

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE REPORT

MONDAY, SEPTEMBER 9, 2013

Present: Ald. Gentile (Chairman), Ciccone, Linsky, Salvucci, Rice, Blazar, Fuller, and Lappin
Also present: Ald. Albright, Baker, Danberg, Hess-Mahan, Sangiolo, and Yates
City officials present: Maureen Lemieux (Chief Financial Officer), David Wilkinson (Comptroller), and Jim Reardon (Treasurer/Collector)

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#185-12 **ALD. BAKER, BLAZAR, SANGIOLO, LINSKY, ALBRIGHT & DANBERG**
requesting that the Board of Aldermen adopt a RESOLUTION to His Honor the Mayor asking that, when the Mayor seeks future Board approval for bonding the cost of additional capital facilities or equipment for the schools, he include in that funding request, as well as in the city-wide Capital Improvement Plan, the estimated costs needed for funding the capital technology needs of the Newton Schools, including the appropriate portions of the estimated project costs of the School Committee's three-year district-wide technology plan not anticipated to be funded by the Information Technology Department budget; the anticipated technology grants from Boston College for the elementary schools; and/or estimated revenue from the E-rate Technology Reimbursement Program.
[06/11/12 @ 11:23 PM]

PROG & SERV APPROVED 6-0 on 07/11/12

ACTION: **HELD 8-0**

NOTE: Ald. Baker provided the attached text for the proposed resolution. The Chairman pointed out that the Programs and Services Committee did not have the resolution text before them when they voted to approve the resolution. Ald. Baker's draft resolution has since been provided to the Programs and Services Committee members via e-mail for review.

The primary reason for the requested resolution is to acknowledge that the technology needs of the Schools are a priority and should have established funding mechanisms. The School Department has a number of technology needs that are important tools in educating students, which are not funded. In the past, the Administration has used creative ways to provide funding for school technology. It would be helpful if there were a technology plan that provided estimated costs for technology projects and equipment. The draft resolution does not ask for a funding mechanism for smaller projects and equipment purchases; however, the co-docketors and several Committee members felt that it was important to include a request for a technology plan to capture the funding plan for the smaller projects and equipment.

Chief Financial Officer Maureen Lemieux informed the Committee that the Information Technology Cluster is currently working to define the City and School technology needs and to

determine how to fund those needs. The group should be ready to issue its five-year technology plan within the next month. Ms. Lemieux suggested that the Committee hold the item until there was an opportunity to review the 5-year plan.

There was some concern that approving the resolution makes a blanket statement that the Board of Aldermen supports the technology funding needs no matter what the cost. It was also pointed out that the School Committee and School Administration usually determine how to prioritize their needs in terms of allocating money to those needs. It would be helpful to see the technology plan and meet with the School Department before making a decision on the resolution.

Ald. Lappin moved hold on the resolution, which carried unanimously. There was suggestion that the work progressive be removed from the draft resolution text for the next discussion.

#12-13 ALD. YATES requesting that the City's Treasurer/Collector accept credit cards as a method of payment for municipal bills.

ACTION: **NO ACTION NECESSARY 8-0**

NOTE: Ald. Yates docketed the item because he learned that citizens could not use credit cards to pay bills at the City's Treasurer/Collector Department. It would be nice to offer that convenience to citizens. Treasurer Jim Reardon joined the Committee and explained that the Treasurer/Collector does not physically accept credit cards due to the cost. The credit card companies charge a transaction fee, which can be quite expensive depending on the amount of money to be charged to the credit card and the City cannot absorb the cost of the fees. However, citizens can pay their bills online with a credit card, as the online bill payment system provides the citizen with a list of the possible fees that could be charged to the citizen and the citizen agrees to pay those fees.

Ald. Salvucci moved no action necessary on the item. It is currently not practical for City departments to physically accept credit cards as a form of payment. The motion carried by a vote of eight in favor and none opposed.

