



## Programs & Services Committee Report

### City of Newton In City Council

**Wednesday, January 19, 2022**

**Present:** Councilors Krintzman (Chair), Noel, Humphrey, Albright, Ryan, Wright, Baker, and Greenberg

**Also Present:** Councilors Laredo and Malakie

**City Staff:** Maura O'Keefe, Assistant City Solicitor; Carol Moore, City Clerk/Clerk of the Council; Nathan Giacalone, Committee Clerk

**#89-22      Request for a review and update of election ordinances in Newton**

COUNCILOR HUMPHREY requesting a review and update to the ordinances governing the operation and conduct of elections in Newton, including but not limited to:

- (1) Elimination of certain restrictions regarding political signage on private property, except for safety reasons, and updating regulation of signage on public property, partially to comply with more recent caselaw.
- (2) Requiring candidates themselves or a designee signing on their behalf to pull papers to seek municipal office.

**Action:** Programs & Services divided the item to create #89-22(1) and #89-22(2) from its existing sections.

Programs & Services Voted No Action Necessary on #89-22(1) 7-0 (Councilor Greenberg not voting)

Programs & Services Held #89-22(2) 7-0 (Councilor Greenberg not voting)

**Note:** The Committee was joined for discussion on this item by Atty. O'Keefe and Clerk Moore and each section was discussed individually.

Councilor Humphrey introduced the item as the lead docketer, stating that many election ordinances in Newton are out of step with the Constitution. He said that this item would likely serve as a "catch-all" for other needed elections updates.

**Section (1) Discussion:**

This section of the item addressed signage ordinances, which are often First Amendment violations already addressed by higher courts. In Newton, these restrictions address the time before an elections signs can be placed, the number of signs a homeowner may have, the size of

the signs and the amount of the property they can take up. Another question for this section is whether the City can regulate signage put up by private groups on public land. This ordinance is often not enforced.

The Law Department was made aware of this issue four years ago and drafted a new ordinance through Zoning & Planning. It was also discussed in the previous election.

Atty. O'Keefe spoke, saying that the existing sign ordinance pertains to all signs in Newton. Signage on City property is handled differently through a policy which focuses on their location, what they pertain to, and the type of public forum. As for the concerns raised in Section (1), these have been understood as unconstitutional for a long time and the municipal law community has understood that it is impossible to write a constitutional sign ordinance. The Supreme Court provided guidance on regulating signage through its 2015 decision, *Reed v. Town of Gilbert*. This decision supported the Law Department's contention that the sign ordinance was unconstitutional. Traditionally, the sign ordinance had been handled by not enforcing it to avoid constitutional issues. A new ordinance was drafted during zoning reform in 2018, but this ordinance ended alongside the reform. The Planning Department is revisiting this issue and will present a new ordinance to the Zoning & Planning Committee when ready, which Atty. O'Keefe said is the proper committee to address this ordinance. She stated this was because according to *Reed*, signs cannot be regulated based on content and the sign ordinance must treat them as a whole and advised the Committee to wait until seeing this draft ordinance before taking action.

Some Councilors disagreed with the recommendation that this should be a Zoning & Planning item, saying that since it addresses elections more than zoning Programs & Services should be appropriate to discuss it. They were also concerned about the schedule in Zoning & Planning allowing discussion of this item. Other Councilors agreed with the recommendation, saying that there will just need to be coordination with the Zoning & Planning Chair to fit this item into the schedule. It was also stated that since this item will make changes to Chapter 30, it will need to be properly advertised with a public hearing. Later in the meeting it was stated that the sign ordinance is scheduled for discussion in the early summer.

Councilors stated that these items were brought up this early in the term to handle them as far away from the elections as possible. They also stated that there will need to be a Rules amendment which clarifies what happens to items like this which cover issues from multiple committees.

#### Section (2) Discussion:

This section of the item addresses questions about candidates pulling papers and the identification process as questions have arisen about this topic in many Newton elections. Currently, if a candidate wants to pull nomination papers, they either need to do so themselves or have an official designee do so. One should not be able to pull papers in their own name then hand them off to somebody else.

