



Finance Committee Report

City of Newton In City Council

Wednesday, June 26, 2019

Present: Councilor Gentile (Chair), Ciccone, Norton, Cote, Grossman, and Lappin

Absent: Councilor Noel and Rice

Also present: Councilors Danberg and Leary

City staff present: Shane Mark (Director of Streets; Department of Public Works), Lou Taverna (City Engineer), Jason Sobel (Director of Transportation; Department of Public Works),

Referred to Public Safety & Trans., Public Facilities and Finance Committees

#156-18 **Ordinance amendments for enforcement and fines for sidewalk clearing violations**
COUNCILORS DANBERG, ALBRIGHT, CROSSLEY, NORTON, AND LIPOF requesting amendments to Chapter 17, Section 3 and Chapter 26 Section 8D of the Revised Ordinances to provide for enforcement and fines for violations of the sidewalk clearing ordinance.

Public Safety Approved 6-1 (Ciccone opposed) on 06/19/19

Public Facilities Approved 6-2 (Gentile and Lappin opposed) on 06/19/19

Action: **Finance Approval as Amended Fails to Carry 3-3 (Ciccone, Gentile, Lappin opposed)**

Note: Director of Streets Shane Mark and Councilor Danberg joined the Committee to discuss the fines for the proposed sidewalk clearing ordinance. The Chair suggested that the Committee focus on the fines and the amendments (attached) provided by the Administration for this meeting. The snow clearing ordinance has been in place since 2011 and the Councilors are familiar with the existing ordinance language. The proposed fine language provides for a written warning for the first offense per 365-day period and a \$50 fine for the second and subsequent offenses within a 365-day period. The City will take a picture of the uncleared sidewalk and will mail the notice of violation to property owner. The Administration is suggesting three amendments to the draft ordinance. The first amendment clarifies that the Commissioner of Public Works can extend the 24-hour compliance timeframe due to weather conditions. The second amendment adds religious circumstances to the list of reasons for an exemption from the snow clearing ordinance. The third amendment requires that property owners clear their sidewalks within 24 hours of the end of a storm. The hope is that putting a fine in place for failure to comply with the snow clearing ordinance will greatly improve the City's walkability in the winter months.

There are some Councilors that do not support fining for violation of the snow clearing ordinance. It is not clear how the City will determine who to fine if a plow truck recovers a cleared sidewalk. Homes on major thoroughfares often clear their sidewalks to find the sidewalk covered in plowed snow a couple of hours later. Plowed snow is heavy and difficult to move. Compliance with the ordinance could require some residents to move piles of plowed snow every time a plow passes by.

A Committee member questioned how the City would let residents know if there is an extension of the 24-hour compliance requirement. Councilor Danberg and Mr. Mark explained that the City would use the city's extensive e-mail lists to notify residents, and if there were extenuating circumstances, a robocall would go out to residents. The Committee would like the Administration to provide notice of the snow clearing requirements and the fine in the fall tax bill mailer.

During the discussion in Public Facilities, there was a request for a copy of the memo provided by the City's Law Department related to whether a property owner is liable if they clear the sidewalk and a passerby slips and fall. A Councilor reiterated the request for the memo (attached) and Councilor Danberg stated that the related law has changed and there is no increased liability if a property owner clears the sidewalk; however, she will follow up with the Law Department to provide the memo.

Snow clearing exemptions are a work in process. People sign up for exemptions through the Senior Center and the Department of Public Works receives the list of exemptions. Currently, there is no plan in place to clear sidewalks in front of exempt properties, but the Administration is working on addressing that issue. A Committee member encouraged the Administration to look for partnerships between youth organizations and exempt property owners for snow shoveling services.

A committee member has concerns related to the appeal process for fines. The appeals on the snow clearing fines are going to Newton District Court and require the person appealing the ticket to appear at the courthouse. The City should reach out to the Court to see if there is anyway to do a mail in appeal.

