

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JANUARY 20, 2010

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

Absent: Ald. Merrill

Also Present: Ald. Harney and Yates

Others Present: Nancy Perlow (Director, Newton Library), Audrey Cooper, Barbara Litzke, Beth Wilkinson (Library Trustees), Jayne Colino (Director, Senior Services), Marion Knapp (Newton Council on Aging), Alice Bailey (Senior Center Staff), Mike Avitzur (Senator Cynthia Creem's Office), Bob Rooney (Chief Operating Officer), Karyn Dean (Committee Clerk)

Chairman's Note: The Committee is inviting Department heads for brief introductions and informational discussions. Nancy Perlow, Library Director, and Jayne Colino, Director of Senior Services, joined the Committee.

LIBRARY

Nancy Perlow, Director of the Newton Library, joined the Committee. She provided a handout with some Library statistics which is attached to this report. She also handed out the January newsletter to each of the Committee members.

Budget

She said that 81% of their municipal appropriation was spent on personnel. About 12% of the municipal budget, minus the benefits they pay the staff, was spent on materials. The 12% figure was key because in order to be eligible for state certification there were certain requirements. One of those was that 12% of the budget had to be spent on materials. The Newton Library spent more than 12% because the Trustees and the Friends of the Library did fundraising, (combined, they raised about \$240,000) and they received some state aid for materials as well. Ms. Perlow said the state was trying to make it easier for libraries to meet the requirements. They continue to look for different ways to fundraise and get advice on how they might do that.

The idea of state aid was that municipalities needed to support their public libraries. The library's budget can not be cut out of proportion to the rest of the city's departmental budgets. They were required to have a 2.5% increase of their municipal appropriation over the average of the last 3 years. They were also required to be open 63 hours a week, which they were. If they didn't meet the 2.5% increase amount, it was possible for a library to apply for a waiver.

If a library doesn't meet certification, it does not receive state funds and the residents from that community can not borrow materials from any other community in the state. Beth Wilkinson, Library Trustee, said it was very unusual for a city like Newton to apply for a waiver. Generally it would be the smaller, less well-endowed cities or towns that would request them. However, this 2.5% figure was the difficult requirement to meet and they were very close to not meeting it this past year. When they got the extra money from fundraising, it brought up the amount that the 2.5% represented, which made it more difficult.

Personnel

Ms. Perlow said that since the director left two years ago, no personnel had left the Library. Currently, however, they had three positions open. Two people left about a month ago and there would be a retirement in a month. They had an assistant supervisor of reference position open, a website designer, and the special library services positions open as well. They were currently interviewing to fill these positions.

Rental

Ald. Fischman wondered if it would be financially beneficial for the library to rent out space to private parties when it was not open. Ms. Wilkinson thought that the extra personnel needed for scheduling and managing groups may negate any gains. There would also be a concern about securing the collection as the floor plan was fairly open. Custodial staff was already overworked and may not be adequate for private events. Ms. Wilkinson said they could look into this more if the Board wanted them to. Ald. Sangiolo pointed out that the building was technically under the control of the Library Trustees, so if they were to raise any money through rentals it would stay under the control of the Library.

The Committee thanked Ms. Perlow for providing this update of the Newton Library.

SENIOR SERVICES

Jayne Colino, Director of Senior Services addressed the Committee. She provided an organizational chart which is attached to this report. She explained that her position was the only one fully funded by the City. The other positions were funded either through an outside source or a combination of City and outside sources. The goal of their department was to improve the quality of life of all seniors in the City. They accomplish that in two ways: they try to address people's interests through their programs; and address their needs through their services. The majority of what they provide was within the four walls of the Senior Center, but there has been an effort in the last several years to expand the services and connect people with the services. They have been working on letting people know there were services beyond the Center itself. These services were designed to provide the options people need to age in Newton. Senior Services was endeavoring to be a liaison to as many services as possible and they want to make access to these services simpler and comprehensive. Ms. Colino said the goal was all about aging where one chooses to age with the help of the community.

Ms. Colino said about 4,000 elders came into the Center for services or programs this year and that has stayed fairly consistent with past years. They were dealing with 6 decades of the population (from 50 – 100 years old). Some people perceived the Senior Center as a resource for only low-income or frail elders. She explained that the Center provided for that population

but, as described earlier, the primary goal was for all elders in the City to have access to as many resources as possible and it covered needs as well as interests.

