

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, APRIL 20, 2005

Present: Ald. Johnson (Chair) Ald. Merrill, Fischman, Coletti, Baker, Parker

Absent: Ald. Hess-Mahan, Sangiolo

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#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: APPROVED 6-0

NOTE: Chairman Johnson noted that information had been provided from Dan Funk and Dolores Hamilton. Ms. Hamilton has pointed out that part of the issue that she faces concerning cost is the relatively high salary of department heads or teachers in comparison to other employees.

President Baker questioned if Ms. Hamilton's proviso would be permitted if we were accepting an act. Due to email problems, Ms. Hamilton and Mr. Funk were not able to discuss this.

Ald. Parker suggested that the Law Department add a section to our ordinances implementing this provision using the language provided. He further suggested adding a sentence and requesting that the Law Department provide a final draft in the proper format. President Baker suggested that the act be accepted and request the Law Department to draft a parallel ordinance with the appropriate proviso.

Note: See memo to Programs and Services regarding next steps

#44-03 ALD. STEWART proposing that the Rules and Orders of the Board of Aldermen be amended to allow a public comment period before one Board of Aldermen meeting a month.

Rules Subcommittee voted No Action Necessary on 1/28/04

ACTION: DENIED 5-1 (Parker abstaining)

NOTE: Ald. Stewart was present for this discussion. President Baker stated that in previous discussions it was noted that the opportunity for public comment existed at the Committee level and not appropriate for the full board. Chairman Johnson said it is her opinion that we already have an open process at committee meetings. Ald. Baker made a motion to deny the item.

#503-03 ALD. PARKER AND STEWART requesting discussion of the possibility of including re-importation from Canada in City of Newton health plans, as pioneered by the City of Springfield, MA.

ACTION: NAN 6-0

NOTE: Ald. Parker noted that a program has been implemented for Canadian drug importation. There was a past request for the **amount** being saved and what the participation rate was. Ald. Parker wanted to move hold on the item until the amount of savings has been answered. He suggested that the Committee send a note to the administration asking for the cost savings as well as the degree of involvement. Chairman Johnson opposed hold as the item was worded “requesting discussion of the possibility of including re-importation...” She noted that the discussion was held and the Mayor has implemented. In her opinion, this docket item no longer has any bearing. She said this request is auditing and requested a new item be docketed and sent to the Post Audit.

#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: APPROVED 6-0

NOTE:

Proposal as to when the Election is Called: Ald. Johnson began this discussion by explaining that what she was trying to achieve was to provide the Board with more flexibility around setting the date of an election and focusing on the Board of Aldermen. She wanted to come back to her original proposal and wanted the Committee to vote up or down. Money can be saved along with more flexibility and Chairman Johnson would like to believe that those sitting on this board, today, tomorrow, and the tomorrows after are well meaning and well caring people of the City and would not like to see this postponed, but would like to see this voted. Ald. Fischman questioned the definition of “forthwith”. Chairman Johnson explained that the issue was discussed in a memo dated February 4, 2005 that said, “After the death of Mayor Mann, the board voted to seek special legislation to allow autumn election, September primary, November election.” A legal challenge followed. Middlesex Superior Court issued a memorandum and order exactly one month following the death. At that time the court provided the following interpretation of the word “forthwith”. To be sure the word “forthwith” has some flexibility and does not require action within seconds or even hours of the time the vacancy occurs. Even in the Board’s view, however, the word means ‘as soon as practicable. See *Gamewell v. Bagley* 352Mass.378,382(1925)...The word does not mean, and cannot be stretched to mean, as soon as

it becomes clear and other approaches will not work.’ Without attempting the almost metaphysical task of determining when the moment of practicability first arrived in this case, it suffices to say that, at this point, that moment lies in the past, not in the future. Chairman Johnson noted it was like “ASAP.” Ald. Fischman further questioned the definition of “unreasonable delay”. Associate Solicitor Smalley indicated that it would not have as much legal impact.

Proposal as to when the Election is Held President Baker said he would like to have his suggestion reviewed as he felt it addresses the fundamental problem which is not when we actually call the election but when the election is held. His concern was with the change to “forthwith”, it leaves the Board a great deal of time to decide when to set the election as opposed to saying that the decision should be made to set the election quickly. The question is when the election occurs and the problem is when the election actually happens. He does think it is important to include School Committee, Mayor and Ward Aldermen because he thinks the issue is the same. Presently the 120 day period is the outside limit. He felt the provision should be amended regarding the timing of the election; to include not having an election in July and August and if the 120 days time frame would cause it to happen, the election would be held in the month of September. President Baker felt this would be an improvement over the current situation. In his opinion, the problem is not that we don’t act quickly enough; the problem is when the election is actually held, not when it is called --that is the distinction between President Baker proposal and Ald. Johnson’s proposal.

Comparing and Contrasting the Proposals Chairman Johnson emphasized what she was trying to achieve was putting in a time frame. President Baker said it would be just saying that currently you have 120 days whenever the election is held after it is called. He indicated that what she was proposing is that you would have more flexibility about when you actually vote as a Board to call the election. Once the election is called, it has to be held within 120 days of the call. There are two different events; the Board decision to set the election date and then there is the actual date of the election which is a separate provision.

After much discussion, the Committee agreed to merge the two. (See attached)

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

ACTION: APPROVED 6-0

NOTE: Discussion began with April 15th memo from Associate City Solicitor Gayle Smalley. (See attached.) Ms. Smalley said it was not a good idea to piggy-back the water/sewer. She pointed out that great caution should be exercised in giving discounts and user fees based on income. The Committee voted in favor of the main item and it was approved 6-0.

#56-04 ALD. YATES requesting an amendment to the Rules of the Board to eliminate the requirement that Home Rule petitions be referred to the Programs & Services Committee.

Rules Subcommittee voted NAN 3-0 ON 1/10/05

ACTION: Nan 6-0

NOTE: The Committee agreed to accept the decision of the Rules Subcommittee and voted no action necessary.

The Committee adjourned at 9:00 pm.

Respectfully submitted,

Ald. Marcia Johnson, Chair