

CITY OF NEWTON

IN BOARD OF ALDERMEN

RULES SUB-COMMITTEE AGENDA

MONDAY, OCTOBER 19, 2009

ROOM 222 – 6:30 PM

ITEMS SCHEDULED FOR DISCUSSION:

- #129-08 ALD. JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen stating that any new item submitted but not yet approved or accepted by the Full Board of Aldermen is prohibited from any formal or informal discussion by any formal, informal or special committee of the Board.
[03-24-08 @ 9:11 AM]
- #258-09 CLERK OF THE BOARD requesting that Article II, Section 2A(1)B(1), **Procedures regarding Board action on traffic and parking petitions** and Article V, Section 3, **Procedures for referral and reporting of traffic and parking petitions**, of the Rules of the Board, be amended to reflect the procedures as outlined in Ordinance Z-12, passed on December 7, 2007. [08/06/09 @ 3:12 PM]

ITEMS NOT YETS SCHEDULED FOR DISCUSSION:

REFERRED TO LAND USE AND PROGRAMS & SERVICES COMMITTEES

- #474-08(2) ALD. HESS-MAHAN & VANCE proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to conform with a proposed amendment to Chapter 30 re transfer of the special permit granting authority to the Zoning Board of Appeals and/or the Planning & Development Board for projects that are not classified as Major Projects pursuant to Article X.

Respectfully Submitted

John Freedman, Chairman

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, MAY 20, 2009

Present: Ald. Johnson (Chairman), Baker, Brandel, Freedman, Hess-Mahan, Merrill, Parker and Sangiolo

Also present: Ald. Harney

Others Present: Dan Funk (City Solicitor), Karyn Dean (Committee Clerk)

Re-appointment by His Honor the Mayor

#107-09 JUDI MacKENZIE, 9 Oak Vale Road, Waban, re-appointed as a member of the NEWTON COMMUNITY EDUCATION COMMISSION for a term to expire on June 30, 2011 (60 days: 6/20/09)

ACTION: **APPROVED 6-0 (Freedman and Merrill not voting)**

NOTE: The Committee reviewed Ms. MacKenzie's resume and Ald. Brandel moved approval of her re-appointment. The Committee voted in favor.

#125-09 THE POST AUDIT & OVERSIGHT COMMITTEE requesting creation of a public tree protection ordinance and amendment of the current tree ordinance as recommended in the Tree Preservation Ordinance Report. [04-17-09 @ 9:14 PM]

ACTION: **HELD 7-0 (Merrill not voting)**

NOTE: Ald. Sangiolo explained that this item came out of a discussion in the Post Audit and Oversight Committee. The Committee wanted more information regarding the tree ordinance and how the tree funds were being spent. Marc Welch, Director of Urban Forestry, put together a very comprehensive report that made several recommendations. Post Audit then decided to docket an item to move forward with a public tree ordinance which was one of the recommendations. The Urban Tree Commission completed a draft of a public tree ordinance that was distributed to the committee at the meeting. Excerpts from the report were attached to the meeting's agenda and copies of the entire report were distributed at the meeting. Ald. Sangiolo said that the tree ordinance had not been officially put forward yet and the Law Department still had to review it. Marie Lawlor will be working on this.

Ald. Johnson said she would like the Committee to take the time to read the report and have Marie Lawlor come to the next discussion of this item to address this in more detail.

The Committee voted to hold this item.

#124-09 ALD. HARNEY requesting to amend the Rules and Orders of the Board of Aldermen to place a term limit on the President of the Board to two consecutive terms. [04-27-09 @ 10:38 PM]

ACTION: **HELD 8-0**

NOTE: Ald. Johnson explained that this item would have normally gone to the Rules Subcommittee. However, because the term of this Board is up at the end of the year, she felt it needed to be heard in a timely fashion. It will have implications for the next President of the Board. Ald. Johnson asked the Committee if they would prefer to send this item to the Rules Subcommittee or discuss it in the full Committee. The members agreed to keep it in Programs & Services.

