

CITY OF NEWTON
IN BOARD OF ALDERMEN
PROGRAMS AND SERVICES COMMITTEE AGENDA
WEDNESDAY JULY 11, 2012

7:45 PM Room 222

ITEMS SCHEDULED FOR DISCUSSION:

REFERRED TO PROG & SERV, PUB. FACIL & FINANCE COMMITTEES

- #170-12 ALD. SANGIOLO, BAKER, BLAZAR , JOHNSON, and YATES requesting the creation of an ordinance to govern the naming of public assets of the City, including the interior and exterior features of public buildings, lands, and water bodies of the City, as well as any public facilities and equipment associated with them, all to serve the best interests of the City and to insure a worthy and enduring legacy for the City's physical facilities and spaces, including appropriately honoring historic events, people, and places. [05/29/12 @ 1:34 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #185-12 ALD. BAKER, BLAZAR, SANGIOLO, LINSKY, ALBRIGHT & DANBERG requesting that the Board of Aldermen adopt a RESOLUTION to His Honor the Mayor asking that, when the Mayor seeks future Board approval for bonding the cost of additional capital facilities or equipment for the schools, he include in that funding request, as well as in the city-wide Capital Improvement Plan, the estimated costs needed for funding the capital technology needs of the Newton Schools, including the appropriate portions of the estimated project costs of the School Committee's three-year district-wide technology plan not anticipated to be funded by the Information Technology Department budget; the anticipated technology grants from Boston College for the elementary schools; and/or estimated revenue from the E-rate Technology Reimbursement Program. [06/11/12 @ 11:23 PM]
- #207-08(2) PROGRAMS & SERVICES COMMITTEE requesting discussion with the Executive Department and various City Department heads regarding use of debt exclusions to address city needs. [03-14-11 @ 10:26AM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, contact the Newton ADA Coordinator Trisha Guditz at 617-796-1156 or tguditz@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#273-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that the Executive and Human Resources Departments develop a comprehensive human capital strategy for the city to include: performance management, talent development, succession planning, and compensation. [07/17/08 @ 9:53 AM]
FINANCE VOTED NO ACTION NECESSARY on 3/8/10

#298-09 ALD. MANSFIELD proposing Home Rule Legislation to amend **Article 2, Section 2-1(c) Composition; Eligibility; Election and Term** of the Newton Charter to establish four-year terms for Aldermen-at-Large with the provision for one Aldermen-at-Large to be elected from each ward at each biennial municipal election. [09-29-09 @ 6:45 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#270-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, School Department, and School Committee in order to determine the most effective and efficient way to organize the Information Technology Departments. [07/17/08 @ 9:53 AM]
FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

#205-11 ALD. SANGIOLO, GENTILE, HARNEY, LINSKY requesting a discussion with the School Committee regarding a proposal to enter into contractual relationships with the Newton Schools Foundation to sell naming rights on behalf of the Newton Public Schools. [06/22/2011 @ 8:32AM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#39-12 HIS HONOR THE MAYOR requesting authorization to establish a revolving account with an annual expenditure limit of \$2,000,000 for the purpose of receiving funds collected by the Newton Schools Foundation in connection with the sale of naming rights for Newton Public School buildings and facilities and to be distributed for the sole purpose of public school education technology and curriculum purposes. [01/30/12 @ 4:18 PM]

#165-12 HIS HONOR THE MAYOR submitting (1) the report prepared by Kopelman & Paige PC, the consultant engaged to review the city's election procedures, and (2) proposing that Charter Sections 2-1(b) and 4-1(b) be amended to establish a particular date by which nomination papers are made available. [05/25/2012 @ 1:35PM]

#145-12 ALD JOHNSON requesting a review by the Solicitor's office as to what constitutes "reorganization" per our City Charter. [05/16/12 @ 10:24PM]

REFERRED TO PROG. & SERV AND PUBLIC FACILITIES COMMITTEES

#36-12 ALD. CROSSLEY & FULLER requesting Home Rule legislation or an ordinance to require inspections of private sewer lines and storm water drainage connections prior to settling a change in property ownership, to assure that private sewer lines are functioning properly and that there are no illegal storm water connections to the city sewer mains.

