

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE REPORT

MONDAY, FEBRUARY 14, 2011

Present: Ald. Gentile (Chairman), Linsky, Rice, Danberg, Fuller, and Freedman

Absent: Ald. Ciccone and Salvucci

Also present: Ald. Sangiolo

City officials present: Robert Rooney (Chief Operating Officer), Arthur Cabral (Budget and Project Specialist; Public Buildings Department), Ouida Young (Associate City Solicitor), Maureen Lemieux (Chief Financial Officer), David Wilkinson (Comptroller), David Turocy (Interim Commissioner of Public Works), Robert DeRubeis (Commissioner of Parks and Recreation), and Marc Welch (Director of Urban Forestry; Parks and Recreation Department)

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEE

#43-11

HIS HONOR THE MAYOR requesting that the budget for the Newton North High School construction project be amended by transferring from various miscellaneous line items and the Owners Contingency line item the sum of two million five hundred eight-three thousand six hundred ninety seven dollars and eleven cents (\$2,583,697.11) to the Construction Manager at Risk line item for the purpose of providing funding for the estimated cost of additional abatement work related to the demolition phase of the project as follows:

From: Reallocation of miscellaneous accounts\$583,697.11
Owners Contingency.....\$2,000,000.00

To: Construction Manager at Risk\$2,583,697.11
[02-03-11 @ 11:57 AM]

PUBLIC FACILITIES APPROVED 5-0 (Gentile, Albright not voting 2/9/11)

ACTION: **APPROVED 6-0**

NOTE: Chief Operating Officer Robert Rooney explained that the item is a request to reallocate funds within the Newton North High School project budget to fund unanticipated abatement work related to the demolition of the old Newton North High School. The additional estimated abatement costs are \$3,950,000, which Mr. Rooney believes is an accurate reflection of the costs. The attached contingency matrix provides a breakout of the estimate for the removal of additional asbestos.

There is \$1,366,302.89 available in the contingency line item within the Construction GMP, which does not require Board of Aldermen approval to use. The Mayor is proposing that the additional \$2,583,697.11 come from the reallocation of line items including the owner's contingency line item. The construction team has reviewed all of the accounts within the budget

and determined that there is \$583,697.11 funds are available for reallocation from fourteen line items. The Mayor is also requesting the use of \$2 million of the \$5 million contained in the owner's contingency line item. Both the reallocation and use of funds from the owner's contingency require Board of Aldermen approval. Mr. Rooney added that if the request were not approved, the abatement phase of the project would run out of funds by the end of March, as illustrated in the attached timeline.

The reallocation of funds has an impact on the punch list items at the new school. The items are on hold until the construction team has a better sense of the actual cost of the demolition. The items will be addressed if there is any money left after the demolition is complete.

Mr. Rooney informed the Committee that it is expected that there will be another request to reallocate funds in June. The construction team will have a better sense of what line items can be reduced and what line items will require additional funds. In addition, there remains \$333,443 in the unallocated contingency line item that can be used to address any unexpected issues. The soil underneath the old high school and a plumbing pipe located under the slab remain unknowns, in terms of whether there is contamination. If the soil or pipe is determined to be contaminated, it is hoped that the owner's contingency, reallocation of accounts and the unallocated contingency would cover the cost of the abatements.

The construction team has spent over two months going over various abatement options to determine the safest option for abutters to the school and students at the new school. The team worked with the Department of Safety and Department of Environmental Protection to determine the best means and methods of disposal. The abatement and demolition should be complete by June of this year. At that point, the last phase of the project that includes the construction of ball fields, parking lots and the landscaping of the area would begin with an expected completion date of November 2011.

Frank Allard of Dimeo Construction explained that the additional contamination is minimal and a result of spray-on asbestos fireproofing on concealed structural steel beams of the exterior wall, which loosened and fell inside the concrete masonry unit (CMU) block wall. Although the contamination is minimal, the Department of Environmental Protection requires an extensive abatement process. The block wall is porous; therefore, it can only be abated through removal and disposal in a landfill. The exterior brick wall of the school will be used as a shield during abatement and removed once the contaminated materials are removed. The plan is to take the interior of the building down floor by floor beginning at the top and working downward. The attached memo from ATC Associates provides further detail on the abatement process.

Ald. Danberg moved approval of the reallocation of the line items within Newton North High School Project budget and the use of the owner's contingency as shown on the attached budget to actual report. The Committee voted unanimously in favor of the motion. Ald. Freedman stated that he was not happy voting in favor of the item but understood the necessity of the request.

