

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, FEBRUARY 6, 2013

Present: Ald. Linsky (Acting Chairman), Blazar, Rice, Fischman, Sangiolo and Baker

Absent: Ald. Hess-Mahan; One vacancy

Also Present: Ald. Danberg, Lappin, Yates, Fuller and Harney

Others Present: Ouida Young (Associate City Solicitor), Peter Koutoujian (Interim Executive Secretary, Elections), David Olson (Clerk of the Board/City Clerk), Ken Hartford and John McDermott (Elections Commissioners), Karyn Dean (Committee Clerk)

#56-13            BOARD OF ELECTION COMMISSIONERS recommending that Home Rule Legislation be sought to forego a special election to fill the position of Ward 1 Alderman at-Large, due to a death. The vacancy would be filled at the upcoming November 5, 2013 municipal election and the individual would be sworn into office immediately following the election.

**ACTION:**        **APPROVED 4-2 (Ald. Sangiolo and Rice opposed)**

**NOTE:** Clerk's note: Ald. Sangiolo has asked for a transcript of this discussion so that all comments are accurately represented.

**Ouida Young:** Let me put a framework together because this is a recommendation from the Election Commission. One of the most important things for you to understand is what the Election Commission discussed at its meeting last Friday and that is what it takes to run a special election; what you will achieve; and what the Elections staff has in front of it in terms of other elections. As I'm sure all of you know the Charter very specifically says in Section 2-5a that if a vacancy in the position of Alderman occurs less than 15 months into a term, that that vacancy needs to be filled. Unfortunately, first of all, Ald. Merrill died. But, also, he also died 13 months into his term, so that under the requirements of the Charter, a special election should take place. The Charter also says that the Board of Aldermen will "forthwith" call for a special election and once called that election must be held within 120 days of that date you called it.

The "forthwith" word has always been an interesting one. As many of you may recall, in 1994 when Mayor Mann died, at that time, which was very early in the term, but for a variety of reasons the Election Commission recommended to the Acting Mayor and the Board of Aldermen that the special election required by the Charter be delayed until November as opposed to holding it within the 120 days as required by the Charter. It was a controversial call. It did require special Home Rule Legislation. That HRL was sought and was ultimately granted and the election took place in November as opposed to July. There were several Aldermen that were unhappy with that decision and actually sued the City and the Board of Aldermen who made the call. It was not a decision that was taken lightly and it did require special legislation.

In this particular instance, the Election Commission is looking at a very heavy calendar that is not of the making of the Election Commission or even of this Board. The elections that are coming up are the Override on March 12; the Senate primary on April 30; the Senate special election on June 25; the preliminary Newton election on September 10; and the general election on November 5. That is 5 elections coming up and if we did piggyback this onto the June 25<sup>th</sup> election...one of the things you may want to consider and hear from the Elections Commission is what it actually takes to run a double election simultaneously. The ballot that is present for the Senate can not have on it the Aldermen. I checked that with the Secretary of State's Election Division today and was told to accomplish that would take "an act of God". So I think you may want to understand and appreciate fully what would happen in terms of the burden of running that election. Just because it's burdensome is not a reason not to do it, but you should have an appreciation of what it would really take. Then consider that even if you get sworn in immediately after June 25<sup>th</sup>, that position will be filled for 4 months, because the Charter also provides that in an instance where you have a vacancy, and you then go to the general election, that once the general election is held, the person who wins that vacant position, although it is filled temporarily by the specially elected person, that individual who wins the general will be sworn in immediately. So they will start taking that office in November and will not wait until the January 1 swearing-in date. So what you will have accomplished with a special election on June 25<sup>th</sup> is a 4-month period where you have an Alderman-at-Large in Ward 1. I will let the Executive Secretary and the Commissioners advise you as to what they are confronting if they run this election.

**Ald. Linsky:** I think you made it clear from the Secretary of State's office, if we were to piggyback on the state election, that we would just need to have a separate ballot. Let's look at that option and see what that means.

**Mr. Koutjoujian:** It has been done. A place like Concord has 6 precincts, we have 32. Concord has done it because their town election, they don't have any elections in the fall as we do, unless they are state elections. We have them in September and November. Towns have them in March, April or May. At that time you've got the Presidential primary, every 4 years they run a piggyback on the Presidential primary. That is something they're used to doing, number one, not that they really enjoy it but they do a great job out there and I've stolen a lot of their ideas and I think of other things we need to get done before an election. There need to be nomination papers provided; there need to be nomination papers for the Senatorial election; there have to be nomination papers for the election coming up. They're going to all be overlapping at the same time, number one. Our office would have to maintain those. We issue the nomination papers for the local elections, the Secretary of State's office issues those nomination papers for the others, but we certify all of those. There are 10,000 signatures the candidates need certifiable for the Senate race, they will get them all over the state, and they get a large proportion in a City like Newton. So we have to certify all those signatures and they will be overlapping also. We have nomination papers out for special election here and nomination papers out for our September and November elections as well. The same candidates would be running in those two races, most likely.

As far as running a dual election goes, sounds easy. Why don't you just take a ballot and run the election anyway. You've got the police officers there, you've got the places open, why don't

you just piggyback the thing and put the ballots out and put it on the state ballots. Well, you can't do that, they won't allow it. So we have to print out ballots and that might cost a few thousand dollars and that's not an awful lot of money for a race. You're going to paying part of that for the senate race anyway, so why not send another \$15,000-\$30,000 on ballots and all the extras that might go along with it. You're going to spend \$60,000 for the state election because we don't have to print the ballots, so we spend \$80,000 like we do for a regular election. I can't see any reason, not one single reason or advantage to having this election. And I say that because the towns have their elections, they can't change that. When this Charter was drawn, we had no idea there would be questions on the ballot, we didn't know that the City was going to have a special election practically every year, we didn't anticipate that there would be another election that would back up to this one. Now we've got a lot of elections coming including override and referendum questions. I don't really see, from my perspective, and of course, I'm looking at it from the job and what has to be done primarily, and I'm trying to think of a good reason why and what it would do. You'll be spending whatever you spend, and the time and effort, for a couple of months, and then will be running again back to back.

You need two ballots, one for the senate race and one for the local race. You need two check outs and two check ins. You need to have a table big enough to check out for one office and then ask do you want the municipal ballot, then check in over here. Take the two of those and take them to the booth, you vote them, take them to the machine and you go to a check out table. Check out at one and then the other. You've maybe had to wait in line for the first one for check out, and now by the time you get to the second one, you're pretty anxious. Because people are anxious when they have to check out. Some people will leave their ballot and walk out. Someone has to then put it through the machine. This complicates it that much more. The instructions that will have to be necessary are signs, cable TV, all kinds of education just for this purpose. When we do absentee ballots, they are going to have to be separated. The applications will have to be separated to those who only want the City ballot, those who want the state ballot, and those who want both ballots. When we send the absentee ballots out, we can send them in one envelope, if they ask for both. However, when they are returned they are going to have to put them into separate, correct envelopes. We can put stickers on them that this is one for the senate race and one for the other. But as we know, people don't always follow directions. It says fill in the bubble, some people put an x or circle it so matter how clear it is. Those people would be disenfranchised if they did not get their vote, they wouldn't know the difference probably, but still, it is not right.

We talk about 2 additional poll workers because if we are going to have 4 of our inspectors from 7am to 8pm they need relief time for lunch and breaks and bathroom. Otherwise we have 2 checkers at each table and one person can keep checking, but in this case we would need 2 people at all times.

**Ald. Linsky:** So the ballots themselves would have to be separated. So after they've gone through check out, and you're indicating that it's a separate check out per ballot. Are they scanned together?

