



Public Safety & Transportation Committee Report

City of Newton In City Council

Thursday, July 15, 2021

Present: Councilor Downs (Chair), Markiewicz, Oliver, Lucas, Malakie, Lipof, Bowman and Grossman

Also Present: Councilors Albright and Norton

City Staff: Lt. George McMains, Executive Officer; Sgt. Kevin Rudd and Chief John Carmichael, Jr. Newton Police Department and Maura O'Keefe, Assistant City Solicitor

Others Present: NewTV

#158-21 Requesting a discussion with the Police about gun regulations

COUNCILORS DANBERG AND ALBRIGHT requesting a discussion with the Police about gun regulations in Newton in order to explain the City's gun laws so that the Council and public can understand them.

Action: Public Safety & Transportation No Action Necessary 8-0

Note: Chief Carmichael, Lt. McMains and Sgt. Rudd joined the Committee for discussion on this item.

Chief Carmichael referenced Massachusetts General Laws (MGL), Chapter 140, the law identifying licensing requirements to carry firearms, including pistols, rifles, shotguns and firearms identification cards (FID cards). The MGL has very specific guidelines designating the local police chief as being the licensing authority.

Various types of licenses include class A licenses, unrestricted carrying a firearm. Other classes include hunting and target licenses. The FID card is a license for rifles and shotguns where a person would not be carrying on their person. MGL, Chapter 269, identifies all gun crimes. There are many gun crimes listed in the MGL.

Specifically related to the conversation tonight is MGL, Chapter 269, Section 10, carrying firearms on school property including elementary, high schools, colleges and universities, with the exemption of being a police officer.

The Police Chief in each Massachusetts community is the licensing authority. The chief being the licensing authority, under MGL there are two times that a person could be deemed a prohibited person, meaning they cannot be licensed under MGL. If a person has committed a felony, misdemeanor with imprisonment over two years, a person who has committed a violent crime, a

person that's carried a weapon or ammunition who has been charged, or any violation of our controlled substances laws, persons who may have been addicted to alcohol or drugs, or people who have been committed under the Department of Mental Health. There are other times when a person may be identified as a prohibited person as well, that's the other side of the statute which talks about suitability. The police chief takes all the factors into consideration when issuing a license. If there are factors that may suggest a person either in the past or existing factors is or could be a risk to public safety the chief can determine if that person is unsuitable to have a license to carry or FID card. The person would have the right to appeal if they were denied. The chief or his designee makes a conclusion that this person might be at risk of public safety denying that person a license. MGL on firearms is very comprehensive. Lt. McMains agreed.

Committee members questions and answers:

Questions and Answers:

Prior to the new Zoning Ordinance, please explain the process of permitting stores to sell firearms? Chief Carmichael answered anytime a person wants to open a gun store, there's the ability to restrict it, restrict the hours and restrict the zoning. The shop must be licensed, and licensing is completed the same way. One of the big issues in Massachusetts is you cannot sell firearms from your own home. If you are a dealer, a location is necessary to run that business. In Massachusetts, there's a limit on how many firearms an individual can sell. Lt. McMains added that the process begins with a business applying to the government for a federal firearms dealer license. Once that's complete, the person applies to the city to receive the chief's approval.

Would Craigslist sales fall under the provision? Can a business be run out of a home? Chief Carmichael answered a person in Massachusetts can sell up to four firearms. It would be necessary to complete the process through the Firearms Records Bureau database. In Massachusetts, a location outside of the residence is necessary to sell firearms.

Does the city require a person to go through a third party to sell firearms? Chief Carmichael answered no, an individual with a license to carry can make firearm transfers to another person. However, you're limited in how many firearms you can transfer in a year. Lt. McMains added Massachusetts law requires a registration form called an FA-10 be generated by a seller and sent to a state department database each time a weapon is purchased. Both the seller and buyer must have a license to carry. Blue cards are no longer used, the process is done electronically.

Is the licensing process for businesses applying defined by MGL? Chief Carmichael answered that it is Massachusetts law that a person must obtain federal firearms licensing first, then apply for their dealer's license to open a business.

When applications are received, does the department have a defined process or criteria on the decision making process to what businesses might be eligible? Does the same process apply for individuals who are applying? Chief Carmichael answered yes if a person has their FFL and obtain their state license. Both types of licenses are issued or denied based on the same criteria if there's

no local ordinance or bylaw restricting that. When the department approves the license, the application is sent to the state requesting a license permit be issued. Once issued, the license is good to carry statewide.