Shane Mark gave the Committee details on how the Administration determines what sidewalks it clears. A working group develops the snow clearing routes in September each year. The School Department, Public Works Department, and Executive Office provide input to the working group to develop a snow clearing route map that schools, and various groups receive. The City currently clears over 80 miles of sidewalk.

A Committee member questioned if the City could use some of the new revenue that is coming in to have the Department of Public Works clear all sidewalks. There are restrictions on how the City can use some of the new revenue, particularly the marijuana revenue, but it is certainly something that the City could investigate. A committee member questioned whether the City could charge property owners for snow clearing. The City cannot charge residents without providing residents with an opt out option for the charge making it inefficient for the City to provide shoveling services as it would be difficult for the City to track what sidewalks to clear on each street.

There were no further questions or comments and Councilor Grossman moved approval of the item as amended, which failed to carry by a vote of three in favor and three opposed. The Councilors voting in opposition of the item will further state their reasons during the anticipated second call discussion of the item on July 8, 2019.

Referred to Public Facilities and Finance Committees

#161-19

Appropriation of \$2 million for design of the Washington Street corridor

HER HONOR THE MAYOR requesting authorization to appropriate and expend two million dollars (\$2,000,000) from Free Cash for the purpose of developing 25% conceptual design of the Washington Street corridor in order to make the improvements to the corridor eligible for the State's Transportation Improvement Program (TIP) funding.

Public Facilities Approved as amended on 06/19/19**Action:**

Finance Approved as Amended 5-0-1 (Norton abstaining) on 06/26/19 - Amendment: to appropriate \$650,000 from the FY 18 Certified Free Cash for a portion of the design costs for the Washington Street Corridor. \$250,000 to be available to the Public Works Department for immediate expenditure and \$400,000 to be placed in a reserve fund under the Comptroller's Department with the condition that the Administration provide the draft Request for Proposals/Qualifications at the same time that the request is made for the \$400,000 in the Comptroller's reserve account.

Note:

City Engineer Lou Taverna and Director of Transportation Jason Sobel joined the committee for discussion of the above item. The item was discussed and approved as amended in the Public Facilities Committee on June 19, 2019. The amendment was to set aside \$400,000 for future use and authorize appropriation of \$250,000 to be spent by Public Works on traffic counts and analysis.

The Chair explained that since the Public Facilities Committee meeting, the Comptroller contacted the City's external auditor about how best to set aside Fiscal Year (FY) 2018 Certified Free Cash for use in FY 2020. The auditor responded that setting aside is not a function that the City can consider. The \$400,000 will need to be appropriated before June 30, 2019 or it will not be available again until FY 19 Free Cash is certified sometime in September or October.

The Chair provided the Committee with a motion that includes an amendment that accomplishes the intention and the spirit of what was voted in the Public Facilities Committee, but from an accounting standpoint, is acceptable. The motion requests the appropriation of the whole \$650,000 with \$400,000 to be placed in a reserve fund under the Comptroller's Department with the condition that the Administration provide the draft Request for Proposals/Qualifications at the same time that the request is made for the \$400,000 in the Comptroller's reserve account. The remaining \$250,000 will be available to the Public Works Department to start working with the city's on-call Traffic Engineer for the work that they want to start to get ready for a trial to start in Summer 2020.

City Engineer Lou Taverna reviewed the request with the Committee. The Department of Public Works and the Planning and Development Department are undertaking the renovation of Washington Street from West Newton Square to Newton Corner. It is a very large project with over two miles of roadway. In order to begin the process, the City needs baseline traffic counts. The Department of Public Works has several traffic counts for areas of Washington Street but what is needed is baseline traffic counts for the entire corridor from Chestnut Street in West Newton to Thorton Street in Newton Corner. The traffic counts are needed to determine what the traffic counts are today to compare with the traffic

counts during the trial, which will help determine whether the trial is a success. The City will use its on-call engineering consultants to gather, analyze and report on traffic counts. The second step is to develop a trial of a boulevard with dedicated turning lanes. Right now, the thought is that the trial would be limited to Washington Street from Chestnut Street to Lowell Avenue but that could change. Although the trial is being done in a section of the corridor, the City needs traffic counts in order to understand the effect of the trial on the whole corridor.