There are questions over the interpretation of a state law. Atty. O'Keefe said the law in question Chap 53, Sec 17, says that the City Clerk shall not furnish blank nomination forms for candidates of municipal office to anyone other than the candidate or a designee with their signed, written approval. It is understood that the Clerk's Office complies with this law. Clerk Moore added that when candidates pull papers, the Clerk's Office ensures that they fill out appropriate pages and provide registered voter information. The Clerk's Office needs to ensure that it fills in the names of the candidates on these forms, though it cannot enforce candidates using white-out after they pick up the forms. It was also stated that the state statute is quite comprehensive and already answers the concerns of the docket item.

Councilors expressed concern about loopholes in the law which allow residents to pull papers without being candidates or a designee (and to make copies of these blank forms) despite it seemingly being clear regarding the initial nomination papers. They stated that this allows for residents to gather signatures for another individual before they make the decision to run. Pre-printing candidate names and the office being sought on the paper was suggested as a possible solution. It was also asked if guidelines or conduct codes could be implemented on those running for office.

Other Councilors stated that while this matter needs attention, a new ordinance is not the proper solution as it risks running afoul of state law. They said it is better handled by the Law Department and the Clerk's Office working together to develop the proper procedures.

Councilors suggested an administrative solution which would produce a receipt when a resident pulls nomination papers, stating that if the name of the candidate and the office is documented, the Clerk's Office can have a better record to use to deny nomination papers. While the Clerk's Office can work out the details of this, it can help ensure that nomination papers are used for the intended candidate.

Another question raised during discussion was over what activities and signage can be permitted within and outside the perimeter around polling places. In particular, it should cover signature gathering within this radius. This could reduce confrontations with police over what is and is not allowed.

Additional Questions:

**Does the law say that no blank documents should be handed out? It sounded like blank documents can be handed out to the correct person.**

Yes, blank documents are handed out the City Clerk's Office does not fill them out.

**Is there a penalty for falsely taking out papers as if preparing to run then handing them to another individual?**

No, this is not a crime, partly because election laws are designed to provide broad access to anybody who decides to run.

**Is it ok to pull papers for somebody else?**

The qualifying factors are that the person whom the Clerk hands the papers to be a registered voter in Newton, then the person can do whatever they want with the nomination papers as long as they do not alter them.

**Is it ok to pull papers then look for a candidate to run?**

Yes, there is another stopgap at the end of the process as when the nomination papers are submitted back to the clerk, the Clerk's Office rechecks to see if the person is qualified to run in the city.

**Could the Clerk's Office be able to pre-print the name of the candidate, the office, or both on the nomination papers it hands out?**

The concern is that some of the proposed enforcement could see the Clerk's Office denying ballot access to a candidate who shows up on the due date for nominations with properly filled out papers. An additional ordinance to close this loophole could conflict with state law.

**How is the ordinance enforced and how do we move forward?**

Enforcement is a challenge to the validity of the nomination papers. Moving forward, the question should be over what makes a valid nomination paper and a municipality's outer limits are in its ability to limit access to the ballot.

The Committee consensus was that it felt the Clerk's Office could provide nomination papers with the candidate's name and office already filled in, though it also acknowledged more research needed to be done before taking a final vote on this section.

Councilor Humphrey made a motion to vote No Action Necessary on (1) which carried 7-0 (Councilor Greenberg not voting).

Councilor Humphrey made a motion to Hold (2) which carried 7-0 (Councilor Greenberg not voting).

**#90-22      Requesting an ordinance supplement to state campaign finance laws**  
**COUNCILORS ALBRIGHT, LIPOF, NOEL, AND KRINTZMAN** requesting an ordinance as a supplement to the state campaign finance laws which would ensure that any communication that references an election or a candidate that is distributed by any means in the City of Newton within 90 days of an election must identify the person or persons responsible for the communication.

**Action:**      **Programs & Services voted No Action Necessary 8-0**

**Note:**      The Committee was joined for discussion on this item by Atty. O'Keefe.

Councilor Albright introduced the item as a lead docketer, stating that there were issues of anonymous campaign materials in the prior election and that the goal of this item is to make campaigns more transparent.

Discussion:

There have been conversations with the Office of Campaign & Political Finance (OCPF) which suggested that an item could be docketed on the local level to supplement state law on this matter. These discussions also showed that candidates and their committees are not required to put “paid for by” disclaimers on their materials. However, the City, not the OCPF, must enforce the local ordinance.

