



Programs & Services Committee Report

City of Newton In City Council

Wednesday, January 17, 2018

Present: Councilors Rice (Chair), Brousal-Glaser, Baker, Krintzman, Kalis, Albright, Greenberg and Schwartz

Also Present: Councilor Cote

City Staff: Karyn Dean (Committee Clerk)

#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.

Action: Programs & Services Held 8-0

Note: David Olson, City Clerk, joined the Committee. He explained that the Recodification Committee reviewed the ordinance related to the city seal and recommended it be docketed for amendment. It had come to the City's attention that the seal had been used on some political campaign literature in the past year. The goal of the proposed amendment is to prevent the city seal from being used inappropriately and will specifically prohibit use for any political purposes. The ordinance also proposes a \$50 fine for each day the ordinance is violated. The proposed ordinance is attached.

Committee Comments/Questions

Councilor Baker wanted to be sure that the Councilors at Work series he is working on could use the city seal under this ordinance. Mr. Olson said he felt that particular use would be considered an appropriate use as all of the City Councilors would be participating.

It was asked if this language would sufficiently enable the use of the city seal in parody, for instance in a cartoon making fun of the City, City Council or a Councilor. There is a common principle that people have a right to parody public entities. Some Committee members felt that a parody would not imply endorsement by the City Council and so it could be exempt. Members also wondered if use in an academic manner, such as on a school report, would be allowable. Mr. Olson said he relied upon the Law Department to guide the language but suggested he could take these questions back to them for clarity.

Use of the seal on Councilor business cards and on individual Councilor's newsletters is appropriate. Asking for votes on that newsletter would invalidate the use of the seal as that would be a political use (campaigning). It was also noted that state campaign finance rules prohibit use of public resources for political purposes and the city seal is a public resource.

The Committee agreed that the primary goal of the proposed ordinance would be to prohibit use of the seal for political purposes. It was pointed out that the City Clerk would have the authority and discretion to grant the seal's use for certain other purposes, personal, academic or commercial, so that would be a good control. Mr. Olson noted that he has only seen the inappropriate use of the seal on political literature during the recent campaign and has not seen any other type of inappropriate use, thus far.

Ultimately, the Committee agreed that use of the city seal should be prohibited for political purposes, however, they were not in agreement on particular commercial, personal and academic uses. Members felt there should be some standards the City Clerk can use to determine appropriateness for these uses. There was a question as to whether the city seal would be considered in the public domain and if it could be prohibited from use, aside from the political prohibition.

Councilor Baker volunteered to work with David Olson and the Law Department to re-draft the language after reviewing commercial, academic and personal uses, public domain issues and first amendment concerns and bring it back to Committee for review. Because there is a fine involved, the item will also be referred to Finance Committee.

The Committee voted unanimously to hold the item.

#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.
Action: Programs & Services Held 8-0

Note: Councilor Cote joined the Committee to present this item. He explained that the Committee met in the last term about amending the ordinances to add requirements for registering lobbyists in the City. There has been some concern about the larger development projects that have been coming through the City Council regarding who was providing materials in support of them. This registration process would make it clearer who is being paid to represent projects. Because property values are so high in Newton, hiring a lobbyist could be a relatively small price to pay in order to make a profit on projects. Maura O'Keefe, Assistant City Solicitor, reviewed other municipalities' ordinances to determine how they handle this issue. She then provided a draft ordinance for review by the Programs & Services Committee. It was then determined that Newton already had an ordinance related to registration of lobbyists, as follows:

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

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

Ms. O’Keefe’s draft ordinance, which was attached to the agenda, is much more detailed than the current ordinance. Councilor Cote stated that the proposed language could use some editing, but likes that it provides more specificity than the current ordinance. He also noted that Councilor Norton, the co-docketer, is a lobbyist and she has to register at the state level. She felt it was reasonable to do the same at the local level.

Committee Comments/Questions

It was pointed out that the exceptions were tricky to figure out and determine who might fall under this provision. The language should make clear that the ordinance deals with people who are compensated for their work in advocating for something before the council. Councilor Cote noted that people who do this kind of work know what they are doing and know they should register.