The trial requires the consulting engineer to develop plans to implement the trial and make recommendations on how to conduct the trial. Mr. Taverna added that the City will need to communicate its plans with all the residents and businesses along Washington Street. The trial would involve taking away the ability of residents to back out of their driveway and take a left turn in some places. The trial will stay in place for a year and if the City receives good data, the trial will remain in place.

The Chair pointed out that the City is talking about embarking on one of the largest public works projects that the city has ever done and that engineering services will range between \$3.6 million to \$5.6 million. The Chair added that it should be noted that the City is doing counts along the entire corridor which includes roughly 24 intersections. In addition, the initial thinking is that the trial will be from Chestnut Street to Lowell Avenue; however, it is possible that the engineering firm that is awarded the contract for the construction of the trial may suggest that the trial be done in a different way. This is one of the reasons the City wants to get the traffic engineers involved immediately. The traffic engineers will help the City with the actual design and implementation of whatever trial makes the most sense. The expectation is that the trial will likely be from Chestnut Street to Lowell Avenue, but the engineers may feel that the City ought to test a longer section of Washington Street.

In order to procure the major engineering services for the entire design of the corridor, the city will issue a request for proposals/qualifications to engineering companies. Once the bid is issued, the Public Works Department will form a selection committee to choose the three best engineering firms that submit their proposal. The selection committee will interview the three firms and rate and rank the firms based on strict selection criteria that the committee develops.

The \$650,000 does not get the City to the trial. The trial needs to be constructed and will need to go out to public bid for that construction. The Administration will be coming back in September with an RFP for the engineering services needed to reach 25% design. The Administration may not be ready with the RFQ for engineering services at that point to provide an RFPQ for the full design.

It was pointed out that the Administration may come back in September 2019 to request the \$400,000 with only a percentage of the design work in an RFPQ or they may ask for the full amount because the draft RFPQ is complete. Commissioner of Public Works Jim McGonagle has said on many occasions that the sooner the City can get the engineering firm that is going to do much of the design on board the better, but an RFPQ for a portion of the design is acceptable. The best-case scenario for the City is to have the same firm on board from the beginning of the project to the end. It is important to the councilors that the City go out to bid for the 25% design.

A committee member noted that the West Newton project is going to be starting and the City does not want to be doing traffic counts for the corridor, as it will skew the counts. In addition, it is important that the Administration look to the future in terms of what might happen with development on Washington Street. Mr. Taverna explained that the Planning Department is an integral part of this project. Councilor Norton raised concerns about the timing of this project with all the development that is happening on Washington Street. The traffic counts will be moot when some of the developments like Washington Place and Austin Street come on-line. In addition, the City could end up paying for the whole project without any funding from the State. There is no guarantee that the State will approve this project as a TIP funded project. Although the visuals for the trial are great, if the City is going to end up paying for the whole thing, it is a want to have rather than a need to have.

Chief Financial Officer Maureen Lemieux added that the whole purpose of this is to get the City to 25% design to submit the item to the TIP. The belief is that it is likely that this project will be accepted onto the TIP and approved for State funding. Ms. Lemieux added that even if this becomes a TIP project funded by the state, the City is responsible for 100% of the design costs. With that, Councilor Grossman moved approval of the item with the below amendment, which carried by a vote of five in favor, none opposed and one abstention (Councilor Norton).

Amendment: to appropriate \$650,000 from the FY 18 Certified Free Cash for a portion of the design costs for the Washington Street Corridor - \$250,000 to be available to the Public Works Department for immediate expenditure and \$400,000 to be placed in a reserve fund under the Comptroller’s Department with the condition that the Administration provide the draft Request for Proposals/Qualifications at the same time that the request is made for the \$400,000 in the Comptroller’s reserve account.

