

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE REPORT

WEDNESDAY, JANUARY 19, 2011

Present: Ald. Gentile (Acting Chairman), Lennon, Albright, Crossley, Danberg, and Lappin

Absent: Ald. Salvucci and Schnipper

Also present: Ald. Blazar, Ciccone, Fuller, Harney, Hess-Mahan, Linsky, Merrill, Sangiolo, Shapiro, Swiston, and Yates

City officials: Marie Lawlor (Assistant City Solicitor), Jayne Colino (Director of Senior Services), Bob DeRubeis (Parks and Recreation Commissioner), Dave Turocy (Commissioner of Public Works), Bob Rooney (Chief Operating Officer), and Linda Walsh (Commissioner of Health and Human Services)

**REFERRED TO PS&T, PUB. FACIL. AND FINANCE COMMITTEES**

#310-10 **ALD. DANBERG, ALBRIGHT, BAKER, BLAZAR, CROSSLEY, FISCHMAN, FREEDMAN, HESS-MAHAN, JOHNSON, LINSKY, MERRILL, RICE AND SCHNIPPER** requesting that §26-8 and §20-21 of the City of Newton Rev. Ords., 2007, be amended to establish criteria and provisions for requiring removal of snow in all districts by property owners, occupants, and property managers to sidewalks abutting their property and to review and amend enforcement provisions including structure of fines, for snow removal violations. [10/25/10 @ 4:39 PM]

**PS&T APPROVAL AS AMENDED FAILED TO CARRY 2-3-1 (Ciccone, Shapiro, Swiston opposed; Harney abstaining)**

**ACTION: APPROVAL AS AMENDED FAILED TO CARRY 3-3 (Gentile, Lappin, Lennon opposed)**

**NOTE:** The Committee met jointly with the Public Safety and Transportation Committee to discuss the item. Both Committees met together on December 8, 2010 and held the item in order to get additional financial information and to incorporate proposed amendments into the draft ordinance. Ald. Danberg provided the attached memo that includes a draft ordinance for a residential snow-shoveling requirement that would start on November 15, 2011 and be in place for two years from that date, if approved. There are no monetary penalties included in the draft ordinance. The draft ordinance includes adjustments to the minimum width requirement from the previously proposed 48" to 36" and an increase in the time requirement in which to clear sidewalks from 24 hours to 30 hours after a storm. The 48" is an Americans with Disabilities Act (ADA) guideline but not a legal requirement. If the Board of Aldermen approves the proposed ordinance, the Board would need to look at it again at the end of the trial period to determine if the snow-shoveling ordinance should remain in place and if adjustments to the language are necessary.

Commissioner of Parks and Recreation Bob DeRubeis updated the Committee on the paid shovelers list and the volunteer shovelers list. There are currently 176 people on the list for paid shoveling and 21 volunteers willing to shovel for free. On average the Parks and Recreation

Commission receives five phone calls after each storm requesting the list of paid shovelers. The list is also available on-line and it is not possible to determine how many people utilize the list through the internet. The department receives two phone calls per storm for the volunteer list, which are referred to the Senior Center and Health and Human Services Department to determine if the callers are eligible to receive volunteer services. The eligibility requirements are based on physical inability to shovel and income level. Director of Senior Services Jayne Colino provide information on the utilization of the both lists by senior citizens. The Senior Center has received thirty-six calls regarding the snow-shoveling list. Nine people qualified for volunteer services.

Deputy Commissioner of Public Works Dave Turocy stated that the Public Works Department efforts to clear 88 miles of sidewalk within 24 hours of each storm have been successful overall. A few of the sidewalks were missed but once the department was informed, they were addressed. The department is on track to meeting its goal. The Police Department has issued no citations to date for violation of existing snow ordinances. However, there has been community outreach on a number of occasions to ensure that business districts are shoveled and plow contractors are not blocking sidewalks or driveways when plowing.

Robert Rooney, Chief Operating Officer, added that the Mayor embraces the concept of improved mobility and safer sidewalks during the winter months. The Mayor is willing to provide resources to ensure that the ordinance is effective, if the Board of Aldermen approves it.