How does the department ensure consistency in the decision making process? Chief Carmichael answered that under Massachusetts law, the person will send in their application where the chief references the law to determine whether to approve or deny a license. When a license is denied, you must be certain that it is not arbitrary. Denial is based on either a past or ongoing threat to public safety. Consistency is necessary when reviewing applications. Other matters are reviewed including security, secure locks and doors ensuring a safe location. Unless the city has some type of restrictions including zoning limiting the number of shops, there are restrictions that can be placed. Lt. McMains added that individuals who apply for a license to carry, the department and government perform background checks. The department also completes a state checklist that dictates how records are checked, how firearms are logged in and logged out, when firearms are sold, how the books match up to sales, etc.

Would it be appropriate to create an ordinance spelling out those requirements? Lt. McMains answered that annually the department is required to conduct an inspection and is allowed to perform 'pop up' inspections to ensure the books match.

How many carry permits are issued in the city? Sgt. Rudd answered that there are approximately 2200 active licenses to carry permits.

Does a license to carry permit allow a person to walk anywhere with a firearm? Sgt. Rudd answered yes, within Massachusetts law unless it is private property requesting that they do not carry. Lt. McMains added that guns are not allowed in schools or on federal property.

Does the department deny permits to people with a history of abuse? Chief Carmichael answered yes, Massachusetts law identifies a violent individual and crimes associated with violence. The department has received license to carry applications from people who have had multiple situations where they were charged with violent crimes but were not convicted. The suitability issue and denying that person based on the fact of the incident and denying them on suitability. Lt. McMains added that a restraining order can also trigger suspension, revocation and denial to carry. Sgt. Rudd added that once a license is approved, the department also checks subsequent activity through the Firearms Record Bureau. If a person is charged with a crime or restraining order, the department receives notice and will determine if a license should be suspended.

Has there been any cases in the city, when the department suspended a license, and the decision was reversed on an appeal? Chief Carmichael answered yes, when an appeal happens, the person must appeal the denial or suspension within 90 days after that decision is made when it goes to the district court. A hearing is held where you lay out the reason on why the department either denied, suspended or revoked the license to carry. The licensee can rebut what the chief says. The judge may overturn the chief's decision.

What if a person passes away and want to gift their guns, does the limit of four apply? Chief Carmichael answered the transfer can be made if the person obtains a license. Many times, those types of situations are dealt with through the FFL. A person can inherit more than four guns.

In the state, is there a difference between a license to carry and license to conceal? Chief Carmichael answered Massachusetts law determines whether an individual can open carry or carry the firearm concealed. If a person is carrying a firearm with open carry, where people can see it, somebody is going to call. An officer responds and can demand to see the license to carry. There's no violation unless it's causing some type of an alarm or behavior issues. Lt. McMains added each applicant is interviewed and made aware of license to conceal. The law is not specific if a person must carry concealed or unconcealed.

If a person has a license to carry, do they also have a license to conceal carry? Chief Carmichael answered yes, if the person has a Class A license, they can carry a firearm on their person. Most people carry their firearm concealed.

Is there a different type of license allowing a person to own a firearm, but not to open carry or conceal carry? Chief Carmichael answered that there are several types of licenses available. License to carry unrestricted is for handguns. It is a crime if you open carry a rifle or shotgun in Massachusetts on any public way.

Please explain the process when the department is notified of someone having a restraining order and are licensed to carry? Chief Carmichael answered that if a person is charged with a crime or have a restraining order, the criminal justice information system requires the person to turn in their firearm and ammunition. The department is notified and will take immediate action to suspend or revoke the license to carry. By law, the person is required to turn their firearm, ammunition and license to carry card into the station.

Does the department know the number of weapons a person has? Chief Carmichael answered it is Massachusetts law, if you transfer a firearm, you must transfer that firearm through the system. It is not a requirement to register the number of weapons. The criminal justice information system may or may not show all the firearms that person may own or possess.

Does the department have a process to reach out to the licensee letting them know that they must turn in their gun, ammunition and license to carry card? Chief Carmichael answered that for new crimes, the person is issued a letter ordering them to turn in their firearm, ammunition and license to carry card. If it is a restraining order the person is supposed to act immediately through the restraining order and licensing authority. There are other loopholes in the law because there's also still a right to appeal. Lt. McMains added that in Newton those letters are served in hand demanding everything. If a person does not turn in a firearm and their license is suspended or revoked. that's a felony charge depending on the type of firearm.

Are licenses to carry, good indefinitely or is there a renewal process? Chief Carmichael answered licenses must be renewed every six years prior to expiring using the same process.

Does renewing the license every six years perhaps prevent a person with a mental health condition from being relicensed? Chief Carmichael answered yes, the department checks the person through the Department of Mental Health database and if they've been confined for mental illness, they would not be issued a renewal license.

