



Programs & Services Committee Agenda

City of Newton In City Council

Wednesday, January 17, 2018

7:00PM
Room 211

Items Scheduled for Discussion:

- #33-18** **Ordinance amendment regarding City Seal**
CITY CLERK requesting to amend Chapter 1, Section 8 of the Newton City Ordinances regarding the use of the City seal.
- #32-18** **Ordinance amendment for registering lobbyists**
COUNCILORS COTE AND NORTON requesting to amend Chapter 4, Section 3 of the Newton City Ordinances to provide additional requirements for registering lobbyists.

Chair's Note: There will be a preliminary discussion of possible future action by the Programs & Services Committee on the recommendations of the Charter Commission.

Please note, this is not an actionable item at this time.

Respectfully Submitted,

John B. Rice, Chair

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the City of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Use of the City Seal (Proposed Draft Ordinance)

(a) No person or entity shall use or display the City seal or any reproduction thereof for any personal or commercial purpose without the prior written authorization of the city ^{Clerk} manager, except that the City Clerk shall not grant authority for use or display of the City seal for any purpose related to any political activity. Under this section, a reproduction of the City seal shall include any depiction of the City seal or any other variation thereof which would cause a reasonable person to believe that the depiction of the city seal implies the endorsement, support, approval, sponsorship, participation, involvement or association with the government of the City of Newton or any of its departments, agencies, officials or employees.

(b) The penalty for any violation of this section shall be a civil fine of \$50.00 per day with each day or portion thereof constituting a separate offense.

(c) The provisions of this section shall be enforced by the City Clerk, as custodian of the City seal.

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Newton City Clerk
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David A. Olson, CMC
Newton, MA 02459

ordinances of the city, whereby any act or thing is enjoined or prohibited or required, shall, unless other provision is expressly made, be liable to a penalty not exceeding three hundred dollars (\$300.00) for each offense unless another penalty is specifically provided. Each day any violation of these Revised Ordinances or of any other ordinance of the city shall continue shall constitute a separate offense. (Rev. Ords. 1973, § 1-6; Ord. No. 306, 12-18-78; Ord. No. R-204, 12-21-81)

Cross references—Offenses and miscellaneous provisions, Ch. 20; police, Ch. 24

State law reference—Penalty authorized, G.L. c. 40, § 21

Sec. 1-7. Disposition of fines and penalties.

All fines and penalties for the violation of any ordinance shall, when received, inure to the use of the city, and be paid into the city treasury, unless it is otherwise directed by the laws of the commonwealth or the ordinances of the city. (Rev. Ords. 1973, 1-7)

Sec. 1-8. City seal described.

The following shall be the device of the corporate seal of the city: A representation within a circle of John Eliot preaching to a group of Indians and around the same the words: "Liberty and Union" and "Nonantum;" and in an outer circle the words: "Newton: Founded 1630: Incorporated a Town 1688: A City 1873."



(Rev. Ords. 1973, § 1-8)

State law reference—Municipal seals, G.L. c. 40, § 47

Sec. 1-9. Documents to be sealed.

All deeds and other legal documents made, given or entered into by the city, requiring a seal, shall be sealed with the city seal. (Rev. Ords. 1973, § 1-9)

Sec. 1-10. Custodian of seal.

The city clerk shall be the custodian of the city seal. (Rev. Ords. 1973, § 1-10)

Sec. 1-11. City flag.

There shall be an official city flag, the design of which shall be a field of gold with a black pale in the center which contains the city seal. The flag shall be divided into three (3) equal sections parallel to the staff, the sections at either end to be gold in color and the center section black. The official city seal shall be on the black center section and shall be in gold with black lettering. (Rev. Ords. 1973, § 1-11)

Sec. 1-12. Enacting style of ordinances.

The enacting style of all ordinances shall be, "Be it ordained by the City Council of the City of Newton, as

Chapter 4

CITY COUNCIL*

- Art. I. General, §§ 4-1—4-19**
Art. II. Clerk of the Council, §§ 4-20—4-49
Art. III. Betterment Procedures, §§ 4-50—4-51

ARTICLE I.
IN GENERAL

Sec. 4-1. Time, place for council meetings.

Regular meetings of the city council shall be held in the months of January through June, inclusive, and in the months of September through December, inclusive, on the first and third Monday evenings of such months and in the months of July and August on the second Monday of each month at 7:45 p.m., unless otherwise ordered by the city council. Where any such Monday shall be a legal holiday, the meeting shall be held on the next following day which is not a legal holiday. Every adjourned sitting of the city council, not an adjourned special meeting, shall constitute a regular meeting, and the order of business thereat shall be the same as in the case of a regular meeting. Said meetings will be conducted in the council chambers of the Newton City Hall. (Rev. Ords. 1973, § 2-1)

Sec. 4-2. Salary of councilors.