#232-19 Request to transfer funds to correct an error related to Utilities Division accounts
HER HONOR THE MAYOR requesting the following transfers to correct an error that was made in the Fiscal Year 2019 funding of the Water, Sewer and Stormwater Health Benefits Accounts:

<u>From</u>	<u>To Account</u>	<u>Amount</u>
Water Full-time Wages (28A401Z3-511002)	Water Health Insurance (28A401Z3-57HLTH)	\$150,000
Sewer Full-time Wages (27A401Y2-511002)	Sewer Health Insurance (27A401Y2-57HLTH)	\$60,000
Stormwater Full-time Wages 26A401A-511002	Stormwater Health Insurance (26A401A-57HLTH)	\$\$25,000

Action: Finance Approved 5-0 (Grossman not voting)

Note: Chief Financial Officer Maureen Lemieux explained that this is a request to correct an error in the Fiscal Year 2019 funding for health insurance benefits in the Utilities Division’s budget.

Funding for several of the Utilities Division’s employees were not included in the health insurance line items. The funding was included in the Utilities Division budget under the wrong accounts. The transfers will correct the error and fund the health benefits. The Committee understood the need for the transfers, and Councilor Cote moved approval, which carried unanimously.

#233-19 Rescind bond authorizations

HER HONOR THE MAYOR requesting reductions in the amount authorized for the following bond authorizations as a result of cost saving on projects and/or premiums received and applied during the bond sale:

<u>Council Order</u>	<u>Project</u>	<u>Amount</u>
#286-13(2)	Angier Elementary School Construction	\$591,542.29
#227-16	Fire Station #3/HQ Reconstruction	\$14,693.23
#94-17	Traffic Signals and Ped Improvements	\$38,008.85
#145-17	Replace Laundry Brook Culvert	\$11,014.78
#182-17	Dedham/Nahanton/Brookline Intersection	\$10,881.21
#176-17	Replace Mondo Track at NSHS	\$9,285.06
#494-18	Carr School AC Units	\$186,081.00
#511-18	Crafts Street Garage Roof	\$482,000.00
#537-18	2 6-Wheel Dump Trucks	\$124,919.00
	Total	\$1,468,425.42

Action: Finance Approved 6-0

Note: Chief Financial Officer Maureen Lemieux presented the request to reduce the amount of 10 bond authorizations. The reductions are a result of either cost savings on a project applied bond premiums, or a combination of both. Some projects came in at a lower cost before the City sold the bonds for the project and the bonds were only sold for the amount needed. With the advice of bond counsel, the City applied premiums earned at the bond sale to some of the projects to reduce the actual bonding for the project. The reductions do not result in a change to the City’s debt payments because all changes were considered on the day of the bond sale. By reducing the bonds, the council authorization will accurately reflect the amount of the bonds sold.

A Committee member felt that the actual request should provide more detail on the cost of the project and whether the reduction in the project cost is a result of cost savings or the use of bond premiums. It would be helpful to the Committee to better understand how premiums play into savings. Ms. Lemieux agreed to provide further detail in next year’s request. With that, Councilor Ciccone moved approval, which carried unanimously.

#234-19 Transfer to cover overtime costs for the scanning project in ISD

HER HONOR THE MAYOR requesting authorization to transfer the sum of fifteen thousand dollars (\$15,000) from the Human Resources Full-time Salaries Account to the

Inspectional Services Overtime/Special Projects Account to cover costs of the scanning project.

Action: Finance Approved 6-0

Note: Chief Financial Officer Maureen Lemieux presented the request for a transfer of funds from the Human Resources Department's salary account to the overtime account for special projects in the Inspectional Services Department. The Inspectional Services Department's budget includes funding for overtime the ongoing scanning project in the department. Usually, if there is a need for additional funds for overtime, funds are available within the Department's budget as a result of attrition; however, this year the Department has been fully staffed for most of the year leaving no available funds. The funds are available for transfer in the Human Resources Department due to attrition.

Ms. Lemieux is requesting \$15,000 to ensure that there is enough to cover the overtime up to the end of the fiscal year on June 30, 2019. A committee member asked if the Inspectional Services Department staff is handling the project and receiving overtime. Ms. Lemieux responded that the overtime funds are for Inspectional Services staff. With that, Councilor Lappin moved approval.