**Mr. Koutoujian:** Those will go into the same machine. The machine is incredible. It can read the codes on up to 6 different ballots. So these are two different ballots and they will be read

correctly, but they will be missed. We will color codes ours so they look different from the other ballot but in that pile they will be mixed. You have twice as many ballots as you would have than for one election and they are going to have to clear these ballots out of the box, under observation, take the ballots out of the box and package them. At the end of the day, just as we send them to the polls, they are going to have to sort them and get them back to us. They have to be sent out separately and sent back separately. So they will have to be sorted out. We cannot go into those boxes for a period of time until the recount is up. Now if we have a recount, or two recounts, we would really be in trouble because there may be a lot of things mixed up, I assure you. Maybe there is a ballot that could be missed and there is confusion. You really have to empty the boxes a couple times during the day, so it's a sorting problem also. Candidates also often want to know how many voters are coming out and you won't be able to determine that from this one because the counter will be reading two ballots. You might assume that everyone took too ballots, but that might not be true. When the tape is done, the votes will show on the tape for each office, but you won't be able to tell during the day. Not that it's a major thing, but we all like to know how many people have come out to vote.

**Ald. Linsky:** This is for you Ouida, the term "forthwith". The clock started when?

**Ouida Young:** The clock started when Ald. Merrill died. You have to forthwith call the election as soon as is reasonably possible you need to call for the election. And like I said, last time we battled this battle in 1994. There is no magic period like 10 days or whatever, but it is as soon as practical, this Board of Aldermen is to be calling the election. And that's why when we did this in 1994, we sought Home Rule authority to delay that forthwith requirement and allow the election to go over to November. Mayor Mann died on April 9<sup>th</sup> and by May the Board had filed HRL to delay the election until November and that HRL was passed by the General Court in late May. We are now in the forthwith period.

**Ald. Linsky:** So what happens if we go down that route and the state legislature does not approve it? What happens then?

**Ouida Young:** Then we try to figure out when you actually need to call this election. Let me put it this way, if you were going to decide to run this special election on top of the June 25<sup>th</sup> election, 120 days from June 25<sup>th</sup> is February 26<sup>th</sup>. So regardless of what you want to do in terms of the HRL, you do not want to call for the election earlier than February 26<sup>th</sup> is you're going to run this on June 25<sup>th</sup>. In terms of when you have to call this election and print ballots, have absentee ballots and nomination papers, Peter has done a timeline of what that election schedule would look like and it appears to me that if you're going to do a special election on June 25<sup>th</sup>, you're nomination papers would need to be made available, Peter is estimating, by April 1<sup>st</sup>. You need 150 signatures on them and therefore you would need to call for the election sometime prior to that. I would suggest you've got two obvious dates in March, the 4<sup>th</sup> and the 18<sup>th</sup>. One of those two dates you would have to make a decision that the General Court doesn't seem to be acting and we better get this election underway. That's what I suggest you would probably want to think about. So, it gives you a window of time for the General Court to act, but sometime in March is when you will have to pull the trigger to get the special election up and running. And to give Peter the time to actually have it occur on June 25<sup>th</sup>.

**Ald. Linsky:** I think a timeline would be useful. I don't know how this committee can take action without that. So, when was it that the city learned back in 1994 that it had gained approval for the special legislation for the later election?

**Ouida Young:** May 19<sup>th</sup> is when it was passed. So it took about a month. It went very fast. It could go very fast this time as well, but a lot depends on whether you have all of your legislative bodies on board and also where they are in terms of the state General Court. The state election folks just got a piece of legislation through dealing with the senate primary in two days. If they want to act, they can act fast. They don't necessarily act fast though. That's why, if you were going to file the HRL, if you were going to vote it tonight for example, the earliest it could be filed with the General Court would be February 20<sup>th</sup> because you're next meeting is not until February 19<sup>th</sup>. And you can't present it to the Mayor for at least 24 hours. And the earliest he could sign it would be the 21<sup>st</sup> really and that's when you file it. It's not impossible to do, but you would have to get it filed pretty rapidly and you would have a short timeframe in March.

**Ald. Yates:** I was assuming you would need separate machines, but if it can read all those, it's wonderful. It seems to be more of a hassle and burden on City Hall staff and on election workers, which is unfortunate, but I don't think intolerable in any instance. What Mr. Koutoujian was describing was what we do if we don't piggyback but don't get any further clearance of that, is that you need two complete systems because you are running two completely different elections under the same day and same locations. It seems to be that we should ask for more modest relief from the General Court such that you can basically run...it makes sense to me that you would need two separate ballots, but it seems to be there's no legal reason, other than it is two elections and you can bypass that...I think citizens should be able to come in, state their particulars, it's a general election, there's no partisanship there, so anyone who can vote in one should be able to vote in the other, so therefore, there should be one set of checkers and one set of check outs at each poll if you get the permission to do that from the Secretary of State. Then they give you the two ballots, you got up to the voter station, you fill out both of them and since it's only one race on each of them should not be that hard for the citizens, then you can put them both in the one box. Or the antsy candidates, they can take the numbers during the day and divide by two. It's a pretty good approximation and if they need anything more than that, they are being ridiculous. Save for second set of checkers in and checkers out, I don't think this is unreasonable at all to do the piggybacking and since I was the participant in the last time this happened, that Ald. Daley retired like the day after the 15 months was over, even though a special election was already called and if he had done it the day before, then the election at which Ald. Snyder was elected, I could have been on the ballot too and taken office immediately. As it was, my ward had only two aldermen for an extended period. And I think that was a burden on members from that ward. People had to double up on Committee assignments which is not always possible, like tonight when Ald. Fuller and I are deserting Public Safety Committee. It seems a much smaller waiver from the state, that would take HRL just allowing the City of Newton to hold a special election to fill the vacancy, can be held on the same day that the election to replace Senator Kerry happens. And the all procedures should be merged as much as possible for the convenience of the voters. I don't think it's an unreasonable burden for the Commission or for the daily workers. I think it's a better thing for the citizens, I think people who might not care about one might care about the other and have a better turnout, slightly, for this election than you would for just the one seat. And I think there is a value, generally, of

greater voter participation and of seats being filled and people being able to do work for the citizens for a longer time. So I would respectfully request that we seek a much minor HRL for these elections to be held on the same day.

**Mr. Koutoujian.:** The State of NH allows for one checker and giving them two ballots. The state of Massachusetts does not allow.

**Ald. Yates:** That's why we need the HRL.

**Mr. Koutoujian.** I really doubt that would go anywhere because the Secretary of State's office...we've tried to get the check out and check in changed and they wouldn't touch it. I don't think they've ever done it. In NH they give them two ballots and they can choose to vote them or not. But in Massachusetts they don't allow it.

**Ald. Yates:** It doesn't make sense.

**Mr. Koutoujian:** A lot of things don't make sense, but we don't make the laws. Some times we find out after we make the laws they don't make any sense. We can't figure all the nuances when you enact a law.

**Ouida Young:** Based on the conversations I've had with the counselors for the Elections Division today when she advised me that even if we wanted to get on the ballot, the Elections people would be opposing that actively. I can't tell you whether or not there would be opposition from the Elections Division. They were pretty clear that we absolutely have the right to have the special election on the same day as the senate race, that is unquestioned. We can do that without any permission from the state in order to do it. At least what I was getting, it was going to be run very clearly as a double election. In fact, the concession that the state was willing to give was that instead of having two checkers for each one of the check in lists, and therefore having to have 4 checkers, they would agree to have one of our checkers checking in on the senate, and one checking in on the local, as opposed to have 4 checkers double up. That was their concession on the check in part from the State Elections Division.

**Ald. Linsky:** That type of petition might be more modest, but that may not be...

**Ald. Baker:** I remember 1994, my memory was that we were successful in getting the HRL but there was some opposition for getting that done.

