

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, APRIL 6, 2005

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

Also Present: Ald. Gentile, Harney Lennon, Yates, Salvucci, Dan Funk (City Solicitor) Carol Stapleton (Recreation)

Appointment by His Honor the Mayor

#53-05 JOANNE KAZARIAN, 131 Cypress Street, Newton appointed as a full member of the Newton Youth Commission for a term of office which will expire on October 31, 2007. (60-day Board action date: 4/23/05)

**ACTION:** **NAN 4-0**

**NOTE:** Ms. Kazarian was not present and since there was no backup information available, the Committee voted NAN with a request to the Mayor to resubmit Ms. Kazarian's appointment.

Re-Appointment by His Honor the Mayor

#118-05 JOSEPH DEVITO, 457 Wolcott Street, Newton re-appointed as a member of the NEWTON YOUTH COMMISSION for a term of office which will expire on April 4, 2008. (60-day Board action date: 06-03-05)

**ACTION:** **APPROVED 6-0**

**NOTE:** Back-up information was available and the Committee voted to approve.

Re-appointment by His Honor the Mayor

#55-05 GWEN FINEBERG, 27 Tudor Road, Newton 02467 re-appointed as a member of the Parks and Recreation Commission for a term of office which will expire on January 1, 2008. (60-day Board action date: 4/23/05)

**ACTION:** **NAN 6-0**

**NOTE:** Due to health reasons, Ms. Fineberg has said that she will no longer be able to serve.

Re-appointment by His Honor the Mayor

#59-05 MICHAEL CLARKE, 38 Halcyon Road, Newton, 02459, re-appointed as an alternate member of the Parks and Recreation Commission for a term of office which will expire on January 1, 2008. (60-day Board action date: 4/23/05)

**NOTE:** Background information was available on Mr. Clarke. Mr. Clarke was present and told the Committee that there are several current projects dealing with accessibility for

playgrounds. He also said the aqueduct was being considered to be a public pathway. He said it would be wonderful if people could go from Newton Centre to Four Corners without having to go on streets. Mr. Clarke said there are good things that need to be integrated and that is one of the reasons that Mr. Clarke is interested in continuing to serve on the Parks and Recreation Commission.

Ald. Parker noted that in the past Dr. Clarke prepared a report on the expenditures on maintaining our open space in the City. He asked if this has been updated. Dr. Clarke noted that this is a real problem. One of the things Parks and Recreation provides is a type of education to our youths that schools do not provide. From his viewpoint, Dr. Clarke felt the aldermen should consider a radical suggestion that the Parks and Recreation Commission become an elected body.

Ald. Merrill asked for Dr. Clarke's opinion on signage on the Little League Fields. Dr. Clarke responded that a solution that has worked well at Auburndale Park is a single sign and on the sign there are plaques that indicate the owners. That sign takes up much less space and the vendors seem to do well with the smaller sign.

Ald. Hess-Mahan asked about a salt mixture that includes mash (by-product for making liquor). He has concerns about the current use of the salt that is used on the road. This runs down into Cheesecake Brooke and Ald. Hess-Mahan hopes there could be use of a better product.

Dr. Clarke said he has discussed with the Mayor the probability of withdrawing his appointment in the next year or so as he plans to go to Washington to work for the National Science Foundation.

Ald. Parker concluded by saying Mr. Clarke was a tremendous asset to the City in many ways and moved his appointment.

Re-appointment by His Honor the Mayor

#48-05 FAY COHEN, 15 Cottonwood Road, Newton Centre, re-appointed as a member of the Election Commission for a term of office which will expire on April 1, 2009 (60-day Board action date: 4/23/05)

**ACTION:** **APPROVED 8-0**

**NOTE:** The Committee had received background information on Ms. Cohen. Ald. Parker noted that she has been dedicated to public service in many ways and moved approval.

Re-appointment by His Honor the Mayor

#49-05 STEVEN SMITH, 442 Chestnut Street, Waban, re-appointed as a member of the Election Commission for a term of office which will expire on April 1, 2009 (60-day Board action date: 4/23/05)

**ACTION:** **NAN 8-0**

**NOTE:** A letter was sent to the Aldermen from Mayor Cohen which said that he was requesting withdrawal of the reappointment of Steven Smith to the Election Commission.

Ald. Johnson said there would be no action necessary based on the Mayor's request for withdrawal.

#367-03 ALD. MANSFIELD requesting consideration of ordinance(s) to allow enforcement of Parks & Recreation Commission regulations regarding swimming and boating at Crystal Lake.

