

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, MARCH 9, 2005

Present: Ald. Johnson (Chair) Ald. Baker, Coletti, Merrill, Parker, Hess-Mahan, Sangiolo, Fischman

Also Present: Ald. Vance, Ald. Mansfield

Others: Sandy Pooler, Fran Towle, Bob DeRubeis, Mark Welch, Gayle Smalley, Steven Bart, Jean Levesque (Boston College), Rep. Khan

#172-04 PRESIDENT BAKER recommending George Corey, 65 Harding Street be re-appointed to the BIOSAFETY COMMITTEE for a term of office to expire January 13, 2007. (60-day Board action date 6-5-04).

ACTION: **NAN 5-2 (Merrill, Parker opposed)**

NOTE: The Board action date on this item was 6-5-04. Mr. Corey was passively reappointed as the 60-day board action date has passed without any action taken by the board. In view of this the Committee voted NAN 5-2 (Merrill, Parker opposed)

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#81-05 HIS HONOR THE MAYOR requesting an appropriation in the amount of \$152,994 from Free Cash for the purpose of supplementing the snow and ice and tree emergency accounts in the Parks and Recreation Department.

ACTION: **APPROVED 7-0**

NOTE: Fran Towle and Marc Welch were present for this discussion. This request is for six storms starting February 1st. Ald. Hess-Mahan asked whether the City used something called mash which is environmentally friendly. Ms. Towle said she would check on this. Ald. Parker suggested that adequate seed money be appropriated. Ald. Sangiolo said there has to be better coordination in getting crosswalks and bus stops for schools done in an acceptable manner. Ald. Hess-Mahan suggested better coordination with crossing guards. Ald. Coletti asked for a follow-up on the question of costs involved with removing private trees.

#47-05 ALD. SANGIOLO requesting amendment to the Tree Preservation Ordinance to provide a provision for notification to the Board of Aldermen of any price adjustment for payment for trees removed in accordance with the ordinance.

ACTION: **HELD 7-0 (Hess-Mahan not voting)**

NOTE: Ald. Sangiolo noted that when the Tree Preservation Ordinance was approved, it was felt that fair; market price would be received from the trees that come down. Ald. Sangiolo had not been notified on the Kessler Woods project. She felt there should be a notification provision in the ordinance.

Ald. Parker felt the intent of the tree ordinance was to allow an appeal if the facts were wrong. Chairman Johnson said she would like to see clear terms; the price is not negotiable. She continued to say that what may have happened is that Parks and Recreation have found themselves in middle during the appeal process.. She would like to see more clarity regarding what can appealed, what cannot, and the process.

Marc Welch informed the city that there was a set price of \$350. Per tree that hasn't gone up or down. Ald. Parker would like to clarify that when an appeal is made to the Mayor, it would only be for the number of trees being replaced but not the price per tree. Chairman Johnson felt that our appeal process could be better refined..

The Committee held the item.

#158-01(2) **PROGRAMS & SERVICES COMMITTEE** requesting ordinance to implement an increase in eligibility threshold for Clause 41A Senior Citizen Tax Deferral program.

ACTION: **HELD 8-0**

NOTE: Rep. Khan was present. She handed out a press release. Rep. Khan told the Committee that two years ago she was asked to file a Home Rule Petition, but there was no cap and the legislature did not like that. It was filed again with a cap of \$60,000. A home owner whose income is less than \$60,000 can apply for a deferral. The city would not lose money as there is an interest payment.

Ms. Smalley of the Law Department said it now falls to the City to set it by ordinance. There is no existing ordinance because this is a state program. The eligibility of this program has been tied to July 1 of each year. The water and sewer discount is currently linked to this program. Our water/sewer ordinance says that if you qualify for 41A, you automatically qualify for the discount for the water. Ms. Smalley noted that an opinion had been provided in the past. Ms. Smalley explained the eligibility goes to July 1 of every year so this would be good timing.