Some Councilors were opposed to the proposed ordinance, saying that it was too broadly written to pass constitutional muster that it is not appropriate for the City to add extra complexity to existing OCPF regulations. Candidates cannot be regulated with conduct codes, but the way they spend campaign funds can be. There were also concerns that it would be improper to put the Clerk’s Office in the position of enforcement. They stated that this could lead to conflicts of interest if Councilors file the complaints as the Clerk must work closely with the Council. There would be an issue if the President is filing the complaint since they lead negotiations on the Clerk’s salary. They also stated that anonymous speech has had an important role in American politics and that it needs to be asked both whether the City can and should be involved in micromanaging the election process.

Other Councilors said that the Committee should wait to see the new regulations being worked on by OCPF before making a final decision on this question. They stated that this item was created to address concerns over perceptions of dirty tricks and unbecoming behavior in the prior election. It was also stated that the proposed ordinance was an early draft that would be narrowed in scope and that it does not impact social media.

Councilor Albright made a motion to Hold which failed to carry with a vote of 4-4 (Councilors Ryan, Baker, Humphrey, and Wright opposed).

Councilor Baker made a motion to vote No Action Necessary but then withdrew the motion.

The anonymity issue is real, but we may be able to plug the hole of candidates and candidate committee affiliates who are not required to disclose, and we can require them to disclose without stepping on the Constitution.

This item needs more clarification and it will be a high bar for anything that requires enforcement. Alternatives should be explored.

Responding to a request that the proposed language be made more targeted and narrow, Atty. O’Keefe clarified that the draft ordinance was intentionally broad because the target of the ordinance is not yet understood. It was provided in this way to determine its purpose during Committee discussion. Additional direction from the Committee is needed to clarify the targets of the ordinance (if it still wants the ordinance) and to fix the problematic enforcement issue. The anonymity question is settled and clear.

The Constitutional issue over anonymity needs to be studied more. What is left is candidates and their committees.

The Committee consensus was that due to outstanding questions over the constitutionality of aspects of this ordinance, it should seek a vote of No Action Necessary and revisit this in the future.

Councilor Humphrey made a motion to vote No Action Necessary which carried 8-0.

The meeting adjourned at 8:33pm.

**Respectfully Submitted,**

**Josh Krintzman, Chair**

Proposed Draft Ordinance:

Sec. 6-7: Campaign Communications Disclaimers

The purpose of this ordinance is to supplement the general laws of the Commonwealth concerning the disclaimers required of candidates for elected office and political action committees in their communications to the public.

(a) Disclaimer Required: Any communication that references an election or a candidate that is distributed by any means in the city of Newton that is within 90 days of an election must identify the person or entity responsible for the communication.

(b) Investigation Required:

(1) Upon receipt of a Complaint from any source, the City Clerk shall notify the subject of the complaint by mailing a copy thereof to the subject via electronic mail and by first class mail.

(2) The City Clerk shall review any evidence of a violation of this ordinance. The City Clerk shall evaluate whether there is sufficient credible, reliable evidence to support the complaint of a violation of this ordinance. If the City Clerk finds that there is sufficient credible, reliable evidence to support the claim, the City Clerk shall issue a notice of violation to the subject of the complaint. If the City Clerk finds that there is not sufficient evidence to support the claim, the City Clerk shall so notify the subject of the complaint.

(c) Notice of Violation: If the City Clerk finds that there is sufficient credible, reliable evidence to support the complaint, the City Clerk shall issue a notice of violation to the person or entity who is the subject of the complaint. The notice of violation shall state the nature of the violation and the evidence reviewed in making the determination. The notice of violation shall state the penalty and the available rights of appeal.

(d) Response to the Notice of Violation:

(1) The subject of the notice of violation shall have 30 days from the date of the notice of violation to respond to the City Clerk. Any information in any form received after the expiration of 30 days shall be deemed untimely and may not be considered by the City Clerk.

(2) The response of the subject may contain additional information for consideration or payment of any fine assessed as a penalty. The City Clerk shall consider any additional information submitted by the subject of the complaint and issue a final written determination. Payment of the fine assessed will render the matter resolved with no further action necessary.

(e) Appointment of a Designee: The City Clerk may assign a designee to carry out the responsibilities of all or any part of the obligations of this ordinance.

(f) Violations: 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(f).