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEE

#42-11

HIS HONOR THE MAYOR requesting a transfer of three hundred thousand dollars (\$300,000) from various departments' salary accounts to supplement the expenditures associated with the removal of snow and ice as follows:

	<u>Account Number</u>	<u>Department</u>	<u>Amount</u>
From:	0110301-511001	Executive	\$10,000
	0110501-511001	Purchasing	\$15,000
	0110601-511002	Assessing	\$15,000
	0110901-511001	Human Resources.....	\$35,000
	0111103-511001	Information Technology.....	\$40,000
	0111401-511001	Planning.....	\$25,000
	0140103-511002	DPW-Vehicle Maint.....	\$35,000
	0140104-511002	DPW – Street Maint	\$25,000
	0150101-511001	Health & Human Svcs Adm.....	\$50,000
	0160103-511001	Newton Free Library	\$50,000
To:	0140110-513001	Snow & Ice – Overtime.....	\$100,000
	0140110-5273	Snow & Ice – Rental Veh.....	\$100,000
	0140110-5532	Snow & Ice – Sand/Salt.....	\$100,000

[01/31/11 @ 5:04 PM]

PUBLIC FACILITIES APPROVED 6-0 (Gentile not voting 02/09/11)

ACTION: APPROVED 5-0 (Linsky not voting)

NOTE: The request is to transfer funds from several department salary accounts to supplement the snow and ice accounts within the Department of Public Works. The funds to be transferred are a result of vacancies within the departments and have no impact on any department operations.

There is a shortfall in the snow and ice accounts in the Department of Public Works. The above request will not close the shortfall in the accounts. Therefore, the Mayor will be docketing a request to appropriate \$500,000 from Free Cash.

Ald. Rice moved approval of the item, which carried unanimously.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#373-10(2)

ALD. GENTILE, HARNEY, SANGIOLO requesting an amendment to §20-13 of the City of Newton Revised Ordinances to adjust the structure, as well as increase the amount of the fines associated with non-compliance of §20-13, **Noise Control**, to reflect the following: first violation: issuance of a warning; second violation: \$100 fine; third violation: \$200 fine; fourth violation: \$300 fine. [01-05-11 @ 10:00 PM]

PROG & SERV APPROVED 7-0 (Linsky not voting on 02/09/11)

ACTION: APPROVED AS AMENDED 5-0 (Freedman not voting)

NOTE: The request to increase the fines associated with violation of the noise ordinance was filed in response to petition received from neighbors of a particular golf course. The

neighbors filed the petition as the golf course begins cutting the grass on the course before 7 AM. The Aldermen from the ward have spoken with representatives of the golf course regarding this and the issue is addressed for a short time but inevitably, the golf club starts cutting the grass before 7 AM again. It is hoped that if the fines are raised from \$50 for any offence to the proposed incremental fees, institutions will be compelled to comply with the noise ordinance. The Police Department is aware of the proposed change to the fines and is willing to enforce the ordinance.

The Programs and Services Committee discussed the appropriateness of issuing a warning for violations and ultimately approved the draft language including the issuance of a warning violation. Ald. Gentile felt that the issuance of a warning for first time violations is appropriate, as first-time offenders may be unaware of the ordinance.

There is another item related to an amendment to the noise ordinance to restrict the use of athletic fields before 7 AM that was held in the Programs and Services Committee. However, that docket item contains a request to raise the cap on fines to \$300 from \$100, which needs to be included as part of this item. The draft ordinance language (attached) for this item includes the increase to the maximum allowable fine.

The proposed amendment to the fines does not add any new types of violations; therefore, the fines only apply to existing ordinance violations. It is hoped that the higher fines will serve as a deterrent to anyone that is currently violating the noise ordinance especially repeat offenders. Ald. Fuller moved approval of the item as amended to include the increase to the maximum allowable fine, which carried unanimously.

Clerk's note: The maximum allowable fine language is related to criminal violations not the incremental civil offenses.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#360-09(3) **PROGRAMS AND SERVICES COMMITTEE** requesting the creation of a revolving account for the purpose of managing the fees collected from the granting of off-leash dog licenses. [10/07/2010 @ 2:30pm]

PROG & SERV APPROVED AS AMENDED 8-0 on 02/09/11

ACTION: **APPROVED AS AMENDED 6-0**

NOTE: The Commissioner of Parks and Recreation explained that the Programs and Services Committee approved the item as amended to create two revolving funds for donations and fees related to off-leash dog licenses for dog parks. The first account would be for the City Clerk to use for administrative costs related to the permitting process. The second account would be for the Parks and Recreation Department to use for the maintenance of the dog parks including fencing. The revolving accounts will be funded as follows: 5% of the permitting fee will be placed in the City Clerk's account and 95% of the fee in the Parks and Recreation account. The City Clerk's cap on expenditures per year will be \$5,000 and the Parks and Recreation Department's cap on expenditures will be \$75,000.

