



Programs & Services Committee Report

City of Newton In City Council

Wednesday, October 19, 2016

Present: Councilors Rice, Auchincloss, Hess-Mahan, Leary, Baker and Schwartz

Absent: Councilors Kalis and Sangiolo

City Staff Present: Angela Smagula (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#328-16 Mayor's appointment of Jean Manasian as a Library Trustee

HIS HONOR THE MAYOR appointing JEAN MANASIAN, 149 Temple Street, Newton, as a LIBRARY TRUSTEE for a term to expire June 30, 2019 (60 days 12/03/16) [09/22/16 @ 4:12 PM]

Action: Approved 5-0 (Councilor Schwartz not voting)

Note: Ms. Manasian joined the Committee. She has been a life-long library patron, visiting every week, and an avid reader. She worked with the two largest advertising agencies in Boston as an Executive Vice President for many years and then opened and operated her own agency for 14 years. She now runs a smaller virtual agency and teaches at Boston University. She would like to continue her history of volunteerism by joining the Library Trustees. She believes the library is one of the great gems of the City. The upcoming renovations and expansions of the library are of particular interest to her and she is excited about the ability of the library to evolve with the changing needs of the residents.

Committee members felt her business experience and personal interests would be ideal for the Board of Trustees. They agreed that the Library is one of the greatest assets in the City. Councilor Hess-Mahan suggested she speak to current Trustee, Audrey Cooper. He moved approval and the Committee moved in favor, unanimously.

#31-15(2) Amend Noise Ordinance restrictions for yard maintenance equipment

THE PROGRAMS & SERVICES COMMITTEE requesting to amend *Chapter 20-13, Noise Control*, relative to time restrictions on the use of yard, garden or grounds maintenance equipment. [03/19/15 @ 12:14 PM]

Action: No Action Necessary 5-0 (Councilor Schwartz not voting)

Note: This item was docketed in the event the Committee wanted to change the time restrictions on all yard maintenance equipment, as the leaf blower ordinance was under review. That change was not part of the general discussions and there was no interest in pursuing this further. Councilor Hess-Mahan moved No Action Necessary and the Committee voted in favor 5-0 with Councilor Schwartz not voting.

Referred to Programs & Services and Finance Committees

- #31-15(4) Amend Chapter 20 Section 51 Civil Fine for Littering to Include Yard Waste**
PROGRAMS & SERVICES COMMITTEE requesting that the City of Newton Ordinances Chapter 20, Section 51, Depositing of Litter, be amended to include leaves, yard waste, and other similar material, and that civil fines be associated with violations of the section and added to Chapter 20, Section 21. [03/24/16 @1:41 PM]
- Action: Approved 5-0 (Councilor Schwartz not voting)**

Note: Councilor Hess-Mahan noted a draft amendment to *Section 20-51 Depositing of Litter* was attached to the agenda. This amendment would add dirt, leaves, grass clippings, trimmings from trees or shrubs, wood chips or other yard waste to the list of debris which may not be deposited on any public or private grounds without consent of the property owner. The proposed amendment would also associate fines with violations of this section, which do not currently exist. The fines would follow the same structure as a noise ordinance violation: first violation, warning; second violation, \$100; third violation, \$200; third and subsequent violations, \$300. This would be complaint driven in terms of enforcement. A redlined ordinance is attached.

The intent is to address the problem of leaves being dumped into the street and left there, which then blow around onto private properties and the public way. This could also lead to safety issues on the streets for bicyclists and drivers when the leaves are wet and can also clog storm drains. The City collects yard waste 41 weeks a year and there is no limit to the amount that will be picked up when bagged. There is a misconception by many residents that the City comes around to pick up piles of leaves if they are left in the street, however, that practice has not been in effect for as long as anyone on the Committee can remember. This ordinance is not meant, however, to interfere with landscapers who put leaves in the street to be picked up in a timely manner a short time later.

Another problem was brought to Councilor Hess-Mahan's attention when a homeowner had a neighbor repeatedly dump leaves and other yard debris from his yard onto his property. There was no enforcement mechanism in the ordinances and the matter went to court which was extremely expensive. This should not have to be a matter settled in such an expensive and time consuming manner.

This item will have to go to Finance Committee since new fines are being proposed. Councilor Hess-Mahan moved approval and the Committee voted in favor, unanimously.

