



Public Safety & Transportation Committee Report

City of Newton **In City Council**

Wednesday, December 8, 2021

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

Also Present: Councilor Krintzman

City Staff: Chief John Carmichael, Jr., Sergeant Michael Wade, Newton Police Department and Maura O'Keefe Assistant City Solicitor

Others Present: New TV; Tom Ayling, Operations Manager, VPNE Parking Solutions, LLC.

#425-21 Requesting renewal of bus license for Lasell University

VPNE PARKING SOLUTIONS, LLC. requesting biennial **renewal of one (1) bus license** for Lasell University. There are no changes proposed from the 2019 license.

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

Note: Sergeant Wade, Newton Police Department and Tom Ayling, Operations Manager, VPNE Parking Solutions, LLC. joined the Committee for discussion on this item.

Sergeant Wade stated that the buses passed City inspection, routes were approved, and appropriate paperwork was received.

Councilor Bowman explained to Mr. Ayling that there is interest in convening a working group of fleet managers to discuss reducing bus emissions and moving toward an all-electric fleet. Newton is serious about moving to a more efficient fleet although we appreciate the shuttles, they help us reduce our transportation emissions. She then stated that she would like a commitment from Mr. Ayling that they are willing to join the working group. Mr. Ayling agreed and said that he is hopeful electric buses will soon come to fruition. Currently, electric bus costs and access are difficult.

Councilor Bowman said that she is hopeful that Mr. Pelletier in the Transportation Division of Harvard University who was instrumental in helping bring electric buses to that campus will join the working group discussion.

Without further discussion, Councilor Bowman made a motion to approve the biennial renewal of the Lasell University bus license. Committee members agreed 8-0.

Docket items #426-21 through #428-21 were discussed together. Please refer to docket #428-21 for discussion of these items.

#426-21 Requesting renewal of taxi license
GEORGE MARRY, 50 Union Street, Newton Centre, MA 02459, requesting **renewal of one (1) taxi license** for Holden's Taxi, Inc.

Action: Public Safety & Transportation Approved 7-0, Councilor Bowman not voting

#427-21 Requesting renewals of taxi licenses
GEORGE MARRY, 50 Union Street, Newton Centre, MA 02459, requesting **renewal of two (2) taxi licenses** for Newtonville Cab Co., Inc.

Action: Public Safety & Transportation Approved 7-0, Councilor Bowman not voting

#428-21 Requesting renewal of taxi license
GEORGE MARRY, 50 Union Street, Newton Centre, MA 02459, requesting **renewal of one (1) taxi license** for Newton Taxi Co.

Action: Public Safety & Transportation Approved 7-0, Councilor Bowman not voting

Note: Sergeant Wade, Newton Police Department joined the Committee for discussion on these taxi renewal licenses.

Sergeant Wade stated that three taxis (one 2012 and two 2011) were recently inspected and passed City inspection and appropriate paperwork was received.

Without discussion, Councilor Grossman made a motion to approve these taxi renewals. Committee members agreed 7-0, Councilor Bowman not voting.

Docket items #429-21 through #435-21 were discussed together. Please refer to docket #435-21 for discussion of these items.

#429-21 Requesting renewal of public auto license
DHANRAJ MAHASE, 275 Grove Street, 2-400, Newton, MA 02466 requesting **renewal of one (1) public auto license** for Mahase Livery Services, LLC. (MHS Worldwide, LLC).

Action: Public Safety & Transportation Approved 8-0

#430-21 Requesting renewal of public auto license
DONALD LAPLANTE, 395 Lexington Street, Auburndale, MA 02466 requesting **renewal of one (1) public auto license** for Don's Car Service.

Action: Public Safety & Transportation Approved 8-0

- #431-21 Requesting renewal of public auto license**
MICHAEL GIMMELFARB, 274 Dedham Street, Newton, MA 02461 requesting **renewal of one (1) public auto license** for American Truck & Equipment Sales, LLC.
Action: **Public Safety & Transportation Approved 8-0**
- #432-21 Requesting renewal of public auto license**
NOEL DIAZ, 46 Central Avenue, Newtonville, MA 02460 requesting **renewal of one (1) public auto license** for Newton Limos Company, LLC.
Action: **Public Safety & Transportation Approved 8-0**
- #433-21 Requesting renewal of public auto license**
ISMAIL UNKOC, 184 River Street, West Newton, MA 02465 requesting **renewal of one (1) public auto license** for Izmo Limo, LLC.
Action: **Public Safety & Transportation Approved 8-0**
- #434-21 Requesting renewal of public auto license**
RAJIV KUMAR, 2323 Washington Street, #G3, Newton, MA 02462 requesting **renewal of one (1) public auto license** for Om Sai Enterprises Inc.
Action: **Public Safety & Transportation Approved 8-0**
- #435-21 Requesting renewal of public auto license**
LAHCENE BELHOUCHE, 32 Adams Street, Newton, MA 02460 requesting **renewal of one (1) public auto license** for Boston Cool Ride Limo Inc.
Action: **Public Safety & Transportation Approved 8-0**