#235-19 Transfer to rebalance the snow and ice accounts

HER HONOR THE MAYOR requesting authorization to transfer the sum of seven hundred thousand dollars (\$700,000) from the Snow and Ice Overtime Account to the Snow & Ice Rental Vehicles (Contractors) Account in order to rebalance the actual costs incurred for the removal of snow and ice throughout the Fiscal Year 2019 winter season.

Action: Finance Approved 6-0

Note: Chief Financial Officer Maureen Lemieux presented the request to transfer a total of \$700,000 to fund the contracted services for snow and ice removal and close out the snow and ice accounts for the fiscal year. The transfer of \$700,000 from the Snow/Ice Overtime Account to the Rental Vehicles (Contractors) Account will ensure that there is enough funding in the contract services account to pay the contractors. The transfer will balance the accounts and provide actual expenditures per line item for snow and ice removal.

The Committee understood the need for the transfer and Councilor Ciccone moved approval, which carried by a vote of six in favor and none opposed.

Referred to Programs & Services and Finance Committees

#455-18 Ordinance amendments to the Plastic Bag Reduction Ordinance

COUNCILORS LEARY, NORTON, AUCHINCLOSS, BROUSAL GLASER, DANBERG, KALIS, MARKIEWICZ proposing ordinance amendments to Chapter 12, Section 71 by revising the definition of "reusable bag", revising the definition for retailers to include establishments of less than 3,500 sq. ft., and adding a 10-cent fee for paper bags provided by the retailer.

Programs & Services Approved as Amended 6-0 subject to second call on 02/06/19

Action: Finance Approved 4-0-2 (Cote, Gentile abstaining)

Note: The Finance Committee previously held this item to allow time to notify retail business of the proposed changes to the plastic bag ordinance. The proposed changes include revising the definition of retailers to include stores under 3,500 square feet and a requirement that retailers charge and collect at a minimum a 10-cent fee for paper bags provided at the point of sale. Retailers could opt to charge more than the 10-cent fee. Councilor Leary informed the Committee that she sent 1,611 letters to retailers throughout the City and canvassed retailers in village centers. The only complaints that Councilor Leary received regarding the proposed amendments to the ordinance were from jewelry stores, candy stores, and high-end clothing stores, as they consider their paper bags a gift bag. It is impractical to offer an exemption to these businesses. In addition, she provided responses to the questions raised at the last meeting. These materials and additional information on plastic bag reduction including a study are available as attachments to the agenda for this meeting.

When the Council first passed the plastic bag ordinance four years ago, several Councilors commented that there should be a fee for paper bags because banning plastic bags pushes people to use paper bags. After comparing the number of bags used by Needham, which does not have a plastic bag ban, and Newton, it is apparent that Newton shoppers are opting for paper bags instead of bringing reusable bags. By charging a fee for paper bags, more consumers will bring reusable bags with them to stores.

The 10-cent fee is meant to reduce check-out bags and encourage the use of reusable bags. Retailers can no longer give out any type of free bag at checkout. The idea going forward is to have the fee go down as more and more people bring their own bags. Have a fee for something consumers received for free previously is one the biggest drivers of changing consumer habits. Implementing fees results in a dramatic reduction in check-out bags. Although the State is currently considering a plastic bag ban bill, the Sate version is not as strong, as it allows retailers to opt not to charge for bags. The City is moving in steps towards the idea that the City needs to reduce and reuse because the City cannot recycle its way out of the significant solid waste and recycling problem. It is important that the City implement a fee, especially as the expectation is that trash and recycling costs are going to dramatically increase.