How many revocations happen per year? Lt. McMains answered that between 2016 to 2019 there were approximately 24 to 36 suspensions or revocations based on a restraining order or a crime after the license has been issued. Sgt. Rudd answered that in the past two years approximately 12 licenses were either suspended or revoked.

Other than the police firing range, is there a place in the city to legally fire a gun, either indoors or outdoors? Chief Carmichael answered that you can fire a firearm outside if you're not within 500 feet of a dwelling and you are on your own property. Sgt. Rudd added that there is one place in the city, a golf course. Often, the department receives calls to check an area when somebody believes that they've heard a firearm go off but many times, its fireworks.

Without further discussion, Councilor Lipof made a motion for no action necessary on this item. Committee members agreed 8-0.

Referred to Public Safety & Transportation and Finance Committees

#197-21

Request for Ordinance Amendment to prohibit firearms within any public building
COUNCILORS NORTON, GENTILE, KALIS, DANBERG, LAREDO, HUMPHREY, MALAKIE, GREENBERG, KRINTZMAN, DOWNS, LUCAS, BOWMAN, CROSSLEY, OLIVER, MARKIEWICZ, NOEL, WRIGHT, LIPOF AND GROSSMAN requesting amendments to the City of Newton Ordinances to prohibit the carrying of firearms in any building owned and under the control of the City of Newton. This ordinance shall not apply to law enforcement officers and/or any building owned by the City and operated as public housing. The proposed ordinance includes amendments to Chapter 17 Sec. 22-23 to include a fine of three hundred dollars (\$300.00), pursuant to the authority granted by G.L. c. 40, section 21D.

Action: **Public Safety & Transportation Approved 8-0**

Note: Lt. McMains, Councilor Norton and Assistant City Solicitor Maura O'Keefe joined the Committee for discussion on this item.

Councilor Norton stated that this docket item would prohibit the carrying of firearms into public buildings, public parks and crowds, it would exempt public safety officers and public housing. The purpose in docketing the item is to maximize the health, safety and welfare of our residents. The Second Amendment guarantees the right to bear arms, but it is not without limit. The docketers believe that this ordinance is a common sense limitation that says all residents should feel safe in our public buildings, public spaces, and in crowds. We know too well that when people are allowed to

bring firearms into all those places, bad things can happen resulting in injury or death, even mass death. This docket item is a very specific way that we can respond to the overwhelming number of residents who reached out to us in opposition to a gun store and gun violence.

While there has been a difference of opinion among councilors strategically, there really is not a difference of opinion about the desire to reduce gun violence and accessibility. Not once in our discussions over the last few months, have I heard any councilor say they want to increase gun access. The difference of opinion has really been about tactics.

Councilor Norton then stated that the city's law department feels that we are on solid ground in terms of putting up a barrier to guns in the public sphere that can add an additional layer of protection to the public when it comes to the risk from gun violence.

Attorney O'Keefe highlighted how the drafting of this ordinance came about. This ordinance represents what the law department believes to be an appropriate exercise of municipal police power but balanced against the constitutional right of law abiding citizens to keep and bear arms. This ordinance is also the product of not only the law departments research and experience, but collaboration, input, guidance, not just from our own police department, but also the experts from EVERY TOWN FOR GUN SAFETY. Now the elements in this ordinance, have been taken directly from lessons learned from Second Amendment case law, whether explicit or implicit. Explicitly, the Second Amendment jurisprudence tells us that the city may ban the carrying of a firearm within government buildings. Implicitly, the same history of case law indicates that the city may impose reasonable restrictions on firearms if the regulation substantially relates to an important government interest. The city's important interest is in protecting the health, welfare and safety of its residents from the dangers inherent in gun use. This is of particular importance, where people tend to gather, and it is for these reasons that the law department has drafted this language.

Committee members and Councilors questions and answers:

Questions and Answers

Did anything stand out when drafting this language? Was everything included and captured? Attorney O'Keefe answered not as far as omissions go. She stated that she thought it were as comprehensive as it could be but settled on the conclusion that this ordinance can easily be amended because the Second Amendment case law right now is fluid, where there is a new composition of the Supreme Court and the volume of cases being brought under the Second Amendment has increased recently. It's incumbent upon me as a member of the law department to let you know that aside from omissions, she did second guess the inclusion of Sections 1 B and C, they were originally not in this draft, they were added after the consultation with Everytown for Gun Safety People. A similar ordinance with these inclusions and specifically a ban on the carrying of firearms in outdoor spaces, in crowds or public space are currently being challenged in the Virginia State Court. Fairfax County, Virginia has an ordinance similar in substance to this one, which has been the subject of a complaint and is currently being litigated.