**ACTION:** **HELD 5-1 (Ald. Johnson abstaining)**

**NOTE:** Carol Stapleton of the Recreation Department was present. Ald. Mansfield said he believes the recommendation of the Law Department has stated that the current rules and regulations that the Parks and Recreation Commission has are sufficient or could be amended to be sufficient and an ordinance would not be added. Ms. Stapleton reported that there was a community meeting with the Newton Highlands Area Council in May of last year that was well attended and included a Police Department representative. There was a power point presentation including the historical facts of the lake. The thrust of that meeting was illegal swimming during the summer month which was a major problem. Ald. Mansfield, who lives on Lake Avenue, reported that on a daily basis there were people swimming at Cronin's Cove which is not allowed as well as illegal parking. Ald. Mansfield noted the reason he put this on the docket was he had been told that the police could not enforce the **existing** regulations.

Ald. Coletti noted that some residents who have rights to their own frontage allow the City to use some of that area. The public is allowed to use the facilities. There is a neighbor against neighbor issue. Environmental Planner Martha Horn wants ticketing enforcement for environmental issues. He strongly felt that if people were fined, it would just make the situation worse. It is a neighbor vs. neighbor issue with the city right in the middle of it. Ald. Coletti suggested that this item held for a few months as it is presently headed for court.

Ald. Johnson would like to see how other communities handle these types of problems. She would like to see some work with Parks and Rec to craft some policies/procedures.

Ms. Stapleton said the cities are abiding by the rules set forth by the state of Massachusetts on May 8, 1991. There was a challenge made to the state by Michael Clarke regarding canoeing on the Lake. Since that time, all rules and regulations were reviewed and they are accepted by the City. Ms. Stapleton noted that internal combustion engines are not allowed. When Parks and Recreation meets in May, Ms. Stapleton would recommend the neighborhood be invited in to see if adjustments need to be made. The state must approve new rules and regulations.

Ald. Parker felt we need to be clear that the City's policies are what the State law requires. In his view, the Law Department should do a survey of what the City's rules are and what the State laws are and whether there are any inconsistencies.

Chairman Johnson felt this should be handled by Parks and Recreation and opposed holding the item. Ald. Mansfield said his reason for docketing in the first place was to get the answer to whether it is the problem of the Board of Aldermen and do we fix it. He had indication from both Parks and Recreation and the Police Department that it was our problem. The Police Department has said unless it is an ordinance, it can't be enforced. The problem at first was swimming in unauthorized places, going in and out of the water at the shore line on City property or launching boats from those places. It was still not clear to Ald. Mansfield that those issues have or can be resolved solely by Parks and Recreation Commission. The problem again is, signs are ignored because they are not enforced. People who live in the neighborhood see the signs and ask why they are not being enforced. Ald. Mansfield concluded that if these are ignored, why not take down the signs? Ald. Sangiolo said the police are only charged with enforcing what is on the books.

Chairman Johnson asked that the revisions be brought back to Programs and Services at a future date. Carol Stapleton will come back to the Committee with further information and the Law Department will determine if an ordinance is needed. The Committee voted to hold 5-1 (Ald. Johnson abstaining)

**REFERRED TO PST, PROG/SERVICES AND FINANCE COMMITTEES**

#273-04 ALD. GENTILE requesting home rule legislation to reclassify the two "dedicated fire apparatus mechanic" positions from Group 1 to Group 4 in the State Retirement System.

**ACTION:** **HELD 8-0**

**NOTE:**

**Background** Ald. Gentile said that a request had been made several months back to consider that two dedicated fire apparatus mechanic positions in the City of Newton be transferred from Group 1 to Group 4. In discussion with the Chief, it has been noted that these men are oftentimes not strictly mechanics that work at the garage but often they are called out and go to fires. Their duties appear to be much more in line with a typical firefighter. All firefighters are in Group 4. This item was taken up in public safety and the recommendation was to place these people into Group 4. This item will go to Finance where the cost of financing this would be looked into. In the interim, the Retirement Board looked at this and did not agree with placing these two positions into Group 4. Ald. Gentile noted that it was far more expensive than anticipated; approximately \$26,000 per year for 15 years which would be really prohibitive. Based on the cost and also on the strong suggestion of the Retirement Board, it does not appear to Ald. Gentile to be reasonable to try to make the switch from Group 1 to Group 4. Ald. Gentile indicated that he would like to see Home Rule petition for just the two firefighters/mechanics that are in Newton

**Change to Group 2** He would like to suggest that this be amended and that there be consideration of change from Group 1 to Group 2. This would appear to be much more in line with the duties that these employees perform than currently in Group 1. He concluded that if that

is something this Committee chooses to pursue further, Ald. Gentile would request provide further information as to what the actual costs would be to go from Group 1 to Group 2.