A) Sewer lines found to be compromised or of inferior construction would have to be repaired or replaced as a condition of sale;

B) Illegal connections would have to be removed, corrected, and re-inspected in accordance with current city ordinances and codes, as a condition of sale. [01/24/12 @ 8:07 AM]

#164-12 ALD. YATES requesting a discussion with the Executive Secretary of the Election Commission and other appropriate officials on how to use City Hall grounds and various other locations around the city to inform Newton voters about the unusual Thursday date of the September primary. [05/24/12 @ 1:41PM]

#144-12 ALD. HESS-MAHAN proposing to repeal the time restrictions for filing special permit applications/site plan reviews for Major Projects during July and August in Article X Section 5 of the Rules and Orders of the Board of Aldermen.

#68-12 ALD. YATES, MERRILL asking that the Executive Department develop a detailed plan for the storage of the veterans archives currently housed in the War Memorial that allows for proper access to the records by veterans, their families, and historians, both amateur and professional. [03-05-12 @ 9:40 PM]

#68-12(2) ALD. YATES requesting that a detailed inventory of the more than 100 photographs, paintings, drawings and other images of the Civil War, World War I, World War II in the office section of the War Memorial Hall be prepared and a plan be developed for their public display in whole or in part before or during the city's observance of the 150th anniversary of the Civil War through 2015 and the centennial of World War I from 2014-2015. [03/23/12 @ 1:43PM]

#67-12 ALD. ALBRIGHT seeking a discussion with the Executive Department regarding a plan and timeline for funding an archivist/records manager position for the city to oversee the preservation, cataloguing, and organization of the city archives; provide guidance and assistance to city departments that are maintaining their own archives in order to ensure that

records are preserved, accessible, and maintained; and, plan for future storage needs as the collection continues to expand. [03-12-12 @10:28 AM]

REFERRED TO PROG & SERV, PUB. FACIL. AND FINANCE COMMITTEES

#312-10 ALD. LENNON, LAPPIN, SCHNIPPER, SANGIOLO requesting a discussion with the School Committee on its plans to address space needs in the Newton public schools. [10-27-10 @11:07 AM]
FINANCE VOTED NO ACTION NECESSARY on 10/12/11 PUBLIC FACILITIES VOTED NO ACTION NECESSARY on 11/18/11

REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES

#245-10 ALD. SCHNIPPER requesting discussion with National Grid regarding the possible damage to trees as a result of gas leaks. [09/01/10 4:00 PM]

REFERRED TO PROG & SERV. AND PUB. FACIL. COMMITTEES

#99-11 ALD. ALBRIGHT, JOHNSON, DANBERG requesting that the Department of Public Works coordinate data on the impact of the snow removal ordinance from the Departments of Public Works, Parks & Recreation, Executive and Senior Services into a monthly report for the winters 2012 and 2013, which will be sent to the Public Facilities Committee that includes the following data: (1) the number of people requesting exemptions; (2) the number of exemptions awarded; (3) the number of warning letters sent; (4) the ability of the City to maintain the same standard regarding treating the surface to preserve safe passage; and (5) cost of the implementation of the program.
PUBLIC FACILITIES COMMITTEE APPROVED 4-0 on 10/5/2011

REFERRED TO PROG. & SERV., PUB.FAC. AND FINANCE COMMITTEES

#89-08 ALD. PARKER requesting the following:
A) review of the maintenance practices for buildings, parks and other properties owned by the City (including School Department facilities and grounds)
B) development of a comprehensive maintenance plan that includes regular schedules for preventive maintenance for each specific site or facility
C) a RESOLUTION requesting that implementation of said maintenance plan be funded using operating budget funds.
[02/13/08 @ 12:07 PM]
FINANCE VOTED NO ACTION NECESSARY ON 3/8/10
PUBLIC FACILITIES NO ACTION NECESSARY ON 11/3/10

Respectfully Submitted,

Amy Sangiolo, Chairman

CONFIDENTIAL -- NOT A PUBLIC DOCUMENT

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: August 17, 1994
TO: Alt. Brooke Lipsitt, Chairman, Post Audit Committee
Alt. Leonard Gentile, Chairman, Programs & Services
Committee
FROM: Ouida C.M. Young, Acting City Solicitor
RE: Docket Item #139-94/Naming Public Facilities

BACKGROUND

Docket Item #193-94 seeks a discussion of City policy regarding the naming of public buildings, facilities and parks. The information gathered to date by the Post Audit and Oversight Committee revealed that the Library Trustees, School Committee and Parks and Recreation Commission lack any policy regarding the manner of selecting names for the buildings, facilities or parks within their control. Given that lack, the Post Audit & Oversight Committee recommended that a policy for selecting the names of public buildings, etc., be put in place. The Board of Aldermen adopted this recommendation and referred the matter to the Programs and Services Committee.