**Ouida Young:** We had a lawsuit from Ald. Mansfield and MacLeish.

**Ald. Baker:** But it did succeed and my memory is not clear, I think it was a state election ballot we had a state election ballot we had the mayor's race on. There was a preliminary and then a general election. I understand Ald. Yates point about trying to make the mechanism simple. It seems to me they were much more willing to give us variance on the date, but not on the procedures and I think the procedures are going to be a tougher sell. So the questions I have for the Committee is whether the Committee has the ability to split the item and have something in the alternative. There is a policy choice that still has to be made by the Committee and

ultimately the Board as to whether to go forward sooner rather than later. But to set up a possibility of a special election, and from what I've heard, doesn't require special legislation. It just requires action within a timely window of March. But to go ahead and ask for the HRL and in the process of doing that have that be the first preference. If it turns out we can't do that and don't get a response by the ultimate deadline in March, then the other starts and we go forward because that's what we have to do under our Charter. So, it seems to me the Committee's choice is if there is a preference for a fall election and there is a policy choice involved in that, as Ald. Yates has raised about the lack of representation for a period of time, but if that's the will of the Committee and the Board, and I'm personally more inclined to that myself, then I think we have to create two tracks. One which we set in motion and get the process ready but not vote it until March pending the discussion and vote of the HRL, see if it the HRL passes and if it does then NAN the other item. If the HRL does not pass within the window of time in March, we let it go forward and we hold a special election as indicated. It seems we have to be able to operate in both tracks, unless the Committee feels HRL isn't warranted at all and then we may as well get started on the special election process.

**Ald. Linsky:** Ouida, you seem to indicate in your recent discussion with the state folks, I got the impression that if we go with the June 25<sup>th</sup> election, we don't have to file for special legislation?

**Ouida Young:** No, we can set down the special election at any point. We would be holding two separate elections. We are not actually on the state ballot, that's when it would get funny. If you want to hold two separate elections, we have the right to set that special election down on any date we want to. We can set that on June 25 if we want to. The 120 days of the Charter provision is within the control of the Board. If the decision of the Board is to try to run it on June 25 when you're already having poll workers, and not turning 5 election dates into 6 election dates, you can't call it until February 26<sup>th</sup> at the earliest and then vote it on the March 4<sup>th</sup> meeting. That is the earliest day for action for the special election for June 25<sup>th</sup>. I would argue that would as soon as possible. There is no sense running an election for example, the first week in June and then again on June 25<sup>th</sup>.

**Ald. Fischman:** In June of 1996 there was a special election to fill the vacancy of Wendall Bauchmann. Ald. Bauchmann died in March and there was a special election. There was also a regular election in November.

**Ouida Young:** I believe Wendall died within the first few months of his new term.

**Ald. Fischman:** I'm just saying I know about both of those elections because I was in them. What happened in the general election is that 7.5% of the electorate voted. To me, that's one of the reasons not to have a special election as a sole special election if you can avoid it. To piggyback it onto a senatorial election, I think it would turn out 30-40%. The Coakley election turned out at 25-30%. My guess is this one would turn out 3 or 4 times more than the one I was in and it seems like a fair trade-off. I realize what the Election Commission is going through and I understand that. I take the same point of view as Ald. Yates.

**Ald. Sangiolo:** I would agree with Mitch just said. I'm not in favor necessarily of having to wait until November. I agree with what Steve said that we need a timeline, so if Ouida you

could present a timeline as well as the timeline that Mr. Koutoujian put together, that would be helpful for the Committee particularly if we're going to report anything out to the full Board. In terms of the negative aspect of November, I think it's the lack of representation. I think that is key. I don't know how much it's going to cost whether it's \$20K or \$30K but, as Mitch said, to have a huge turnout would be significant in the City. And I think it's great we're having 5 elections in the City even though it's going to be a nightmare for you guys to run. It's going to get a lot of people motivated and hopefully more active and engaged in the City. It's too bad that we don't have a system where our Mayor could go ahead and appoint somebody. Barney might be free, not that he would want to. I think it's unfortunate that we're in this situation. I think the forthwith came up more recently when Susan Basham had resigned so we had this long discussion in this Committee about forthwith. I don't remember what date and how long we waited, and I don't remember if we went with HRL. We didn't? We just went ahead and scheduled an election.

**Ald. Fuller:** I want to associate myself with the comments of Ald. Fischman, Yates and Sangiolo. I am struck by, yes we have 24 Board members and when we're all gathered together in Chamber it seems like a lot of people. But we do our substantive, and particularly under this President, in Committees and very little of the work is done on the floor of the Board. I was struck just as an example, last night in Land Use Committee, we were sadly missing Carleton Merrill, we had a couple people who were out of town, and a couple people who were late. We met at 7:00pm and we were waiting and waiting to get a quorum. The representation, for example, particularly for something like Land Use, of all Aldermen from all wards really makes a difference and having a full 11 months...if you can shorten it to only 6 months, I wouldn't underestimate the importance of the additional \$15-\$30K. And the double duty of the workers that day and the occasional confusion of the voter that day saying "just tell me again", I think is worth it. I would override the Charter only with very good reason. I think that if we really think we should override the Charter in this instance, we should go back and say is the Charter wrong. And we would need to substantively docket that item and say is the 15 months wrong, has the world changed since we came up with that and do we need to rethink it. I haven't heard anyone really say that, I think it's more the peculiarity of this particular year with 5 elections going on that is unusual. But that doesn't seem to me to outweigh the importance of having a full slate of Aldermen.

**Ald. Baker:** What has happened is the double up of Committees assignments. You may not have a 24<sup>th</sup> Aldermen, but it doesn't mean you're out a Committee role, it just means that the President hasn't assigned someone to fill the space. The second thing is, the Charter we modified in 1994 because it seemed to make sense, notwithstanding the fact that we could have held a special election for Mayor, that would have been a big turnout. It just didn't seem to make sense at the time and so we did put it off. I don't think it's a defect in the Charter and if Carleton had died another 30 days later, the election would have automatically happened in November. It's just that the Charter has to pick some period of time, and it says at a certain point it's not worth holding a special election. We are right on the cusp. In the case of Susan Basham, we had to fill immediately because that resignation occurred on January 1<sup>st</sup> and that was real long period of time there. So it's not as sharp a choice for me. I guess the question I'm wrestling with is, if we can do this as I hear it from Mr. Koutoujian but its going to be cumbersome, some additional expense, the HRL gives us the option of doing it in the fall, we can do it ourselves for a little



more money sooner, then I guess the question is whether the representation gap is big enough of an issue to warrant filling it now as opposed to waiting, which we would have done if Carleton had died in the beginning of March. I'm really torn a little bit about that and I'd like to hear some thought about the questions that Ald. Fuller raised about the timeliness of filling the election because that seems to me the most decisive variable right now as opposed to the mechanism. The mechanism choices are the HRL which has at least a shot, and if that doesn't work we can go with the special election. The question is do we prefer that over the special election.

**Ald. Blazar:** I'd like to know what the Ward 1 Aldermen think about this because they're the ones that have to deal with the situation the way it is now. I don't know how they feel or if they want to take a position on it. I've been taking a position in the same way the Elections Commission is going. The June date, to me, the summer is very slow for the Board. July and August not a lot is happening so basically is someone is elected in June, they are really just coming back for September and October and then the election is in November. The Ward 1 Aldermen would have a better feeling about all this, I think.

**Ald. Sangiolo:** Certainly I would like to hear Ward 1 input, but this is an at-large seat. I'd be interested in how this impacts Land Use petitions? We've got Riverside coming up and that's one extra vote against, automatic.

**Ouida Young:** As I said at the Election Commission, I'm more concerned about what is good for the City. I don't really care what is good for the petitioner in this context.

**Ald. Sangiolo:** I'm not suggesting it's good or not good for the petitioner. But it does put us in an awkward position if we vote something down or don't approve something.