- #336-16 Request for a Resolution embracing Free Speech**
COUNCILOR AUCHINCLOSS requesting a Resolution reflecting the will of the City Council that punishing Newton North High School students for displaying the Confederate Flag is contrary to Newton's embrace of free speech, and that the display does not rise to the Supreme Court's standard of protecting schools from substantial disruption to educational program or discipline. [09/30/16 @ 9:45 AM]
- Action: Held 5-0 (Councilor Baker not voting)**

Note: Councilor Auchincloss explained that he does not have a draft resolution at this point. He wanted to speak to the School Department and School Committee first in order to establish a common set of facts of the events that took place at Newton North High School relative to the report of students displaying the Confederate Flag. He also wanted to understand the school's perspective on the legality of the measures they took after the incident in light of Massachusetts and federal law regarding free speech. He asked Matt Hills, Chair of the School Committee, and/or Angela Smagula, Assistant City Solicitor, to describe the sequence of events in this incident.

Mr. Hills explained that because this is an issue involving student behavior and student discipline, there are serious limitations on what he can say. Even if events are posted on social media, written in the newspaper, etc., he cannot comment on them. He is also not in a position to comment on any theoretical examples of behavior and what the consequences of those behaviors might be. What he would like to say is the School Department is responsible for acting in accordance with the Student's Rights and Responsibilities Handbook. There is a section on discipline guidelines and codes with 35 criteria in total. The School Department acted within its responsibilities under the guidelines in that handbook and he is comfortable with their assessment. The Handbook is, to a certain degree, a legal document that has heavy input from lawyers in updating it each year.

Mr. Hills said he would not comment on what, if anything, were the actions the students took that could have led to discipline. The fact that this it has been reported that students were suspended over flying the Confederate flag, doesn't mean they were suspended, or if they were, it was because they were flying the Confederate flag. There may be other contributing factors in this incident as well.

Councilor Auchincloss asked if the principal of Newton North called the police after he was informed that the Confederate flag was on display by students. Mr. Hills said he could not confirm that as he has no firsthand knowledge of that. Even if the principal called the police, it may not have been for that reason. There may, or may not have been, other criteria involved in any action by the School Department and he recommended the Committee not narrow their thinking to a certain part of the incident. The narrative may not be correct and may not be a free speech issue at all. As he mentioned earlier, there could be other factors involved.

Committee Comments/Questions

Councilor Auchincloss was frustrated with the lack of answers. He felt that secrecy breeds theories without a common set of agreed upon facts and a common dialogue. He also noted that the school's handbook does not take precedence over state or federal law.

A Committee member noted that it was clear that the Chair of the School Committee felt he could not share any more details than he has so far. This is relatively soon after the incident and that may be playing a role in not having all the facts or having the ability to discuss it in more detail. The Councilor wondered if student conduct was within the purview of the City Council. The legal aspects are rich and intriguing, but it doesn't feel like the most opportune time for the discussion of free speech. There is a lot of collateral damage that should be kept in mind as elected officials and

how this might be impacting members of the community who are not clearly represented in the room.

Another Councilor noted he was a member of the ACLU and that it was always appropriate to talk about free speech and civil liberties. He was not interested in the students' discipline and believed that was properly the job of the School Department. He'd be happy to sign a resolution that supports a student's right of free expression, but must also state that symbols of oppression are counter to the values that this community upholds in being open and inclusive.

Laws in Massachusetts go above and beyond what the Supreme Court requires in terms of upholding a student's right of free speech as well as the school's right to free speech. (M.G.L. Chapter 71, Section 82 is attached.) This is both a sword and a shield for the schools. There was a bitter debate in the past wherein some people felt parts of the school's curriculum were derogatory with respect to Israel. He supported the school's free speech rights to teach and use materials that may be offensive to some in the school community, but which prove to be instructive and educational.

He believed that it was important to protect the rights of all, just as much as he would protect the rights of someone to say black lives matters or who assert with equal voracity that blue lives matter or that all lives matter. There are school systems that will suspend students for displaying a Pride flag, yet may allow the Confederate flag to be displayed. These are real issues that make a difference and even though some symbols are offensive, all must be protected equally or none can truly be protected. Free speech is the most important right to stand up for and protect. He also understood, that the rights of students are not all free and unlimited on school property, but there is the requirement for schools to protect students and make sure all have equal access to education. Several Committee members agreed with these comments.