Members of both Committees had several questions regarding the cost to the City of clearing the additional sidewalks and implementing the proposed ordinance. Information on the amount of money the City is spending on plowing the additional sidewalks was requested. If the trial ordinance is approved, a notification system for the implementation of the ordinance and for violation of the ordinance needs to be put in place. Mr. Rooney stated that the City would likely use a notice, flyer, mailing, and the web page along with newspaper ads to inform residents about the new ordinance. Sarah Ecker, Director of Community Relations, will likely oversee the notification of a violation with address data provided by the Parking Control Officers. There is plenty of time to determine how to handle violations before the November 15, 2011 date.

There was a question concerning what Department of Public Work employees are doing for two or three days after the storm. Mr. Turocy explained that it varies with every storm, but crews are generally sanding, widening streets, filling potholes, refilling the sand and salt buckets and hauling snow from intersections and village centers. If the storm is large enough or there are back to back storms the department is straight out for two weeks. Mr. Turocy cannot guarantee that there would be any employees to clear sidewalks after a storm. Ald. Lappin asked for the cost of implementing the snow-clearing ordinance including the cost of any necessary equipment and contract negotiations. Mr. Rooney stated that the City has not started negotiations with the Parking Control Officers. There is no intention of entering negotiations until the ordinance is approved. There will be a small software upgrade cost for the handheld devices to be used for ticketing and data entry. The cost of processing and mailing a ticket is approximately \$1.50 per ticket.

Ald. Gentile asked why the City was planning to involve the Parking Control Officers during the trial, as no fines will be issued. Mr. Rooney explained that the Parking Control Officers would be used to provide data on residents that were not clearing their sidewalks. Ald.

Lennon stated that if there is a 30-hour clearing requirement the Parking Control Officer would be back to enforcing parking restrictions. It would be a loss of revenue if the Parking Control Officers were redirected to snow-clearing enforcement. Ald. Harney added that the ordinance enforcement should be complaint driven.

Several members of both Committees were concerned about approving an ordinance that would require residents to shovel, salt, and sand their sidewalks to a width of 36" or the width of the sidewalk if smaller than 36" within 30 hours of a storm when the City currently does not meet that standard. Mr. Rooney explained that the City does only minimal salting and sanding as the salt is corrosive to vegetation. He also pointed out that the expectation is that residents make a reasonable effort to meet the ordinance requirements. It was pointed out that some of the intersection corners are buried under 6' of snow dumped by plows. The City cannot expect residents to remove that snow. Mr. Turocy stated that during the last storm the plow drivers had no choice but to put the snow on the intersection corners to keep the roads open for travel. Ald. Lennon provided the attached photos of municipal parking lots, intersections, and crosswalks that are covered in snow.

Although Aldermen were in agreement that sidewalks should be cleared, some Aldermen felt that there was no need for an ordinance and that increased public education would promote the level of awareness of the importance of snow clearing. The City could continue providing a shoveling list and work on improving its own snow clearing operations. There was concern that the City was asking people to clear sidewalks that are owned by the City. The ordinance is placing a physical and financial burden on citizens. There are people in the City who cannot shovel due to health issues and cannot hire a contractor due to financial hardship.

Members of both Committees discussed the possibility of including a waiver for people who cannot shovel or pay for a contractor to clear their sidewalk due to their health and financial hardships. Ald. Crossley felt that the issue was addressed by meeting the standards, which are determined by the Senior Center for volunteer shoveling services. There is language in the Town of Arlington ordinances that could be incorporated into the proposed ordinance. Assistant City Solicitor Marie Lawlor stated that she could incorporate the language into the draft ordinance but there needed to be language clarifying who would make the determination that a resident was exempt. Ald. Albright moved approval of the ordinance as amended to include a waiver for residents who have a physical and financial hardship in the Public Facilities Committee. Ald. Fuller made the same motion in the Public Safety and Transportation Committee. The motions in both Committees failed to carry.