In accordance with chapter 39, section 6A, of the General Laws, each member of the city council shall receive annual compensation of nine thousand seven hundred fifty dollars (\$9,750.00), payable monthly. The effective date of any subsequent salary increase voted under this section shall be the date upon which the succeeding board (to that which voted the increase) is sworn into office. Any such subsequent salary increase shall require the affirmative vote of two-thirds (2/3) of the city council and be voted only between January first and September thirtieth of a year in which a municipal election is to be held. (Rev. Ords. 1973, § 2-3; Ord. No. 573, 7-5-73; Ord. No. 201, 3-7-77; Ord. No. R-314, 3-21-83; Ord. No. S-269 and S-270, 9-8-87; Ord. No. V-132, 9-15-97)

Sec. 4-3. Registration of persons receiving consideration to affect outcome of any matter pending before city council.

(a) Any person who has received or will receive a fee or any other consideration to effect positive or negative action by the city council on any matter pending before it shall register with the city clerk their name, address and the name of the person or persons on whose behalf they are seeking such action before commencing such activity.

(b) This section shall not apply to attorneys of record for petitioners to the city council, provided their names and addresses are clearly set forth on the petition.

(c) No violation of this section shall affect the validity of any action of the city council. (Rev. Ords. 1973, § 2-6)

Secs. 4-4—4-19. Reserved.

***Cross references** – Ward boundaries established, § 1-15; administration generally, Ch. 2; notification to officers and boards of certain orders of the city council, § 6-1

*(Ord. No. A-68, 12-08-15 changed references to “Board of Aldermen” to “City Council”)

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David A. O'Brien
Newton, MA 02459

Registration of Lobbyists

1) Purpose: The primary goal of this ordinance is to preserve the integrity and transparency of the democratic process, by mandating the registration of those who are hired to promote and influence a legislative agenda.

2) Definitions:

City Official: the Mayor and members of the City Council; any Board member, Commission member or other appointee of the Mayor; City Department Heads.

Compensation: any economic consideration in any form, in exchange for services rendered or to be rendered in the future, which shall include any remuneration of any value, direct or indirect.

Lobbying: a communication, by any means, from a lobbyist to a City Official concerning any issue or docket item that will foreseeably be decided or voted upon by that City Official, which seeks to influence, convince, induce, or otherwise persuade the member to decide to act or vote in a particular way.

Lobbyist: a person who is retained, without or without direct or indirect compensation for the purpose of lobbying; a person who is employed by a lobbyist organization.

3) Registration Required

a) Registration with the City Clerk's office shall be required for any person or entity that:

1) meets the definition of lobbyist or lobbyist organization as defined in section 2 above, and

2) engages in lobbying as defined in Section 2 above.

b) Any person engaging in lobbyist activity is required to register with the Clerk's Office within ten (10) days of commencing lobbyist activity, and shall renew the registration annually thereafter.

c) Registration shall consist of the following information:

- 1) name, address, telephone number of the person engaged in lobbying activity,
- 2) name and address of the source of compensation for lobbying
- 3) a description of the action, docket item, or subject matter, the lobbyist seeks to influence,

- 4) amount of compensation received in connection with lobbying activity at the time of registration; if compensation cannot be calculated, then a brief description of the compensation shall be made;
- d) The cost of registration shall be \$100 per lobbyist.
- e) Failure to register, or failure to renew registration, while conducting lobbyist activities will be considered a violation of this ordinance.
- f) Renewal of registration will not be required upon the cessation of lobbying activity, with proper notice to the City Clerk's office.

4) Exceptions

The following individuals and entities are exceptions to the definitions in Section 2, and the Registration requirements of Section 3:

- a) officials of any local, state or federal agency acting in their official capacity,
- b) a person, or group of people, advocating on their own behalf for their own interests,
- c) an employee of a non-profit organization, advocating on an issue impacting a constituent of that entity.