If litigation were to evolve, we would be forced to think about the ordinance differently. Ms. O'Keefe, in your opinion and particularly in consultation with the experts, this draft is good for now? Ms. O'Keefe answered yes, it's not about the fact that we're not the first to be sued. That is not a consideration in the law department when we talk about risk assessment. The law department is willing to take this particular risk because in our assessment it fits squarely within current Second Amendment case law, jurisprudence in the first circuit, and within Massachusetts courts to put these reasonable limitations on carrying firearms under certain circumstances and in very limited locations. Part of the department's great apprehension with the zoning ban is that it's a ban. There is an abyss between putting a complete ban on some aspect of the Second Amendment and putting reasonable limitations on that. This ordinance represents what the law department believes to be reasonable limitations.

Is it necessary to include in the draft language, "owned by and under the control of the city of Newton?" Please explain where we might own a property but not be in control of it. Attorney O'Keefe answered that it would be a leased property. For example, Austin Street property is owned by the city but leased to the developer. The Hyde Center property the city has an ownership interest but doesn't have any control over it. The reason why it's owned and controlled, is to separate out public property from private property.

Please explain 1 c) in the draft language. Does it mean, I would be forced to walk around a blocked off block party if I were carrying? Would I be in direct violation of this ordinance? Ms. O'Keefe answered yes, from a technical standpoint. Whether or not that aspect of it where you have a temporal ephemeral aspect to the violation whether that's enforceable is questionable. Lt. McMains answered that people have a right to have access and egress from their residence. It is not so much that the department would enforce that. What would the courts say if a person who's legally licensed to carry a firearm leaves their home travels on a public way and must go through a closed off block party. He then stated that he did not know if the courts would uphold that.

How practical or enforceable is it to be watching for concealed firearms during festivals, etc.? Lt. McMains answered that he always tries to be alert to bulges in somebody's waistline, etc. Training includes looking for that and suspicious behavior as in the Boston Marathon. Ms. O'Keefe added as a point of clarification that this is not a criminal statute that the police would not be able to arrest someone for violating this ordinance. Every ordinance does have a discretionary aspect to it and the enforcing body would be expected to and they'd be allowed within their own expertise and skill to evaluate the specific facts and circumstances of any incident and be able to decide about whether there's an actual violation or some sort of technical violation that they would essentially let go. Lt. McMains stated that he respectfully disagrees with Attorney O'Keefe. Ordinances are not arrestable. However, if an officer advises a person that they're in violation of the ordinance and they continue to violate that ordinance, MGL 272, section 59 allows officers to arrest for a city ordinance violation if they don't comply. It is unlikely, a person would be arrested, but there is a possibility.

What buildings would this ordinance apply to? In the draft is the language "controlled by" the important part? Attorney O'Keefe answered that the ordinance is written very specifically to be

narrow enough to stay within the bounds of what's permissible under the Second Amendment. The city would probably enter into an agreement to lease a property that it would then take over for use even for a temporary amount of time. She then stated that she does not know if there is a good way to amend this ordinance to encompass that kind of situation or how frequently that would happen. She then stated that she would look at this issue to determine if it would be advisable.

If a person apparently violates this ordinance, could it be evidence for the department to revoke or suspend their license to carry because they disregarded our laws? Lt. McMains answered that he would not know what the chief would do.

Sworn officers is mentioned in the draft. Does this also cover state, customs, border officers, FBI agents and other federal officers? Ms. O'Keefe answered yes, as written.

Is the \$300.00 proposed fine the state maximum for a civil ordinance by city? Attorney O'Keefe answered yes, the maximum amount under state law that a municipality can levy as a fine.

Committee members thanked Councilor Norton and Attorney O'Keefe for their diligence on this item.

Without further discussion, Councilor Markiewicz made a motion to approve this item. Committee members agreed 8-0.

At approximately 8:20 p.m., Councilor Bowman made a motion to adjourn. Committee members agreed 8-0.

Respectfully submitted,

Andreae Downs, Chair

Draft Ordinance for Docket Item # 197-21

Firearms Prohibited on City Property

1. It shall be prohibited for any person to carry a firearm on their person, loaded or unloaded:
 - a) within a building owned by and under the control of the City of Newton;
 - b) in a park, recreation area or recreation facility owned by and under the control of the City of Newton or its agents;
 - c) on any public street, sidewalk or public way closed pursuant to a permit for block parties, street festivals or other neighborhood function under these Ordinances, during the duration of the permitted closure of the street, sidewalk or public way.
2. This ordinance shall not apply to sworn law enforcement officers.
3. This ordinance shall not apply to any building owned by the City and operated as public housing.
4. Violations of this section shall be punishable by a fine of three hundred dollars (\$300.00) per day. Each day a violation continues shall constitute a separate offense. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(d).