Note: Sergeant Wade, Newton Police Department joined the Committee for discussion on these public auto renewal licenses.

Sergeant Wade stated that the public autos were inspected in April and June 2021. Newton Limos Company, LLC (#432-21) was inspected in November 2021. All vehicles passed City inspection and appropriate paperwork was received.

Committee members questions and answers:

Regarding Mr. Diaz's application (#432-21), is this the applicants address or are they operating out of 46 Central Avenue? Committee Clerk Delaney answered that the business address on the application is 46 Central Avenue. Public autos are not marked the same as taxis. Chair Downs added that public autos are allowed to be garaged at applicant homes.

Without further discussion, Councilor Markiewicz made a motion to approve these public auto renewals. Committee members agreed 8-0.

#436-21 **Requesting to amend City Ordinance for expanding overnight permits in municipal lots**
COUNCILORS BOWMAN, DOWNS, LUCAS, GREENBERG AND DANBERG
requesting that City Ordinance Chapter 30 19-200 C (4) **Resident sticker and visitor permit; municipal lot parking program** be reviewed including current enforcement and potential changes to the effective daily time of overnight permits for municipal lots to be changed from 7:00 p.m. to 7:00 a.m. to all hours that parking meters are not in operation.

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

Note: Sergeant Wade, Newton Police Department joined the Committee for discussion on this item.

Council members were provided with a draft ordinance, attached.

Councilor Bowman explained that with the current ordinance, residents can obtain free parking permits from the Police Department allowing them to park in municipal lots between 7:00 a.m. to 7:00 p.m. during the winter parking ban, but not during a snow emergency.

Councilor Bowman stated that this item was docketed when residents expressed concern thinking they had to remove their vehicle from a municipal parking lot before 7:00 a.m. or it might be towed. In conferring with the Transportation Coordinator, Law and Police Departments it was confirmed this is not the case. For example, if a municipal lot has a three-hour parking limit, you could park for three hours before 6:00 p.m., which is when enforcement stops, and you could stay in the lot until 10:00 a.m. without penalty. People think permits allow them to park no earlier than 7:00 p.m. and must remove their vehicle by 7:00 a.m. This docket item and draft ordinance language makes clear that lot time limits rule outside of the winter overnight parking ban. The Police Department and Traffic Bureau websites have been updated for clarity.

Committee members comments, questions and answers:

Comments:

This docket item refers to municipal lots only. Not MBTA, library or school parking lots. Most municipal lots are metered, except Adams Street. A review of this ordinance revealed that the whole section is outdated and needs revision.

Questions and Answers:

Per year, how many permits are issued? Sgt. Wade answered that there are over fifty permits issued per year. This year, between November 30 to December 8, 2021, fifty-five permits were issued plus the number of permits issued prior to November 30.

How many permits have been issued in prior years? Sgt. Wade answered that he did not have this information available. Last year, permits were not issued because the parking ban was not in effect due to COVID-19.

Are parking permits issued for the Nonantum parking lot?

Is it legal for cars to occupy lots all day on Sundays, when there is no enforcement? Councilor Bowman answered yes.

What are the time limits on the Adams Street parking lot? Councilor Bowman answered that the Adams Street lot has a three-hour parking limit.

Where do people park their cars during a snow emergency? Chair Downs answered that people plan. There are several private or MBTA lots available during a snow emergency, although it's not always convenient and it costs.

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

#188-21 Request for Ordinance Amendment to place Limitations on Firearms Business Licenses
COUNCILORS KRINTZMAN, DANBERG, DOWNS, KALIS, LAREDO, CROSSLEY, WRIGHT, NOEL, BOWMAN, HUMPHREY, GROSSMAN, LIPOF AND MARKIEWICZ requesting an ordinance that would limit the number of licenses to firearms dealers, gunsmithing and/or firing range licenses that may be awarded.