There is a change to the definition of reusable plastic bags to ensure that the reusable bag is truly reusable and not just an extra thick plastic bag. A reusable bag means a sewn bag with stitched handles that can carry 25 pounds over a distance of 300 feet; is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

Councilor Lappin moved approval of the item as amended, which carried by a vote of four in favor, none opposed and two abstentions. Councilor Gentile clarified that he supports the change in the definition of reusable bag and including the smaller retail establishments but has an issue with requiring retailers to charge for paper bags when abutting communities are not charging a fee for bags. He needs additional time to consider how he will vote on the docket item. Council Cote aligned himself with Councilor Gentile's comments.

Referred to Programs & Services and Finance Committees

#224-19 Request for salary increase for City Clerk/Clerk of the City Council
COUNCILORS LAREDO AND KALIS requesting an increase in the salary of the City Clerk/Clerk of the City Council to \$139,719 effective July 1, 2019 to match the percentage increase included in the FY20 budget for H-grade employees.

Programs & Services Approved

Action: **Finance Approved 6-0**

Note: The President and Vice-president of the Council are requesting a salary increase for the City/Clerk of the City Council. The Clerk received an increase this past fiscal year, which kept his salary increase in line with the FY 19 salary adjustments for department heads. The proposed increase is on par with the percentage increase that City department heads received in the FY 20 budget. The Committee did not have any questions and Councilor Ciccone moved approval, which carried unanimously.

#210-19 Mayor's reappointment of James Pellegrine as a Constable
HER HONOR THE MAYOR reappointing James Pellegrine., 15 Adams Court, Newton as a Constable for the City of Newton for a term of office to expire June 30, 2022. (60 days: 08/02/19)

Action: **Finance Approved 6-0**

Note: Mr. Pellegrine is a retired Newton police officer, who has served as a Constable of the City for the past twelve years. Mr. Pellegrine filled the appropriate paperwork with the Clerk's office including a copy of the required \$5,000 bond. The Chair did not feel it was necessary for Mr. Pellegrine to be present for the meeting as he is a re-appointment and known to most Committee members. Councilor Ciccone moved approval of the re-appointment, which carried unanimously.

#231-19 Mayor's re-appointment of Daniel Kunitz as a trustee of the Cousens Fund
DANIEL KUNITZ, 51 Pratt Drive, West Newton re-appointed as a trustee of the Horace Cousens Fund for a term of office to expire on June 1, 2022. (60 days – 08/17/19)

Action: **Finance Approved 6-0**

Note: Dan Kunitz is being reappointed to Horace Cousens Fund for a three-year term. The Committee members had an opportunity to review Mr. Kunitz's resume, which was attached to the agenda. The Committee was pleased to reappoint Mr. Kunitz and Councilor Norton moved approval, which carried unanimously.

All other items before the Committee were held without discussion. Draft Council Orders for the above items that are recommended for City Council action are attached.

Respectfully submitted,

Leonard J. Gentile, Chair

156-18

Draft for Discussion 1/18/2019 Edited 6/26/19

Revise the provisions of Sec. 26-8D and Sec. 17-23 as follows:

Sec. 26-8D. Removal of snow and ice from sidewalks

In order to allow for safe pedestrian and wheelchair passage, every owner or occupant of a building or lot of land abutting upon a paved sidewalk or any person having charge of such property shall use reasonable efforts to remove snow and ice from the sidewalk and handicap access ramps, and shall use reasonable efforts to treat said sidewalk and ramps to allow for a safe passageway of approximately thirty-six (36) inches in width, provided that where such sidewalk is less than thirty-six (36) inches in width the passageway shall encompass its entire width and handicap access ramps. Snow and ice shall be removed, and sidewalks and ramps shall be treated, within ~~thirty~~ twenty-four (~~30~~24) hours after such snow has ceased to fall or such ice has formed. This section shall apply to snow and ice which falls from buildings, other structures, trees or bushes, as well as to that which falls from clouds. The Commissioner of Public Works may extend the 24-hour compliance time--frame when weather conditions necessitate. This section shall not apply to owners or occupants of a building or lot covered by Section 26-8. The mayor or his designee is authorized to coordinate volunteer snow clearing assistance or to grant an exemption, renewable annually, for citizens who upon written petition demonstrate hardship due to a combination of health and financial duress, or religious circumstances. ~~Enforcement shall be limited to issuance of notices of non-compliance for violations of any provision of this section.~~ (Z-83, 3-21-11)

Add Sec. 26-8D to the provisions of Sec. 17-23 (f)

Sec. 17-23. Enforcing persons and revised ordinances subject to civil fine.

