



## Public Safety & Transportation Committee Agenda

### City of Newton In City Council

Wednesday, January 18, 2017

7:00 PM  
Council Chamber

#### Items Scheduled for Discussion:

*The Public Safety & Transportation and Programs & Services Committees will meet jointly on the following items and the Chairs will be taking public comment:*

#### REFERRED TO PROGRAM & SERVICES AND PUBLIC SAFETY COMMITTEES

**#443-16** **Ord. amendment regarding immigration status and guidelines for community policing**  
HIS HONOR THE MAYOR, CHIEF OF POLICE, PRESIDENT LENNON, AND COUNCILOR KALIS, proposing an amendment to the City of Newton Revised Ordinances Chapter 12, Article V; Human Rights Commission and Advisory Council, to add a new section (C) to §12-50 defining: 1) the Policy of the City of Newton regarding immigration status and 2) the final Foundational Guidelines for Community Policing. [12/16/16 @ 10:45 AM]

#### REFERRED TO PROGRAM & SERVICES AND PUBLIC SAFETY COMMITTEES

**#443-16(2)** **Ordinance amendment to protect undocumented residents**  
COUNCILORS ALBRIGHT, AUCHINCLOSS, HESS-MAHAN, NORTON, CROSSLEY, BROUSAL-GLASER, HARNEY, FULLER, LEARY AND DANBERG, proposing an amendment to the City of Newton Revised Ordinances to protect undocumented residents which at a minimum does the following:

- 1) No city official will request or seek information regarding a person's immigration status.
- 2) No city official will report to, respond to or cooperate with Immigration Customs Enforcement with regard to status of any persons who has contact with a city official or employee except in the case where that person has been convicted of a felony, is on a terrorist watch list, poses a serious substantive threat to public safety, or is compelled to by operation of law except as required by law. [12/16/16 @ 9:11 AM]

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The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

**Items Not Scheduled for Discussion at this meeting:**

**#4-17 Providing the 2016 Annual Report on the work of Traffic Council**  
TRAFFIC COUNCIL CHAIR, providing the Annual Report on the work of the Traffic Council for 2016 pursuant to Section 19-30(g) of the City of Newton Revised Ordinances 2012. [12/19/16 @ 4:53 PM]

**#366-16 Requesting a review and update on Traffic Council responsibilities**  
COUNCILORS NORTON, SCHWARTZ AND AUCHINCLOSS, requesting a review and update on Traffic Council responsibilities by shifting certain areas to the executive branch, including the installation of stop signs and safety upgrades. [10/17/16 @ 9:15 AM]  
**HELD 5-0 on 12/07/16, Councilor Cote not voting**

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

**#359-16 Submittal of the FY 2018 to FY 2021 Capital Improvement Plan**  
HIS HONOR THE MAYOR submitting the Fiscal Years 2018 to 2022 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/11/16 @ 11:28 AM]

**#345-16 Requesting a review, amendment or elimination of the Winter Overnight Parking Ban**  
PUBLIC SAFETY & TRANSPORTATION COMMITTEE, requesting a review and possible amendment or elimination of the winter overnight parking ban. [10/06/16 @ 9:10 AM]  
**HELD 6-0 on 11/02/16**

**REFERRED TO PROGRAMS & SERVICES AND PUBLIC SAFETY COMMITTEES**

**#312-15 Update from Health Department on opiate overdose epidemic**  
ALD. COTE, HARNEY AND NORTON, requesting a review and discussion of the opiate overdose epidemic including an update from the Health Department appraising the board on the current situation to include comparative statistics from previous years as to the number of opiate overdoses handled by first responders. In addition, what is being done immediately to take this on and what support can the Board provide. [10/19/15 @ 1:30 PM]

**REFERRED TO PUB FACIL, PROG & SERV, AND PS&T COMMITTEES**

**#46-15 Discussion of parking options and permits at municipal and school parking lots**  
ALD. JOHNSON & CICCONE, requesting a discussion with the Commissioner of Department of Public Works and the School Department to determine and discuss parking options including use of school properties based on the current municipal parking lot programs including the issuance of permits. [02/11/15 @ 1:35 PM]

**#28-14 Discussion on duplicate street names**  
ALD. CICCONE AND FULLER, on behalf of the Health Department and the Emergency Medical Services (EMS) requesting a discussion on duplicate street names. [01/09/14 @ 10:57 AM]