Councilor Krintzman said that when he worked for the state senate, he was integral in re-writing the state lobbying laws. He felt this is a good concept and is supportive, but the language needs more review. There has to be a balance of transparency without causing a chilling effect for those who would like to participate in the public process. There is language in MGL Chapter 268A which can be used as a resource even though there are differences between lobbying on a state level and a municipal level.

A Committee member wondered if the current ordinance should be more proactively implemented instead of changing the language. Councilor Cote said he had suggested working with the City Clerk on ways to get the information out to lobbyists. Mr. Olson said he did meet with Ms. O’Keefe about how to let people know they need to register. In his 11 years, no one has registered or asked about registering. Councilor Cote will contact Ms. O’Keefe to explore this more. A Committee member suggested that a notice could be added to the special permit application, or it could be mentioned at the beginning of public hearings. Adding the word “lobbyist” to the current ordinance would be helpful as well so that if anyone searches for an ordinance, they would be able to find it.

Councilor Cote will follow up with Ms. O’Keefe on language. The Committee voted to hold this item 8-0.

Councilor Rice explained that he would like to have a preliminary discussion of possible future action by the Programs & Services Committee on the recommendations of the Charter Commission.

The Committee discussed various options and strategies for approaching further discussion and possible action by the City Council on the recommendations made by the Charter Commission. The voters did not vote in favor of the proposed City Charter as presented by the Charter Commission, however, there was some public opinion, as well as City Councilor opinion, that some of the

recommendations should be implemented and others, perhaps, amended and implemented. Some of the recommendations, such as changing the composition of the City Council, and perhaps term limits, would require a ballot question and vote by the residents of Newton. Other changes could be made without the ballot requirement, through Home Rule Legislation, affirmatively signed by the Mayor, enacted by the General Court and then signed by the Governor. There was some disagreement as to which class of items should be dealt with first. Some thought that the changes that would require a citywide vote should be dealt with first because there was a deadline involved in getting questions onto the 2019 ballot. Others felt the recommendations that would not require a vote of the residents should be dealt with first in order to make some shorter-term progress.

Ultimately, the Committee decided to appoint a Subcommittee to further research and discuss these matters. Chairman Rice, in the time since the Committee meeting, forwarded a memo stating the members of the Subcommittee, its Chair and the charge of the Subcommittee, based on the Committee's discussion. It is attached.

Meeting adjourned.

Respectfully Submitted,

John B. Rice, Chair

City of Newton Ordinances 2017

Chapter 1 – General Provisions

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."



(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, 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.

(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)



Memorandum

To: Programs & Services Committee
From: Chair, John B. Rice
Re: Charge for the Charter Subcommittee of the Programs & Services Committee
Date: February 1, 2018

A. Background.

1. While the Charter public debate leading up to the vote on a new Charter last November focused largely on issues of the size and composition of the City Council, the proposed Charter contained a number of changes from the current Charter which were also recommended by the Charter Commission.
2. Aside from a vote on a recommendation of a duly elected Charter Commission, a City Charter can also be amended by a special act of the General Court relating only to such City or Town through passage of a Home Rule Petition. Such an act can occur in a city like Newton only if the City Council body votes in favor of a Home Rule Petition effecting the change, the Mayor affirmatively signs it, the General Court enacts it, and the Governor signs it.
3. In the case of changes to the composition of the City Council, the expectation is that such a change would also require a subsequent vote in its favor by a majority of Newton voters at the next municipal election at which such a vote can be scheduled, and if it passed, it would take effect for the next municipal election thereafter.
4. While it is being researched, a change in terms of office, such as term limits, might also require such a vote. For ease of reference, these might be called "structural changes." Other changes, like the change of name of the Board of Aldermen to City Council, occurred without requiring such a subsequent vote by the Newton electorate.
5. At the end of the last term, the City Council voted in favor of a Home Rule Petition to reduce the City Council by one Councilor-at-large, leaving eight Ward Councilors and Eight at-large Councilors from each of the eight Wards. Mayor Warren did not concur, so the Petition died at the end of the 2016-17 Council term. The specific proposal, however, has been re-docketed by one member of the 2018-19 Council, so a structural change in the Charter will be before the Council in the 2018-19 term.
6. The City Council has a number of responsibilities upcoming in the first half of 2018, including work on zoning, as well as the City budget, which is traditionally completed by Memorial Day. In addition, the Council has seven new members, and the Council is working with a new Mayor. Finally, the public has just spent a year in intense discussion about Charter questions and fatigue can easily set in.