#304-13 HIS HONOR THE MAYOR requesting approval of a settlement of workers' compensation claims against the City of Newton in the amount of twenty-five thousand (\$25,000) relevant to injuries sustained by an employee in 2006 and 2007. [09/03/13 @ 4:56 PM]

ACTION: **APPROVED 7-0 (Linsky not voting)**

NOTE: Chief Operating Officer Maureen Lemieux reviewed the request for funds to settle a worker's compensation claim. An employee of the City was disabled from injuries sustained at work on two occasions, in 2006 and 2007. The employee is unable to return to work. The employee currently receives his retirement as well as \$705 a week in partial disability worker's compensation. The employee is eligible to receive the \$705 for approximately 100 weeks or for a total of \$76,000; however, he has agreed to a lump sum settlement of \$25,000.

By agreeing to the lump sum payment of \$25,000, the employee will no longer receive the \$705 per week. It is expected that the City will save approximately \$50,000 over the span of two years due to the settlement of this claim. Ald. Lappin made a motion for approval, which carried unanimously.

#7-13(2) HIS HONOR THE MAYOR requesting authorization to transfer the sum of thirty thousand dollars (\$30,000) from the Fiscal Year 2014 Budget Contingency Account to the Executive Office Engineering Services Account for the purpose of funding an engineering study regarding the Waban Hill Reservoir and embankment on Manet Road in Chestnut Hill.

ACTION: **APPROVED SUBJECT TO SECOND CALL 8-0**

NOTE: Chief Financial Officer Maureen Lemieux presented the request for a transfer of \$30,000 from budget reserve to a special appropriation account under control of the Executive Office to provide funds for an engineering study on the Waban Hill Reservoir. Once the study is completed, the City will have a better understanding of the options for reuse of the Waban Hill Reservoir site and be able to place an informed value on the site. The site is owned by the MWRA, which is considering selling the property. The City of Newton is interested in purchasing the site. Chief Operating Officer Robert Rooney will manage the study, as he has been involved in the discussions regarding purchasing the site.

The engineering study will consist of soil borings, soil sampling, soil testing, and a slope stability analysis. In addition, the engineering company will look at the feasibility of removing a portion or the entire embankment and the expected lifespan of the embankment. The study will also include recommendations for maintenance of the embankment.

There was some concern among the Committee members that there is no way to hold an engineering company accountable if the study does reveal a problem that exists. It was pointed out that there is likely a disclaimer in the contract between the City and an engineering firm stating that the firm will only guarantee areas that have been studied and tested. It was suggested that the City could investigate the possibility of requiring that the engineering firm provide some type of liability insurance or bond to the City. The Committee asked that the Administration investigate the possibility and provide the information to the Board of Aldermen.

Ald. Rice moved approval of the item subject to second call, which carried unanimously.

REFERRED TO LAND USE & FINANCE COMMITTEES

#193-13 ALD. HESS-MAHAN proposed that the annual fee for an auto dealer license be increased from \$100 to \$200 per G.L. chapter 140 sec. 59.

ACTION: **APPROVED 6-0-1-1 (Fuller abstaining; Ciccone recused)**

NOTE: Chairman of Land Use Ald. Hess-Mahan explained that Massachusetts General Law allows municipalities to charge a \$200 fee for annual auto dealer licenses. The City of Newton has not increased its fee of \$100 in the past thirty years. A significant amount of work goes into the licensing process for auto dealers.

There are currently thirty dealers within the City. There are several different City departments involved in the auto dealer licensing process. The Clerk of the Land Use Committee processes all applications, coordinates retrieving and distributing the information needed from several City departments, provides the licenses and responds to a number of inquiries on the dealers throughout the year. The Treasurer's Department checks on all applicants to ensure that they owe the City no back taxes. The Inspectional Services Department determines whether a new applicant's site is appropriate for an auto dealership and that current licensees have not had any zoning violations in the past year. The Police Department provides information on whether there are any traffic issues or parking violations related to the any of the auto dealers' operations.

The Assistant Clerk of the Board met with the Police Department and Law Department to discuss the possibility of doing CORI checks on auto dealers to determine whether there is any legal reason not to license a dealer. On the Law Department's advice, there will be no CORI check but there will be a new process developed for vetting licensees.

Ald. Salvucci moved approval of the request to increase the fee to \$200. The Committee voted in favor of the motion by a vote of six in favor, one abstention, and one recused. Ald. Fuller abstained as she felt that there should be detailed information on the cost to the City of licensing the auto dealers. Ald. Ciccone recused himself as he has relatives that hold a City of Newton auto dealer license.