Ald. Harney explained that he docketed this item after discussions with other communities and residents of Newton. He noted that in other communities, Presidents tend to serve a term or two and then move on. Constituents have asked him why, in Newton, Presidents tended to stay longer in office. Ald. Harney felt being President was a huge honor and that there were many on the Board who deserved the chance. He thought it would be fairer for a President to serve two terms then open the way for others to serve. He said he realized people can vote for whomever they want, but in a small legislative body like this, there was certainly pressure to vote in a particular way. Having term limits would free people up to run and to vote. Ald. Harney said he did not feel strongly about extending this item to Vice President as well.

Opposition to Term Limits

Ald. Baker said this new Rule would disqualify him for running for re-election as President. Under the Charter, the Board President serves at the pleasure of the Board. It is not an elected term that stays in place in matter what. If the Board is displeased and wants to replace the President, they may do so. Ald. Parker said that was true, but it was unlikely to happen. Ald. Baker also pointed out that if a particular member is interested in running for President, they may do so. He felt these safeguards were sufficient.

Ald. Merrill said he did not support term limits. He said that anyone who would like to be President can run for the position and there was nothing to prevent that. He was happy with the process that is currently in place.

Ald. Hess-Mahan didn't think limits were necessary. He said there have been no Presidents that have served more than 3 terms for decades, aside from Wendall Bauckman. Because it is not a party system, he felt they avoided the abuses that could come from that. He saw the presidency as a meritocracy. If you have the votes, you're the President, and if not, then someone else is.

Support of Term Limits

Ald. Parker said he might not support term limits for publicly elected officials, but it was not inconsistent to support term limits for the Board's own leadership. He said having a long term incumbent makes it difficult for someone else to run against that person. He

thinks there should be a term limit but two terms was too few. He pointed out that aside from Wendall Bauckman serving for 10 terms (20 years), the most terms served by any President was 3 (6 years). He was support a limit of 3 or 4 consecutive terms. That person could run again after some time off and be elected if it was the will of the Board. Furthermore, he thought turning off positions more frequently was a good idea. It would bring fresh perspective and a new dynamic to the Board. He also felt it might be appropriate to have term limits on chairmanships as well. Ald. Sangiolo and Ald. Brandel agreed.

Ald. Brandel said because they did not operate under a two-party system, the mechanism for turning over leadership wasn't insured. Therefore, he felt there was good justification for term limits. He also thought that if term limits were placed on President, they should be staggered against the term of the Mayor to provide continuity and also to avoid what might be an unhealthy alliance.

Ald. Johnson noted that the School Committee has a 2 consecutive term limit. Ald. Parker said the Charter Commission put the term limits on the School Committee to get the current Chair off the Committee. It didn't necessarily have anything to do with the other members.

Amendment Request

Ald. Brandel asked if the item could be amended to include chairmanships. Ald. Johnson felt adding this would need more clarification and it should be a separate docket item.

Information Requests

Ald. Johnson asked Ald. Harney which other communities had term limits. He said he would have that information for the next discussion of this item.

Ald. Johnson said she would like to know the tenures of the Presidents over the past 50 years. A list is attached to this report. Ald. Sangiolo would also like to see the votes of past caucuses. This will require some research and the clerk will get it to the committee in time for the next meeting.

Ald. Parker moved to hold this item and the Committee voted in favor.

#50-09 CLERK OF THE BOARD requesting that Article IX, Section 2 of the Rules of the Board be updated to reflect the use of the most current version of Robert's Rules Newly Revised 10th Edition (Cambridge, Mass; Perseus Publishing, 2000) [02/05/09 @ 12:21 PM]

ACTION: **APPROVED 5-0 (Freedman, Parker and Sangiolo not voting)**

NOTE: This item updates the Rules of the Board to refer to the most recent edition of Robert's Rules. The Committee voted to approve this item.