- #240-12**      **Request Chapter 19 Motor Vehicles & Traffic be amended, Sec. 19-224 and 19-226**  
RECODIFICATION COMMITTEE, requesting that **Chapter 19 MOTOR VEHICLES AND TRAFFIC** be amended to determine who has jurisdiction for parking on municipal land, the owning department as described in **Sec. 19-224. Parking prohibited on city grounds.** or the Traffic Council as described in **Sec. 19-26. Authority and role of Traffic Council.**

**REFERRED TO PS&T AND PUBLIC FACILITIES COMMITTEES**

- #413-11**      **Updates on the renovations to the City's fire stations**  
ALD. CICCONE, SALVUCCI, GENTILE & LENNON, updating the Public Facilities and Public Safety & Transportation Committees on the progress of renovations to the city's fire stations. [11/17/11 @ 11:07 AM]
- #137-11**      **Possible changes to long-term meter fees to discourage short-term use**  
ALD. DANBERG AND FULLER, requesting possible changes to City Ordinance 19-191, Parking Meter Fees, to require a minimum purchase at long-term parking meters in order to discourage short-term use. [04/26/11 @ 9:52 AM]

**Respectfully submitted,**

**Allan Ciccone, Jr. Chair**



Setti D. Warren  
Mayor

## City of Newton, Massachusetts Office of the Mayor

#443-16

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January 13, 2017

Dear City Councilors,

There is a possibility of some further revisions to the proposed ordinance and Foundational Guidelines that will be discussed in the upcoming Public Safety & Transportation and Programs & Services meeting on Wednesday Jan. 18.

The Mayor's Office will email to all councilors the final documents for their consideration prior to the meeting on Wednesday.

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CITY OF NEWTON

2017 JAN 13 PM 3:20

DAVID A. OLSON, CITY  
NEWTON, MA 02459

## Fact Sheet on the Welcoming City Ordinance

Although the Mayor's One Newton Statement and the Councilors' Welcoming City Ordinance differ on how to best address Donald Trump's draconian agenda on immigration, on one crucial point there is resounding consensus. Trump's threat, to deport millions of immigrants living peaceful, productive lives among us, is a stab at the heart of Newton's vision of one welcoming community.

The differences between the Statement and the Ordinance are more in approach than objectives but these differences are substantial nonetheless, and critical to achieving the mutual ends both measures strive for. We believe that in each instance the clear enforceable provisions of the Ordinance are superior to the more general, changeable language of the Statement in achieving our common goals. For example:

A. In their most central parts both proposals look favorably on protecting peaceful, law-abiding immigrants from the Trump juggernaut, while frowning upon the Police Department becoming mired in the morass of enforcement of civil immigration law.

The three key sections of the Welcoming City Ordinance provide clear unequivocal protections to those people.

**Sec 2-402. Requesting or Maintaining Information Prohibited.** *No City Agency, or agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law or judicial decision.*

**Sec 2-403. Disclosing information prohibited.** *Except as otherwise provided under valid federal law, no City agency or agent shall disclose information regarding the citizenship or immigration status of any person.*

**Sec 2-405. Use of City Resources Prohibited.** *No City Agency or agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration law or to gather or disseminate information regarding the citizenship or immigration status of any person, unless such assistance is required by valid federal or state law...*

These provisions, having the force of law, protect peaceful law-abiding immigrants living productive lives in our community from summary imprisonment or deportation or both.

These provisions also ensure that not just the Police Department, but every other city agency as well, can focus on the duties the City has assigned them - the challenging job of

providing Newton citizens the highest quality of services - without the additional unwanted, unnecessary, counterproductive burdens that may be imposed upon them by the federal INS.

Finally these provisions mean that this City will stand steadfast behind its vision of Newton as One Welcoming Community in the face of Trump's divisive agenda.

The ordinance connected to the One Newton Statement upon cursory inspection appears to protect immigrant status as well:

*“(1) Immigration status shall have no bearing on a person’s treatment by officials and employees of the city. There is no expectation that officials and employees of the city will report persons to federal immigration authorities based on immigration status.*

*(2) Interactions with federal immigration authorities by the Newton Police Department will be in accordance with the One Newton: Foundational Guidelines for Community Policing to Promote Safety for All.”*

But upon further examination these protections are less real than illusory.