#412-12 HIS HONOR THE MAYOR requesting a discussion regarding updating the City's departmental fees and fines. [11/27/12 @ 12:45 PM]

ACTION: **NO ACTION NECESSARY 8-0**

NOTE: Chief Financial Officer Maureen Lemieux stated that it would appropriate to vote the item no action necessary. The administration is not ready to present any recommendations for increases to the City's fees and fines. There is also another docket item requesting several amendments to the ordinances to reflect the current fees and fines, which was filed as part of the recodification of the ordinances.

It was suggested that when the discussion regarding amending the fees and fines takes place that information on the underlying costs associated with the fees be provided to the Aldermen. With that, Ald. Ciccone moved no action, which carried unanimously

#14-13(2) HIS HONOR THE MAYOR requesting amendment of the Municipal Whistleblower Policy, which was approved by the Board of Aldermen on February 4, 2013, to provide a more consistent policy. [03/11/13 @ 5:43 PM]

ACTION: **NO ACTION NECESSARY 7-0-1 (Linsky not voting)**

NOTE: The Whistleblower Policy was approved by the Board of Aldermen on February 4, 2013. The Financial Audit Advisory Committee worked on the language that was approved by the Board of Aldermen. Since the approval of the policy, the Administration has requested that the Board of Aldermen amend the policy by removing the Chair of the Financial Audit Advisory Committee as a person that can receive whistleblower complaints from an employee

and adding the Office of the Inspector General in place of the Chair of the Financial Audit Advisory Committee. The Mayor is concerned that the reporting could become politicized, as the Chair of the Financial Audit Advisory Committee is required to be an Alderman

Committee members did not see the need to amend the policy and pointed out that the Aldermen constantly receive calls and e-mails from City employees regarding another City employee who has acted in an unethical or unlawful way. In addition, it was the recommendation of the Financial Audit Advisory Committee to include the Chair of the Financial Audit Advisory Committee, as an alternative to someone from the Mayor's Administration. Therefore, there seems to be no harm in keeping the current language of the policy.

The Law Department and Human Resources Department had raised concern regarding the language related to unwanted transfers to new locations or units and threats of physical harm. The concern related to transfers was that there are often unwanted transfers within the City that are not related to whistleblower reporting. It was stated that the policy only prohibits transfers in the spirit of retaliation and not other unwanted transfers. The majority of the Committee members felt that the inclusion of both the language related to transfers and threats against physical harm did not cause any problem with the policy. Ald. Fuller moved no action necessary on the item which carried by a vote of seven in favor and one abstention.

The Committee adjourned at 8:20 PM and all other items before the Committee were held without discussion. Draft Board Orders for the above items that are recommended for Board of Aldermen action are attached.

Respectfully submitted,

Leonard J. Gentile, Chairman

WHEREAS in a progressive City like Newton, it is important to enable those who serve its citizens to be up to date in the technologies that can help them fulfill their responsibilities, and

WHEREAS the Newton School Department in particular has identified long-term technology needs in fulfilling its educational responsibilities to Newton schoolchildren; and

WHEREAS funding for such technology needs has often been deferred in whole or in part because of other legitimate School Department priorities;

NOW THEREFORE, be it resolved that His Honor, the Mayor, be requested, when he seeks future Board approval for bonding the cost of additional capital facilities or equipment for the schools, he include in that funding request, as well as in the city-wide Capital Improvement Plan, the estimated costs needed for funding the capital technology needs of the Newton Schools, including the appropriate portions of the estimated project costs of the School Committee's three-year district-wide technology plan not anticipated to be funded by the Information Technology Department budget; the anticipated technology grants from Boston College for the elementary schools; and/or estimated revenue from the E-rate Technology Reimbursement Program.



SETTI D. WARREN
MAYOR

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Office of the Mayor

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2013 SEP 13 PM 1:02

RECEIVED
Newton City Clerk

To: Alderman Leonard Gentile, Chairman, Finance Committee
From: Maureen Lemieux, Chief Financial Officer
Subject: Environmental Study – Manet Road Reservoir
Date: September 13, 2013

As a result of questions asked by members of the Finance Committee I have conferred with the Engineering, Purchasing and Law Departments.