Action: **Public Safety & Transportation Approved 5-2-1, Councilors Oliver and Lucas opposed, Councilor Malakie abstaining.**

Note: Councilor Krintzman, Chief John Carmichael, Jr., Newton Police Department and Maura O'Keefe, Assistant City Solicitor joined the Committee for discussion on this item.

Council members were provided with a draft ordinance, attached.

Attorney O'Keefe stated that this draft was created before the zoning ordinance passed. This ordinance has the same effect. This draft limits the ability of the Police Chief to issue more than one firearms business license in the City. The recently-passed zoning ordinance has the same impact. This draft was meant as an alternative and can still be enacted. However, it doesn't clash with the current zoning ordinance because this deals with the licensing instead of the regular zoning controls that you find in your typical zoning enactment. The draft speaks directly to the license to sell, rent or lease firearms and the limitations on gunsmithing. Almost always you'll find that a license to sell goes with a gunsmithing license, and the sale of ammunition. You rarely find just a unique gunsmithing license or a license to sell.

Attorney O'Keefe then stated that like any other ordinance that touches the Second Amendment, this is subject to challenge. This draft was crafted in such a way that it's not an absolute ban, because it does allow the Police Chief to issue one license. An absolute ban on any Second Amendment right is more likely to be struck down if challenged. While this proposal is on questionable legal ground, it is defensible. Attorney O'Keefe discussed this draft with gun control experts across the state and country; they expressed similar concerns, but they agreed that it's defensible.

Councilor Krintzman said that he docketed this item from a desire to be as restrictive as possible with the proliferation of guns in the City. Several Councilors felt an outright ban would be constitutionally indefensible. But there is a significant difference between a ban and one license. We thought that if the City allowed one license, it could preemptively and proactively limit the total number of stores to one. Newton's zoning significantly limits the opportunities for gun stores. But uses evolve and change. The current buffer zones thus are also subject to change, and opens the possibility that new locations where a gun store could potentially locate may open up. We may be better served by limiting the number of licenses. He is hopeful that no license will ever be provided, but if it should be, there is some comfort knowing it would be the only one license. He then said that hoped the Committee would approve the draft ordinance.

Committee members questions, answers and comments:

Questions and Answers:

Is this draft unconstitutional or constitutional? Would the City be capable of winning in court? Attorney O'Keefe answered that it is the constitutionality of this ordinance is not settled. Whether the City would win a challenge is not clear, but she knows the City could put on a solid defense for it. She could not say that about an absolute ban.

How many other cities and towns in Massachusetts have passed an ordinance like this and has it been challenged? Attorney O'Keefe answered that she is not aware of any other municipality in the United States that has an ordinance like this. This was part of an effort from the Law Department to respond to the acute concerns from the City Council about what can be done and how do we confront the challenge of gun control. The Law Department proposed creative solutions that still worked within the statutory framework. Usually, limitations on licenses come in the form of zoning, because zoning has the same impact or a similar impact to limit the number of commercial licenses or commercial businesses that can operate in certain areas. This ordinance, the Law Department reviewed the licensing statutory framework in the Mass General Laws, Chapter 140.

At this time, considering that we do not have any gun manufacturers, gun smithing or gun stores in Newton can we wait to pass this ordinance? Attorney O'Keefe answered yes, the reason why it doesn't need to happen tonight is because of the work that the City Council did, with the zoning ordinance. Because of the zoning, one of the first questions that that must be answered by the Police Chief when an application comes in is where the business will locate. The Police Chief must evaluate the validity of that address under our zoning. Because of the way the zoning ordinance is written, I think it's doubtful that there could be more than one business in the City. This ordinance is really like a belt and suspenders. However, I will note that while this might not be necessary tonight, we know that development happens quickly and that the zoning ordinance doesn't always keep pace with development. That could impact the ability of a second firearms business to come into Newton under the zoning code.

If we were to approve this, and it is challenged in court, would our zoning ordinance also be put in jeopardy in a potential lawsuit? Attorney O'Keefe answered that this is a difficult question to answer. Anyone can sue, even without grounds. If someone was to challenge this ordinance, it would be a matter

of legal strategy whether they want to include the zoning ordinance. There's certainly nothing stopping someone from doing that. Independently the zoning ordinance and this ordinance have their own legal footing.

Is this draft riskier than what we currently have in place or is it similar? Attorney O'Keefe answered that the risk with this ordinance is the unknown because it is a unique take on an attempt to regulate firearms at the municipal level. The Law Department knows exactly what to do when the zoning ordinance is challenged because there are numerous cases that have created a pathway and a map for litigation. I know that putting a cap at one is risky. I know that if the cap were greater, the chance of being able to defend it successfully increases but then the purpose of the ordinance lessens. Completely prohibiting the Police Chief from issuing any licenses is just a non-starter.