**Ouida Young:** I don't think so. There are instances where members get conflicted out, or in other instances they might not be there. I don't know if Riverside might in fact not come off until November or December. It's pending and not roaring back in immediately. That was raised at the Election Commission by Bill Renke as a member of the public and I'm really concerned that the Board decide what's best for the Board and the petitioner will take care of itself.

**Ald. Sangiolo:** Was there a full complement of the Election Commission because I know Nancy Levine just got appointed or she hasn't been sworn in yet.

**Mr. Hartford:** The Board just approved it on Monday and the Commission met before.

**Ouida Young:** She was present and participated in the discussion. Chairman Hartford, Jim McDermott and Margie Butler were present.

**Ald. Sangiolo:** So there were 3 that voted.

**Ald. Rice:** I also agree with Ald. Fischman, Fuller and Sangiolo about having a dual election. This is an issue that if we bring to second call next week we will have 23 people getting up and

speaking. I think and I understand Lisle's point about taking double tracks. But I think once we make a decision in this Committee, on Monday on second call, we will find out the view of the Board and which direction we want to take it. Whether we bring it out of Committee this week and get the Board's feelings at the full meeting or whether we try to do the dual track at the same time I'm not sure which way to go.

**Ald. Baker:** We have to decide how to respond if we want to decide to respond differently than what the Election Commission recommended, because they recommend a Home Rule Petition and that is what we have as a docket item. We would have to create a second docket item for a special election. We couldn't act on that tonight anyway. We would have to have it docketed and then it would come to Committee. This is an unusual process, but there is the possibility that the Committee, if you really feel this is a matter that people will weigh in generally...the problem with that it's hard to do that without having the same conversation again, in a larger room with advise of council and Mr. Koutoujian and the Commission itself. You could have a Committee of the Whole discussion and then bring it back to the Committee for action. I'm not sure I'd recommend that but I'm just saying procedurally you could do that. I think it's probably better to get a sense of the Committee here about what our preference is and to see if there is any consensus in the Committee. If there is not a consensus in the Committee then it's a hard thing to bring out in a positive direction. On the other hand, if the Committee comes to resolution and says we agree with the Election Commission and let's go that route and if it does not work, we can docket tonight a special election as a Committee and have it docketed. And if the HRL does not happen, we can clearly go that route. I think we need to come to some sense inside the Committee about what our own preferences are. The other difficulty is if you have a special election and somebody who is currently a ward alderman runs at-large, you still have the vacancy and the problem is not solved. I think the question that is key, and I'd be interested if we could get a sense of the Committee about whether the vacancy should be filled sooner or later. That would be the decisive variable about which track you take. If the sense of the Committee is that it needs to be filled soon, then we are not in the HRL model and we need to docket something and go there. If the sense of the Committee that it's not essential that it be filled soon and it better that it be filled as part of a general election where there are all sorts of people running for these roles, and there is no great harm to the City for the delay, then we need to go ahead and act on the recommendation of the Election Commission.

**David Olson:** The Board meeting is not on next Monday, it is February 19<sup>th</sup>. The item could be docketed then and then taken up at Programs & Services on February 20<sup>th</sup>. But it could not be voted and back to the Board until March 4<sup>th</sup>.

**Ald. Baker:** Chairman, I would be prepared to move the Elections Commissions recommendation in the Committee just to see what the sense of the Committee is.

**Ald. Linsky:** I just want to be sure, if it was the will of the Board to really want the June 25<sup>th</sup> date, we can do that?

**Ouida Young:** The Charter says that the Board of Aldermen sets the date. #57-13 states a recommendation about another election date and it has struck me that you follow the

recommendation of the Elections Commission's dates. It is just a recommendation. You can decide.

**Ald. Linsky:** I think once we get the vote on #56-13, and we have to do that because the full Board has to deal with that regardless of what the Committee really thinks about that, in order for it to be timely. We have to vote that out one way or another. So I'm just going to take a vote. Creating a new item for the June 25<sup>th</sup> item, we can create in Committee.

**David Olson:** If you docket it tonight, you can put it on the February 19<sup>th</sup> docket and take it up in Programs & Services on February 20<sup>th</sup>.

**Ald. Linsky:** No matter what we think about #56-13, we have to create options depending upon how the full board votes, that can come back to this Committee if necessary.

**Ald. Fischman:** I think we would get a good turn out at either a June or November election. I agree with Dick Blazar. It's the summer, there is a blackout period in Land Use for large petitions in the summer. The Land Use calendar for the 6 months prior to the end of the term is modified so larger one's will not be out there. One's in the pipeline could be considered though. Hearing everyone speak of it, I feel we need to create a double-pronged attack. I guess I feel sort of neutral whether or not it be June or November. The other piece is the possibility of musical chairs within Ward 1 doesn't make me feel great about the June 25<sup>th</sup> date either because if there is going to be a vacancy, we may end up with that anyway. In the end of November if that person is sworn in, is not the worst thing in the world.

**Ald. Linsky:** On the turnout issue it is probably the same for either date. One thing that is on people's minds is cost. What are talking about? What is the cost for us to double up on June 25<sup>th</sup> as compared to \$0 for November election?

**Mr. Koutoujian:** I believe the election (senate) without our printing the ballots is about \$60-\$65K. We have got to print ballots and some other things including separate packages for separate ballots. They have to be sealed when they go out and sealed separately when they come back. We have 32 cases and we would need 32 additional for the other ballots. We can't borrow from Waltham because they have an election at the same time. It's unlikely we could borrow from anyone so we would have to buy those. Maybe about \$25 or \$30 a piece, so \$6-8K, I'm not sure. So it will probably cost over and above the senate election another \$30-\$35K. Ballots, absentee ballots, postage, mailing, poll workers. I don't have the numbers here but you had it for the last election. I don't think the cost is a major concern here, I don't think the City is concerned about the extra dollars. You might say it's worth it for the turnout and that might be the one advantage. You want the bigger turnout for each one. You will also get a bigger turnout because the Mayor is running in the November election. Most people look at this as we have an election on March 12, April 30, two on June 25<sup>th</sup> and in my estimation is more like two and a half elections. Then you have the preliminary and another election in November. Whether I'm here or not, you're going to have to run this. This is not an easy task. Trust me. There are a lot of considerations here. You have to see what the public is thinking and maybe that have different ideas. I just want you to know that it is more than just a simple matter of saying piggyback the elections.

**Ald. Baker:** I'm prepared to move the main item.

**Ald. Linsky:** There is also a motion to create a parens(2) to read something to the effect that the Programs & Services Committee requesting that June 25<sup>th</sup> be set as the date of the special election. The Committee agreed to docket this item.

**Ouida Young:** You would have to vote on the special election item by your March 18<sup>th</sup> meeting. If you have not heard from the state about the HRL before that date, you will have to act on the special election.

**Ald. Baker:** I think if we vote the first item, this is the alternative if we don't pass the HRL. I'm not creating this as an equal alternative, I'm saying it's an alternative if the HRL does not pass.

**Ald. Linsky:** There is a motion for approval of #56-13. A vote of yes will be in support of the Elections Commission's recommendations. Although he is not here, Ald. Hess-Mahan has sent an email indicating his opposition to this docket item.

The Committee voted to approve this item 4-2 (Ald. Sangiolo and Rice opposed).

**Ald. Fuller:** If the vote were close by the Board of Aldermen, but were in favor of the HRL of the November election, do you think that would influence the General Court.

**Mr. Koutoujian:** I don't think so. If the Board of Aldermen and the local reps and senators are in favor of it, I'm sure there wouldn't be any problem.

**Ald. Sangiolo asked for a timeline and a cost breakdown for the special election to take place with the June 25<sup>th</sup> senate election. Both of those documents are attached to this report.**

#57-13            BOARD OF ELECTION COMMISSIONERS requesting approval of Tuesday, September 17, 2013, as the date of the Preliminary Municipal Election in accordance with Article 8 Section 1 of the City Charter.