Councilor Auchincloss said he appreciated the thoughts and comments from his colleagues and will use that input to draft a resolution. In short, it would encompass the ideas that symbols which widely connote hate and oppression do not comport with Newton's values, but the City Council stands by the rights of all students to express themselves to the full extent of Massachusetts standards wherein anything short of disruption is permitted.

The Chair asked Mr. Hills if the School Committee might agree with such a resolution, which is more general than specific to the incident in question. Mr. Hills reiterated that the Committee is making an assumption that may not really be correct. The incident and what occurred after it may not have been about an offensive symbol or free speech. If his colleagues on the School Committee wanted to take a position on that, he would be very surprised. The City Council should do what they feel is appropriate, but the School Committee is very unlikely to take this up. A Committee member felt that a general resolution would not be advisable as it is being triggered by an event and would be impossible to disassociate it from that event. It would be premature to pass anything before hearing from any members of the community who may feel injured by the

incident. Separately, he agreed that he was not sure if it was the City Council's purview to be involved. The School Committee and/or School Department have the appropriate authority.

Mr. Hills said he was pleased that this conversation took place because communication between the City Council and the School Committee is essential. Even though he doesn't agree with Councilor Auchincloss' point of view on this particular item, he was pleased that he picked up the phone and called him with his concerns. He would welcome and be happy to come for discussions of other matters in the future.

The Chair clarified that if any resolution were to come of this, it would generally be in support of the issues discussed and not specific to the incident at Newton North High School.

Councilor Hess-Mahan moved hold on the item and the Committee voted in favor.

Referred to Public Facilities and Programs & Services Committees

#255-16 5-58 waiver for relocation of modular classrooms

COMMISSIONER OF PUBLIC BUILDINGS requesting a waiver of the City of Newton Ordinance Sec. 5-58. Site plan approval for construction or modification of municipal buildings and facilities for the relocation of the existing modular classrooms from the Zervas Elementary School to the Brown Middle School and Newton South High School. [07/06/2016 @ 11:51 AM]

Public Facilities voted No Action Necessary 7-0 on 9/21/16

Action: No Action Necessary 5-0 (Councilor Schwartz not voting)

Note: The docket request is no longer necessary, as the Administration opted to pursue the site plan approval process for the relocation of modular classrooms from the Zervas Elementary School to the Brown Middle School and Newton South High School. Therefore, a motion for No Action Necessary was made and carried unanimously.

Respectfully Submitted,

John B. Rice, Chair

Sec. 20-51. Depositing of litter.

No person shall in any manner place or deposit or cause to be placed or deposited on any street or sidewalk, or on any park, playground or other public grounds, or upon any other premises, without the consent of the owner thereof, any noxious substance or liquid or any discarded articles or materials or any dirt, leaves, grass clippings, trimmings from trees or shrubs, wood chips or other yard waste or any rubbish or litter of any kind except in containers set out for collection in accordance with the provisions of Chapter 11 of the Revised Ordinances. (Rev. Ords. 1973, § 14-2; Rev . Ords. 1995, § 20-2)

Sec. 20-21 Enforcing persons and revised ordinances subject to civil fine.

(d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

.....	<u>PENALTY</u>
() Warning	\$0.00

Sec. 3-29. Removal and disposal of canine waste.

() Any Offense.....	\$50.00
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Sec. 20-13. Noise Control

() First offense in calendar year.....	Warning
() Second offense in calendar year	\$100.00
() Third offense in calendar year	\$200.00
() Fourth or subsequent offense in calendar year	\$300.00

Sec. 20-51 Depositing of Litter

<u>() First offense in calendar year.....</u>	<u>Warning</u>
<u>() Second offense in calendar year</u>	<u>\$100.00</u>
<u>() Third offense in calendar year</u>	<u>\$200.00</u>
<u>() Fourth or subsequent offense in calendar year</u>	<u>\$300.00</u>

Sec. 26-8. Removal of snow and ice from sidewalks in certain districts.

#336-16

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XII** EDUCATION**CHAPTER 71** PUBLIC SCHOOLS**Section 82** Public secondary schools; right of students to freedom of expression; limitations; definitions

Section 82. The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually, (a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions. Any assembly planned by students during regularly scheduled school hours shall be held only at a time and place approved in advance by the school principal or his designee.

No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy and no school officials shall be held responsible in any civil or criminal action for any expression made or published by the students.

For the purposes of this section and sections eighty-three to eighty-five, inclusive, the word student shall mean any person attending a public secondary school in the commonwealth. The word school official shall mean any member or employee of the local school committee.