#33-09 ALD. LAPPIN requesting an amendment to the Rules of the Board of Aldermen so that appointments requiring confirmation to the Farm Commission be referred to the Committee on Community Preservation. [01/22/09 @ 9:03 AM]

ACTION: **APPROVED 5-0 (Freedman, Parker and Sangiolo not voting)**

NOTE: Appointments to the Farm Commission are currently referred to the Zoning and Planning Committee. Ald. Yates, Chairman of Zoning and Planning, agreed to allow the appointments to be transferred to the Committee on Community Preservation. Ald. Lappin, Chairman of the Committee on Community Preservation, requested this transfer. The Committee voted to approve this item.

#154-08 ALD. JOHNSON requesting to establish a definition and appropriate usage of the Committee of the Whole of the Board of Aldermen as are all committees of the Board. [4/10/08 @ 9:09 AM]

ACTION: **APPROVED 6-0-2 (Parker, Merrill abstaining)**

NOTE: Ald. Johnson explained that since the last discussion of these following items, City Solicitor, Dan Funk provided some potential language to clarify this and the following rules in question.

Ald. Freedman explained that the Rules Subcommittee felt it would be helpful to have a definition of Committee of the Whole in the Rules of the Board. This language would amend Art. II Sec 11 by adding Subsection D as follows:

The Committee of the Whole consists of the entire body of members of the Board in attendance, meeting as if it were in a committee setting and subject to the rules of committee procedure. The results of votes taken in Committee of the Whole are not final decisions of the Board but have the status of recommendations which the Board is given the opportunity to consider further and which it votes on finally under its regular rules.

Ald. Parker did not feel it was necessary to add this language. It was his understanding that when something was not included in the Board Rules, they would refer to Robert's Rules. Dan Funk said this puts the definition of Committee of the Whole, in the way the Board has historically used it, into the Rules for clarity. Ald. Parker said he would abstain.

The Committee voted to approve the above language with Ald. Parker and Ald. Merrill abstaining.

#153-08 ALD. JOHNSON requesting to establish a definition and appropriate usage of the Long Range Planning Committee of the Board of Aldermen as are all committees of the Board. [4/10/08 @ 9:09AM]

ACTION: **NO ACTION NECESSARY 7-1-0 (Sangiolo opposed)**

NOTE: Ald. Freedman explained that there was some concern that the Long Range Planning Committee was not a temporary committee since it has been in existence for many years. Ald. Johnson moved no action necessary on this in the Rules Subcommittee because she plans on docketing an item to deal with this in a different way. The Committee voted to approve No Action Necessary with Ald. Sangiolo opposed.

#130-08 ALD JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen requiring that referral of any and all new business, communications, petitions and orders docketed before the Board of Aldermen be restricted to one or more of the standing committees of the Board of Aldermen: Land Use, Programs and Services, Public Safety and Transportation, Zoning and Planning, Finance, Real Property Reuse, Post Audit and Oversight, Public Facilities and Committee on Community Preservation. [03/24/08 @ 9:11 AM]

ACTION: APPROVED Alternative 1B 7-1-0 (Parker opposed)

NOTE: Ald. Freedman explained that this item was meant to bring clarity to the referral process. When it is not clear where an item should be assigned, the current Rules allow the President to assign it to a special committee, including a Committee of the Whole. The question was whether or not there should be some restrictions to that. The City Solicitor offered language that would give the President more power, and alternative language that would be more restrictive. Any new language would amend Art I, Sec 3 C of the Rules of the Board.

The less restrictive language (Alternative 1A) clarified the process for an appeal of the referral and allows any alderman to challenge it. The more restrictive language (Alternative 1B) addressed the concern that an assignment might be made without any particular attention being brought to it, and some aldermen may inadvertently miss it. This language calls for any referrals to Committee of the Whole to also be put on 2nd call for automatic review and discussion.

Alternative 1A:

Any other new business that does not fall within the jurisdiction of the nine established permanent committees as described above shall be referred by the President to such committees as he/she deems appropriate, including the Committee of the Whole. The President may also refer new business that is within the jurisdiction of one or more of the nine permanent committees to a special committee or to the Committee of the Whole, but such referral, upon objection by a member of the Board, shall be subject to appeal to the Board who can vote to reassign such new business to alternate committee(s).