**ACTION:**        **APPROVED 6-0**

**NOTE:** Ald. Sangiolo asked when the nomination papers will be available. Mr. Koutoujian said they would be available on May 1<sup>st</sup>, which is what most cities do. Ald. Sangiolo moved approval and the Committee voted in favor 6-0

#370-06(2)      CLERK OF THE BOARD OF ALDERMEN requesting a re-vote of the request  
(#54-13)            for special legislation previously approved on January 17, 2012 to authorize placement of a non-binding public opinion advisory question on the ballot for either a regular or special municipal election in accordance with the procedures established by section 18A of G.L. chapter 53.

**ACTION:**        **APPROVED 6-0**

**NOTE:** David Olson, Clerk of the Board, explained that this special legislation was not voted on by the last General Court and so it is up to the Board to decide if they would like to send this back to the new session. Ald. Sangiolo said she would like to send this back and the Committee voted in favor 6-0

#34-13      ALD. DANBERG, ALBRIGHT, BLAZAR, RICE, LINSKY AND CROSSLEY  
requesting a prohibition on polystyrene-based disposable food or beverage containers in the City of Newton if that packaging takes place on the premises of food establishments within the City. [01/03/13 @ 11:01 AM]

**ACTION:**      **HELD 6-0**

**NOTE:** Ald. Danberg addressed the Committee. She said she would like to come to an agreement to form a subgroup to look at this issue further and hold this item in Committee this evening. She wanted to emphasize that the ban would only affect food or beverage packaging that takes place in Newton. Nothing coming in from outside the community using this material would be included in this ban. Ald. Blazar volunteered for this sub-group and perhaps the along the co-docketers of this item would also serve.

She explained that polystyrene was first used in 1941 the manufacture of tires in the war. It is lightweight, it a good insulator and is waterproof. The molded type (used for protective packaging and food product packaging) and peanut type (used for shipping) are the most common. (The peanuts tend to be re-used but not “recycled” per se.) It is almost impossible to recycle because when it is baled for transport it falls apart and it cannot be bulk-shipped in any kind of cost effective way. It also holds grease and other residue from food which makes it difficult to clean for recycling. The biggest problem is it only breaks into smaller and smaller particles and gets into the water supply and ultimately the food supply. Animals cannot digest this material and it can cause death. It accumulates on the beach and on roadsides and is a major source of pollution on the planet. Eighty percent of ocean trash starts on land. While she was visiting China, she witnessed a huge mass of trash formed mostly by polystyrene material on the Yangtze River. It is also a suspected human carcinogen and a suspected toxin for gastrointestinal, kidney and respiratory systems. Its manufacture releases dangerous hydrocarbons into the air which are then inhaled and get into the human respiratory system. Ald. Linsky said he heard a report that much of the debris making its way to the Alaskan coast from the Japanese tsunami is made up of polystyrene materials.

Ald. Danberg noted that there are good alternatives and therefore this is not a necessary material for use. The Town of Brookline has banned this material and it is likely the federal government will ban this material at some point. She said that a plant in Rhode Island compresses this material and then ships it to China. Great Barrington banned all polystyrene 22 years ago and paper products are used instead. California has a proposed bill to ban this material as well statewide and several municipalities already have a ban in place. Several businesses in Massachusetts have banned polystyrene container use and The Museum of Science and McDonalds are examples.

Ben Pearlman, and attorney with the law firm of Serlin Haley of Boston, representing Dart Container Corporation, asked to address the Committee. He said he has been working with Dart

for about a year. **He provided a letter which is attached to this report.** Dart has been manufacturing polystyrene foam for over 50 years, and recycling it for 25 years. Their east coast headquarters is in Lancaster, PA. The Rhode Island recycler that compresses the foam ships it to the Lancaster facility and it is not being shipped to China. Other recycling operations are in Michigan and California and then the material is sent back to manufacturing plants for re-use. There are many recycling and manufacturing operations because shipping the material is not cost effective, as was mentioned. As of February 1<sup>st</sup>, Dart has partnered with a facility in Framingham, MA to compress foam and this will hopefully increase recycling in Massachusetts. Dart wonders what the polystyrene foam would be replaced with and that material could cause pollution as well. Cardboard has its own set of problems from production to shipment to waste as well. He noted that the Brookline ban is currently under review by the Attorney General. He said that his client would be happy to come in for any further discussions or public hearings or questions. He said he would find answers to questions from the committee including the claim that the product is carcinogenic to humans; if there is any indication on polystyrene products that indicates that it has been or can be recycled;

Ald. Rice would like to find out how much polystyrene is being used in Newton. Ald. Danberg said she would speak with Elaine Gentile, Director of Environmental Affairs for the City, to see if there was any way to know that. Ald. Linsky would like to have Ms. Gentile come to the next discussion of this item.

The Committee voted to hold this item 5-0.

#### **REFERRED TO PROGRAMS & SERV. AND PUBLIC FACILITIES COMMITTEES**

#315-12      **ALD. FULLER, RICE AND GENTILE** of the Angier School Building Committee providing updates and discussion on the Angier School Building project as it develops through the site plan approval process.  
[10/02/12 @ 3:37PM]

**ACTION:**      **HELD 6-0**

**NOTE:** Ald. Rice said the Angier School Building Committee met last week along with Design Review. Ald. Gentile, Fuller and Fischman were also present. At that meeting, both Committees voted unanimously to come up with a preferred design of the two that were presented. One design had the library on the second floor, but after many discussions, they decided to move it to the first floor and the K wing would also be on the first floor. The rest of the classrooms would be on the second floor. That was what they approved. There are a number of meetings coming up and he will confirm them. There will be a public forum on the design they voted. They have submitted it to the MSBA and they will be evaluating their preferred design at their April 3<sup>rd</sup> meeting. In April, there will be feedback from the MSBA and if they approve the design it will then move into schematic design. If it is not approved, they would have to submit a different concept design. He expects more attendance at the public forum on Wednesday night since they are further along in the process. He did not know the location of the meeting at this time. The group has met with the Parks & Recreation Commission regarding parking in the area as it is on Parks & Recreation land. There will be a meeting on February 28<sup>th</sup> with the Historic Commission, the Design Group and the Angier School Building Committee.

The Committee voted to hold this item 6-0

**REFERRED TO PUBLIC FACILITIES AND PROGRAMS & SERVICES COMMITTEES**

#231-12      RECODIFICATION COMMITTEE recommending that **Sec. 11-11. Permit to cart trash and/or recyclable materials.** be deleted as G.L.c.111 §31A authorizes the Health Department to require registration for “garbage,” which is addressed in Sec. 11-5.

**ACTION:**      **APPROVED 5-0 (Ald. Baker not voting)**

**NOTE:** Ald. Lappin was on the Recodification Committee and joined the Committee. She explained that this is mainly a housekeeping item in the recodification. The changes were made to bring the ordinance up to state law standards as shown in the table and “redline” version that was attached to the agenda. The Committee asked for further explanation from the Law Department and voted to approve this change subject to that explanation. **The explanation is attached to this report.** The Committee, therefore, approved this item.

#228-12      RECODIFICATION COMMITTEE recommending that **Chapter 28 VETERANS' SERVICES** be amended by deleting **Secs. 8 through-10**, which refer to “a physician to the department of veterans’ services” – a position that no longer exists.

**ACTION:**      **APPROVED 5-0 (Ald. Baker not voting)**

**NOTE:** Ald. Lappin explained that a physician position has not existed for a very long time in Veteran’s Services, therefore, the reference to it needs to be removed from the ordinance. The Committee voted to approve this item.