Per the Engineering Department, the geotechnical consulting engineer has been tasked to take "a few borings" within the embankment in order to make an educated determination of the structural conditions of the embankment, based on engineering judgment and standard of care. He is not tasked to look for hazardous material. Should he encounter hazardous material in the test borings, he will report this to us, but his mission is not to look for it.

The dam embankment was built over 100 years ago, and functioned as a drinking water supply reservoir up to the 1950's. There is no reason to believe that hazardous materials were used in the construction of the embankment, but if they are encountered in the test borings, they will be reported.

The ability of the City to shift the risk of an embankment failure, or discovery of hazardous materials, on to the Geotechnical Engineering firm would require that the City change the Standard of Care owed by the Geotechnical Engineering firm from one of negligence to one of strict liability. The Standard of Care owed by design professionals such as engineers or architects to an owner can be stated as follows:

The generally accepted professional standard of care ordinarily used by design professionals performing a similar scope of services in the same geographic area on projects of comparable size and complexity. *(Quoted from the MSBA's Designer Service contract, currently being used on the Angier School project.)*

Under this Standard of Care, the Geotechnical Engineering firm would only be liable to the City for the subsequent failure of the embankment or discovery of hazardous materials if the work done by the Geotechnical Engineering firm was below the generally accepted professional standard for such work in this geographic area. In other words, the
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Geotechnical Engineering firm is only liable if it negligently performed its analysis of the structural integrity of the embankment.

Given that the structural analysis proposed is a limited investigation, and the embankment failure may be due to a subsurface condition that was not discovered through this limited investigation, the City may not be able to show that the Geotechnical Engineering firm was negligent in issuing a structural integrity analysis that said the embankment was sound.

If the City wants to get a higher Standard of Care from the Geotechnical Engineering firm by applying a strict liability standard rather than a negligence standard to the performance of the firm's work, the City will essentially be asking the firm to guarantee that the embankment will not fail if the structural integrity analysis finds the embankment sound. Such a change in the Standard of Care will come with a significant increase in cost. Indeed, it is quite possible that the City will be unable to find any Geotechnical Engineering firm willing to accept a strict liability standard for its work, guaranteeing that the embankment will not fail for some period of time.

The allocation of liability would depend on the terms of the contract. The value of any liability assumed, however, would only be as good as the obligor's ability to pay. As the professional engineer is unlikely to have adequate resources, meaningful risk mitigation would have to come through insurance procured by the City or through the professional engineer's own insurance, which names the City as loss payee. The City's ability to mitigate risk will be proportionate to what it is willing to pay for the mitigation. The City will pay for coverage either through insurance it procures or the fee paid to the professional engineer which includes its cost of the required coverage.

Contractual liability of the professional engineer without a guaranty from a creditworthy entity will probably not give the City the protection it seeks. Insurance options are separate structural and environmental liability policies or a custom combined policy. Based on our recent experience with the Rail Trail – we would estimate that the City should expect to pay roughly \$35,000 to 45,000 (single premium) for \$2 million of environmental coverage for five years (\$50,000 deductible). This policy may be eligible for a 50% premium reimbursement from the state. Estimates for the cost of structural and custom policies are not immediately available.

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, 2013

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the following item be and is hereby voted NO ACTION NECESSARY:

#12-13 ALD. YATES requesting that the City's Treasurer/Collector accept credit cards as a method of payment for municipal bills.

Under Suspension of Rules
Readings Waived and Item Voted NO ACTION NECESSARY

(SGD) DAVID A. OLSON, City Clerk

CITY OF NEWTON
IN BOARD OF ALDERMEN

2013

ORDERED:

That in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the Director of Human Resources is hereby authorized to expend the sum of twenty-five thousand dollars (\$25,000) from the Workers' Compensation Trust Fund Account for the purpose of settling a Workers' Compensation claim for a former employee of the Utilities Division of the Public Works Department.

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

CITY OF NEWTON
IN BOARD OF ALDERMEN

2013

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the transfer of the sum of thirty thousand dollars (\$30,000) from the Budget Reserve to the Waban Hill Reservoir Engineering Study Account for the purpose of paying for an engineering study of the Waban Hill Reservoir and embankment is hereby approved as follows:

FROM:	Budget Reserve (0110498-5790).....	\$30,000
TO:	Waban Hill Resv. Eng. Study (C103001-530203).....	\$30,000

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____

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