

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, MARCH 17, 2004

Present: Ald. Tess Hess-Mahan (Acting Chair) Ald. Baker, Merrill, Parker, Sangiolo

Absent: Ald. Johnson, Coletti, Fischman

Also Present: Ald. Gentile, Dan Funk (City Solicitor) Gayle Smalley (Associate City Solicitor) Ald. Mansfield

Appointment by His Honor the Mayor

#91-04 RICHARD DYER, 10 Terrace Avenue, Newton appointed as a member of the NEWTON YOUTH COMMISSION for a term of office expiring January 9, 2007 (60-day Board action date 4/2/04)

ACTION: **APPROVED 4-0 (Sangiolo not voting)**

NOTE: Mr. Dyer stated he has been a Newton resident for 14 years and has been an attorney since 1985. Mr. Dyer runs a drug and alcohol program at the Judge Connolly Center.

Ald. Parker moved his appointment and the Committee voted to approve 4-0.

Appointment by His Honor the Mayor

#33-04(2) MARY PANAGGIO, 108 JFK Circle, Nonantum, appointed as a member of the NEWTON HOUSING AUTHORITY for a term of office to expire on February 16, 2008. (60-day Board action date 5-14-04)

ACTION: **APPROVED 4-0**

NOTE: Ms. Panaggio enjoys dealing with older people and has been involved with both Bingo and Post 440 as well as having worked part-time at City Hall for thirty years. She would like to see more affordable housing in Newton.

Ald. Merrill moved her appointment and the Committee voted 4-0 to approve.

#230-01 ALD. PARKER requesting an amendment to the Rules and Orders of the Board re the release of confidential documents.

RULES SUB-COMMITTEE VOTED NAN ON 01-28-04

ACTION: **NAN 3-1 (Parker no, Sangiolo not voting)**

NOTE:

Ald. Parker gave an example for his reason to request an amendment re the release of confidential documents. The League of Women Voters had been interested in the reduction of the size of the Board. There was an opinion from the Law Department with respect to what the procedures would be to put an item on the ballot. Since the opinion was stamped "confidential", the League was not able to see the answer. Ald. Parker went on to say that he thought there should be clear rules on releasing that type of information.

President Baker feels the Law Department has served the Board well and does not see a change necessary.

Mr. Funk noted that one of the roles of a city attorney is to protect his clients in a variety of ways. President Baker said that it appeared that the only safe approach would be to allow the full board to release documents and would be in favor of docketing an item to say a document should be released; then have the full board vote on it. This, in Ald. Baker and Solicitor's Funk's opinion, would be a safe procedure.

REFERRED TO FINANCE AND PROGRAMS AND SERVICES COMMITTEES

#295-99(2)

ALD. GENTILE proposing that Chapter 104 of the Acts of 1987 be amended so that the first sentence in paragraph 3 of Section 1 reads: "Said treasurer shall pay from the amount in the fund including the interest thereon such amounts as the city solicitor, with the approval of the Mayor and Board of Aldermen of said city, determines to be necessary"

FINANCE APPROVED 5-1-1 (Stewart opposed; Gerst abstaining)

ON 2/9/04

ACTION:

APPROVED 3-0-2 (Parker, Sangiolo abstaining)

NOTE:

Dan Funk explained to the Committee that Finance voted to create the (2) on this item. Ald. Gentile noted that the Finance Committee Report makes it appear that the item was voted, but it is clear to all those who were present that what the Committee had done was to create the (2). Ald. Gentile said there is now a City ordinance on the books that he feels explains how these settlements should be handled. It is also makes clear in the City Ordinance that the approval of the Mayor and the Board is needed. Ald. Gentile said that language is inconsistent with the enabling state legislation that created the Liability Trust Fund to begin with. Ald. Gentile still believes that it makes sense to be consistent and to add *Mayor and Board of Aldermen* to the enabling legislation.

Representative Peter Koutoujian has told Ald. Gentile that House Counsel put this into proper form. The change would insert Mayor and Board of

Aldermen so that it is clear that no City Solicitor has the authority to enter into an agreement without the approval of the Mayor and the Board of Aldermen.

