

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE REPORT

MONDAY, APRIL 30, 2012

Present: Ald. Gentile (Chairman), Ciccone, Linsky, Rice, Blazar, Fuller, and Lappin

Absent: Ald. Salvucci

Also present: Ald. Albright and Sangiolo

City personnel: Maciej Konieczny (Project Manager, Public Buildings Department), Joseph Mulvey (Interim Director of Information Technology), Leo Brehm (Director of Information Technology; School Department), Robert Rooney (Chief Operating Officer), Maureen Lemieux (Chief Financial Officer), and David Wilkinson (Comptroller)

#101-12 HIS HONOR THE MAYOR requesting authorization to appropriate the sum of twenty-five thousand dollars (\$25,000) from Free Cash for the purpose of funding design costs as part of a larger construction project for Lower Falls Community Center required to bring the structure into compliance with accessibility requirements. [04-09-12 @ 3:40 PM]

ACTION: **APPROVED 6-0 (Ciccone not voting)**

NOTE: Maciej Konieczny, Project Manager, presented the request for an additional \$25,000 for the design of the accessibility portion of the renovation project at Lower Falls Community Center. The accessibility portion of the project will bring the building into compliance with all of the Architectural Access Board and Massachusetts General Law requirements. The \$25,000 will provide a comprehensive review of the requirements, code review, schematic design, and construction documents. Once the accessibility portion is designed, the Public Buildings Department will request funds for construction. The Public Buildings Department expects to begin actual construction in Fiscal Year 2014.

The Chairman pointed out that the Committee was informed in January 2012 that the Public Buildings Department would be coming in with a request for additional funds for the accessibility requirements that were triggered due to the renovation. The Chairman asked if the City had lost the \$179,000 Green Community Grant due to delays in the project. Mr. Konieczny responded that the City would meet all of the requirements of the grant; therefore, it will retain the grant. Ald. Rice moved approval, which carried unanimously.

#102-12 HIS HONOR THE MAYOR requesting authorization to appropriate the sum of five hundred thousand dollars (\$500,000) from cable contract receipts for the purpose of constructing Phase I of III to connect all city facilities with high-speed fiber infrastructure for continued reliance on the IT network. [04-09-12 @ 3:40 PM]

ACTION: **HELD 7-0**

NOTE: Interim Director of Information Technology Joseph Mulvey presented the request to the Committee. The requested \$500,000 would fund Phase I of a three-phase project to connect all city buildings to a fiber optic network. Many of the City's buildings currently have two paths of fiber provided to the City as part of a licensing agreement with RCN. The two fibers in most buildings already have dedicated uses leaving no fibers to create redundancy in case of service interruptions. A new fiber optic network would provide redundancy and allow the City to upgrade connection speeds across the City improving computer performance. In addition, the new network would allow the School Department to improve all of its computer-based programs and allow schools to share teaching resources between schools. The City cannot switch to VoIP (Voice over IP phone technology) due to the limitations with the current network. A new network would allow VoIP to be implemented, which would likely result in cost savings to the City.

The design portion of the project has been sent out to bid and the City has received responses from two companies. The low bidder quoted approximately \$40,000 for the design. It is expected that a service contract will be signed within the next week. The design costs will be funded with FY 2012 funds. It has not been determined whether to connect city buildings by priority or by geographical location. It is expected that the company that designs the project will provide a recommendation on how to install based on the City's needs.

Mr. Mulvey has spoken with companies who provide fiber optic networks to get a sense of the cost of the new network. It is estimated that the cost of connecting all of the buildings would be close to \$1 million. The \$1 million does not include the related equipment, which would roughly cost an additional \$250,000.

The first phase of the project would be funded through the Cable Receipts Reserve Accounts, which is a change from the funding source displayed in the FY 2013 – FY 2017 Capital Improvement Plan. Assistant City Solicitor provided a memo (attached) to the Board stating that the cable franchise fees in the accounts could be used to fund the fiber network. The Administration has yet to determine how the rest of the project will be funded. The entire project is expected to take three years to complete in order to make it a more financially manageable project for the City.

There was concern that the project would take three years to complete. Some Aldermen would like the project to be funded and completed as soon as possible. The sooner the project is complete, the sooner the City can take advantage of the much-improved network and the schools can implement their IT plans. In addition, the City could begin using VoIP technology, which is likely to result in significant savings to the City. Committee members asked that the Administration provide any other efficiencies that could be gained if the network is installed sooner.

The Committee would like an opportunity to review the design plans before taking an action on the requested \$500,000. In addition, it would be helpful to have a funding plan for the upcoming phases of the project and a response to whether the project timeline can be expedited.

Ald. Fuller moved hold on the item until the requested information is available to the Committee. The motion to hold the item carried unanimously.

REFERRED TO PROG & SERV, PUBLIC FACIL. AND FINANCE COMMITTEES

#367-10 HIS HONOR THE MAYOR requesting authorization to appropriate an amount not to exceed five million dollars (\$5,000,000) from bonded indebtedness for the following:

(B) installation of up to six modular classrooms at five elementary schools as well as the addition of permanent classrooms and renovations to the core of F.A. Day Middle School. [11/29/10 @ 3:23 PM]

(A) \$75,000 for site plan work for 1 modular at Horace Mann, 2 at Zervas, and 1 at Burr was approved on December 20, 2010.

(B1) \$923,375 for installation of 4 modulars was approved on July 11, 2011

(B2A) \$86,545 for additional expenses related to the construction and installation of modular was approved on November 21, 2011.

(B2B) \$102,117 for design of sprinkler systems at three elementary schools was approved on November 21, 2011.

(B2C) Six hundred forty-three thousand five hundred dollars (\$643,500) of the remaining \$3,812,963 for the design and other related expenses associated with the building renovations to F.A. Day Middle School was approved on December 19, 2011.

(B2D) One million four hundred seventy-four thousand one hundred ninety-four dollars (\$1,474,194) of the remaining \$3,169,463 for the purpose of funding construction, construction administration and related expenses for the sprinkler system installations at the Burr, Zervas, and Horace-Mann Elementary Schools to be voted 03/05/12.

#367-10(B2) – \$ 1,695,269 (remaining balance) for renovations to the core of F.A. Day Middle School and sprinkler systems.

PUBLIC FACILITIES VOTED NO ACTION NECESSARY 6-0 on 04/18/12

ACTION: NO ACTION NECESSARY 7-0

NOTE: Docket Item #367-10(B2) is no longer necessary as the Mayor has submitted a new request (Docket Item #115-12) for additional funds for the construction of Day Middle School. Therefore, a motion for no action necessary was made and approved unanimously.

The Committee adjourned at 9:05 p.m. 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

LAW DEPARTMENT



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JULIE B. ROSS

To: David Wilkinson, Comptroller

From: Alan Mandl, Assistant City Solicitor

Date: April 27, 2012

Re: Use of Cable License Funds to Support City Municipal Fiber Network

You have asked for advice whether funds received by the City from its three cable operators may be expended on a planned municipal fiber network. You have indicated that the municipal fiber network will be capable of carrying data, video and voice communications. Some potential video applications are under consideration.

Conclusion

Franchise fees may be expended on the planned municipal fiber network.

- This use of funds received by the City is consistent with the terms of existing licenses with Verizon and RCN and will be consistent with a renewal license with Comcast which is currently under final stage negotiation.
- Under the federal Communications Act, 47 U.S.C. §542(i), federal agencies may not regulate the use of funds derived from franchise fees (except in the case of limited exceptions inapplicable to the proposed use).
- Under Massachusetts law, there is no statute, court decision, agency order or agency regulation controlling the use of franchise fees. The Massachusetts Cable Commission and the Cable Division of the Department of Telecommunications and Energy (now the Department of Telecommunications and Cable and the Department of Public Utilities) have issued advisory letters on this subject. According to these advisory letters,

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franchise fees must be used for “cable-related purposes.” The advisory letters recognize that this term is ambiguous; however, as discussed below, the use of cable funds for the municipal fiber network is well within what is considered “cable-related.” Advisory rulings are not binding on the agency or upon any person. G.L.c.30A, §8; 220 CMR 2.08; however, they are instructive.

- Because the municipal fiber network is cable of carrying video programming, funding the fiber network should constitute the use of cable funds for cable-related purposes. There are a number of cable-related purposes which are included here only as illustrations. For example, the transport of video programming from an originating location to another fiber network location; the use of the fiber network to enable the training of public safety officials who can be linked into a City location where the training exercise is being broadcasted; distance learning; use as a return path for video programming between the originating location (e.g., a school event or school-generated programming) and the cable networks (cable operators might use spare capacity on the municipal fiber network for this purpose); enabling the placement of video kiosks at public locations; and video streaming applications.
- There is some support for the cable-related nature of a municipal fiber network under the federal Communications Act. Under 47 U.S.C. §531(b), a community may request that a cable operator designate channel capacity on its cable system for public, educational or governmental use and that capacity on a cable operator-owned institutional network be designated for educational or governmental use. This statute demonstrates that cable operator support of the use of network capacity for public, educational or governmental use would be for a cable-related purpose. There are a number of examples in other states where cable franchise payments are applied to fund municipal fiber networks.

Let me know if you have any questions or would like to discuss this issue.

CITY OF NEWTON
IN BOARD OF ALDERMEN

, 2012

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the sum of twenty-five thousand dollars (\$25,000) to be appropriated from Free Cash, be and is hereby appropriated, granted, and expenditure authorized under the direction of the Commissioner of Public Buildings for the purpose of funding design costs associated with accessibility requirements as part of a larger construction project at the Lower Falls Community Center:

FROM:	Free Cash (01-3497)	\$25,000
TO:	Lower Falls Community Center ADA Compliance (38E11504A-530202).....	\$25,000

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date _____