You've raised several general questions regarding the naming of buildings, etc., which pertain to the discussion of this docket item before the Programs and Services Committee.

QUESTIONS

1. Who has the authority to name municipal public buildings, facilities or parks? Is there any state statute or local ordinance dealing with the naming or re-naming of public buildings, facilities or parks?¹

¹ Unless otherwise noted, the term "public building" or "public buildings" as used herein will include all types of public facilities and public parks. It will not include streets.

2. Do the names given to public buildings have any legal status? Is there any law which protects the name from later changes?
3. What legal requirements, if any, are there relating to the process of making naming decisions? To what extent, if any, is public participation mandated?
4. Does the City undertake any obligation, e.g., signage or maintenance, by naming a public building?
5. Are there any public buildings which are legally unsuitable for naming?

SHORT ANSWERS AND DISCUSSION

1. There are no local ordinances or state statutes dealing with the naming of public buildings.

As a general rule, the "right" to name a public building belongs to the public officer or board, etc., which has jurisdiction and control over the public building. The "right" to name buildings has been characterized as an executive, rather than a legislative, function. See Discussion of Question 1.

2. There is no "legal status" afforded to the names given public buildings except where the name given the public building, etc., was a condition of a gift to the municipality. For example, the terms of a monetary gift to the Board of Library Trustees required that the auditorium in the Mann Building be identified as the "Druker Auditorium" for so long as the building is used as a library.

By statute, there is a limited right to appeal the re-naming of a public park which has had the same name for at least twenty-five years. See footnote 2.

3. There are no legal requirements relating to the process of choosing a name. However, if the entity having jurisdiction and control over the public building is subject to the Open Meeting Law, e.g., the School Committee, etc., then the naming decision must be done during a public meeting. The public does not have a right, per se, to participate in the naming decision. Again, with regard to the appeal from a re-naming of a public park, see footnote 2.

4. The City undertakes no legal obligation to put up a sign disclosing the name of a public building to the public, although it hardly makes much sense to name a building and then fail to tell the public the name of the building by way of a sign. Clearly, naming a building carries no legal obligation to maintain the building.

5. Whether any public building is unsuitable for naming is a policy decision which should be left to the discretion of the officer or board having jurisdiction and control over the building.

DISCUSSION OF QUESTION #1

As noted in the Short Answer to Question #1, there is no state or local law which sets out the procedure for naming public buildings. There are a few statutes establishing an appeal process with regard to the re-naming of public ways or public parks in certain instances or to the naming/re-naming of private ways.²

Further, there are no reported judicial decisions in Massachusetts which deal with the procedure for naming public buildings. Thus, there is very little specific guidance in

² G.L. c. 85, §3 states in pertinent part:

When the name of any public way, . . . , or of any public park, is changed by the board or officer having jurisdiction thereof, if the name changed has been in use for twenty-five years or more, there shall be a right of appeal from such action to the [Massachusetts Highway Department]. Said appeal shall be taken within thirty days after such change, and shall be by petition of at least twenty-five inhabitants of the town in which such change has been made, requesting the reversal of such action. . . . upon the filing of such petition, a public hearing shall be given by said department, after such public notice as it shall determine, and unless the department shall approve of such change, the same shall be of no effect. (Emphasis Added.)

Note, G.L. c. 85, §3 applies to cities as well as towns. See G.L. c. 4, §7, cl. 34 and G.L. c. 40, § 1.

The naming of private ways and the naming of private ways open for public use but which have not become public ways is controlled by the local board of survey. See G.L. c. 85, §§3A and 3B. There is no statutory right to appeal naming decisions made by a board of survey.

Massachusetts law to help answer the question of how public buildings are named.