Alternative 1B:

Any other new business that does not fall within the jurisdiction of the nine established permanent committees as described above shall be referred by the President to such committees as he/she deems appropriate, including

the Committee of the Whole: however, upon objection by a member of the board, such referral shall be subject to appeal to the Board who can vote to reassign such new business to an alternate committee or committees. In the event that the President wishes to refer new business that is within the jurisdiction of the nine permanent committees to a special committee or to the Committee of the Whole, the item shall be placed on 2nd call by the Clerk of the Board and the decision on the referral shall be subject to a majority vote of the Board.

The Rules Subcommittee approved a revised version of Alternative 1A as follows:

The President shall refer new business to one or more of the nine permanent committees, to a special committee, or to the Committee of the Whole, but such referral upon objection by a member of the Board shall be subject to appeal to the Board who can vote to reassign such new business to alternate committees.

Ald. Johnson said she was concerned about the President referring items directly to Committee of the Whole because it circumvents the committee structure. She noted that they receive their aldermanic packets on Friday night and if they are delayed in looking at it, they might miss something. Having the item automatically put on 2nd call prevents that. In an effort to be more transparent, if an item is not going to one of the nine standing committees, then attention should be called to it. Ald. Johnson would like to make the process clearer regarding how that referral could be made and under what circumstances. A list of all items that have been referred to Committee of the Whole by Ald. Baker is attached.

Ald. Parker said his understanding was that all business had to go to one of the substantive committees. He felt that it was in violation of the Rules for anything to be sent directly to Committee of the Whole. Mr. Funk said that is the default position but subsequent to that, the rules state that “unless objection is made, the President may refer any other new business to such committees as are deemed appropriate but this assignment may be subject to appeal by the Board.” Ald. Parker thought that meant that if an item is clearly referable to a particular substantive committees and the President refers it to a different substantive committee, then the Board could appeal that. He did not interpret that as allowing the President to send something to Committee of the Whole when it could be sent to one or more of the committees. Ald. Parker felt that both Alternative 1A and 1B give the President the opportunity to circumvent the committee process. He would like to go in the direction of making it clearer that the President may not refer items that could be referred to one of the standing committees to Committee of the Whole. Ald. Brandel agreed saying that being in Committee of the Whole presented a different dynamic than a committee meeting. The committee setting allows for items to be looked at through several different lenses with much more give and take.

Ald. Baker disagreed. He said he asked Ouida Young in the Law Department about sending an item to the Committee of the Whole. He was counseled that it was permissible and he said he did not violate the Rules. He also sent a memo in the packet telling the Board that he was referring this particular item to the Committee of the Whole

and why. Two memos are attached to this report. Ald. Baker, as an example, spoke of the high school bond issue item. He said that item could have gone through three committees. He called and asked the chairs of those committees to see if they would agree to a Committee of the Whole for the item.

The chair of the Finance Committee also had suggested a Committee of the Whole. Ald. Baker thought it made sense to handle that item in this way since most people on the Board were interested in it. He felt having it go through the committees was an unnecessary step. If a particular committee refused to take it up for discussion, then it would be difficult to move the item forward except for discharge, and discharge is a very cumbersome remedy. He said that there would be few cases that would be referred to Committee of the Whole. It would have to be an extraordinary item and all other items would be referred as usual.

Ald. Brandel felt it was not a good thing to give the Board President more power than he/she already has. He agreed with Ald. Johnson's concept that if an item is being referred in a non-standard way, it should be called to the attention of the Board. He felt it made the process more democratic and he favors Alternative 1B. He also thought it is better to slow down the democratic process rather than speed it up. It allows for a healthier legislative body. Ald. Parker agreed and said before President Baker's term, he could not recall any item being referred directly to Committee of the Whole. Ald. Johnson agreed. Mr. Funk said there were some items regarding litigation that were referred to Committee of the Whole, which is a different circumstance.

Ald. Freedman also felt it was wise to keep the democratic process alive and well, but he did not see this change as a barrier to democracy. The legislative body could make objection; each member of the body would be involved in the discussion; and the item would ultimately come back to the full board for action. He felt these 3 avenues gave ample opportunity to carefully look at any item. He felt the board was already too process-intensive as is and would like to see it streamlined. He would like to go back to the original language of Alternative 1A.