Ald Johnson read from Kelly Byrne's letter dated November 4, 2004 where she stated that the Retirement Board could not consider Group 2 as this position does not meet the statutory classification of Group 2. Ald. Gentile said he has been told that the Retirement Board was not taking a position. He was not aware of any prohibition from going from Group 1 to Group 2.

Ald. Coletti said that under Group 2 it does state that employees of a municipal department who are employed as fire or police signal operators or signal maintenance repairmen are required to respond to fires and perform duties assigned to them. Ald. Coletti felt that after proper information is received, we could move forward. Ald. Sangiolo would like information from other communities that are doing this.

**Further Information Needed.**

Law Department and Retirement Board - Chairman felt further information from Law Department and Retirement Board regarding costs is necessary. Ald. Harney was pleased to note that Marie Lawlor, the City's new Assistant City Solicitor, had been a former Chief Counsel for the Boston Retirement Board. and is an expert on retirement.

Other Communities - Ald. Gentile noted that there has been a state wide move to make this switch with a number of employees in this position in different cities and towns. Ald. Sangiolo suggested investigation with the Mass. Municipal Association and the Fire Association to the State. It was noted that Quincy accomplished this via Home Rule Legislation. Ald. Harney has observed that in Quincy there was a case where a firefighter, who was formerly trained at the firefighting academy and later as part of his duties, became a mechanic as well. He emphasized that this statute is interpreted very strictly.

**Action Taken** Ald. Sangiolo moved hold until further information is received including opinion from the City Solicitor's office, as well as financial information and if the state will correct the language. Ald. Coletti suggested a 60-day deadline on receiving input.

#548-03      ALD. GENTILE, SALVUCCI AND LENNON requesting discussion and possible City acceptance of Chapter 137 of the Acts of 2003, an Act relative to public employees serving in the armed forces. If accepted, city employees who have been granted a military leave of absence as members of the armed forces called to service after September 11, 2001 will be entitled to receive pay at regular base salary and will not lose any seniority or any accrued vacation leave, sick leave, personal leave, compensation time or earned overtime.

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

**NOTE:**      Ald. Gentile explained that there was state legislation passed that protects those men and women who have gone off to serve in the armed forces. It was Ald. Gentile's

understanding that this was the practice of the City of Newton and if this is so, possibly the legislation would need to be adopted and the item could be NAN'd. Ald. Merrill noted that Framingham has recently accepted the provisions. He heartily endorsed this recommendation.

Ald. Fischman added the expiration was five months and questioned if there was an automatic extension. Ald. Gentile suggested that Dolores Hamilton be present at the next meeting to discuss this item. Ald. Johnson said she would talk to Dolores Hamilton, Dan Funk, and Kay Khan. The Committee agreed to hold for two weeks.

#465-04      ALD. YATES requesting a discussion with the Commissioner of Health on how to better distribute flu vaccine to senior citizens to avoid lengthy wait times in the cold.

**ACTION:**      **NAN 7-0**

**NOTE:**      Ald. Yates informed the Committee that this problem of flu distribution was a unique circumstance and will not happen again. He moved NAN and the Committee voted 7-0

#74-05      DAVID DONAHUE & ALLAN CICCONE requesting an ordinance to prohibit a special election being called for the purpose of overriding Prop 2 ½ that has the effect of increasing the operating budget of any City Department including the Newton Public Schools and to guarantee that any future request to override Prop. 2½ with the intent of increasing the operating budget shall be held at the next regularly scheduled General Election that includes the election of Aldermen, School Committee or the Mayor.

**ACTION:**      **HELD 6-0 (Merrill, Baker not voting)-**

**Background** David Donahue and former Alderman Allan Ciccone were present for this discussion. Mr. Donahue requested that this item approved on its merit. He said it would increase voter participation, eliminates all future surprises and believes that Newton's current budget team is able to forecast with reasonable certainty their budget for two to three years in advance. They would like a 20 month forecast. Mr. Ciccone thought that in an off-election year the Board is safe for another year and a half and the Mayor for another three years. This would allow them to come forward for an override without it impacting their re-election. With this proposal, when the Mayor or members of the Board decide to place an override question on the ballot it could only occur when there is an election for Mayor or Board of Aldermen. Mr. Donahue noted it would also save approximately \$62,000 if a special election were not held.