5) Reporting Requirements

A person who meets the threshold requirements of Section 2(a) must file an annual report with the City Clerk's Office. The annual report shall consist of the following information:

- a) Name, business address, and telephone number of the lobbyist
- b) If applicable, names of the owners of the business, or if a corporation, the names of the officers of the business.
- c) Name, business address and telephone number of each client for whom the lobbyist is performing lobbying activity in the City;
- d) A brief description of the nature of each client's business;
- e) A brief description of the actions, docket items, legislative or administrative activities the lobbyist seeks to influence on behalf of each client;
- f) Name of each person employed by the lobbyist to conduct lobbying activity in the City;

- g) Any donations to any entity on behalf of a City Official
 - i) A complete and comprehensive accounting of any expenses that are paid on behalf of any client for the purpose of lobbying a City Official
 - k) The total amount of compensation received for services as a lobbyist for the purpose of lobbying any City Official; an accounting shall be made for each client for whom a lobbyist is compensated
 - l) A contact log consisting of a recording of all contacts made with City Officials for the purpose of lobbying. The contact information shall include all phone records, emails and other correspondence by and between the lobbyist and a City Official.
- 6) Enforcement (TBD)
- 7) Penalties: A violation of any section of this Ordinance shall result in a fine of ____.
- 8) This Ordinance shall be interpreted in accordance with chapter 268B of the General Laws, and nothing herein shall be construed to limit the prohibitions, restrictions, duties obligations or requirements thereunder.
- 9) Severability: If any provision of this Ordinance is held to be invalid by a court of competent jurisdiction then such provision shall be considered severable from the remaining provisions, which shall remain in full force and effect.

EXCERPT FROM 3/22/17 PROGRAMS & SERVICES REPORT**#300-16 Ordinance to register lobbyists**

COUNCILORS COTE, NORTON AND HARNEY proposing an ordinance to register lobbyists in the City of Newton.

Action: Programs & Services Held 8-0

Note: Councilor Cote explained that he started to speak with the Law Department about this issue after the last election and right after Austin Street had been voted. He had been approached by some people asking where some flyers and literature regarding Austin Street had come from and who paid for them. This prompted him to call the Secretary of State's office to inquire about lobbying requirements. The Secretary's office responded that there are federal and state lobbying regulations, but they were unaware of few, if any at the municipal level. If there is a statewide issue, such as the legalization of medical marijuana, lobbyists register at the state level to lobby within a City on that issue. Otherwise, there are no regulations on lobbying on local issues.

Councilor Cote noted that a state representative from Taunton, MA proposed a statewide bill which allows municipalities to opt in or out but it seemed like a lot of paperwork and it may have just stalled in Committee. The City of Boston has a proposed ordinance pending. He felt that full transparency would be fairest to the residents so they know who they might be talking to, why they are advocating (or not) for a particular issue and if they are being paid to do so. He asked Maura O'Keefe, Assistant City Solicitor, to do some research and write a draft ordinance to register lobbyists in Newton. The draft ordinance was attached to the agenda.

Councilor Norton noted that she is a lobbyist and has to register with the state. She felt it was logical to do the same locally. During the Orr project discussions, for example, a man showed up often who said he was doing research and preparing reports just because he was interested, which she felt was highly unlikely and that he was probably a paid lobbyist. She felt that the public should know when someone is being paid to advocate to the City Council on a matter.

Councilor Cote added that he spoke to David Olson, City Clerk, about the process of registering and Mr. Olson felt that the impact on staff would be low and there would be no significant cost associated with it.

Ms. O'Keefe explained that lobbyist ordinances are found at the state level and cities with large populations of over a million residents like Los Angeles, Houston or San Diego. There are a couple of smaller municipalities that have them such as Providence, RI and a small town in Florida. Boston has a proposed ordinance as was mentioned by Councilor Cote. The draft ordinance she prepared is based on the Massachusetts state version, but simplified. The draft distills the intent and is targeted at bringing transparency to the process.

The definition of lobbyist in the draft ordinance is someone who is retained with or without direct or indirect compensation for the purpose of lobbying or someone who is employed by a

lobbyist organization. This means anyone who is working on a regular basis, in their regular business, to influence a governmental matter, or promote some sort of outcome. A Committee member felt that might include all the Land Use attorneys, however, Ms. O'Keefe did not believe they would fall under this definition. Councilor Cote explained that they would be retained specifically as Land Use attorneys, not lobbyists, and lobbying was not their regular business.

Committee Comments/Questions

Councilor Cote said that Land Use Committee members get some calls asking who is behind certain campaigns for or against a project. He felt this would provide some transparency for that. Another Councilor, who sits on the Land Use Committee, said that he has never gotten any questions of that nature.

Many Committee members noted that they tend to know who all the players are in the City and did not see this as a problem and perhaps that is why there are no regulations on the municipal level. A well-known lobbyist was hired to work on the Washington Place project and most people knew who he was and that he was paid. Councilor Cote and Councilor Norton felt that most residents would not have known that he was a lobbyist and a registry would provide transparency for those who cared to look.