Ald. Baker said he was persuaded by Ald. Johnson's concern about keeping the process transparent and he did not feel strongly about whether to do it by objection or by 2nd call. He felt it was important, however, to have the ability to refer an item to the Committee of the Whole. If there is an objection then there is a vehicle for that via 2nd call, and the Board can make the decision. He was comfortable with that.

Ald. Johnson said this was an effort to make this process as clear as possible. She was comfortable with Alternative 1B which she felt was better than what was in the current Rules. Ald. Parker and Ald. Brandel thought that a two-thirds or three-quarters vote should be required instead of a simple majority. Mr. Funk felt that a simple majority would be more palatable to the Board. Ald. Hess-Mahan agreed.

The Committee voted to approve Alternative 1B with Ald. Parker opposed.

#129-08 ALD. JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen stating that any new item submitted but not yet approved or accepted by the Full Board of Aldermen, is prohibited from any formal or informal discussion by any formal, informal or special committee of the Board. [03/24/08 @ 9:11 AM]

ACTION: **HELD 7-0 (Freedman not voting)**

NOTE: Ald. Johnson explained that this item came out of a late file docket item by the Mayor regarding the high school bonding. A suspension of the rules was required and the motion failed to carry. Therefore, the item was not docketed at that meeting. In the time between that Board meeting and the next (when it could be docketed under the normal rules) there was an informational meeting wherein the issue was discussed with members of the Board and the Mayor. Ald. Johnson's concern was that if an item is not scheduled for discussion on an agenda, it can not be discussed.

The Rules Subcommittee voted to recommend approval of the following language that would amend Art. V, Sec 2B of the Rules:

If the item is not admitted to the docket under suspension of the rules, it may not be discussed by any committee of the Board until after it has been admitted to a subsequent docket in accordance with these rules.

Ald. Baker said the Board and the President of the Board had asked the Mayor to come to brief them periodically on the high school and that was part of the discussion of the budget that he was continuing in a Chairmen's meeting. He said it was not an attempt to bypass the docket process. The discussion in the Rules Subcommittee persuaded him that making the policy explicit was the right thing to do. Ald. Baker said the Chairmen's meeting is designed to help talk about what the Board is going to do. It is not designed to take any action on an item and is only designed to provide information.

Ald. Hess-Mahan and Ald. Freedman noted that there needed to be some leeway to discuss items in some sort of forum. Ald. Hess-Mahan said he did not see a problem with a discussion in a meeting that would not be rendering any kind of decision. Ald. Sangiolo said that discussing an item that has not been accepted to the docket is contrary to the will of the Board. She agreed with Ald. Johnson that unless and until an item is accepted to the docket and on a committee agenda, it should not be discussed.

Mr. Funk suggested defining committees in which discussions would be allowed in these circumstances.

The Rules Subcommittee also agreed upon the following language regarding new docket items and their acceptance or rejection. This language would amend Art. II of the rules of the Board by adding Sec. 2B(3) as follows:

Upon approval of the first call vote, all new docket items appearing on the docket bearing the date of the Board's first call vote shall be considered accepted for Board consideration with corresponding committee assignments as noted on the

docket. However, the acceptance of any new docket item is subject to being placed on 2nd call for Board discussion at the same meeting at which the item first appears on the docket. At 2nd call, the Board may accept or reject the item for docketing, or postpone to a date certain the decision on whether to accept or reject it as a docket item.

Ald. Parker said it was his understanding that every item on the docket gets referred to a committee unless the Board votes by a supermajority to kill it. He referenced the Mark White discussion and said the Law Department wrote an opinion to that effect. In that case, he said there was a Robert's Rules provision that let the Board vote to kill that item, but there was not the appropriate majority so it had to be referred to a committee. Ald. Parker wondered whether they really wanted to have the ability for a simple majority vote to kill an item before it goes to committee. He suggested that it should at least take 2/3. Ald. Baker said that if an item is referred to a committee and is put on second call and then the Board says it does not want to see it go anywhere, then it is gone. Mr. Funk said there is currently no rule for that and that is why they had to reference Robert's Rules for the White item. Ald. Parker said the standard was very high for invoking that Rule from Robert's Rules and this new language would make it extremely easy.