Budget

Ms. Colino explained that about 78% of their budget came from the City, and 6% (about \$45,600) was from Community Development Block Grant Funds (CDBG). They were waiting to hear back from their most recently submitted proposal to CDBG. FY11 was the beginning of the next 5 year block of funding from them. They have asked for an increase to the positions that were currently funded by CDBG and they also asked for the addition of another part-time outreach worker. This was to respond to the growing demographic requiring their services. They currently have a clinical social worker and an outreach social worker on staff. The demand for their services has increased to the extent that the clinical social worker was hired to do mental health support, counseling and therapy for individuals, couples, families and groups. About half of her time right now was doing case management and needs assessments, service planning and monitoring of cases that may be changing. That's why they have asked for another outreach worker through the CDBG proposal so they can get back to supporting the mental health aspects of aging. The Senior Fund helped to establish an emergency relief fund that the social workers can access when every other resource has been accessed (food stamps, perpetual benevolent fund, the Cousens fund, etc.) and exhausted. They received a per capital grant from the state of \$7.00 per elder.

This year, they received a new small grant from the Older Americans Act Title 3 funds which helped them to establish a program for a home contractor referral program. They have collected information from home contractors and checked their licenses, their references, etc. This list was available to elders who needed some help. Newton Wellesley Hospital has been offering a fear of falling program at the Senior Center. Ms. Colino explained that this was a serious concern for seniors and it could be quite isolating. The hospital provided this service with no cost to the City.

Transportation

About 42% of their budget was dedicated to transportation services at \$248,000. It will be a priority in FY11 to continue funding that to respond to the growth in the currently provided services. Last year, some services had to be reduced and they would like to restore those - that included transportation to medical facilities within 2 miles outside the city borders, and transportation to houses of worship and long care facilities to visit loved ones. The Greater Boston Interfaith Organization was trying to organize the houses of worship in Newton on transportation services for their congregants, among other needs.

Ald. Linsky asked Ms. Colino if they have explored having volunteers provide transportation. Ms. Colino said that the liability for that would be too onerous for the City. Contracting this service to Veteran's Taxi took the City out of the transportation service business. In the past, Senior Services owned and maintained vans and did the scheduling and dispatching, but they found it was more cost effective to contract the service out. Ald. Rice asked about The Ride from the T. Ms. Colino explained that The Ride was based on disability qualifications, not age. The Ride goes almost anywhere the T goes and the Senior Services transportation services are to specific locales only.

The Committee thanks Ms. Colino for providing this update on the Senior Services Department.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#13-10 HIS HONOR THE MAYOR requesting authorization to appropriate and expend one hundred thousand dollars (\$100,000) from Budget Reserve for the purpose of supplementing the Law Department legal assistance account.

ACTION: **ITEM DIVIDED INTO A AND B:**

A: \$50,000 HELD 6-0 (Ald. Sangiolo not voting)

B: \$50,000 APPROVED 6-0 (Ald. Sangiolo not voting)

NOTE: Bob Rooney, Chief Operating Officer, addressed the Committee on this item. He explained that Donnalyn Kahn (Acting City Solicitor) was unable to attend. Even though the item was submitted under the previous administration, Mr. Rooney said it was still valid. The City does not have labor counsel on staff so that work was outsourced to Morgan Brown & Joy. The funds spent to date have mostly been for lengthy arbitration sessions generally in unfair labor practices. The advance work for those sessions was extensive. Mr. Rooney said it was difficult to project arbitration costs because cases can be appealed several times. Mr. Rooney said the money was encumbered in August and was expended over the next several months. There was approximately \$20,000 left in the account.

The Mayor was requesting \$100,000 from Budget Reserve to supplement the Law Department legal assistance account for these expenses. This will leave about \$250,000 in Budget Reserve which they felt was adequate. Ald. Baker asked if Budget Reserve money would be used to deal with severance packages. Mr. Rooney said there may be a portion requested for that purpose, but this request was solely for outside labor counsel. He said that there were arbitrations going on this week and next that were full day sessions and invoices will be coming from those soon.