First, the One Newton Proposal does not categorically prevent the City from reporting peaceful, law-abiding immigrants to the federal government. It merely says *“there is no expectation the City will report persons to federal immigration authorities based on immigration status”*.

This is no protection at all. Expectations change. If this or a subsequent administration decides to give in to federal pressure and start reporting law-abiding immigrants, it would merely be a change in “expectations” not a violation of the ordinance. They could do so without Council approval or even notice. The ordinance would be no protection at all.

Contrast this with the Welcoming City Ordinance’s clear prohibition:

*“Sec 2-402. Requesting or Maintaining Information Prohibited. No City Agency, or agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law or judicial decision.”*

Second, the One Newton proposal is further weakened by tying “Police Department interactions with the federal immigration authorities” to the One Newton Statement.

The Statement provides:

*“The Newton Police Department does not take action on civil immigration matters. In most cases, by the time that an undocumented alien is flagged by the fingerprint system, they have already been processed out of police custody to the Newton District Court.”*

But this falls short of providing real protection in four critical ways.

First, it’s policy not law. Therefore it is changeable at a moment’s notice. If a new administration, or a new Police Chief has a different view, or just changes his mind, that statement of policy could be changed or worse ignored, in an instant. Without any notice to the public or action by or notice to the City Council, Newton could become a participant in the wholesale imprisonment of peaceful, productive immigrants dwelling among us.

Second, it is vague. *“In most cases, by the time that an undocumented alien is flagged... they have already been processed out.”* What about those individuals who have not been “processed out”? Nothing in the statement prevents the City from handing over their information to the INS. What if the INS sent the Police Department a Civil Immigration Detainer Request? Again nothing in the Statement prevents the City from detaining an individual not for a crime but solely on the basis of an INS document.

Third, it is only a statement of present practice. For the future it holds no guarantees.

Fourth, it only covers the Police Department. None of the other agencies which might come upon sensitive information would receive any protection. The One Newton policy also proposes a change to Article V Sect 12-50 to say “There is no expectation that officials and employees of the city will report persons to federal immigration authorities based on immigration status.” This change is unclear and certainly does not mandate how city employees must behave in this regard.

The sponsors of the Welcoming City Ordinance urge the supporters of the One Newton Statement to make the protections that we both support explicit and enforceable so that the reality of our laws will match the rhetoric of our statements.

B. In a second critical way both the Statement and the Ordinance are steadfast in their determination to provide for protection against individuals who are a danger to society. Sec 405 (f) of the Ordinance provides: “This section shall not apply when an investigation conducted by or information received by any City Agency indicates that the subject of the investigation

1. Has an outstanding criminal warrant
2. Has been convicted of a serious felony in any court of competent jurisdiction;
3. Is being investigated for terrorism.”

While the Statement provides: “Police do reserve the right to cooperate with Immigration & Customs Enforcement (ICE) when terrorism is suspected or when a serious felony has been committed by an undocumented alien and the individual is considered to be a threat to the safety of others, consistent with the federal Priority Enforcement Program (PEP).”

It is the intent of both the Statement and the Ordinance to reflect the current Police practice.

C. What happens under the Ordinance and the Statement if the federal government requires the City to assist it in the enforcement of immigration laws? Don't city officials have to comply with the demands of federal officers to help with the administration of a federal law?

The more pertinent question is “Does the federal government have *the right* to demand that city officials do anything to administer federal law? The answer is a resounding “no”. As Justice Scalia wrote in *Printz v. United States* “The Federal Government’s power would be augmented immeasurably and impermissibly if it were able to impress into its service – and at no cost to itself – the police officers of the 50 states.” 922.

In fact in its more than two hundred year history the U.S. Supreme Court has never upheld any federal law requiring state or local officials to play an involuntary role in administering a federal program. The only danger is the Supreme Court has held that if a state or city was found to comply voluntarily, compliance was allowed.

Under the Welcoming City Ordinance, the prohibitions, having the force of law, would resist this federal encroachment upon local government autonomy.