The Committee voted to hold this item.

Motion to adjourn.

Respectfully Submitted,

Marcia Johnson, Chairman



Memorandum

To: Rules Subcommittee
From: David A. Olson
Re: Docket Item #258-09
Date: October 16, 2009

Rules Subcommittee Members,

At your meeting on Monday, October 19, 2009 at 7:00 pm, you will be taking up docket item:

#258-09 CLERK OF THE BOARD requesting that Article II, Section 2A(1)B(1), **Procedures regarding Board action on traffic and parking petitions** and Article V, Section 3, **Procedures for referral and reporting of traffic and parking petitions**, of the Rules of the Board, be amended to reflect the procedures as outlined in Ordinance Z-12, passed on December 7, 2007. [08/06/09 @ 3:12 PM]

I have requested that two sections of the Board Rules be amended to reflect the new Traffic Council procedures that are defined in Ordinance Z-12 which the Board passed in December of 2007.

The first request is the deletion of Article II, Section 2, B(1). With the adoption of ordinance Z-12 the Board amended Chapter 19 of the City Ordinances and gave the authority to approve traffic related items to the Traffic Council.

Ordinances Sec. 19-26. Authority and role of Traffic Council

(a) Subject to the provisions of section 19-30, the traffic council shall have sole authority to adopt, amend and repeal regulations governing operation and parking of vehicles at particular locations on streets and public grounds under the control of the city, and for such purposes, the traffic council shall constitute the rule-making body of the city under the provisions of section 18 of chapter 90 of the general laws and section 2 of chapter 85 of the general laws.

With the adoption of the text in Chapter 19 Sec 26(a) of the City Ordinances, the text of Article II, Section 2, b.(1) of the Board Rules should be deleted as it is no longer valid:

ARTICLE II - BOARD MEETINGS AND PROCEDURES

Section 2 – Order of Business

B. First Call of Committee Reports

(1) Procedures regarding Board action on traffic and parking petitions.

At the time that the Chairman of the Public Safety and Transportation Committee on first call moves the acceptance of that committee report, such Chair shall include the acceptance of the report of the Traffic Council, excepting any items already identified for second call.

Items which have been considered and been the subject of a recommendation made to the Board by the Traffic Council may be finally acted upon by the Board or referred to the Committee on Public Safety and Transportation for such committee's report. However, once the Traffic Council has made its recommendation on a traffic or parking petition, the Board may not recommit that item to the Traffic Council.

The second Request is the deletion of Article 5, Section 3 of the Board Rules. Again the changes adopted by the Board in Ordinance Z-12 now provide a definition of the process in Chapter 19:

Section 19-29. Docketing of petitions.

Upon the receipt of a petition concerning a matter within the jurisdiction of the traffic council, the clerk of the board of aldermen shall make an initial determination whether it complies with the requirements of the foregoing section. In the event that it so complies, the clerk of the board shall promptly place the matter on the agenda of the traffic council, and simultaneously notify the board of aldermen that the matter has been docketed with the traffic council. (Ord. No. Z-12, 12-03-07)

With the adoption of the text in Chapter 19 Sec 29 of the City Ordinances, the text of Article V, Section 3 of the Board Rules should be deleted as it is no longer valid:

ARTICLE V - CLERK OF THE BOARD

Section 3. Procedures for referral and reporting of traffic and parking petitions.

A. Upon the receipt of a petition concerning a matter which comes within the jurisdiction of the Traffic Council, the Clerk shall place the matter on the agenda of the Traffic Council and simultaneously place the same item on the Board's Docket.

B. Whenever the Traffic Council submits to the Board its report regarding recommendation(s) for action on traffic and parking petitions, the Clerk shall include a notation regarding such report on the Reports Docket, and shall include and distribute such report as part of the Friday packet provided for in Section 2. above.