Respectfully Submitted,

Stephen Linsky, Acting Chairman

# Newton Elections Matrix 2013

	Override Election March 12, 2013	Special for Senate June 25, 2013	Special for Alderman June 25, 2013	Municipal Election November 5, 2013
February				
	February 20, 2013 (Wednesday) 8 p.m. – Last day & hour to register voters for the Override.			
		February 27, 2013 (Thursday) 5 p.m. – [Party] Last day & hour for submitting nomination papers.	February 27, 2013 (Wednesday) (120 days to June 25)	
March		March 4, 2013 (Monday) [Party] Certification of nomination papers must be complete.		
		March 6, 2013 (Wednesday) 5 p.m. – [Party] Last day & hour for filing nomination papers.		
		March 8, 2013 (Friday) 5 p.m. – [Party] Last day & hour for filing withdrawals or objections.		
	March 11, 2013 (Monday) Noon – Last day & hour to apply for an absentee ballot. <a href="#">March 12, 2013 (Tuesday) Override Election</a>	March 12, 2013 (Tuesday) 5 p.m. – [Party] Last day & hour for filling vacancies caused by withdrawals.		
April		April 3, 2013 (Wednesday) 5 p.m. – [Non-Party] Last day & hour for submitting nomination papers.	April 1, 2013 Board of Aldermen Meeting Last day to decide if holding a special election on June 25. (86 days to June 25)	
		April 10, 2013 (Wednesday) Last day to register to vote for primary.	April 8, 2013 (Monday) Nomination Papers available.	
		April 12, 2013 (Friday) [Non-Party] Certification of nomination papers must be complete.		
		April 16, 2013 (Tuesday) 5 p.m. – [Non-Party] Last day & hour for filing nomination papers.		
	April 18, 2013 (Thursday) 5 p.m. – [Non-Party] Last day & hour for filing withdrawals or objections.			
	<a href="#">April 30, 2013 (Tuesday) State Primary Elections</a>			
May				May 1, 2013 (Wednesday) Nomination Papers available.
		May 6, 2013 (Monday) 5 p.m. – Last day & hour for filing withdrawals or objections to nominations made at the primary or for filing acceptances by write-in candidates.		
		May 7, 2013 (Tuesday) 5 p.m. – Last day & hour for filing vacancies cause by withdrawals.	May 7, 2013 (Tuesday) 5 p.m. – Last day & hour to file Nomination Papers.	
			May 23, 2013 (Thursday) 5 p.m. – Last day & hour for Objections to and/or Withdrawal of Nomination papers.  5:10 pm. – Drawing for ballot positions.	



June		<b>June 5, 2013 (Wednesday)</b> Last day to register to vote in the state election.	<b>June 5, 2013 (Wednesday)</b> 8:00 p.m. – Last day & hour to register to vote for the June 25 <sup>th</sup> election.	
			<b>June 17, 2013 (Monday)</b> 5 p.m. – Last day & hour for ALL Candidates to file Campaign Finance reports.	
			<b>June 24, 2013 (Monday)</b> Noon – Last day & hour to apply for an absentee ballot.	
		<a href="#"><u>June 25, 2013 (Tuesday) Special Senate Election</u></a>	<a href="#"><u>June 25, 2013 (Tuesday) Special Municipal Election</u></a>	
July				
			<b>July 25, 2013 (Thursday)</b> 5 p.m. – Last day & hour for all candidates to file Finance Reports.	<b>July 30, 2013 (Tuesday)</b> 5 p.m. – Last day & hour to file Nomination Papers.
August				
				<b>August 15, 2013 (Thursday)</b> 5 p.m. – Last day to file objections or withdrawal of nomination papers.  5:10 pm – Drawing for Ballot position for Preliminary.
				<b>August 28, 2013 (Wednesday)</b> 8 p.m. – Last day & hour to register to vote in primary.
September				<b>September 9, 2013 (Monday)</b> 5 p.m. – Last day & hour for all candidates to file Political Finance Forms.
				<b>September 16, 2013 (Monday)</b> Noon – Last day & hour to apply for an Absentee Ballot for the preliminary election.  <b>September 17, 2013 (Tuesday)</b> <b>City Preliminary Election</b>
				<b>September 23, 2013 (Monday)</b> 5 p.m. – Last day & hour for filing withdrawal or objections to nominations made at preliminary.  5:10 pm – Drawing for Ballot positions for November 5 <sup>th</sup> election.
October				
				<b>October 16, 2013 (Wednesday)</b> 8 p.m. – Last day & hour to register to vote for November 5 <sup>th</sup> election.
				<b>October 28, 2013 (Monday)</b> 5 p.m. – Last day & hour for All Candidates and Committees to file Political Finance Forms.
November				<b>November 4, 2013 (Monday)</b> Noon – Last day & hour to apply for an Absentee Ballot for November 5 <sup>th</sup> election.  <a href="#"><u>November 5, 2013 (Tuesday) Municipal Election</u></a>

**ESTIMATED ADDITIONAL COST OF WARD 1 AT-LARGE ELECTION IN  
CONJUNCTION WITH THE SENATE ELECTION ON JUNE 25<sup>TH</sup>**

Election Consultant	\$ 5,000
Two Additional Poll Workers Per Precinct (64 @ \$130)	\$ 8,320
Ballot Printing (46,000 @ .23)	\$10,580
AccuVote Machine Programming	\$ 1,200
AutoMark Machine Coding	\$ 750
Absentee Voting Postage	\$ 800
Sealable Ballot Bags (32 @ \$109)	\$ 3,488
<b>TOTAL</b>	<b>\$30,138</b>



February 6, 2013

City of Newton Board of Alderman  
Programs and Services Committee

**RE: Item No. 34-13 – Requesting a prohibition on polystyrene-based disposable food or beverage containers in the City of Newton**

Dear Chairperson Sangiolo and Members of the Programs and Services Committee:

I am writing to you on behalf of Dart Container regarding Item No. 34-13 that will be addressed at the February 6, 2013 City of Newton Programs and Services Committee meeting. Dart opposes any legislative or regulatory effort to ban or restrict the use of polystyrene foam\* foodservice containers in the City of Newton.

As a matter of introduction, Dart Container is a leading manufacturer and recycler of a broad range of high quality, cost-effective foam and solid polystyrene and other plastic single-use products for the foodservice industry. As a responsible corporate citizen that has been in business for more than half a century, Dart supports and shares in efforts to minimize the amount of packaging that is disposed of and its effect on the environment.

The issues of packaging and solid waste management and recovery (e.g., recycling, composting, etc.) are largely science-based and often technical in nature. It is vitally important that any efforts regarding these issues are based on credible, accurate, factual and comprehensive information. A valid analysis requires consideration of all factors compared against alternatives, including the packaging product's performance, life cycle energy use and emissions creation, and a comparison of recyclability and compostability.

However, because a tremendous amount of misinformation and misconception exist, as well as an overall lack of understanding about polystyrene packaging and the environment – particularly about the realities of solid waste and its management – Dart respectfully requests that, along with other members of our industry and other stakeholders, we be provided the opportunity to work cooperatively with Newton officials to address reasonable, achievable, fair and balanced solutions to overcoming waste and litter reduction challenges.

Dart established a department almost 25 years ago specifically dedicated to environmental issues that works to provide current, well-documented, factual information on our products and the environment, and to develop environmental answers and solutions for our customers and the general public. As a result of our efforts, Dart is nationally recognized as a leader in understanding and promoting the facts about polystyrene foodservice products and associated environmental issues, and has received special recognition for our environmental efforts from the United States Congress, the California State Legislature, the American River Parkway Foundation, McDonald's Corporation, the California Integrated Waste Management Board and others.

Dart urges you to consider the following realities regarding the environmental performance and safety of polystyrene foam and alternative foodservice containers.

*\* The brand name STYROFOAM™ often is misused as a generic term for foam foodservice products. STYROFOAM™ is a registered trademark of The Dow Chemical Company that represents its branded building material products, including rigid foam and structural insulated sheathing, and more.*

**Solid waste realities**

According to the U.S. EPA and other credible sources, all polystyrene foodservice (foam and non-foam) cups and containers account for less than 1.0 percent by weight and volume of the municipal solid waste stream. The largest contributor to total municipal waste is organics (food scraps/yard trimmings) at 20 percent.