In-House Counsel vs. Outsourcing

Ald. Blazar asked if the City had considered hiring a labor lawyer instead of outsourcing the work. He felt that the money being spent could support such a hire. Mr. Rooney said the administration was looking at FY11 and the legal staff to see if it would make sense to bring that function in-house. He noted that the field was very focused on Massachusetts labor law so it would be a very specific resource. Ald. Linsky said that others had expressed an interest in exploring that option as well. Ald. Fischman was interested in finding out what the Law Department thought about this option.

Cost Drivers

Ald. Hess-Mahan asked Mr. Rooney what was driving the cost for this outside counsel. Mr. Rooney replied that the main recipient for labor counsel and arbitration cases was the Human Resources Department. The policies in the City were being contested by employees and having clearer policies could lessen the number of cases. Mr. Rooney said it was extremely difficult to predict how many cases there could be and how long they could take.

Splitting Item

Ald. Linsky noted that about \$142,000 had been spent for the first half of the fiscal year, so another \$100,000 seemed to be on target to finish out the year. He wanted to give the Law Department the money to meet their current obligations but suggested approving only \$50,000 at this time. Ald. Linsky would like to hear from the Law Department about the next fiscal year and whether an in-house option was on the table, and what was happening with current arbitration cases. Ald. Baker was comfortable with voting a partial sum and hearing from the Law Department. He felt the Finance Committee might have similar concerns. Mr. Rooney said half the amount would suffice for now. He explained, however, that only one case was settled with nine to be re-opened.

Vote

The item was split into items A and B.

A: Hold \$50,000; B: Approve \$50,000.

The Committee voted to Hold \$50,000 and Approve \$50,000 by a vote of 6-0 on both parts.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#358-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend fifty five thousand dollars (\$55,000) from tax revenue from the local option meals tax to restore funding to the Senior Transportation Program.
[10/09/09 @ 5:25 PM]

ACTION: **HELD 6-1-0 (Ald. Sangiolo opposed)**

NOTE: Bob Rooney addressed the Committee on this item. He explained that the meals tax revenue had other uses than what they could afford for Senior Transportation at this time. He said they supported trying to fund this service, but it could not be from this account. The Committee Clerk checked with the Comptroller, Dave Wilkinson, and he confirmed that the revenue from the meals tax had to be earmarked by the time the tax rate was set in November. This request was not submitted at that time, therefore, the money was longer available. The Mayor's office had not yet determined another source of revenue for this item. Mr. Rooney would like to re-submit the item as it may have a different amount as well as a different source of revenue. Ald. Baker explained that the Board was very interested in seeing this service restored and would like to hold the item until the details were determined by the Mayor's office.

Vote

Ald. Baker moved to hold this item with the idea that the Mayor's office will re-submit the item as soon as possible. The Committee voted 6-1-0 to hold this item with Ald. Sangiolo opposed.

REFERRED TO PUB SAFETY & TRANS AND PROG & SERV COMMITTEES

#20-10 ALD. HESS-MAHAN AND HARNEY requesting special legislation prohibiting the use of handheld mobile devices to send, read or receive electronic messages while operating a motor vehicle within the City of Newton and in order to protect its citizens and to limit unnecessary motor vehicle

accidents, injuries, and fatalities, and that the appropriate committees conduct a public hearing to examine the feasibility thereof. [01/04/10 @ 5:07 PM]

ACTION: **HELD 7-0**

NOTE: Ald. Hess-Mahan presented this item to the Committee. He explained that Representative Peter Koutoujian had filed legislation which would prohibit texting while driving, but it would be considered a secondary rather than primary offense. A driver would have to be stopped for another reason, and if found to have been texting, could then be cited. The City of Boston's effort was first introduced by Councilman John Tobin, who knew of a family whose child had been killed by a driver who was texting. The version proposed by Boston would consider texting while driving as a primary offense. The proposed legislation from the City of Boston as well as Rep. Koutoujian is attached to this report.

Research

Ald. Hess-Mahan had provided some research on the issue that was attached to the agenda. It showed, among other things, that talking on hands-free or hand-held devices was equally distracting to drivers. Studies from Virginia Tech Transportation and the University of Utah showed that driving a truck while texting was 23 times more dangerous than when not, and driving a car was 6 times more dangerous. Reaction time increased substantially, and the distraction caused swerving into other lanes, and other reckless behavior. Studies were performed naturally and in a simulator. AAA became very interested when research showed that 50% of teenagers admitted to texting while driving or being a passenger in a car with a driver who was texting.