Could this be challenged if and when someone applies for a second license which is denied? Attorney O'Keefe answered that as far as suing for this ordinance, it would be a hurdle for anyone to maintain a lawsuit not just for this ordinance, but also a problem for the zoning ordinance too.

Councilor Lukas said he would support a vote of no action necessary because he felt that Newton has something in place that is less likely to be challenged than this ordinance. If this item is voted no action necessary, can we bring it back at any time? Attorney O'Keefe answered yes.

Comments:

I am hopeful we will pass this ordinance. We have the process to move forward and put up the best defense we can.

To have one additional legal protection (ordinance) is a good thing. It is preferable if we make our statement and be proactive then to wait. Once someone tries to license a second gun store, it may look like we're trying to single out one individual or one business.

Chief Carmichael stated that there is one issue in Chapters 141-21 and 141- 22B (the sale of ammunition licenses). One of the issues is that they must have a location. When they apply for a dealer's license, they must have a building that would be in the City to apply for the license. Any person applying for a firearms license whether it's a license to carry, dealer's or license to sell ammunition there's a section in the law that allows them to appeal that. If a person applies for the license, and I as the Chief deny that license, they can go in front of a judicial review within 30 days. I'm sure this will be part of that appeal process if it occurred. Attorney O'Keefe added that this is exactly how this challenge would look. It would come from a denial of one of these licenses. The challenge of that ordinance would make its way through the courts because of that denial.

Without further discussion, Councilor Grossman made a motion to approve this item. Committee members agreed 5-2-1, Councilors Oliver and Lucas opposed, Councilor Malakie abstaining.

At approximately 8:00 p.m., Councilor Bowman made a motion to adjourn. Committee members agreed 8-0.

Respectfully submitted,

Andreae Downs, Chair

Resident stickers and visitor permits and ordinances governing their use shall be effective ~~daily between the hours of 7:00 p.m. and 7:00 a.m.~~during all hours that parking meters are not in operation for municipal lot parking. All other parking and traffic regulations and ordinances of the City of Newton remain in full force and effect and must be obeyed by sticker or permit parkers

Limitations on the Issuance of Firearms Business Licenses

1. Purpose

The primary purpose of gun control legislation in the Commonwealth is the promotion of public safety and prevention of crime and violence through thoughtful limitation of access to deadly and dangerous weapons to irresponsible people. This interest in protecting the health, welfare and safety of citizens is both compelling and significant, and it is shared equally by the City of Newton. To achieve this goal, and taking into consideration the Constitutional protections afforded to those duly licensed to own and possess firearms, it is a proper exercise of municipal police power to take action to appropriately regulate commercial access to firearms within the City of Newton. This ordinance is intended to supplement the statutory gun control framework of the Commonwealth.

2. Definitions

For the purposes of this ordinance, the terms used herein shall have the same definitions as set forth in M.G.L. c. 140 § 121, as may be amended.

3. Limitations on licenses for the sale of firearms issued in Newton

- (a) The issuance of one (1) license to sell, rent, or lease firearms, rifles, shotguns and machine guns in the City of Newton shall constitute reasonable grounds for the Chief of Police to deny any and all other applications for such license.
- (b) The Chief of Police shall not issue more than one (1) license to sell, rent or lease firearms, rifles, shotguns and machine guns to be exercised contemporaneously within the City of Newton.

4. Limitations on licenses for gunsmithing issued in Newton

- (a) The issuance of one (1) license to be in business as a gunsmith in the City of Newton shall constitute reasonable grounds for the Chief of Police to deny any and all other applications for such license.
- (b) The Chief of Police shall not issue more than one (1) license to be in business as a gunsmith to be exercised contemporaneously within the City of Newton.

5. Limitations on licenses for the sale of ammunition issued in Newton

- (a) The issuance of one (1) license to sell ammunition shall constitute reasonable grounds for the Chief of Police to deny all other applications for such license.
- (b) The Chief of Police shall not issue more than one (1) license to sell ammunition to be exercised contemporaneously within the City of Newton.
- (c) This section 5 shall not apply to the issuance of a license to sell ammunition to a licensed shooting club or firing range facility for regulated shooting on their premises.

6. Severability

If any portion of this ordinance is ruled invalid, such ruling will not affect the validity of the remainder of the ordinance.