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

#31-11 HIS HONOR THE MAYOR requesting an appropriation in the amount of \$2,065,000 from Free Cash to the Department of Public Works – Snow and Ice Removal Account. [01/10/11 @6:07 PM]

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

**NOTE:** Deputy Commissioner David Turocy presented the request to appropriate and expend \$2,065,000 to supplement the Public Works Department's snow and ice budget. The department began the year with a little over \$1 million in its snow and ice accounts. The Administration has looked at the 5-year snow average of funds expended for snow and ice

operations by the Public Works and Parks & Recreation Departments. The seed money and the requested money reflect the average expenditure amount expended over that period. The request reflects the Financial Management Policies adopted in January of 2008, which states, "the City may make the annual appropriation for snow and ice control purposes in an amount that will not be less than the median annual expenditure for this purpose for the trailing five year period. It is the policy of the City that, after Free Cash is certified, the Mayor will seek an appropriation of funds into snow and ice accounts in amount equal to the difference between the amount of the trailing five year average expenditure on snow and ice and the amount already in the accounts."

Mr. Turocy assured the Committee that it would still receive monthly update on snow and ice expenditures. Mr. Turocy provided such an update, which was attached to the agenda. As shown on the update, the department has already expended the \$1 million dollars it began the season with and has expended an additional \$800,000 to date.

Committee members understood the need for the appropriation. Ald. Gentile felt that the Administration should have made the request a little earlier to avoid being in a deficit in the snow and ice accounts. Ald. Lappin moved approval, which carried.

#385-07      ALD. SCHNIPPER AND GENTILE updating the Public Facilities Committee on the progress of the Newton North High School Project. [11/21/07 @ 10:23 AM]

**ACTION:**      **HELD 6-0**

NOTE:      Ald. Gentile gave a brief update on the Newton North High School Project. The construction team continues to work with the Department of Environmental Protection (DEP) on the removal of asbestos from the old school during the demolition. It is fully expected that there will be a negative impact on the project schedule. The City is investigating the safest and most cost effective way to remove the asbestos. It is hoped that the DEP will approve the latest means and methods for removal of the asbestos to avoid missing the next planting season for the new fields. It is not possible to determine the cost of the abatement. Committee members asked if there would be a large cost associated with the project management for the rest of the project. Ald. Gentile explained that the Administration has cut back on project management. They are trying to keep the overhead costs down. Ald. Gentile will provide further information on the demolition as it becomes available.

Respectfully submitted,

Leonard J. Gentile, Acting Chairman



# Memorandum

To: Board of Aldermen  
From: Alderman Danberg  
Re: Snow Ordinance  
Date: January 14, 2011

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Colleagues,

In preparation for our discussion of the snow ordinance on Wednesday night, please find attached an article from the Boston Globe regarding the SJC's ruling on snow removal and a new draft of the snow ordinance which has been reviewed and explained by Marie Lawlor.

Thanks

## SJC's snow ruling unlikely to cause unwarranted suits

January 9, 2011

THE CALENDAR has flipped to the middle of winter, and the Supreme Judicial Court's July ruling on snow removal has taken on a heightened importance in this season of treacherous, slippery footing. The ruling seems unlikely to place an undue burden on businesses and homeowners, but the Legislature may need to step in to clarify a few points, depending on how things go this season.

The key component of the ruling was the court's decision to strike down the distinction between "natural" and "artificial" accumulations of snow and ice. Previously, under a century-old common-law rule unique to Massachusetts, property owners were not liable for snow that remained unplowed, or icy parking lots that weren't sanded. The explanation was that those were "natural" conditions, while a property owner who, say, plowed snow into a giant pile and blocked the view of incoming traffic, could be held liable for injuries.

But this proved, over time, to be a confusing standard — courts often had to determine in which category to put, say, ice uncovered by snow shoveling. And it made little sense to create a blanket excuse for failing to take even rudimentary precautions against slips and falls. So the court was right to rule that the distinction has "sown confusion and conflict in our case law."

In effect, the court has reconciled snow and ice standards with those applied to all other potential property hazards. Property owners must, as an earlier ruling put it, "act as a reasonable person under all of the circumstances, including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk." Nobody can be held liable for someone else's injuries without being found to have acted negligently. This is not, in itself, an undue burden to place on home and business owners — the SJC pointed out in its ruling that several Massachusetts laws already impose stricter standards.