With the One Newton Statement no one knows what would happen. “*The City will monitor any changes in federal directives and will be prepared to resist any efforts to change our approach to community policing.*”

This means whether the City succumbed to federal pressure would be solely up to the Mayor and Police Chief. With the Welcoming City Ordinance the City Council would need to approve any change in our commitment to Newton as One Welcoming Community.

What the Supreme Court is basically saying is that under our federal system of government, where states have a high degree of autonomy, the constitution protects us from what are essentially unfunded federal mandates, (and probably funded ones as well). Congress can't create a program and saddle local government with even a part of the cost of implementing it.

D. What is the difference between Ordinance and the Statement if the federal government tries to punish us by cutting off our federal funding for not helping in the administration of federal immigration law?

The fact is no one knows what the federal government will do or even if it has the right to cut off funding for our non-cooperation. After all, The Supreme Court has held these forced



cooperation laws unconstitutional. It seems unlikely they would uphold laws that would punish us for failure to obey an unconstitutional law.

What is certain is that we will be in a stronger position to oppose undue federal pressure with the Ordinance than the Statement. The Ordinance has a clear prohibition against forced cooperation.

The Statement is unclear on resisting federal encroachment and therefore any city cooperation could be taken to be voluntary.

Finally under the Statement this or subsequent Mayors or Police Chiefs could unilaterally and without notice agree to assist Trump and the INS in their draconian plans. Under the Ordinance the matter would be deliberated by the Council openly and any change in this important area of public policy would require Council approval.

E. Won't this Ordinance permit dangerous criminals to remain at large endangering public safety?

As we said in section B above both the Ordinance and the Statement make public safety the highest priority. But in one important respect the Ordinance is superior to the Statement in the area of public safety.

The One Newton Statement recognizes that: *"In order for police to best protect the community, the channels of communication must be open so that individuals feel safe to report alleged crimes and to provide information when asked about a possible crime."*

If an otherwise law-abiding immigrant who does not have proper documentation is a victim to, or witness of a crime, we want that crime reported. Failure to do so not only endangers the victim, it endangers the public as a whole by allowing a criminal to remain at large.

But if a person is afraid to report the crime for fear of being imprisoned or deported, or if it is a domestic matter and there is fear that a family member might face the same fate, the whole community loses. That is why reporting law-abiding but undocumented immigrants to the federal government flies in the face of our objectives in community policing.

The strong prohibitions in the Welcoming City Ordinance ensure *"that individuals feel safe to report alleged crimes and to provide information when asked about a possible crime."*

The One Newton Statement does not provide that assurance.

F. How does that Newton case where the Appeals Court held the City couldn't restrict a police officer's discretion affect the Ordinance and the Statement?

The short answer is it doesn't affect either.

In that case, *Newton Police Association v Police Chief of Newton*, the chief wanted certain police officers to write more tickets in high accident zones. The officers argued that statute 90C section 3(A)(1) meant it was up to them and not the chief to decide whether to write a ticket. The City argued that it "that the police chief is vested with inherent authority to ...direct the members of the police force as to their respective ...duties." Otherwise there'd be chaos, and that therefore the chief could set up ticketing criteria and direct the officers to issue tickets under those circumstances.

The Appeals Court basically agreed with the City as a general rule that statutes like 90C 3(A)(1) didn't restrict the chief's inherent authority.

But they said there was a unique glitch in the history of this particular statute. It seems that back in the good old days, after an officer wrote a ticket, the chief had up to three days to issue the ticket or downgrade it to a warning.

The Court noted that that meant it was open season on the chief and anyone with ties to him could call him up and say something like "Please I was only going 5 miles over the speed limit and everyone was going faster so please rip up my ticket." The practice of "ticket fixing" became so pervasive that Gov. Volpe and the legislature put a stop to it by saying that issuance of a ticket was solely up to the officer not the chief.

But the Chief has the inherent power to do everything in the Welcoming Ordinance and the One Newton Statement.

In conclusion, both approaches have the same underlying goals. But it is the Welcoming City Ordinance that in each instance provides Newton the best chance of achieving those goals and maintaining our City as a place that welcomes, indeed cherishes diversity.