(f) DEPARTMENT OF PUBLIC WORKS: The commissioner of public works and/or his or her designee shall be authorized to issue written notice of the following violations:

Sec. 28D. Removal of snow and ice from sidewalks.

- () First offense per 365 day periodwritten warning
- () Second and subsequent offenses per 365 day period\$50.00

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: October 29, 2010
TO: Members of the Board of Aldermen
FROM: Marie M. Lawlor, Assistant City Solicitor
RE: Proposed Snow Removal Ordinance – implications of the *Target* case

It has come to the Law Department’s attention that a great deal of confusion exists regarding the impact of the recent Supreme Judicial Court decision in the snow and ice liability case of *Papadopoulos v. Target Corporation*, 457 Mass. 368 (July 26, 2010). The purpose of this memo is to briefly explain the Court’s ruling prior to your consideration of the recently docketed proposed amendment to the City’s snow removal ordinance.

Prior to the *Target* decision, property owners in Massachusetts were shielded from liability for injuries resulting from a “natural accumulation” of snow or ice. Liability could only attach if the property owner in some way acted to create an “unnatural accumulation” of snow or ice. In simple terms, if you didn’t shovel it or otherwise create the hazardous snow or ice condition, then you would not be held liable. This standard came to be known as the “Massachusetts Rule”, since Massachusetts was the only snow state using that standard. All other snow states use the standard of general premises liability in which the owner has an affirmative duty of reasonable care to maintain property in a reasonably safe condition under all the circumstances.

In the *Target* decision, the Court has abolished the “Massachusetts” rule. In the future, the standard for snow and ice injuries will be the same as that for any other premises injury claim in Massachusetts. The premises liability standard imposes an affirmative duty on a property owner to use reasonable care to maintain the property in a reasonably safe condition in view of all the circumstances. This standard will now apply to snow and ice cases, so property owners may no longer feel secure that “doing nothing” to make snow and ice accumulations reasonably safe, whether those accumulations are natural or unnatural, will protect them from liability.

Revise the provisions of Sec. 26-8D and Sec. 17-23 as follows:

Sec. 26-8D. Removal of snow and ice from sidewalks

In order to allow for safe pedestrian and wheelchair passage, every owner or occupant of a building or lot of land abutting upon a paved sidewalk or any person having charge of such property shall use reasonable efforts to remove snow and ice from the sidewalk and handicap access ramps, and shall use reasonable efforts to treat said sidewalk and ramps to allow for a safe passageway of approximately thirty-six (36) inches in width, provided that where such sidewalk is less than thirty-six (36) inches in width the passageway shall encompass its entire width and handicap access ramps. Snow and ice shall be removed, and sidewalks and ramps shall be treated, within twenty-four (24) hours after such snow has ceased to fall or such ice has formed. This section shall apply to snow and ice which falls from buildings, other structures, trees or bushes, as well as to that which falls from clouds. The Commissioner of Public Works may extend the 24- hour compliance timeframe when weather conditions necessitate. This section shall not apply to owners or occupants of a building or lot covered by Section 26-8. The mayor or his designee is authorized to coordinate volunteer snow clearing assistance or to grant an exemption, renewable annually, for citizens who upon written petition demonstrate hardship due to a combination of health and financial duress, or religious circumstances. (Z-83, 3-21-11)

Add Sec. 26-8D to the provisions of Sec. 17-23 (f)

Sec. 17-23. Enforcing persons and revised ordinances subject to civil fine.

(f) DEPARTMENT OF PUBLIC WORKS: The commissioner of public works and/or his or her designee shall be authorized to issue written notice of the following violations:

Sec. 28D. Removal of snow and ice from sidewalks.