Ald. Harney said that he has seen the danger of texting while driving as he drives down the roads of Newton and the highways around the city. He fully supported this ban but wanted to be sure that other modes of communication were included as well, such as emailing. Ald. Hess-Mahan said some people have suggested a complete ban on cell phones while driving but said he felt that would be much harder to get passed and to enforce. Ald. Hess-Mahan said that virtually all states have a reckless driving statute which was separate from this type of ban.

Current Efforts

This ban would require special legislation in order to levy fines. The overarching purpose of this, however, was to get the legislature to pass some legislation. The Senate had passed a ban as a rider to the budget, but it did not get passed in the final version of the budget. Ald. Hess-Mahan said several municipalities were looking for a coordinated effort to support this ban and make it a reality. Currently 20 states had some sort of ban on texting or using a cell phone while driving.

Follow Up

Ald. Baker wondered if a public hearing was necessary since this was a public safety issue. Ald. Fischman agreed that it was a public safety issue but felt it was a good idea to have a public hearing to disseminate the information. Ald. Harney agreed. Ald. Hess-Mahan said he would like the opportunity to have some experts on the issue present at a public hearing. Ald. Linsky said he did not think that this Committee needed to be as involved in the public hearing

part of this as the Public Safety and Transportation Committee. It would come back to Programs & Services for the Home Rules Legislation to be put in place.

Ald. Sangiolo moved to hold this item and the Committee voted in favor 7-0.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#83-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to adopt the proportion of Governors Municipal Partnership that would allow the City to reduce employee health insurance costs by joining the Group Insurance Commission.
[02/27/07 @ 10:21 PM]

ACTION: **HELD 6-0 (Ald. Sangiolo not voting)**

NOTE: Please see note for #82-07 below as these two items were discussed together. After discussion, the Committee voted to hold this item by a vote of 6-0 with Ald. Sangiolo not voting.

#82-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to allow the cities and towns to tax all telecommunications facilities in the City (which would yield at least \$1.6 million per year for Newton). [02/27/07 @ 10:21 PM]

ACTION: **HELD 6-0 (Ald. Sangiolo not voting)**

NOTE: Ald. Yates addressed the Committee on item #82-07 and #83-07. He said he was hoping there would be an opportunity to tax the telecommunications equipment, not just the poles and wires. His understanding was that it would yield \$25M to all the cities and towns in Massachusetts. He felt that the existing law preventing the taxation served no legitimate purpose and the cities and towns needed the money. He was hoping that it was on the state representatives list of priorities. The Massachusetts Municipal Association has supported this initiative.

Mike Avitzur, a representative from Senator Cynthia Creem's office, joined the discussion. Mr. Avitzur said that people on the hill have not forgotten about these issues. As the budget cycle heats up in the next weeks and months, they will come to the fore.

Telecommunications

Mr. Avitzur explained that on the telecommunications issue, the Appellate Tax Board ruled that the centrally valued poles and wires on public lands owned by the telecommunications companies should not be exempt from the personal property tax. For a while, it was unclear whether that would be reversed on appeal. In the meantime, the Department of Revenue (DOR) required municipalities to keep any revenues they collected in an overlay account. Senator Creem, as well as some other legislators, put forward an amendment before this year's budget to codify the Appellate Tax Board ruling. They were unable to convince the full Senate at that time to enact the codification of that ruling, but as a compromise there was a Municipal Relief Commission that was established that Senator Creem served on and Senator Rosenberg chaired. They put forward a packet of recommendations on a host of issues related to

municipal finances, including this issue, just under a year ago. All of the recommendations were included in the Senate budget that passed last spring, however, the House balked. A budget came out for FY10 with the codification and clarification of the Appellate Tax Board ruling. Mr. Avitzur contacted the DOR and they calculated that the tax was bringing in \$718,000 to Newton this year.

The switches and signals were not included in the package. Mr. Avitzur's understanding was that there was an argument that taxing the signals and switches would be a disincentive for future expansions of wireless networks in foreseeable and unforeseeable ways. The City of Boston has been leading the charge on getting the signals and switches taxed as well. He said that this will be brought up in the FY11 budget discussions relative to Newton. Mr. Avitzur said he will bring the concerns of Newton back to Senator Creem.