**\*Be it ordained by the City Council of Newton as follows:**

The Revised Ordinances of the City of Newton are hereby amended in Chapter 2 by adding at the end thereof the following new article:

**Welcoming City**

**Sec 2-400. Purpose and Intent.** The City of Newton has long derived strength from its diverse community, including those who identify as immigrants. Through the City's commitment to social justice and inclusion, one of the City's most important objectives is to enhance its relationship with all its residents, including immigrants and to make all of our residents, workers and visitors feel safe and secure. Now, when the well-being of our hard working immigrants is again being jeopardized, we believe it is critical to reaffirm in this ordinance, our city's commitment to fair treatment for all. To accomplish this goal, we propose to join with cities and towns throughout the country in setting forth that our local officials and law enforcement will not be come partners with the US Immigration and Customs Enforcement ("ICE") to detain and deport immigrants, who have not committed a serious criminal offense, without the due process of law. This Ordinance seeks to clarify and codify the Newton Police's community policing policies presented by the police chief and the Mayor.

**Sec 2-401. Definitions.**

As used in this ordinance, the following words and phrases shall mean and include:

"Administrative warrant" means an immigration warrant issued by ICE, or a successor or similar federal agency charged with enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

Agency. "Agency" means every City department, agency, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.

Agent. "Agent" means any person employed by or acting on behalf of an agency.

Citizenship or immigration status. "Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States,

“ICE” means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.

“Immigration detainer” means an official request issued by ICE, or other federal agency charged with the enforcement of civil immigration laws, to another federal, state or local law enforcement agency to detain an individual based on a violation of a civil immigration law.

“Serious violent felony: ” means a violent felony for which there is no district court jurisdiction pursuant to M.G.L. ch. 218, § 26.

**Sec 2-402. Requesting or Maintaining Information Prohibited.** No City Agency, or agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law or judicial decision.

**Sec 2-403. Disclosing information prohibited.** Except as otherwise provided under valid federal law [above in section 2-402](#), no City agency or agent shall disclose information regarding the citizenship or immigration status of any person.

**Sec 2-404. Exceptions to Prohibitions.** The prohibitions in Sec 2-402 and 2-403 shall not apply where the individual to whom such information pertains provides his or her consent (or if such individual is a minor, the consent of that person’s parent or guardian), where the information is necessary to provide a City service or where otherwise required by valid state or federal law or where permitted under section 2-402.

**Sec 2-405. Use of City Resources Prohibited.** No City Agency or agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration law or to gather or disseminate information regarding the citizenship or immigration status of any person, unless permitted under section 4-402. Nothing in this section shall prevent the City, including any agency, department, officer, employee or agent of the City, from lawfully discharging his or her duties in compliance with and in response to a lawfully issued judicial warrant or judicial subpoena.

The prohibition in this Section shall include but not be limited to:

- (a) identifying, investigating, arresting, detaining, or continuing to detain a person solely on the belief that the person is not present legally in the United States or that the person has committed a civil immigration violation or that the person is deportable;
- (b) arresting, detaining, or continuing to detain a person based on any immigration detainer, federal administrative warrant, or any other such order or request in any form whatsoever or otherwise honoring any such detainer,

- warrant or request to detain, interview or transfer to federal authorities without a judicial warrant any individual in City custody;
- (c) notifying federal authorities about the release or pending release of any person for immigration purposes;
  - (d) providing federal authorities with non-public information about any person for immigration purposes; and
  - (e) enforcing any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.
  - (f) This section shall not apply when an investigation conducted by or information received by any City Agency indicates that the subject of the investigation
    1. Has an outstanding criminal warrant
    2. Has a prior conviction for a serious violent felony
    3. Is being investigated for terrorism.
  - (g) Notwithstanding this, Newton Police Department may request information from ICE relating to an individual in custody within the context of a criminal investigation, and may release to ICE the minimum amount of information required to effectuate the request.

**Sec 2-406. Ordinance Not to Conflict with Federal Law.** Nothing in this ordinance shall be construed or implemented to conflict with any otherwise valid and enforceable duty and obligation imposed by a court order or any valid federal or applicable law.

**Sec 2-407. No Private Right of Action.** This ordinance does not create or form the basis of liability on the part of the City, its agencies or agents. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury. The exclusive remedy for violation of this ordinance shall be through the City's disciplinary procedures for employees under applicable City regulations, unless the agency, department, officer, employee or agent of the City is lawfully discharging his or her duties as set forth in Sec 2-406.

**Sec 2-408. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Newton hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions were to be declared invalid or unconstitutional.