

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS & SERVICES COMMITTEE REPORT

WEDNESDAY, JUNE 20, 2001

Present: Ald. Parker (Chair) Ald. Merrill, Johnson, Sangiolo, Tattenbaum
(Ald. Sangiolo served as Chair for the first item at the request of the Chair)

Other Aldermen Present: Ald. Lipsitt

Others Present: Mark Gilroy (Commissioner of Inspectional Services) Gayle Smalley
(Assistant City Solicitor) Doug Dickson (Newton Community Preservation Alliance)
Joyce Marchette (Chamber of Commerce), Steven Bart

REFERRED TO PROGRAMS & SERVICES, ZAP & FINANCE COMMITTEES

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

ACTION: APPROVED 4-1 as amended. (Ald. Merrill opposed)

NOTE: The ordinance was before the Committee after a several month hiatus of
not being taken up. Ald. Sangiolo, Vice Chair of the Committee, chaired this portion of
the meeting at the request of the Chair Alderman Parker so that Ald. Parker could more
freely speak on the item, not from the Chair.

Ald. Parker outlined some of the discussion that had taken place in the past. There have
been numerous drafts in discussion of policy objectives and at two different points in
time, drafts were voted out of the Committee to the floor of the Board and subsequently
recommitted for more discussion. Ald. Parker said that looking through the notes on the
meeting last December in which some business owners had discussed their concerns
about the ordinance, he felt as though a lot of the concerns that were being raised were
criticisms not of this but of a phantom ordinance that Ald. Parker wouldn't even vote for
because concerns were expressed for how well they could eliminate their own property
and other concerns that had nothing to do with what is in the actual ordinance since the
actual ordinance only limits trespass across property lines and light pollution and has no
restriction on how brightly one can eliminate one's own property. The objective should
be to set a reasonable standard for what is and appropriate amount of light to shine across
property lines and to have a reasonable and clear way of enforcing and monitoring that.
Ald. Parker pointed out that it is not difficult to meet these objectives despite some of the
things that people had said. There are a few specific amendments that Ald. Parker
wanted to propose regarding concerns that have been raised. For example, the concern
raised by Jim Sullivan of the Bowen/Thompsonville Neighborhood Association regarding
what happens when there is a stricter standard required by the Board of Aldermen acting

as a special permit granting authority or another board or commission. He didn't want the light ordinance to be the only standard where other boards or commissions have existing jurisdictions to apply stricter standards. Language was drafted by Associate City Solicitor Smalley to address that point. Another concern was whether the Inspectional Services Department could both be the enforcer and the adjudicative body for deciding whether to grant waivers and the Committee decided that it would make sense to have another body to decide waivers and the suggestion was that be the Planning and Development Board or the Planning Director. In subsequent discussions, members of the Committee felt more comfortable having it be the Planning and Development Board rather than just one individual. Ald. Parker pointed out that the main effect of the ordinance will be that there will be recommended type of lighting fixture that directs light onto one's own property that applicants for building permits and others who discuss construction projects in the City will learn about and that most people will be perfectly happy to comply with that standard. Ald. Parker responded to the claim that if there is a law in existence, people will be less likely to work things out themselves and to the contrary, when there is no standard, that is when there are problems, not when there is a standard that is clearly delineated. We will have a more positive inter-action between people and institutions that have light trespass issues because of that clear standard. Another issue that has been raised was what burden was placed on existing institutions to change their lighting to comply with the ordinance. Ald. Parker said he would not be adverse to allowing more time for institutions for the phase in provision more than the one year in the existing draft to allow institutions with the existing lighting to come into compliance, but he asked if, in fact, this isn't a big issue now, as some people have alleged and light is generally not shining across property lines, then in that case there won't be a lot of lights that won't currently be in compliance, but if in fact there are a lot of lights that aren't in compliance conversely, then there is a bigger problem than people are saying there is.

Ald. Parker asked Associate City Solicitor Gayle Smalley to distribute the draft of the alternative language and one of the issues that Ald. Parker had asked to clarify is that there is no restriction on the amount of light one can shine on one's own property. The Associate City Solicitor had explained would be a negative prohibition and, therefore, shouldn't be in the ordinance, but could be in a fact sheet or an introduction to the ordinance. Associate City Solicitor Smalley explained the amendments to the ordinance.

Ald. Johnson asked whether the business community had responded to any of her questions regarding liability and insurance concerns and was informed that the Committee had not heard anything, none of her questions were answered. Ald. Johnson said that the city should also comply with the ordinance and we shouldn't wait forever for city compliance, for example, in parks where lights are left on unnecessarily.

Ald. Parker pointed out that in the existing draft the city must comply with the ordinance except where there is a public safety welfare convenience reason why the city needs to be exempted and if this is passed, all city agencies would begin a process of evaluating their