Solicitor Funk noted the ordinance is clear. The fact there is a technical gap between the legislation and the ordinance is a mere happenstance in terms of the realities of what a City Solicitor would do under the circumstances. In his view it is important to realize what taking this to the legislature does. It is asking the legislature to fix something that raises issues as if there is a problem. He continued to say that it is a real effort to go up to the legislature; they are there to help us solve problems we can't solve ourselves. The impact of this is an embarrassment for City government and the Law Department. Newton is known to have a superior City run government and the Law Department is part of that reputation and Mr. Funk has never seen special legislation filed aimed at limiting the authority of a City official, in particular a City Solicitor.

Ald. Gentile observed that we are talking about policy and feels we should try to correct a mistake made in 1987 where the words *Mayor* and *Board of Aldermen* should have been in the enabling state legislation when this fund was originally created. Ald. Gentile said it was brought to our attention five years ago and he thought it would be a good idea to straighten this out.

Mr. Funk provided the Committee with some background. As self insurers it was decided that as the City was beginning to face a very likely large settlement in an eminent domain case, it was decided that there be separate fund for claims and claim oriented issues, litigation, lawyer fees, etc. and that a reserve would be built up for any extraordinary settlement or judgement that we might not be prepared for.

President Baker questioned, whether as a policy, does it make sense to limit ourselves as a matter of state law rather than just limit ourselves as a matter of local law. Ald. Gentile feels this is an opportunity to close a potential loophole that could cost taxpayers a great deal of money with a future City Solicitor.

President Baker moved approval of the new language because, in his view, what has been done in the ordinance really should be done in the legislation. The Committee voted 3-0-2 to approve. (Parker, Sangiolo abstaining.)

REFERRED TO PROG. & 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: **HELD 5-0**

NOTE:

Ald. Gentile suggested that the Committee take this item up at a future date and invite Delores Hamilton, Leon Brathwaite as well as the Unions to attend. Ald. Gentile explained to the Committee that this had been passed in November of last year and it does require local approval. If the City of Newton were to approve it, it would insure that anyone who works for the City who is called to active duty will at least be guaranteed that they would not lose income while they are on duty. There are financial implications because the City would be the one required to make up the difference in pay. Another question raised by Ald. Gentile was health care issues and felt that could also be addressed at another time.

Ald. Gentile read a portion of a note from Ms. Hamilton, which said, *"It is what the City's current practice has been since 2001. I believe it is the same practice used during the Gulf War back in the early 90's. Back then it was through a resolution by the Board, although I wasn't here then, it was adopted for the 90 days and then it was never voted for an extension because the war ended. Since it was the only recent experience the City had, it became the current practice when the first employee was activated."*

Ald. Parker made a motion to hold and the Committee voted 5-0.

#336-98

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

ACTION: **APPROVED 4-0-1 (Merrill abstaining)**

NOTE:

Ald. Parker said this ordinance was written to address the issues of light trespass across property lines and light pollution. The rules were suspended to accept a draft from Gayle Smalley. Enforcement had been discussed by Ald. Parker and Mike Rourke. Ticketing was specified to be handled by ISD. The prior version authorized the Police Department to carry out ticketing. At Ald. Parker's request, this revised version authorizes the department of Inspectional Services to carry out such

ticketing. There is a waiver provision if this presents a hardship for some compliance.

There was discussion around the section of the ordinance that states "*illuminate a flag*" or an architectural feature be changed to "*United States Flag*".

Ald. Sangiolo had concerns regarding enforcement. Ald. Parker noted that a new enforcement inspector had recently been hired by ISD and is working flextime and could handle enforcement issues occurring during evening hours.

Ald. Hess-Mahan read into the record a memo from Ald. Johnson. (See attached memo dated March 14, 2004)

Ald. Sangiolo moved to approve and the Committee voted 4-0-1 (Merrill abstaining)

The Committee adjourned at 10:19 p.m.

Respectfully submitted,

Ald. Hess-Mahan
Acting Chair