Health Insurance

Ald. Yates said that on the health insurance issue, he docketed the item as being part of the Group Insurance Commission (GIC). Since then, the Citizen Advisory Group looked at this and found that it was unclear whether the GIC did a better job of holding down costs than the City did. He felt the City has had a decent track record in negotiating with the insurance providers. The state negotiated their health care costs a different way and was exempt from collective bargaining. What they gave to cities and towns was an option to join the GIC if a super majority of their union employees approved that. Ald. Yates felt that was unlikely to happen in Newton. He said the General Court was delinquent in doing things that could give cities and towns some relief. He would like to see more power give to cities and towns.

Follow Up

Ald. Yates would like to have the state representatives come into a Committee meeting to pledge their support for the telecommunications item as well as the health insurance item. He said if they were willing to send a letter to be shared with the Board that stated that when the Speaker asked for items to be included in the budget, they would ask for improvements to the telecommunications taxation for cities and towns and would also ask to include the ability for cities and towns to set their own health costs on the same basis as the state. If they could not send that letter, he would like to have them come in to speak to the Committee. Ald. Baker and Yates suggested having the Committee Clerk seek written commitments from the members of the House on these issues and ask that the House budget is made up before the Senate budget.

The Committee voted to hold this item by a vote of 6-0 with Ald. Sangiolo not voting.

Respectfully Submitted,

Stephen Linsky, Acting Chairman



FACTS AND FIGURES

for Fiscal Year

July 1, 2008 - June 30, 2009

Income:

Municipal Approp.	\$5,154,125
Contributions & Funds	\$237,375
State Aid	\$130,462
Regional Library Aid	\$39,953
Grants	\$16,322
Prior Year Fund Balances	\$85,889
Total Income	\$5,664,126

Expenditures:

Personnel	\$4,168,107
Materials	\$800,289
Other	\$695,730
Total Expenditures	\$5,664,126

Main Number/Circulation	617-796-1360
Reference	617-796-1380
Children's	617-796-1370

... Library Hours ...

Monday	9 am-9 pm
Tuesday	9 am-9 pm
Wednesday	9 am-9 pm
Thursday	9 am-9 pm
Friday	9 am-6 pm
Saturday	9 am-5 pm
Sunday*	1 pm-5 pm

* Closed in July and August

330 Homer St., Newton, MA 02459

www.newtonfreelibrary.net



STATISTICS

Circulation:

Adult Print	727,120
Adult Non-Print	594,851
Children's Print	513,143
Children's Non-Print	120,775
Total	1,955,889

The Collection

Print Materials	518,908
Non-Print	70,589

Added to the Collection in FY09

Print	32,119
Non-Print	7,333

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Programs

Number of Children's Programs	1,294
Number of Adult and YA Programs	294
Total Number of Programs	1,588

Program Attendance

Children's	28,957
Adult and YA	12,399
Total Attendance	41,356

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Other

Reference Questions Answered	141,921
Head Count	735,280
(people who walked into Library)	
Number of Volunteers	508
Volunteer Hours	23,885
Website Hits	534,219