As in other instances where a legal question arises in connection with governmental actions which appear to be rooted in tradition, rather than express statutory provisions, one must rely upon basic legal principles in order to formulate an answer. Municipal governments have the power to acquire and hold both real and personal property for public use. McQuillan Municipal Corporations, §28.02; Worcester v. Eaton, 13 Mass. 371. The power to name is implied from the power to exercise jurisdiction and control over the particular property involved. McQuillan, §30.13 (Where authority over the opening and use of streets belongs to common council, the common council has power to name and rename streets.) Where a power is conferred on a municipal corporation, but the law is silent as to the mode of exercising such power, municipal authorities have reasonable discretion to determine the manner of exercising such power. McQuillan, §10.29. Further, where there is no clear mode in which a particular power may be exercised, courts will consider well-established customs in determining the mode in which a particular power should be exercised. McQuillan, §10.17. Given that the naming of public buildings does not require the adoption of an ordinance, naming decisions can be characterized as executive, rather than legislative, in nature. McQuillan, §10.06.

As evident from the information gathered by the Post Audit Committee, at least in the recent past, the officers or boards with jurisdiction and control over Newton's public buildings have historically named the property within their control. There is no legal principle which suggests that these naming decisions, as varied as the procedures may be, is legally impermissible.

As noted above, while there is no statute dealing with the naming of public buildings, G.L. c. 85, §3 statutorily allows an appeal from the re-naming of a public way or public park. This statute does not apply to public buildings or facilities. The language of this statute states in pertinent part "... when the name ... is changed by the board or officer having jurisdiction thereof...". This supports the proposition based upon general principle of municipal law that naming decisions are, in the first instance, within the authority of the officers and boards having jurisdiction and control over the property. ³

³ By analogy, it is interesting to note that there is a statute in the United States Federal Code which expressly provides for the naming and renaming of buildings within the custody and control of the General Services Administration, which buildings include "courthouses, customhouses, appraiser's stores,

cc: Ed English, Clerk of the Board of Aldermen
Richard Kelliher, Chief Administrative Officer

barge offices and other public buildings outside the District of Columbia and outside the military reservations". See 40 USCA §§285 and 298d. This section of the Code was first adopted in 1949 as part of the Public Buildings Act of 1949. The legislative history for §298d notes:

... In the past Congress has frequently authorized the construction of buildings for certain named departments or agencies of the Government and in some instances the building has been named by Congress, and express statutory authority is required to change the name of the building in event that original name is no longer descriptive because of a change of occupancy. The committee believes that authority to change the name of buildings is a proper function of the Federal Works Administrator ...

Legislative History, Public Buildings Act of 1949, section 410.

The Legislative History for section 410 also notes that naming decisions of this sort are considered "a proper function of the executive branch."

Memorandum

To: Members of the Programs and Services Committee

From: Alderman Baker

Subject: #170-12 ALD. SANGIOLO, BAKER, BLAZAR , JOHNSON, and YATES
requesting the creation of an ordinance to govern the naming of public assets of the City, including the interior and exterior features of public buildings, lands, and water bodies of the City, as well as any public facilities and equipment associated with them, all to serve the best-interests of the City and to insure a worthy and enduring legacy for the City's physical facilities and spaces, including appropriately honoring historic events, people, and places. [05/29/12 @ 1:34 PM]

Date: July 7, 2012

Cc: Board of Aldermen, Mayor Warren, Newton School Committee, Newton Law Department

1. Background.

The process of naming public assets in the City has been a patchwork of decisions over time, with no explicit framework for the decision-making involved. For example, it seems to be agreed that the naming of streets and intersections is an aldermanic function (E.g., the recent Board vote to name a portion of Newton Highlands in honor of former Alderman and School Committee member and longtime Newton activist, Rodney Barker.) The Newton School Committee named the auditorium at the former Newton North High School after music teacher, Albert Lasker, and the auditorium at Newton South after former Principal, Van Seasholes. Mayor Warren renamed conference room in honor of former Mayor Theodore Mann, and the Library itself is named after him. The question is whether and how this process might be improved.

1. Legal context.

- a. There is no explicit authorization to name a public asset in any Newton ordinance, though there is an ordinance which provides that a gift of tangible personal property worth a thousand dollars or more conditioned on naming can be accepted. Sec. 2-10(d). Over time, the Newton Law Department has given several opinions indicating that, in general, the right to name assets goes with the jurisdiction over the specific asset involved, the most comprehensive of which was done in 1994, a copy of which is attached. An example, given in that and several other memos from the Department before or since, involves General Law