**Legal Opinion** City Solicitor Funk said that although we are in a home rule state which basically means cities and towns can pass laws as long they are not inconsistent with state, federal or constitutional law or that the state legislature hasn't occupied the field. In this instance we have principles that come into play that the only way to accomplish the goal is by home rule

legislation. An ordinance cannot alter the election statutes--Prop 2 ½ statutes. Those are two areas where the legislature has occupied the field and there are no ordinances that deal with either elections or taxes as we are not permitted to. This ordinance would limit the times when an override for operating budgets can be overridden and that is something the statute allows to happen any time. So, we cannot do this by local ordinance. In order to alter state law, the state legislature would have to do it for you and that is what home rule legislation is.

Ald. Fischman said he would like an opinion from the Executive Department regarding the next two years. He felt there was a legitimate concern in regard to understanding the issue.

### **Committee Member Opinions**

Ald. Coletti said that under the current system, justification has to be shown. He also said that this could defeat the mechanism of Prop 2 ½ that says that the guideline is to stay within 2 ½% plus new growth from year to year and if that can't be done, there is another procedure. Ald. Coletti said that, in his opinion, it would become an election of rumor and innuendo rather than fact which is what we have now. Ald. Coletti was not in favor of putting a request out for funds before he knew we really need them. Ald. Coletti noted the City has spent close to five million dollars on snow removal; there had only been a one million dollar budget allocated for this. Ways were found to handle this without asking for an override. With this proposal the Mayor could pursue an override more easily than we have it now.

Ald. Johnson noted the current wording sounds like it is being geared toward the Mayor and the budgeting process as well as the Mayor and the Board's accountability. Ald. Johnson felt it was very important to have a real dialogue with every department head that comes before every committee and make the budget process a transparent process. For the four years she has sat on this Committee, and was involved with the budget process, there were few citizens present. These discussions are posted and we are trying to make that process and that dialogue more open and transparent. She said you can't legislate trust and judgment. She would like to see both Mr. Donahue and Mr. Ciccone join together with others on the board to put processes in place that make it transparent and ensure accountability.

Ald. Baker agreed that any November election would be a problem as you really need the opportunity of a special election to know the scope and the issues before you in the budget process. He did not feel that anybody in the last override was not forthcoming about their position.

### **Amending the Item**

There was discussion regarding changing the item to pursue home rule legislation. Ald. Coletti felt it would not change the current docket item substantially. There was clarification that if the docket item were amended, it could not be voted on this evening.

Ald. Sangiolo asked the docketors if they would consider amending their petition so that it is not for municipal election but any November election. That way, there would not be a two year wait. Mr. Donahue asked the Committee to hold the item as he would like to do further research.

Ald Coletti suggested that in the home rule legislation there be a requirement for a five year budget forecast.

**Action Taken** Ald. Johnson moved hold until new language is brought forward to her by Mr. Donahue and Ciccone and a new item #74-05(2) would go before the Committee.

The Committee voted 6-0 to hold.

**REFERRED TO PROG. & SERV. AND FINANCE COMMITTEES**

#105-05 HIS HONOR THE MAYOR requesting that the sum of \$20,000 be appropriated from the Cable Franchise Administrative Overhead Account for the purpose of supplementing the Law Department part-time salary account to employ Attorney Catherine Farrell on a part-time basis for the remainder of this fiscal year.

**ACTION:** **APPROVED 6-0 (Merrill, Baker not voting)**

**NOTE:** Dan Funk explained that Attorney Cathy Salchert had left the City in January after 15 years of excellent service to the City and Marie Lawlor was hired to take her place. There was a need for extra weeks of pay to cover the changes in the department. Now that Michael Basemen has left, Catherine Farrell's part time work will increase and this money is needed for this fiscal year and to make up the shortfall.

Ald. Coletti moved approval of this item.

**REFERRED TO PROG. & SERV. AND FINANCE COMMITTEES**

#106-05 HIS HONOR THE MAYOR requesting that the sum of \$100,000 be appropriated from the Cable Franchise Administrative Overhead Account for the purpose of supplementing the Law Department Legal Assistance Account.

**ACTION:** **APPROVED 6-0 (Merrill, Baker not voting)**

**NOTE:** For the past several years \$100,000 has been budgeted for Labor Council's anticipated expenses and the money (\$100,000) was depleted. Mr. Funk reported that money was depleted (\$100,000) after six months. His request for the \$100,000 is only an estimate. Ald. Coletti requested backup of a graph showing trends for five years showing actual costs for Labor Council.

Meeting adjourned at 10:31 p.m.

Respectfully submitted,  
Marcia Johnson, Chairman