#171-04 ALD. HESS-MAHAN requesting home rule legislation authorizing local voting rights for permanent resident aliens residing in Newton.
Item recommitted by Full Board on February 7, 2005

ACTION: **HELD 8-0**

NOTE: Ald. Vance proposed two amendments:

1. The first would limit the applicability to people who had already applied for citizenship. In Ald. Vance's opinion this would be an important first step and at least resolves a part of the problem. Permanent alien residents would have revealed by beginning the process of seeking citizenship that they are making the necessary indication of allegiance to this country and the desire to have their allegiance to this country rather than some other country. .
2. The second would be to clarify the regulatory authority of the Election Commission relating to this specific item. It would be helpful if the Commission could issue some regulations to clarify the issue of demonstrating adequately that citizenship has been applied for.

Discussion Ald. Parker asked if we were talking about letting people vote in local elections or are we talking about letting people run for local office. Could a non-citizen serve on the School Committee or Board of Aldermen or as Mayor? Ald. Hess-Mahan said the definitive answer was yes. Ald. Merrill questioned how long it actually takes to become a citizen. In answer to this question, Ald. Hess-Mahan said the minimum is five years and can take up to as long as ten years. Ald. Hess-Mahan noted that the first two marines who died in Iraq were both permanent resident aliens. In fact permanent resident aliens would be the first to be recruited and are assigned to the front line positions.

Concerns about the first amendment One of principal concerns of Ald. Hess-Mahan was the fact that currently the citizenship process takes so much longer than it used to and there are people who have indicated their commitment. Another argument in support of Ald. Hess-Mahan's position is that there are many people who live in the community and pay taxes. Ald. Sangiolo was not pleased with the amendment but if it gets the vote, it would be a step in the right direction.

Chairman Johnson questioned how someone would prove that steps had been taken to acquire citizenship and would it have to be done every year. Ald. Vance said it was his understanding that there is a formal process for filing an application for citizenship. It was his understanding that there is a formal process of filing for citizenship. An affidavit would be filed with a copy of the application for citizenship or confirmation from the local INS office that citizenship has been applied for. Ald. Vance said that it is probably not something that would have to be done every year.

Support for the Amendment Ald. Vance said that was not the length of time it takes to secure citizenship, in his opinion, was not sufficient reason to not having this step as a criterion for securing voting rights. The importance of making the significant commitment to allegiance to this country through commencing the citizenship process seemed to Ald. Vance to be a significant step forward and one that he would support.

Decision Ald. Hess-Mahan asked if the item could be held until he could have discussions with both the Legal and Election Departments. Ald. Merrill made a motion to hold and the Committee voted 8-0 in favor of holding the item.

#214-04 ALD. JOHNSON requesting that the City Charter relative to the schedule for Preliminary Municipal Elections be amended in order to make the Charter consistent with state election statutes.

ACTION: **APPROVED 7-0-1 (OPTION 2)**
OPTION 2 – By authorizing the Board of Aldermen/Mayor to set the date. Alternatively, the Election Commission could set the date.

NOTE: City Solicitor Gayle Smalley joined the Committee for this discussion. The practice in the past has been for the Board of Aldermen to set the date for the preliminary election. She explained that one of the easiest ways to change this is to strike the word forth and substitute the word seventh so that the election would automatically be scheduled on the 7th Tuesday before the municipal election. (That is typically when it is held.) However, the Jewish holidays are going to fall squarely on a Tuesday every so many years. It is apparently our practice to go to the 8th Tuesday. The second version just has the Board set the date; the third version has the Board set the date and the board needs to choose each time between the 7th or the 8th Tuesday. Those are, in Ms. Smalley’s opinion equally legally appropriate approaches and it just depends on how much the Board would like to tighten it down.

Ald. Hess-Mahan felt that clearly this must be amended and expressed his choice as alternate #2. Ald. Parker suggested deleting the word fourth and the Board of Aldermen would set the date. Ald. Sangiolo had preference for alternate #3. Her reason was that people would be given the expectation of that date.