existing lights and making changes where necessary. Ald. Merrill said he looked at the ordinance and why it is being proposed and said he hasn't had any citizens approach him about regulating light trespass or pollution. He can't see why it is necessary to pass an ordinance regulating how much light can be used and if neighbors can't work it out, why should the government interfere. He is concerned about inspectional services and police enforcing the ordinance. He can't think of any problems that haven't been worked out, including Clay Chevrolet and Frost Motors and his current inclination is to vote no on the ordinance. Ald. Parker responded to Ald. Merrill's suggestion that no one was concerned about this by pointing out that in the information that was distributed to the Committee summarizing some of the past meetings, there were at least a dozen people who had experienced light trespass problems and supported the ordinance and while this isn't the #1 crisis in the city, it is valuable to have a fair, consistent standard for how much light is acceptable and what is being proposed is a fairly generous standard. Ald. Parker emphasized that what we have here is actually two ordinances in one and that the light pollution portion of the ordinance is also important because it raises the awareness in setting up lighting fixtures of how much light is being emitted into the sky and the light pollution regulation will have a long-term value to the quality of life, not only people in Newton, but in surrounding communities and hopefully other communities will adopt similar standards. Ald. Merrill had also suggested that the Inspectional Services Staff would have to go out in the middle of the night to enforce the ordinance. Ald. Parker pointed out that will not be necessary because this would be handled like any other recommended building requirement that when someone comes in to the Inspectional Services Department or Planning Department and says I am planning on constructing something, tell me what I need to do. They will then be given a set of guidelines for recommended light fixtures and so during regular working hours when city departments are ordinarily there, they would be distributing this information and if there were a problem at night, this would be handled like any other complaint at night by the police and even under existing law, if someone shining light into someone else's window, the police are still going to be called and so this isn't going to increase the number of calls to the police, it is just going to give them a fair and consistent standard to apply. In terms of whether it is difficult to enforce, it is very simple because the light meter on any camera can detect light levels and that is actually easier to enforce and measure than the noise ordinance because the noise source can be intermittent and one can turn down the volume or some equipment can have varying levels of sound whereas most light fixtures one need only flip the light switch on and then take out the light meter to measure how bright the light is. Ald. Parker also said that in the discussion on light pollution that while just Newton does this, light pollution won't go down by that much, but in the past we have played a leadership role and that when we have adopted something, a lot of other communities have too. We were first on tobacco control and other communities followed and if we were the first on this in the area, other communities might follow too cutting on the overall level of light pollution in the greater Newton area.

Ald. Merrill said that comparing this ordinance to the smoking ordinance should not be done because smoking is a public health issue and this is just a quality of life issue and he

said, for example, some members of the board are against parking restrictions in parts of the city and that effects quality of life and he thinks citizens can deal with these issues and government isn't needed to get involved. Ald. Merrill also asked why didn't the people with the complaints just go to the businesses in question to resolve them. Ald. Parker referred to the record of the public testimony in which citizens said they had gone to businesses to try to work out problems and that it would make things a lot easier to work out if there is a fair and consistent applied that can be referred to.

Ald. Tattenbaum said she has been listening to both sides and has been having a hard time making a decision, but she is leaning towards Ald. Parker's position of having a standard. Ald. Johnson said she supports the ordinance. She said that when she was out collecting nomination signatures, citizens stated that the light ordinance was one of the top three issues that people raised.

Ald. Parker then moved his amendment to Sec. 20-27(a) which added the Planning Director as one of the enforcing authorities and to (b) and (c) in that section as noted in the Law Department draft (b) corrects a technical glitch that has the word this appearing and fails to refer to Sec. 20-25; (c) adds the provision of other boards and commissions maintaining jurisdiction. That amendment prevailed 3 in favor, with Ald. Merrill abstaining and Ald. Sangiolo not voting.

Discussed next was Ald. Parker's amendment to 20-26(a), which is the waiver provision. Ald. Parker moved to change all 20-26's decision maker for granting waivers from the Inspectional Services Director to the Planning and Development Board including Paragraph (a) and the other references in Sec. 20-26. That motion prevailed by the same vote of 3 in favor, 1 abstaining (Ald. Merrill) and Ald. Sangiolo not voting and the Committee said this particular change would be checked with the Planning and Development Board members to see whether they felt comfortable with it before this got to the board since they hadn't been consulted on that question.

Ald. Tattenbaum suggested that the phase in provision Sec. 20-28(a) could be five years from the time of adoption. Ald. Johnson thought that five years was too long and proposed three years and then moved then that the transition period be three years. That passed by the same vote of 3 in favor, 1 opposed (Ald. Merrill) and Ald. Sangiolo not voting.

Ald. Parker then moved approval of the ordinance as amended. It prevailed 4 in favor, (Tattenbaum, Parker, Johnson, Sangiolo) 1 opposed (Ald. Merrill)

REFERRED TO PROGRAMS & SERVICES, ZAP & FINANCE COMMITTEES

#64-01(3) PROGRAMS & SERVICES COMMITTEE recommending ordinance to implement Community Preservation Act in Newton

ACTION: HELD 5-0

NOTE: The Committee was again joined for discussion of this item by Associate City Solicitor Gayle Smalley, also by Doug Dickson representing the Community Preservation Alliance. Both of whom had handouts, which are attached to the report. Associate City Solicitor Smalley's handout was a memo summarizing what needs to be in the ordinance. The other item was the recommendation from the Community Preservation Alliance presented by Doug Dickson as what they would like to see in the ordinance or what their recommendation for the ordinance is.

Ald. Johnson asked for some clarification from Mr. Dickson about what was proposed. The board was also joined for discussion of this item by Board President Brooke Lipsitt who suggested that the position should be appointed not elected and she doesn't want to skew towards a particular area. Committee members were in agreement after some brief discussion that there should be four additional members. They should be appointed, although there was not consensus as to whether they should be appointed by the Mayor or the Board or in another way. Committee members were interested in discussing the breakdown of the positions, but one point in particular, whether there would be positions designated by professional expertise and there was also the point made that there are four not three areas – historic, open space, recreation, and affordable housing and since the Planning Department is sort of a neutral member of the nine, there could be two each from each of the other four and have a balanced body. Because the hour was 10:00 PM and the Committee had agreed to adjourn then, Ald. Tattenbaum moved hold. There was no discussion of the motion to hold and the item was held unanimously 5 in favor, 0 opposed.

Respectfully submitted,

Ken Parker, Chair