In addition, contrary to popular public belief, waste materials do not readily biodegrade in modern landfills. Modern landfills are regulated under strict federal and state regulations to ensure protection of human health and the environment. Today's modern MSW landfills are not like compost piles, where the purpose is to process materials in such a way that they will decompose quickly. Modern landfills are actually designed to keep waste from the environment and to minimize biodegradation.

The reality is that very little waste biodegrades in a landfill. Highly regulated and highly engineered modern landfills are designed to discourage biodegradation by removing oxygen, sunlight (heat), and water. Also, because biodegradation can lead to the release of harmful methane gas or leachate, which can contaminate air and groundwater, it is actually preferable to place non-biodegradable rather than biodegradable products in landfills.

**Polystyrene Foam Foodservice Products Comprise a Very Small Portion of Litter**

Commonly used polystyrene foam food service products make up 1.5 percent of litter, according to a new report that surveys recent studies on litter. The May 2012 report by environmental consulting firm Environmental Resources Planning "examined a variety of litter surveys to determine the extent to which polystyrene foam food service products contribute to litter."

ER Planning compiled information from nineteen litter surveys conducted in the U.S. and Canada from 1994 to 2009, including a 2008 national survey of 240 sites. The firm reviewed surveys that used statistically valid quantification and characterization methodologies. The report finds that polystyrene foam food service products "consistently constitute a small portion of litter (1.5 percent). Evaluating just the surveys conducted since 2000 yields an even lower median value of 1.1 percent."

Surveys included in this review met the following criteria:

- Statistically valid quantification and characterization methodologies were used.
- Polystyrene foam food service products were specifically quantified.
- Littered items were quantified by count. Counts are much more precise and have lower variability between measurements than either volume or weight, which are both useful measures, but only when recorded along with a tally of littered items.
- No survey conducted before 1994 was included, because the information might be considered outdated.

**Product bans do not effectively reduce waste and litter**

There exists a widely-held misconception that litter is a problem caused by one particular material or one particular type of packaging rather than irresponsible consumer behavior, which is the true cause. The reality is that some people improperly dispose of materials by littering. Littering is a matter of behavior; people who discard materials into the environment usually do so because they don't think or don't care. The only true solution to litter is to change the behavior of those who litter and enforce the laws that prohibit this behavior.

The fact is that eliminating polystyrene foodservice products (or any other product or material) would simply change the composition of waste that is generated and the litter that is found on our streets and waterways not reduce the quantity or eliminate the negative effects of the irresponsible human behavior that put it there in the first place. All products must be packaged in some type of packaging. There is no environmentally acceptable

form of litter, and focusing on one specific packaging type falls short of a comprehensive policy that is needed to address litter.

Legislative initiatives which ban or severely limit the use of products in the marketplace – especially bans on polystyrene foam foodservice products – are misguided attempts to address the issues of solid waste and litter. Bans on specific products simply do not reduce solid waste or litter as litter is the result of human behavior, not a product or material itself. Often, emotional responses to these issues are pursued with a willful disregard of principles of sound science, evidence and logic, rather than practical solid waste management solutions.

Dart is aware of the following evidence and testimonials that polystyrene bans do not work:

- Data from a recently completed litter re-audit done for the City of San Francisco confirms that eliminating all food-related polystyrene would simply change the type of litter found. Specifically, all paper cups observed (hot, cold, and other), increased to 2.41 percent of total litter in 2008 from 1.82 percent in 2007, while polystyrene cups decreased to 0.78 percent from 1.13 percent during the same period.
- The Santa Barbara, CA City Council directed staff to evaluate the merits of banning polystyrene foodservice products. Staff found through their research that a ban on polystyrene would only be effective and have a net benefit to the environment if the foodservice ware was made from compostable material and that any benefits could only be realized with a citywide organics collection and composting program – which the city does not have.
- Carmel, CA City staff confirmed in a June 3, 2008 staff report that since the inception of its 1989 ordinance to ban polystyrene foodservice, "...the problem of food packaging waste litter has not improved..."
- In a December 2005 opinion-editorial to the Ventura County Star, Jean-Michel Cousteau, the founder of the California-based Oceans Future Society and son of famed ocean explorer, Jacques Cousteau, wrote:

*California's beaches are a natural treasure and we need the public's help to protect them. But history teaches an important lesson: **bans don't work** [emphasis added.] If a community bans Styrofoam and plastic carry-out containers, coffee cups, picnic ware and similar items, we know what will happen: individuals and businesses will switch to other disposable products, such as glass, aluminum, and wax-covered cardboard. The amount of litter will not change, only its composition. That's why bans are overly simplistic and don't get to the real cause of the problem...*

*Public education and stricter enforcement of existing litter laws, with appropriate penalties, would help remind both our fellow Californians and the thousands of visitors who come here each year that it is their personal responsibility and civic duty to keep California clean. Unfortunately, there will always be litterbugs among us. Bans have no effect at all on such people. Irresponsible human behavior cannot be addressed by eliminating products in society.*

### **Polystyrene is recyclable**

Polystyrene is a thermoplastic, which means that it can be completely recycled. Foam (and non-foam) polystyrene foodservice products are technically very easy to recycle, and can be recycled as part of an integrated solid waste management strategy.

Though the challenge to recycling polystyrene foam is in the efficient and economical collection of clean material and transportation to a recycling facility, at this time, single-use polystyrene foam foodservice products are not only recyclable, they are the most recycled of all foodservice materials today – paper or plastic – and are recycled in select locations in North America.

However, due to unfavorable economics associated with transportation and contamination issues, no disposable foodservice products (e.g., plastic, paperboard, other), including post-consumer polystyrene foam, are widely recycled currently.

implemented these recycling programs with the state of Delaware, the cities of Philadelphia and Baltimore, Dauphin County (Harrisburg), Pa., and Carroll, Howard and Cecil Counties in Md.

- Dart has partnered with the City of Roseville, CA on a foam recycling program by assisting them with the purchase of a commercial grade densifier, and with Stockton Recycling through PFPG for a public drop-off location in Stockton, CA.

- **School Lunch Tray Recycling**

- Polystyrene foam lunch trays have been recycled in the Boston School system since 2000 and Cambridge's school trays are also being recycled currently.
- Dart works with hundreds of public schools, five state universities, and the State of Michigan to recycle all types of foam polystyrene products.
- The following CA schools are now recycling their foam lunch trays: El Segundo USD, Torrance USD, Manhattan Beach USD, Chula Vista USD, Lodi USD, Culver City USD, Los Alamitos USD, Monrovia USD, Ontario USD, Pasadena USD, Santee USD, South Bay USD, and Valley Center USD.
- The following non-CA schools are now recycling their foam lunch trays at Dart drop-off locations: Arlington Heights USD #25, Chicago, IL, Freeman Elementary, Aurora, IL, Hope D. Wall School, Aurora, IL, Wake County Schools, NC, Ann Arbor Public, Ann Arbor, MI, Essexville Hampton

And, in contrast to polystyrene foodservice products, the reality is that single-use paperboard foodservice products are not recycled because most paper foodservice products are made from multiple materials. Most of these products are coated with polyethylene plastic or wax that enable them to safely hold foods and liquids, but makes them very difficult to successfully recycle.

As evidence of Dart's efforts to minimize the amount of packaging that is disposed of and its effect on the environment, we have been a proactive and positive partner with our customers and the public in developing and promoting innovative polystyrene foam foodservice packaging recycling programs. Currently, Dart is capable of reprocessing 12 million pounds of both pre- and post-consumer foam products annually, and encourages the recycling of post-consumer polystyrene foam products by offering these options:

- Dart currently operates polystyrene foam recycling drop-off locations (15) at our North American production plants (U.S., Canada and Mexico) and one in the UK for anyone who wishes to recycle foam products. These plants receive foam from individuals, local schools, community recyclers, commercial businesses, hospitals and manufacturing plants. Dart sells its recycled polystyrene foam to manufacturers who reprocess it into useful products.