B. Recommendation.

1. Mindful of all these considerations, the Programs and Services Committee recommends the following:
 - a. **Establishment of a Charter Subcommittee.** The Chair of the Committee establish a Charter Subcommittee to look at the prior Charter recommendations and docket items related to it.
 - b. **Subcommittee membership.** The Charter Subcommittee should be composed of two members who opposed the Charter and two who supported it. As of this writing, Chairman Rice has asked Councilors Albright, Baker, Kalis and Krinzman, to serve, with Councilor Baker as Subcommittee Chair, choices he has confirmed with President Laredo.

c. **Subcommittee work initially on non-structural issues.** The Subcommittee begin its work with non-structural issues and report its conclusions as to them, if possible, to the full Programs and Services Committee by the summer recess, recognizing that consideration of some Council matters would need to be suspended, for example, during the Budget deliberations.

d. **Structural issues considered second.** While structural issues may be implicated by some of the non-structural recommendations, the Charter Subcommittee would defer consideration and recommendation, if any, about such matters until the non-structural recommendations are disposed of by the Committee and the Council.

e. **Structural issue timing.** If that process is successful, then the Charter Subcommittee would reconvene and continue to examine structural issues referred to it by the full Committee, with the expectation that conclusions and recommendations, if any, would be considered during the second half of 2018, so that they could be determined and voted by the Committee, and then the full Council, in time for them to be considered and passed by the General Court, signed by the Governor and available for a vote in the municipal election of 2019.

f. **Timing continued.** Without a hard deadline, that would mean a target vote by the full Council, including time for Charter objections and reconsideration, if any, no later than the end of March, 2018, so as to avoid running into budget deliberations beginning in April, 2018 as well as provide time for the General Court, the Governor, and the 2019 Newton election process to respond. The point is not to limit the speed or care of the Subcommittee but ask it to conduct its work so as to avoid, if at all possible, structural changes to the Charter for the 2021 election, if any, being foreclosed by the passage of time rather than substantive decision by all those needed to be involved.

g. **Staff and resources.** To facilitate efficient work by the Subcommittee, the Clerk of the Council will provide a staff Clerk or Clerks to assist in notices, agendas, and reports, as well as help provide a special email address and acknowledgement by the subcommittee to citizen communications. The Clerk will also look into whether a red-line comparison of as much of the proposed changes can be made easily so that the Subcommittee can focus on the substance of the changes considered.

h. **Subcommittee process.** Because this Subcommittee is in the first instance a second look at what the Charter Commission recommended, the expectation is that it will not be a time for public hearings or extensive testimony, unless invited by the Chair on behalf of the Committee. If and when the Subcommittee examines proposals not recommended by the Charter Commission, it may decide to entertain public testimony or comment, recognizing, however, that extensive deliberation about the last proposal in 2017 occurred in the Programs and Services Committee and the full Council, all of which is available. Also, the full Committee, or even the Council in Committee of the Whole or as a Council, may wish to carry on that conversation.

i. **Timing of meetings.** As to the timing of Subcommittee meetings, the option is to find an evening when all members of the Subcommittee can attend without hardship, and interested members of the public or City staff with special knowledge can also attend.

j. **Timing continued.** Unlike standing Council Committees, the Subcommittee Report need not be done in time for a Friday packet before the next full Board meeting. That makes the second and fourth Wednesdays possible meeting nights. Another option, subject to scheduling, is prior to a Programs and Services Committee meeting, and in such a case, the Chair of Programs and Service might elect to defer starting that meeting later than 7 or even 7:45. A third option might be on a second or fourth Thursday. A fifth might be on 5th week Mondays or Wednesdays when regular Committee work is not scheduled.

k. **Timing continued.** The resolution of meeting scheduling, however, is likely to best await the formation of the Subcommittee and its members having time to work with the Clerk of the Council on both a work plan for the Subcommittee and on how the schedule of Subcommittee members and Council staff work best in concurrence with daytime schedules of subcommittee members and their other Council work.

2. The hope and expectation of the Committee is that this Charter Subcommittee process will assure a thorough and timely review of the Charter recommendations coming before the Council during this 2018-19 term.

Thank you.