Option #2 was moved and the Committee voted 7-0-1 (Sangiolo abstaining)

#215-04 ALD. JOHNSON requesting that the City Charter be amended to allow more flexibility when filling a vacancy for Mayor, Board of Aldermen, and School Committee.

ACTION: **HELD 7-0 (Coletti not voting)**

NOTE: **Background** Ms. Smalley stated that when she joined the Committee for this discussion one month ago, the Committee was completely divided. She developed a hybrid alternative. She said that the Committee was particularly interested in the timing for the vacancies for the Aldermen as opposed to the Mayor or the School Committee.

- Alternative 1 would amend both sections; it would take out the word forthwith in Section 2-5 about calling elections for aldermanic vacancies and taking out the word forthwith would put in a rule that the Board must act without unreasonable delay and no later than six months after the vacancy. The same alternative would also amend Sec. 8-4 which is the timing for the election itself and it would flat out state that no special election shall be held during the months of July and August. The 120 day time frame would otherwise put you in July or August and the election would be put over to September. In Ald. Baker's view it was important to do the same thing for the Mayor and the School Committee.
- Alternative 2 is more streamlined approach. It does not change the forthwith language or the call. It merely focuses on the timing of the election and it takes out the 120 days and substitutes a seven month period. It would put in a prohibition against a July and August election.

Opinions President Baker said the second alternative with the forthwith remaining means that you can have the election called quickly rather than the 1st option which has more than six months to decide to call the election and the election could take place within 10 days beyond that.

Ald. Johnson reiterated that she put this item forward to save the City some money on special elections that did not need to be held.

Ms. Smalley explained if a vacancy occurs in the first 15 months of office, there would be a special election to fill the vacancy. After 15 months, if a vacancy occurs, there is no special election. Ald. Fischman did not like the timeframe of nine months and felt it should be held within 7 months of the vacancy.

The Committee agreed to hold the item.

#336-98 ALD. PARKER, MANSFIELD, SANGIOLO proposing an ordinance to limit light trespass across property lines.

Item recommitted by full board on April 6, 2004

ACTION: **APPROVED 5-0-3 (Merrill, Coletti, Fischman abstaining)**

NOTE: Ald. Parker said he feels that this agreement is reflective of a good compromise process. Ald. Baker noted the problems he thought we would see would be

residents vs. residents. He felt it would be valuable to have a stricter standard for a residential property.

Ald. Fischman did not feel that notification has been sufficient. Chairman Johnson noted that there was a public hearing that was announced on the floor of the Board as well as a public hearing notice placed in the newspaper. She felt that this item has had more coverage than some of the zoning ordinances. Articles have also appeared in the TAB.

Ald. Hess-Mahan is less concerned regarding notice for homeowners as he felt it was well publicized but is concerned regarding a stricter provision for homeowners.

Chairman Johnson reiterated that she thought as much as possible has been done. Her concern regarding Ald. Baker's proposal is that it brings us back to where we started from with the businesses. She stated the reason this item was recommitted in April was that we had not been working with businesses and the businesses felt there was discrimination. The residents could then wonder why they would have a stricter standard than the businesses. Ald. Baker said he would have been more comfortable amending the standard generally rather than make an exception.

Ald. Parker felt this was a significant step forward and hoped the Committee would vote to approve.

Mr. Steven Bart of 26 Rochester Road joined the Committee. He felt the compromise standard of .35 is still a standard that does provide reasonable protection.

Ald. Coletti feels it is somewhat intrusive to tell people when to put on and put off their lights. He feels if you choose to live in a place like Newton which is only six miles from Boston, you would expect to have lights.

Ald. Parker moved approval of the ordinance. The Committee voted 6-0-2 (Coletti Fischman abstaining)

Respectfully submitted,

Marcia Johnson, Chairman