In addition, back in 1990, Dart instituted two portable, off-site recycling programs for our customers:

- The first program, CARE (Cups Are REcyclable), provides larger institutional users of foam products (and municipalities) with an integrated, efficient method of recycling. The customer leases a densifier on the premises to crush all postconsumer foam foodservice products (e.g., cups, plates, bowls, and clam shell containers) into a cylinder for convenient storage and transportation. The cylinder is then backhauled on a Dart truck for reprocessing at a Dart recycling facility.
- The second effort, Recycla-Pak, is a mail-back program designed for beverage service on a smaller scale. The program allows businesses such as delis or coffee shops to collect and return used foam cups only in specially-designed Dart Recycla-Pak cartons, shipping prepaid. The cups are then recycled at a Dart recycling facility.

These off-site programs warranted recognition from the EPA's Office of Solid Waste in a 1992 letter, stating: "Dart's initiatives to foster recycling of its products are precisely the sort of actions that we would like to see adopted throughout corporate America."

Dart has also been a proactive and positive partner with local governments, primarily in California and Michigan, and now on the east coast of the United States, in developing, implementing and promoting innovative recycling programs, including:

- Curbside Recycling
  - In the U.S., 20 percent of the population of the state of CA has access to curbside foam recycling (57% of the population of L.A. County)
  - Los Angeles, Long Beach, Torrance, Pasadena and Thousand Oaks California are a few of the approximately 40 cities that collect and recycle post-consumer polystyrene foam foodservice products in their residential blue box collection programs (for a list of cities that offer curbside recycling, go to [www.dart.biz/recycleCA](http://www.dart.biz/recycleCA))
  - Other: In Ontario, Canada, approximately 90 municipalities, including the City of Toronto, representing over 50 percent of all households in the province of Ontario, have access to curbside and/or drop-off recycling programs that collect post-consumer foam cups and containers.
- Drop-Off Programs
  - In Michigan, Dart has established more than 40 polystyrene drop-off locations in over 30 counties.
  - In the mid-Atlantic area of the U.S., a growing number of municipalities have recently partnered with Dart on a program to collect postconsumer foam from designated drop-off sites. Local residents, businesses and organizations can bring their used foam products to these sites where it will be collected and transported to Dart's nearby manufacturing facilities for processing. Since July of 2011, Dart has

polyethylene plastic, wax, or other nonbiodegradable materials, the fact is that they are essentially no more degradable than polystyrene products.

Regarding whether or not these materials biodegrade in landfills, according the Biodegradable Plastics Institute, there is no scientific data available which shows that "biodegradable" plastics will fulfill consumer's expectations under landfill conditions (i.e., breaks down completely into nothing in 12 months or less). These products may become more main stream in the future, but at this time, the reality is that single-use foodservice products made from bioplastics are not viable as a replacement for single-use polystyrene foodservice products.

Still, Dart is actively working on developing bioplastic products. We currently have a database of almost 250 companies and individuals working with new, green materials, have nondisclosure agreements with over a dozen companies to investigate and test their products, and have the following materials currently under consideration: materials from renewable resources; biodegradable materials; additives to improve performance of biodegradable materials; materials that lower emissions or energy usage; and additives to lower environmental impacts of polystyrene.

thousands of times lower than have occurred in the occupational setting...In finished products, certainly styrene is not an issue." *Source: news reports of Associated Press story, June 2011*

U.S. National Institutes of Environmental Health Sciences (NIEHS): NIEHS in June 2011 noted: "Styrene should not be confused with polystyrene (foam)\*. Although styrene, a liquid, is used to make polystyrene, which is a solid plastic, we do not believe that people are at risk from using polystyrene products." *Source: NIEHS web site*

John Bucher, associate director of the National Toxicology Program: Mr. Bucher was quoted in Associated Press reports in August 2011: "The risks, in my estimation, from polystyrene are not very great," he said. "It's not worth being concerned about." *Source: news reports of Associated Press story, August 2011*

Otis Brawley, Chief Medical Officer, American Cancer Society: Bloomberg News in June 2011 reported that Brawley said, "Consumers don't need to worry about polystyrene cups and food containers..." Quote: "I see no problems with polystyrene foam\* cups." *Source: Bloomberg News, June 2011*

The U.S. Food & Drug Administration: Based on scientific tests over five decades, FDA has determined that polystyrene is safe for use in foodservice products. Polystyrene meets the FDA's stringent standards for use in packaging both to store and to serve food.

Harvard Center for Risk Analysis: A twelve-member panel of international experts selected by the Harvard Center for Risk Analysis reported in 2002 that the very low levels of styrene present in foods – whether naturally occurring or from polystyrene foodservice products – does not represent a concern to human health.

## **Conclusion**

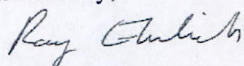
In conclusion, as a responsible corporate citizen that has been manufacturing polystyrene foam foodservice products for more than 50 years and recycling them for almost 25 years, Dart supports and shares in efforts to minimize the amount of packaging that is disposed of and its effect on the environment.

Dart respectfully requests that, along with other members of our industry and other stakeholders, we be provided the opportunity to work cooperatively with Newton officials to address reasonable, achievable, fair and balanced solutions to overcoming waste reduction challenges.

Again, it is vitally important that any efforts regarding these or any other issues be formulated by collecting and basing recommendations on comprehensive, accurate and meaningful information. Additional factual information on polystyrene foodservice products and the environment and health and safety issues can be found on the following websites:

<http://www.dart.biz/web/environ.nsf/pages/menu>  
[www.plasticfoodservicefacts.com](http://www.plasticfoodservicefacts.com)  
<http://youknowstyrene.org/>  
<http://www.niehs.nih.gov/news/media/questions/sya-roc.cfm#s8>  
<http://www.hhs.gov>  
<http://styrene.org/faq.html>

Sincerely,



Ray Ehrlich  
 Regional Manager, Government Affairs and the Environment  
 Dart Container Corporation  
 Tele: 410-593-9501 Email: [ray\\_ehrlich@dart.biz](mailto:ray_ehrlich@dart.biz)

CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

TO: Members of the Programs & Services Committee  
FROM: Marie M. Lawlor, Assistant City Solicitor  
RE: Docket Item #231-12  
DATE: February 7, 2013

RECEIVED  
Newton City Clerk  
2013 FEB 11 AM 10:59  
David A. Olson, CMC  
Newton, MA 02459

---

The recommended recodifications to Chapter 11 and Chapter 20, section 20-21(f), listed in a May 2, 2012 memorandum to the Recodification Committee are necessary to correct current ordinance language which is inconsistent with state law and to clarify inconsistent provisions within the Chapter 11 itself. The reasons for the recommended changes are as follows:

1. Section 11-5. Recommended changes will correct language which currently does not conform to state law. In addition, recommended changes will correct confusing language in order to clarify that persons collecting garbage or trash are required to offer recycling services.
2. Section 11-6. Suggested removal of the italics on the phrase "Non-profit rubbish" to maintain consistency of style in the ordinance. Italics are not used elsewhere and are unnecessary.
3. Sections 11-7(h); 11-8(i); 11-9(a); and 11-10(c) and Section 20-21(f) (civil penalty). Recommended changes are to clarify that graduated offenses are counted per 365 day period, as law department review of committee reports confirms was the intent of the Board. Cross-reference to Section 1-6 of the Ordinances is recommended to place persons on notice that every day an ordinance offense continues constitutes a separate offense.
4. Section 11-11. The recommended changes are necessary to conform to state law. Current language is inconsistent with state law.