This could, however, increase the potential for nuisance lawsuits. Some suits involving clearly naturally occurring snow accumulation would have been immediately thrown out under the old standards — for example, if someone sued after slipping on snow that had fallen in the first two hours of a storm, before anyone could remove it. Now these cases could at the very least lead to legal expenses for homeowners, even if they are eventually settled or thrown out.

It's not yet clear if this will be a widespread problem, however, and Massachusetts' standard is now more in line with those of other New England states. For now, the new standard is an improvement because it treats hazards as hazards, whether they are brought about by people or nature. If this leads to an explosion of nuisance lawsuits, the Legislature should reserve the option of stepping in to provide more protection for property owners on those borderline cases that could prove irresistible to overly litigious plaintiffs. But for now, the SJC's ruling appears to be a reasonable approach to a perennial problem.

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**LAW DEPARTMENT**  
**INTEROFFICE MEMO**

**To:** Alderman Victoria Danberg

**From:** Marie M. Lawlor, Assistant City Solicitor

**Date:** January 14, 2011

**Re:** Docket Item # 310-10 Revised draft language for sidewalk snow removal ordinance

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As you have requested, I have made the following revisions to the draft sidewalk snow removal ordinance language. Both redlined and clean copies of the revised language are attached. The revisions are highlighted below as follows:

1. The proposed trial period has been reduced from three years to two years from date of adoption;
2. The required minimum width for passageway has been reduced from 48 inches to 36 inches;
3. The time period for snow and ice removal has been increased from 24 hours to 30 hours;
4. Violations during the two year trial period will be subject to a warning only, no monetary penalty;
5. No increase in fines for violations of current snow ordinances.

**REVISED DRAFT LANGUAGE FOR SIDEWALK SNOW REMOVAL TRIAL PROGRAM - 2 year trial**

1. Insert a new section **26-8D** as follows:

**Sec. 26-8D Trial program for removal of snow and ice from sidewalks.**

In order to allow for safe pedestrian and wheelchair passage, every owner or occupant of a building or lot of land abutting upon a paved sidewalk or any person having charge of such property shall cause snow to be removed from the sidewalk, including handicap access ramps, and ice on the sidewalk, including handicap access ramps, to be removed, sanded or salted to allow for a passageway of at least ~~forty eight (48)~~ thirty-six (36) inches in width, provided that where the sidewalk as defined herein is less than ~~forty eight (48)~~ thirty-six (36) inches in width, the passageway shall encompass the entire width of such sidewalk and shall include handicap access ramps. Snow shall be removed and ice shall be removed, sanded or salted within ~~twenty four (24)~~ thirty (30) hours after such snow has ceased to fall or such ice has ~~come to be~~ formed. This section shall apply to snow and ice which falls from buildings, other structures, trees or bushes, as well as to that which falls from clouds. This section shall not apply to owners or occupants of a building or lot covered by Section 26-8. The provisions of this section shall expire two (2) years from the date of its adoption unless terminated earlier or renewed or modified by the board of aldermen. Warnings may be issued for violations of any provision of this section.

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~~2. Amend paragraph (d) of section 20-21, **Enforcing persons and revised ordinances subject to civil fine**, relative to ordinances enforced by the Police Department by:~~

~~A. Deleting, in Sec. 26-8 **Removal of snow and ice in certain districts**, the penalty amount of "\$25.00" and inserting in its place the penalty amount of "\$50.00."~~

~~B. Adding after Sec. 26-8 the following language:~~

~~Sec. 26-8D. **Removal of snow and ice from sidewalks (program)**~~

~~( ) Any offense.....~~

~~C. Deleting, in Sec. 26-9 **Putting snow and ice upon streets, sidewalks and bridges**, the penalty amounts of "\$25.00", and inserting in their place the penalty amounts of "\$50.00~~



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1

Intersection of Pearl / Waban / Gardner. The crosswalk is completely closed in. You can also barely see the painted letters on the street designating the 'School Zone.' In this case, the resident has not cleared their sidewalk.