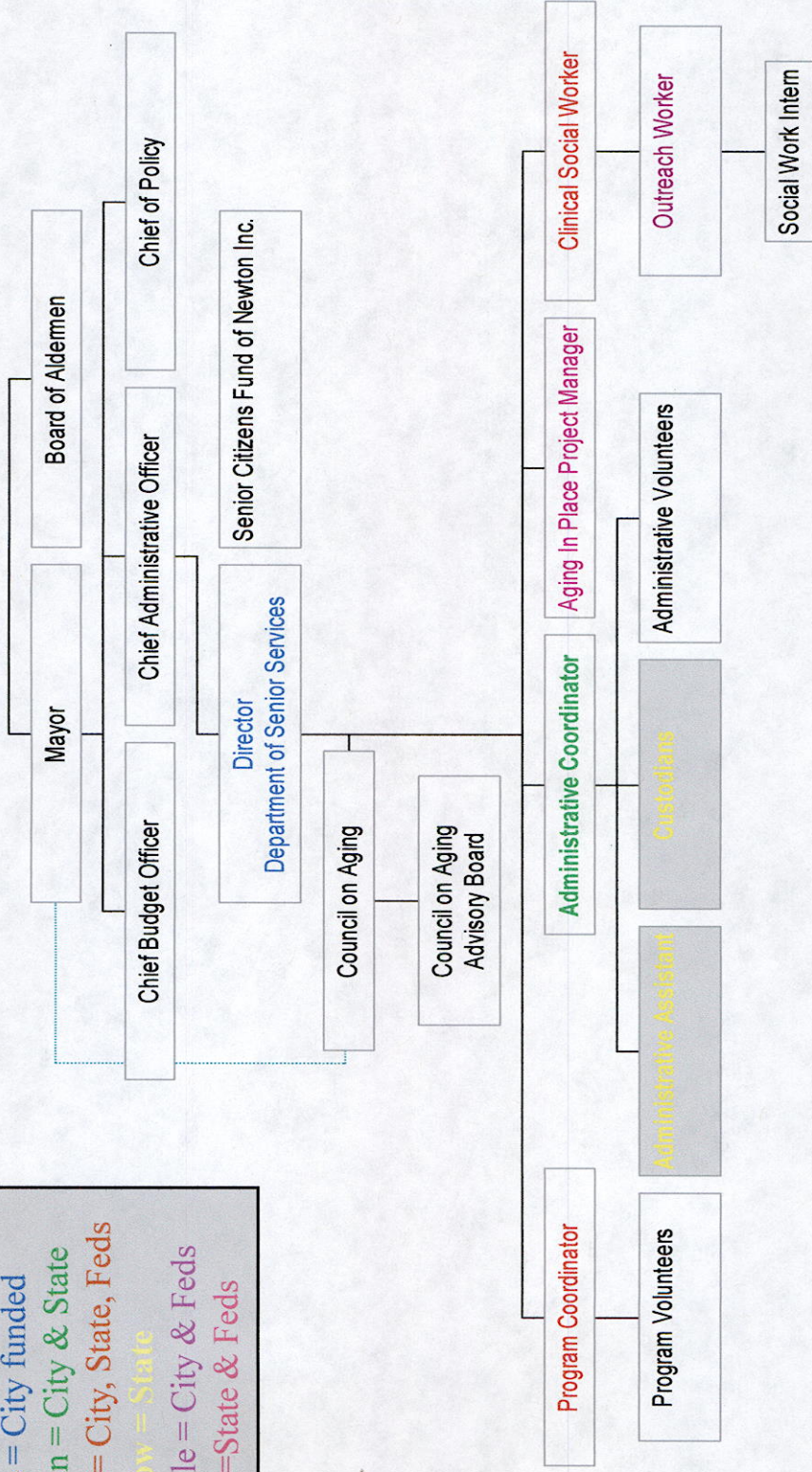
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330 Homer St., Newton, MA 02459

www.newtonfreelibrary.net

Department of Senior Services

Key
 Blue = City funded
 Green = City & State
 Red = City, State, Feds
 Yellow = State
 Purple = City & Feds
 Pink = State & Feds



Offered by Councilors JOHN TOBIN and STEPHEN MURPHY



**CITY OF BOSTON
IN CITY COUNCIL**

HOME RULE PETITION

ORDERED, That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause 1 of Section 8 of Article II, as amended, of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

PETITION FOR A SPECIAL LAW RE:

BANNING TEXTING WHILE DRIVING IN THE CITY OF BOSTON

Section 1.

Notwithstanding section 13 of chapter 90 of the General Laws, or any other general or special law to the contrary, a person operating a moving motor vehicle in the City of Boston who, by means of a mobile telephone or an electronic wireless communications device, other than a voice-activated global positioning or navigation system that is permanently affixed to the vehicle, sends, reads, or writes a text message, shall be guilty of a civil automobile law violation as defined in M.G.L. c. 90C, s. 1. As used in this act, a mobile telephone means an electronic wireless device that has an internal feature or function for wireless communications that shall include, but is not limited to talking or listening to another person on the telephone, text messaging, or sending an electronic or text message to another mobile wireless telephone or other electronic communication devices.

Section 2.