On the other hand, it was pointed out that during discussions of regulating tobacco in Newton, for example, there were instances of people coming in who represented the tobacco industry. However, they did generally announce at the meetings who they were and who they were representing.

A Councilor argued that a bigger issue comes from Councilors becoming unduly biased against a project because neighbors don't want it, rather than on the pro-development side.

Councilor Norton felt that if someone is promoting or advocating for a particular outcome to an elected official, the residents should know that. Others in Committee felt registering might have a chilling effect by imposing a regulatory burden. Speakers at public hearings are asked to give their address, and some do not even like to do that, so there could definitely be a chilling effect on participating in the issues.

A Committee member felt that there did not seem to be much of an interest in Committee to approve the ordinance. Big cities, states and the federal government require registering and regulation of the lobbying industry because there are large amounts of money involved. Lobbyists in Washington and in other big cities are on a scale that is very different than a smaller city.

There was some confusion as to who would be considered a "lobbyist". Ms. O'Keefe reiterated that would be anyone who received compensation for lobbying as their regular job, as defined above. There are exceptions built into the ordinance: Anyone representing or advocating for their own interests would not be included; officials acting in their official capacity would not be

included; and an employee of a non-profit organization advocating for a constituent of that entity would not be included.

Follow Up

A Committee member asked to see Houston, San Diego, Los Angeles, Providence and Boston's ordinances at the next discussion.

Another Committee member said he was not opposed to the transparency this ordinance might bring but he would like to see a couple of examples of when this was a problem in Newton. He would also like to make sure it is not overly broad so that it creates a chilling effect on participation in issues, and also that it is not too burdensome to City staff to administrate this and make decisions on who should or should not be registered.

The Committee voted unanimously to hold this item.

EXCERPT FROM 10/18/17 PROGRAMS & SERVICES REPORT**#300-16 Ordinance to register lobbyists**

COUNCILORS COTE, NORTON AND HARNEY proposing an ordinance to register lobbyists in the City of Newton. [08/10/16 @ 3:11 AM]

Action: Programs & Services voted No Action Necessary 5-0 (Councilor Sangiolo not voting)

Note: Councilor Cote explained that the notes from the last discussion were attached to the report. The follow up from that meeting was to find out what other communities were doing in terms of an ordinance to register lobbyists and to bring that information back to Committee. However, after the last meeting, it was discovered that Newton already has an ordinance in *Chapter 4, "Section 4-3 Registration of persons receiving consideration to affect outcome of any matter pending before the city council."* The ordinance was attached to the agenda. The City Clerk reported that he had received no registrations.

Councilor Cote said the ordinance could stay as is or the Committee could recommend incorporating the work that Maura O'Keefe had done in preparation for the first discussion. That draft language was also attached to the agenda. Councilor Cote noted that the Planning Department could also make a note on their applications that this ordinance exists and any lobbyists need to register with the City Clerk.

A Committee member wondered who would be considered a lobbyist. For example, would anyone who lobbied for any particular side in the leaf blower discussions be a lobbyist? Ms. O'Keefe reminded the Committee that anyone lobbying on their own behalf or for their own business would be exempt from this requirement. The distinction is that someone would need to be paid specifically to come before the City Council to advocate for a certain outcome. That would, therefore, not include a landscaper, or a home business owner, for example.

It was asked if there was some specific incident that occurred which is driving this ordinance amendment. Councilor Cote said that after the Austin Street vote, there were questions asking where certain pamphlets were coming from in support of the Austin Street project. Similar questions may come up in future projects so this would allow people to be able to find out if someone is a lobbyist. Councilor Leary said Livable Newton did the Austin Street pamphlets and were not being paid. They were advocating for their own interests.

Ms. O'Keefe said that the current section is quite vague and she produced the City of New York's lobbyist ordinance, which is quite long and extensive. The current ordinance is sufficient to create a policy, however, and she would be happy to work with the Clerk's office to come up with some guidelines and parameters. Another advantage of a policy would be that amendments would be much simpler to do, while amending an ordinance would be more difficult. A Councilor noted that the current ordinance expresses the desire for transparency and could continue uphold that goal.

The Committee felt it would be helpful to try to let as many people as possible know about the ordinance, perhaps through the permit applications, as one idea. Councilor Cote would speak to the City Clerk to determine if there were other ways to let the community know and Ms. O'Keefe would speak to the Clerk about creating a policy, as mentioned.

The Committee voted No Action Necessary, unanimously.