chapter 85, Section 3, which provides for a process of appeal to the state Department of Public Works [presumably now the Department of Transportation] for change of name of a park or public by “the board or officer having jurisdiction thereof.” While there is no statute providing for the naming itself, several opinions from the Law Department have indicated that reference is enough to infer that the Commissioner of Parks and Recreation had the right to name the park in the first place. At the same time, that inferred power does not appear to be absolute. For example, while Section 21-2(a) of the Newton ordinances provides that the Parks and Recreation Commissioner has charge of the “management, care and maintenance of school grounds,” any naming power implied in that role was trumped by another provision of the Ordinances, Section 21-2(b), which provides that “control of school yards and school grounds” was “entirely within the jurisdiction of the Newton School Committee,” giving it, rather than the Recreation Commissioner, the right to name the outdoor classroom at the Memorial Spaulding School. Subject to further elaboration by the Law Department, for the time being I have presumed that in a matter where state law is not explicit, and our own ordinances have been used to sort out which of our respective agencies has naming authority, that the Board of Aldermen has the ability to enact an ordinance clarifying the ground rules about naming. That conclusion is supported by the fact that the Town of Wellesley passed a by-law several years ago, upon the advice of town counsel (a copy of whose opinion was previously provided to the Programs and Services Committee), governing the naming process in that community, including the decisions of its School Committee. Ms. Young pointed out that the Wellesley town counsel did not cite the state law providing general custodial power over school buildings in the School Committee. At the same time, my understanding is that town by-laws have to be reviewed by the Attorney General’s office for validity, and the Wellesley naming by-law was apparently acceptable. Therefore, pending further advice from the Law Department on the authority of the Board of Aldermen to pass a general ordinance governing naming by those bodies or agencies having operational jurisdiction over them, a subject which is still undergoing research as I understand it, I have drafted the ordinance below as a basis for further discussion or action by the Committee.

- b. Other precedent seems hard to find, but it is interesting that while the legislation governing naming in Puerto Rico allows it in various other contexts, sale of naming rights in schools and hospitals is expressly prohibited, presumably because those that go there have little choice in the matter.
2. Possible courses of action:

- a. Recommend a proposed ordinance to the Board as outlined below, or
- b. In light of the fact that the naming of school buildings is apparently on hold, and further work is being done by the Law Department, recommend holding the item for further study of a proposed ordinance through an advisory subcommittee appointed by the Chair of the Programs and Services Committee.

In that light, here is my current draft of a naming ordinance for the Committee's consideration. Note that in that process, I have tried to include clarify some of the issues of concern to a number of members of the Board.

Naming of Public Assets [Draft for discussion only 07-07-12].

1. Purposes. It is the policy of the City of Newton to reserve the naming or renaming of public assets for circumstances that will serve the best interests of the City of Newton, and ensure a worthy and enduring legacy for the City's physical spaces.
2. Prohibition. Unless otherwise permitted by paramount state law, no city assets may be named or renamed except in accordance with the provisions of this ordinance.
3. Sale or conditional gifts of naming rights restricted. The sale of a right to name a public asset of the City of Newton shall not be permitted, nor shall any gift be accepted conditioned upon the naming of a public asset of the City.
4. Major Assets. Assets that are considered to major physical assets of the City of Newton, such as buildings, recreational facilities, parks, water bodies, and conservation land, shall be named only after the agency or board with jurisdiction of such an asset shall approve the name, and the Board of Aldermen, by a majority vote, concurs in that naming.
5. Non-major assets. All other City assets which are part of a larger whole, such as the interior spaces of buildings; features within parks, conservation land, recreational areas; driveways or parking lots; or furniture or other small fixtures of any description shall be named by the Board having jurisdiction over the asset pursuant to a policy adopted under section 7(a) herein.
6. Categories of names.
 - (a) Historic events, people and places. The City may preserve and honor the history of the City of Newton , the Commonwealth of Massachusetts, or the United States; prominent historical figures; and local landmarks, neighborhoods, or prominent geographical locations.

(b) Outstanding individuals. The City may acknowledge individuals who have contributed of their time, talent, and energy to the public life and well-being of the City of Newton, the Commonwealth of Massachusetts, or the United States, and its citizens, including those veterans who put themselves in harm's way to serve their country.

7. Policies for naming:

- (a) Naming policy required. No board or agency otherwise authorized to name a public asset shall do so without having a written naming policy, adopted after a public hearing, and which policy shall be otherwise consistent with the provisions of this ordinance. All such policies shall be available from the City Clerk and also posted on the City web site.
- (b) Change of names. Names given shall not be changed without following the same procedures as for naming an asset under this ordinance.