Violations of section 1 of this act shall be punished by a fine of one hundred (\$100) dollars for the first offense, two hundred (\$200) dollars for a second offense, and three hundred (\$300) dollars for subsequent offenses committed during any twelve-month period. The fines imposed pursuant to this act shall be divided as follows: seventy-five (75%) percent of the fines shall be paid over to the treasury of the City of Boston; and twenty-five (25%) percent of the fines shall be paid over to the treasurer of the commonwealth to be deposited in the highway fund.

Section 3.

Any law enforcement officer with jurisdiction in the City of Boston is authorized to enforce the provisions of this act. Said law enforcement officer may stop the motor vehicle and issue a

citation to the operator, but only if the officer observes the violation, as defined in section one, or has reasonable grounds to believe that a violation of section one has been committed, is being committed or is about to be committed. Notwithstanding the provisions of this act, all other administrative enforcement and appeal procedures that apply to chapter 90, section 13 of the General Laws shall apply to this act.

Section 4.

The provisions of this act shall take effect upon its passage.

HOUSE No. 3259

The Commonwealth of Massachusetts

PRESENTED BY:
Peter J. Koutoujian

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act prohibiting the use of certain communication devices while operating a motor vehicle. .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter J. Koutoujian	10th Middlesex
Ruth B. Balser	12th Middlesex
Denise Provost	27th Middlesex
Susan C. Fargo	Third Middlesex
Alice K. Wolf	25th Middlesex
Matthew C. Patrick	3rd Barnstable
Carl M. Sciortino, Jr.	34th Middlesex
John W. Scibak	2nd Hampshire
Cory Atkins	14th Middlesex

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT PROHIBITING THE USE OF CERTAIN COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 8 of chapter 90 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the third paragraph the following paragraph:—
A person holding a junior operator’s license shall not use a mobile telephone while driving. For the purposes of this section, a “mobile telephone” shall include, but not be limited to, a mobile telephone utilizing cellular, analog, satellite, wireless or digital telephone technology, and capable of sending or receiving telephone communications. A violation of this section shall be punishable by a suspension of a junior operator’s license for not more than 1 year and fine of not more than \$100. It shall be an affirmative defense for a junior operator to produce documentary or other evidence that the telephone call that is the basis of the alleged violation was made for the sole purpose of seeking emergency assistance. A violation of this paragraph shall not be considered as a conviction of a moving violation of the motor vehicle laws for the purpose of determining surcharges on motor vehicle premiums pursuant to section 113 of chapter 175. An insurance company doing business in the commonwealth shall not deny an individual the right to purchase a motor vehicle liability policy based on a violation of this paragraph.

SECTION 2. Said chapter 90 is hereby amended by inserting after section 24P, as so appearing, the following section:—

Section 24Q. (a) For the purposes of this section, a “mobile telephone” shall include, but not be limited to, a mobile telephone utilizing cellular, analog, satellite, wireless or digital telephone technology, and capable of sending or receiving telephone communications.

(b) A person shall not operate a motor vehicle on a public way:

- (1) while holding a mobile telephone in one or both hands or with any other part of the body; or
- (2) while using or operating a mobile telephone, unless the a mobile telephone is affixed to the vehicle or is part of a fixture in the vehicle and remains so affixed while being used or operated, or is specially adapted or designed to be affixed to the driver as headgear and is so used, to enable the driver to use or operate the mobile telephone without holding it in the manner contemplated in clause (1), and remains so affixed while being used or operated.
- (3) while sending, reading, or writing a text message. A person shall not send, read, or write a text message when selecting or entering a phone number or name in a wireless communication device for the purpose of making a phone call.

(c) This section shall not apply to the following persons operating motor vehicles in the execution of their duties:

(1) the driver of a fire-fighting vehicle;

(2) the driver of a rescue vehicle or an ambulance; or

(3) a state, county, or local public safety official, if operating the vehicle with due regard to the safety of others.

(d) A violation of this section shall be punishable by a fine of not more than \$100. A second and subsequent violation shall be punished by a fine of not more than \$250.

(e) It shall be an affirmative defense for an operator to produce documentary or other evidence that the phone call that represents the alleged violation was made for the sole purpose of seeking emergency assistance.

(f) A violation of this section shall not be considered as a conviction of a moving violation of the motor vehicle laws for the purpose of determining surcharges on motor vehicle premiums pursuant to section 113 of chapter 175. An insurance company doing business in the commonwealth shall not deny an individual the right to purchase a motor vehicle liability policy based on a violation of this section.