2

Same intersection. As you can see here and the photo below, the sidewalk along the left side has been done by the city plow. It is difficult to understand how someone in a wheelchair or a parent pushing a baby carriage would be able to maneuver this. It is clearer on the picture below.



3



4

Intersection of Washington Street / Hunnewell Avenue / Hibbard Road. This is a heavily traveled route for children going to Underwood and Bigelow. On each side of Hunnewell, the resident has cleared their sidewalk but the crosswalk is completely plowed in. Clearer to see sidewalk on the pictures below.



5

Middle right of picture you can see the cleared sidewalk.



6

A little harder to see but a path has been cleared just under the bushes.



7

In terms of crosswalk clearing, I believe this picture and the picture below is what we should be striving for. Unfortunately, these photos were taken in Watertown. I am unsure if they do all of their crosswalks but where I am taking these are in high pedestrian traffic areas and it is a bus route. There were 2 or 3 more that I did not include.



8



9

Sidewalk completely blocked in a village center. We currently have ordinances on the books that would deter this activity and we have the ability to give fines. It is my understanding there has not been any snow-related citations issued in the last 12 months. I am unsure but can find out how long this has been a part of our ordinances.



10

Right next door to picture #9



11

Another resident on a corner lot with the sidewalk shoveled. It is tough to see from the photo, the homeowner is an elderly woman who has shoveled the width of a shovel all along her property. The sidewalk is passable but no way for anyone to cross the street.



12

Dead end street without the ability to plow much snow down to the end because it will block a driveway and a hydrant. That being said, the snow is pulled out to the entrance of the street (below).



13

This is one corner. You can see the resident has shoveled the length of their property around the corner.





14

This is was the corner/curb cut looks like.



15

This is the opposite corner of the dead-end. The resident has shoveled the length of their property (pics #15 and #16).



16



17

This is what the corner looks like.



18

This is 4 days after the second storm. Therefore, this accumulation has been in place since December 27. Granted, some of it had melted but if it had not, it would be even worse. As an example, I believe we should be concentrating on the removal of snow in village centers to help pedestrians moving through our villages. I have seen numerous people climbing over snow banks to get to local businesses.



19

Adams Street / Murphy Court. Local business. Sidewalk shoveled. Corner plowed in.



20

Opposite corner of Murphy / Adams. As mentioned, the streets were done exceptionally well but this one still needed some work 4 days after the storm.



21

Another business property on Adams Street. Can enforce with existing ordinance. No citation issued.



22

Business, in a business zone, in a 'residential' area on Adams Street.  
Can enforce with existing ordinance. No citation issued.



23

Same example as above.



24

Well known city property on Washington Street. Done beautifully all along the front, unfortunately,



25

They stopped at the corner. Remaining city property all along the abutting street not touched.



26

Another leased city property. In the agreement, would have to get clarification if this is the responsibility of the lessor or the leasee.



27

Municipal parking lot. Snow piled in handicap spots.



28

Different municipal parking lot.



29

Same result..piled in handicap spot(s).





30

Same lot as #28 & #29



31

Same lot as #28 & #29 & #30



32

Designated school route for Lincoln Eliot School is Watertown Street to Pearl Street. However, the crossing guard is at Watertown & Capital Sts and parents and kids walk down Capital. This is the intersection of Capital/Washburn Street. You can see Lincoln Eliot in the background. The crosswalk is completely plowed in. Residents on both sides have done their walks. Hard to see here but can see below.



33



34

Intersection of Adams Street & Lincoln Road. This is a crossing guard post. The city plows this sidewalk. The crossing is across Adams to Middle Street (right side of picture). You can see that is completely blocked in. The 'open' area (directly above) is going across Lincoln Road.

More examples of plowed in corners...



35

Burton Ave & Hawthorn Street



36

Intersection of Hawthorn and Clinton Streets



37

Intersection of Hawthorn & Clinton Streets



38

Intersection of Farwell & Joseph Road



39

This was to give an idea of how high the snow bank is at Green / Cook / JFK Circle.