() First offense per 365 day periodwritten warning

() Second and subsequent offenses per 365 day period\$50.00

DRAFT 6/20/19 CLEAN COPY

Delete Sec. 12-71 in its entirety and insert in its place the following:

Sec. 12-71. PLASTIC BAG REDUCTION ORDINANCE

(a) Declaration of findings and policy-Scope.

The City Council hereby finds that the reduction in the use of plastic bags by commercial entities in the city is a public purpose that protects the marine environment, advances solid waste reduction and protects waterways. This ordinance seeks to reduce the number of plastic bags that are being used, discarded and littered, and to promote the use of reusable checkout bags by retail stores located in the city. Further, this ordinance seeks to increase the use of reusable bags.

(b) Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"Department" means the city's department of health and human services.

"Commissioner", means the Commissioner of Health & Human Services or his/her designee.

"Checkout bag", means a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include:

- (i) bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of a retail establishment;
- (ii) laundry or dry-cleaner bags;
- (iii) newspaper bags;
- (iv) a paper bag given to customers at a pharmacy for medication;
- (v) a bag without handles that is used to protect items from damaging or contaminating other items such as protecting wine bottles or vegetables;
- (vi) a bag used to contain unwrapped food.

"Recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

"Reusable checkout bag" means a sewn bag with stitched handles that (1) can carry 25 pounds over a distance of 300 feet; (2) is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

"Retail establishment", means any commercial entity, whether or not for profit, with retail space located in the City of Newton including but not limited to a restaurant, food or ice cream truck, convenience store, retail pharmacy, supermarket, or seasonal and temporary businesses. "Retail establishment" shall not include Meals on Wheels food delivery services to home bound persons with disabilities or home bound seniors.

(c) Requirements

(1) If any retail establishment provides a checkout bag to customers, the bag shall be either a recyclable paper bag or a reusable checkout bag.

(2) A retail establishment that provides any type of checkout bag shall sell it for no less than ten cents (\$0.10). All moneys collected pursuant to this ordinance shall be retained by the retail establishment.

(3) Any charge for a checkout bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the "Checkout Bag Charge" thereon.

(4) The Commissioner may promulgate rules and regulations to implement this section.

(c) Effective date.

This ordinance shall take effect six months from date of passage for any retail establishment with retail space of 3500 square feet or larger or with at least two locations under the same name within the city with retail space that totals 3500 square feet or larger; and shall take effect 12 months from date of passage for all other retail establishments.

(d) Exemptions

No exemptions shall be allowed.

(e) Penalties and enforcement.

(1) Fine. Any retail establishment which violates any provision of this section or any regulation established by the commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation occurs shall constitute a separate offense.

(2) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this section, the commissioner of the health and human Services, or his or her designee, shall be enforcing persons.

(f) Severability.

Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provision of this section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this section shall remain valid and enforceable.

CITY OF NEWTON

IN CITY COUNCIL

2019

ORDINANCE NO. B-

BE IT ORDAINED BY THE CITY COUNCIL

That the Revised Ordinances of Newton, Massachusetts, 2017, as most recently amended by Ordinance B-12, dated July 9, 2018, relative to **ARTICLE II. CLERK OF THE COUNCIL** are hereby further amended as follows:

In **Sec. 4-21. Salary.**

1. Delete the words "July 1, 2018" and insert in place thereof "July 1, 2019"

and

2. Delete the figure "\$135,619" and insert in place thereof "\$139,719"

Approved as to legal form and character:

ALISSA O. GIULIANI

City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT

Approved:

(SGD) DAVID A. OLSON

City Clerk

(SGD) RUTHANNE FULLER

Mayor

CITY OF NEWTON

IN CITY COUNCIL

2019

ORDERED:

That in accordance with the recommendation of His Honor the Mayor and with the confirmation of the City Council, be it known that DANIEL KUNITZ is hereby re-appointed as a member of the BOARD OF TRUSTEES OF THE HORACE COUSENS INDUSTRIAL FUND for a term to expire June 1, 2022.

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk