

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE REPORT

WEDNESDAY, NOVEMBER 14, 2012

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

Absent: Ald. Ciccone and Fuller

Also present: Brian Lever (Preservation Planner), Robert DeRubeis (Commissioner of Parks and Recreation), Maureen Lemieux (Chief Financial Officer), and Rob Symanski (Financial Analyst)

#357-12 HIS HONOR THE MAYOR requesting authorization to transfer the sum of one million eight hundred fifty thousand dollars (\$1,850,000) from FY 2012 Free Cash to the Rainy Day Stabilization Fund. [10-30-12 @ 12:42 PM]

ACTION: **APPROVED 6-0**

NOTE: Chief Financial Officer Maureen Lemieux presented the Mayor's request to transfer \$1.85 million from Free Cash be transferred into the Rainy Day Stabilization Fund. When the fund was established, the goal was to have \$8 million in the fund by the end of 2012. With the requested, there will be over \$8 million in the account or 2.5% of the municipal operating budget. It is the administrations intent to continue to grow this account to reach the goal of having at least 5% of the operating budget in reserve (i.e., approximately \$15 million). The Chairman added that Moody's Investor Services and First Southwest look favorably upon the City having this type of reserve account and the fact that the City is growing the account.

Ms. Lemieux informed the Committee that the City currently has approximately \$4.9 million in Free Cash. If the \$1.8 million is transferred, it will leave \$3.1 million in Free Cash. Two million dollars of Free Cash is dedicated to the snow budget, which is now over \$5 million, leaving \$1.1 million in Free Cash. An additional \$200,000 of Free Cash will be used to provide additional funding for tree removal costs associated with Hurricane Sandy and there will be a 500,000 to 600,000 payment to the School Department related to money from the State for Medicaid Direct Services leaving approximately \$200,000 in Free Cash. In addition, there have been a number of vacant positions within the City over the past year, which has generated additional funds that can be used to fund unanticipated costs.

Ald. Lappin moved approval, which carried unanimously.

#358-12 HIS HONOR THE MAYOR requesting authorization to expend a fifteen thousand dollars (\$15,000) reimbursable grant from the Massachusetts Historical Commission for the purpose of surveying and documenting historic buildings in the City of Newton. [10/30/12 @ 12:42]

ACTION: **APPROVED 6-0**

NOTE: Preservation Planner Brian Lever presented the request for authorization to expend a grant to be used to survey and document historic buildings within the City. The documentation of the City's buildings is the backbone of preservation. Last June, the Board of Aldermen approved the use of Community Preservation Act Funds for a historic building documentation project, which focused on buildings constructed between 1830 and 1840. In the meantime, the Planning Department applied for a \$15,000 historic preservation grant from the State. The Planning Department was awarded the grant and will now break the original project into two phases with the intent of including buildings constructed during the 1850s at no additional cost to the City. The Planning Department will apply for a second grant to fund the second phase of the project.

Brian Lever will be responsible for meeting all of the guidelines and reporting requirements associated with the grant. Mr. Lever is familiar with grant management and grant reporting requirements. The Committee members emphasized the importance of meeting all the financial reporting requirements, as inaccurate reporting impacts the City's external annual audit.

Ald. Rice moved approval, which carried unanimously.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#359-12 **HIS HONOR THE MAYOR** requesting authorization to transfer the sum of three hundred thousand dollars (\$300,000) from the FY 2013 Budget Reserve to the Parks & Recreation Forestry Vehicle Rentals Account for the purpose of responding to tree damage as a result of Hurricane Sandy. [10/30/12 @ 12:42 PM]

PROG & SERV APPROVED AS AMENDED 5-0 INCREASE OF 200K FROM FREE CASH

ACTION: APPROVED AS AMENDED 6-0 INCREASE OF 200K FROM FREE CASH

NOTE: Commissioner of Parks and Recreation Bob DeRubeis presented the request for funds to pay costs associated with tree damage because of Hurricane Sandy. The Mayor has requested that the requested transfer of funds be increased by transferring an additional \$200,000 from Free Cash to the Parks & Recreation Forestry Vehicle Rentals Account. The additional \$200,000 would increase the total amount to \$500,000. The Administration is tracking the costs associated with the storm and will be submitting receipts to the Federal Emergency Management Agency (FEMA) for reimbursements. However, it is difficult to determine the amount of reimbursement, as FEMA does not accept all filings.

The City and the City's contractor responded to 945 locations for trees or tree limbs down. The Parks and Recreation Department and City contractor worked throughout the storm to keep roadways clear and open. The response summary, which was attached to the agenda, provides further details regarding the storm including damage information and estimated expenditures for contractual costs and disposal of the trees and debris. The Commissioner stated that the city's tree services contractor was fantastic in terms of response and available equipment. With that, Ald. Salvucci moved approval, which carried unanimously.

#303-12 HIS HONOR THE MAYOR requesting authorization to expend a State Brownfields Program Reimbursable Grant in the amount of twenty-two thousand one hundred fifty eight dollars (\$22,158) and authorization to transfer the sum of twenty-two thousand one hundred fifty-eight dollars (\$22,158) from Budget Reserve for the purpose of purchasing environmental insurance to support the creation of a multi-purpose recreational pathway through a 99-year lease between the City and the Massachusetts Bay Transportation Authority (MBTA) for an unused MBTA Right of Way parallel to Needham Street. [09/24/12 @ 5:00 PM]

ACTION: **APPROVED AS AMENDED 5-0-1 (Blazar abstaining) @ \$40,409.82 from FREE CASH**

NOTE: Chief Financial Officer Maureen Lemieux presented the request for \$22,158 to purchase a \$3 million environmental insurance policy. There is currently a docket item which was discussed twice and approved by the Public Facilities Committee and is awaiting action in the Programs & Services Committee requesting authorization to enter into a 99-year lease between the City of Newton and the Massachusetts Bay Transportation Authority (MBTA) for an unused MBTA right of way parallel to Needham Street. The abandoned MBTA rail bed would be used to create a .97-mile recreational pathway. The purchase of insurance would protect the City for five years if any contamination were detected during the construction of the pathway.

The State offers a reimbursable matching grant program through the Brownfields Program for the purchase of an environmental insurance policy. During the first discussion in the Public Facilities Committee, there were a number of questions regarding whether the City could obtain additional environment insurance and whether an increased policy would still be eligible under the State's grant program. In response to those questions, Assistant City Solicitor Bob Waddick investigated and provided the attached memo to Chief Operating Officer Robert Rooney stating that it is possible to increase the coverage and still receive the matching grant funds. The Public Facilities Committee reviewed the memo and discussed whether it was a good idea to purchase the higher insurance policy. Most members of the Public Facilities Committee felt that the higher level of insurance was appropriate and would be more comfortable with the rail bed conversion if the City opted to purchase the higher level. Three members of Public Facilities had reservations about purchasing the higher level of insurance, as it was unlikely that there would be any contamination discovered.

The Mayor has submitted the attached letter requesting an amendment to increase the docket item by \$18,250.92 and change the funding source to Free Cash in order to purchase a \$10 million insurance policy for five years from State's Brownfields Program. There was some concern that the City would not be covered after five years and would then be exposed to potential litigation if environmental contamination were discovered. It was suggested that the City could look outside the State program for an insurer after the five-year policy is expired. The Chairman will ask that the Law Department investigate the possibility of purchasing additional insurance and provide an answer before the next Board of Aldermen meeting. Ald. Rice moved approval of the item as amended, which carried by a vote of five in favor and one abstention. Ald. Blazar abstained in order to review the information to be provided by the Law Department.

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#320-12 ALD. SALVUCCI AND GENTILE requesting a discussion with the Engineering Division of the Public Works Department regarding the billing and collecting of street opening permit fees. [09/28/12 @ 10:28 AM]

PUBLIC FACILITIES HELD on 10/17/12

ACTION: NO ACTION NECESSARY 6-0

NOTE: The Public Facilities Committee discussed the above item on October 17, 2012 and learned that National Grid has agreed to pay all outstanding street opening fees and to pay all future street opening permitting fees on a monthly basis. The Public Facilities Committee will receive an update on the status of payments from National Grid in February. As the Public Facilities Committee will continue to monitor the situation, it is unnecessary for the Finance Committee to discuss the item. Therefore, Ald. Salvucci moved no action necessary, which carried unanimously.

The Committee adjourned at 7:40 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

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, , a transfer of one million eight hundred fifty thousand dollars (\$1,850,000) from FY2012 Free Cash to the Rainy Day Stabilization Fund be and is hereby approved as follows:

From:	Free Cash (01-3497).....	\$1,850,000
To:	Transfer – “Rainy Day Stabilization Fund” (0110499-5922A).....	\$1,850,000

Under Suspension of Rules
Readings Waived and Adopted

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____

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, His Honor the Mayor is hereby authorized to expend a reimburseable grant in the amount of fifteen thousand dollars (\$15,000) awarded by the Massachusetts Historical Commission, to be used for the purpose of surveying and documenting historic buildings in the City of Newton.

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____

CITY OF NEWTON

IN BOARD OF ALDERMEN

2012

ORDERED:

That, in accordance with the recommendation of the Programs and Services and Finance Committees through their respective Chairmen Amy Mah Sangiolo and Leonard J. Gentile, the sum of three hundred thousand dollars (\$300,000) to be appropriated from FY13 Budget Reserve, be and is hereby appropriated, granted, and expenditure authorized and that a transfer of two hundred thousand dollars (\$200,000) from FY2012 Free Cash to the Parks & Recreation Forestry Vehicle Rentals Account is hereby approved as follows:

FROM:	Budget Reserve	
	(0110498-5790).....	\$300,000
	Free Cash	
	(01-3497	\$200,000
TO:	Parks Expenses	
	(01602011-5273).....	\$500,000

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____



City of Newton, Massachusetts
Office of the Mayor

Telephone
(617) 796-1100

Telefax
(617) 796-1113

TDD
(617) 796-1089

E-mail
swarren@newtonma.gov

SETTI D. WARREN
MAYOR

November 14, 2012

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Re: Amendment to Docket Item #303-12: appropriation to purchase environmental insurance

Ladies and Gentlemen:

I submit this letter as an amendment my request of September 24, 2012 requesting an additional appropriation of \$18,250.92 (for a total of **\$40,409.82**) and changing the source to Free Cash to purchase a \$10M environmental insurance policy from the State's Brownfields Program. As a matching grant, this provides insurance at approximately half of the true cost to purchase the policy outside the Program. This additional insurance is deemed prudent in order to manage risk of potential exposure due to discovery of hazardous materials on the mile long rail bed should the City enter into a 99-year lease with the MBTA.

With your approval, such purchase will not occur unless and until, the City has an agreement with the MBTA on the terms of the lease. This insurance coverage will provide coverage on any pre-existing conditions should they be discovered during/after construction for up to 5 years.

I appreciate your support on this valued initiative.

Sincerely,

Setti D. Warren
Mayor

RECEIVED
Newton City Clerk
2012 NOV 14 PM 4:50
David A. Olson, CMC
Newton, MA 02459

Cc: Maureen Lemieux, Chief Financial Officer
Donnalyn Kahn, City Solicitor
Candace Havens, Director of Planning and Development



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#303-12

Telephone
(617) 796-1100

Telefax
(617) 796-1113

TDD
(617) 796-1089

swarren@newtonma.gov

November 5, 2012

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

RE: MBTA 99-Year Lease for Right of Way, Docket Item #302-12

Dear Ladies and Gentlemen:

This letter is in response to the joint meeting with Public Facilities and Programs and Services Committees regarding questions pertaining to the subject docket item, specifically addressing the potential for City liability due to possible exhumation of hazardous materials when constructing the proposed rail trail. I've attached legal review of each question from the Assistant Solicitor, Bob Waddick. Included is a matrix of 15 communities who have, or are in the process of, constructing rail trails on land purchased from the MBTA.

In answer to the question as to whether the Administration feels the City is adequately protected from risks of encountering hazardous materials during the conversion from a rail bed to a walking trail, further analysis supports that the conclusion that the City proceed with the purchase of a \$3 million policy with a 5-year term as allowed under the Brownfields Program. Doing so negates the requirement for the City to indemnify the MBTA from liability and yet provide some level of protection should mitigation of hazardous materials found on site be necessary.

Should you have further questions about the various issues pertaining to the MBTA lease for conversion to a rail trail, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Rooney".

Robert R. Rooney
Chief Operating Officer

Encl.

**CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM**

DATE: November 2, 2012
TO: Robert R. Rooney, Chief Operating Officer
FROM: Robert J. Waddick, Assistant City Solicitor
RE: Docket #302-12 - Questions re Proposed 99 Year lease With MBTA

At the joint committee meeting held on October 3, 2012, legal questions were raised regarding the above referenced matter. Below, are responses to those questions after review from the Law Department.

Question 1. Have other communities in the Commonwealth that have developed rail trails found contamination?

Answer 1. Contact was made with Transit Realty, which manages the MBTA's real estate, who reported that it is not aware of any contamination found in the course of the development of more than a dozen rail trails on MBTA property throughout the Commonwealth. Transit Realty has been involved in all of the rail trail projects on MBTA property. On the Malden rail trail, there was contamination which was known prior to the execution of the lease, and it is our understanding neither the MBTA nor Malden is the party liable for the contamination. Attached is a chart which summarizes the towns known to have developed rail trails and whether the municipality purchased environmental insurance and whether there was contamination found during the development of the rail trail.

Question 2. If the MBTA exercises its right to terminate the Lease with the City, what is the City's exposure if contamination is discovered after the MBTA has retaken possession of the property?

Answer 2. The Massachusetts Oil and Hazardous Material Release Prevention and Response Act, commonly referred to as Chapter 21E, sets forth the framework for addressing and assessing liability for the release or threat of release of hazardous substances. An amendment to Chapter 21E passed by the legislature in 2003, exempted cities and towns that lease a site from the MBTA for the purpose of maintaining a rail trail from the definition of "owner" or "operator" under the statute.¹ This is significant because the liability provisions of Chapter 21E, which are set forth under Section 5 of the statute, are triggered by the "owner" or "operator" status. A city or town would be considered an "owner" or

¹ Chapter 21E sets forth the conditions that a municipality must adhere to in order to maintain its exemption from the status of "owner" or "operator." Among them are the following: a municipality cannot cause or contribute to the hazardous release or threat of release; a municipality must take reasonable steps to prevent the exposure of persons to hazardous materials; must notify the Department of Environmental Protection of releases or threats of releases; and must take the appropriate action to protect the health and safety of the public if there is an imminent hazard.

“operator” under the statute only with respect to a release or the threat of a release of hazardous material that occurs while the city or town is in possession of the MBTA property.

Therefore, if a release or threat of release of hazardous material first occurs after the MBTA has retaken possession of the rail trail property from the City of Newton, it does not appear that the City would be liable as an “owner” or “operator” under Chapter 21E. However, because the timing of a release or threat of release is a factual determination, the City could incur legal and consulting expenses defending its position even if it is ultimately determined that the release or threat of release of hazardous material is unrelated to the City’s use of the property and occurred at a time when the city was not in possession.

Question 3. Can the City purchase a higher amount of environmental insurance under the Brownfields Program and extend the coverage beyond five years?

Answer 3. It is possible to increase the amount of coverage under the Brownfields Program (BRAC) which provides matching funds. The BRAC Program will cover 50% of the premium up to \$150,000.00. However, the BRAC Program and the state law which authorizes it, cover insurance premiums for policies of five years, so the coverage period cannot be extended. As the 50% matching funds from the BRAC Program is a one-time grant, it would not be available if the City wanted to renew its environmental policy. We have requested quotes for coverage of \$5 million and \$10 million but it is likely to be proportionate to the \$3 million policy quoted at \$41,035 (matching funds puts a cost to the City at \$22,159 as some fees are not covered under the match).

Question 4. Has the MBTA done any testing of the rail bed for contamination?

Answer 4. It is extremely unlikely that the MBTA has done any testing. Even though the MBTA is the owner of the railroad property, it has never actually operated any service on the property in Newton (it was leased out to freight haulers such as CSX). Transit Realty reports that it does not believe that any environmental testing has been done.

Question 5. What would happen if a parcel abutting the rail trail is developed in the future and contaminants emanating from the rail trail is discovered ?

Answer 5. (See answer to Question 2 for general explanation of City’s liability under Chapter 21E). If the release of hazardous material is attributable to the City’s use of the property, then the City will be viewed as an “owner” or “operator” of the site and will be subject to the provisions of Chapter 21E with respect to liability. The timing of the release of the hazardous material will be important in assessing the City’s potential liability. If the facts indicate that the release predates the City’s possession, then it would be unlikely that the City would be viewed as the “owner” or “operator” for the purposes of liability under Chapter 21E. However, because the timing of a release is a factual determination, the City could incur legal and consulting expenses defending its position even if it is ultimately determined that the release of hazardous material is unrelated to the City’s use of the property and occurred at a time prior to the City’s possession.

Figure 1. Rail Trail Conversions -- Experience with Hazardous Materials

	<u>Community</u>	<u>Environmental Insurance</u>	<u>Hazardous Contamination</u>	<u>Notes</u>
1	Danvers	NO	NO	
2	Malden	NO	NO*	*pre-condition existed
3	Wenham	NO	NO	
4	Topsfield	NO	NO	
5	Rockland	NO	NO	
6	Lynn	NO	NO	
7	Saugus	NO	NO	
8	Methuen	NO	NO	
9	Peabody	NO	NO	
10	Newburyport	NO	NO	
11	Acton	YES	NO	
12	Salem	Pending		
13	Wakefield	Pending		
14	Newton	Pending		
15	Needham	Pending		

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, , a transfer of forty thousand four hundred nine dollars and eighty- two cents (\$40,409.82) from FY2012 Free Cash to the Mayor’s Office Expenses for the purpose of purchasing a \$10 million dollar environmental insurance policy for the next five years to protect the City during the conversion of a .97 mile rail bed to a multi-purpose pathway through a 99-year lease from the MBTA be and is hereby approved as follows:

From:	Free Cash (01-3497).....	\$40,409.82
To:	Mayor’s Office Expenses (0110301-575009).....	\$40,409.82

Under Suspension of Rules
Readings Waived and Adopted

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____