The Committee asked Commissioner DeRubeis if he was comfortable with the \$75,000 cap. The Commissioner responded that the cap could be revised if it is too tight. There is a requirement that a municipality can only spend an amount not to exceed 10% of the tax levy and any one municipal department can only spend 1% of that amount. The Parks and Recreation Department is close to that 1%, as it already has a number of revolving funds. The Committee understood and Ald. Linsky moved approval of the item with the inclusion of the additional revolving fund for the City Clerk's Office. The motion carried by a vote of six in favor and none opposed.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#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]
PROG & SERV APPROVED 7-0 (Merrill not voting) on 10/6/10

ACTION: **APPROVED 6-0**

NOTE: Ald. Sangiolo joined the Committee for the discussion of this item. The Programs and Services Committee unanimously approved the ordinance after reviewing the ordinance language to protect trees on public property. The ordinance would require a person to apply for a permit to remove, construct within the dripline, prune, affix, or hang anything from a public tree. The fee for the permit would be \$150.00 and would be valid for 60 days. The fee will be waived for city departments, agencies, or commissions or if the tree warden determines the proposed activity is beneficial to the tree or the wellbeing of the public. For example, it would be unlikely that a person would be charged a fee for hanging lights or planting a tree. The proposed ordinance affords public trees the same type of protection given to private trees.

The Tree Warden Marc Welch explained that the funds from the permit fees will be used for administration of the permit program, review of the permit applicants plan, and, if necessary, providing an alternative plan that causes minimal damage to the tree. In addition, if the tree warden assesses the plan and determines that the proposed work cannot be done without damage to the tree, it may require a removal of the tree, which triggers a public hearing that will require legal notices in the newspaper.

Ald. Rice moved approval of the item, which carried unanimously.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#307-10 PROGRAMS AND SERVICES COMMITTEE proposing a RESOLUTION to the Interim Director of Health and Human Services to increase the tobacco seller's license fee. [10/25/210 @ 4:34pm]
PROG & SERV NO ACTION NECESSARY 6-0 (Merrill not voting) on 01-19-10

ACTION: **NO ACTION NECESSARY 6-0**

NOTE: Ald. Sangiolo explained that the Programs and Services Committee voted the item no action necessary, as there has been a new Commissioner of Health and Human Services hired. The Programs and Services Committee felt that it would helpful to give the new Commissioner

time to acclimate and familiarize herself with the licenses and fees associated with her department before pursuing the item. Therefore, the Programs and Services Committee voted the item no action necessary and will file a new docket item at the appropriate time. With the understanding that there would be a new item filed, the Finance Committee unanimously supported a motion of no action necessary.

REFERRED TO COMM. PRES., PUB FAC & FINANCE COMMITTEES

#147-08 COMMUNITY PRESERVATION COMMITTEE recommending that the sum of \$359,400, including \$2,000 for legal costs, be appropriated from the FY'08 Community Preservation Fund's historic resources and general reserves, for a project to rehabilitate and expand storage space for the research library and archives at the Newton History Museum, to preserve the existing collections, and enhance public access to the collections. [04-01-08 @ 4:10 PM]

COMMUNITY PRESERVATION APPROVED 6-0 on 4-29-08

(A) DESIGN FUNDS ESTIMATE \$37,500.00 – BOA APPROVED

(B) BALANCE OF PROJECT ESTIMATE \$321,900.00-PUBLIC FACILITIES VOTED NO ACTION NECESSARY ON PART B 8-0 on 05/05/10

ACTION: NO ACTION NECESSARY ON PART B 6-0

NOTE: The requested funds are no longer available as the funding source is from a fiscal year 2008 fund. The Community Preservation Committee will docket another request for construction funds for the History Museum construction project when the design is complete and a final construction amount is available. The Committee unanimously voted approval of a motion for no action necessary.

The meeting adjourned at 9:02 p.m. and all other items before the Committee were held without discussion. Draft Board Orders for the above items are attached.

Respectfully submitted,

Leonard J. Gentile, Chairman

NNHS Phase 2 Abatement Impact - Contingency & Timeline


As of: Feb 4, 2011

Cost Estimates for Additional Asbestos Contaminating Material (ACM):

Exterior wall contaminated with asbestos	\$	3,360,000
Foundation wall waterproofing to be abated	\$	70,000
Transite drainage pipe- estimated	\$	480,000
Testing / additional exploratory work	\$	30,000
Total	\$	3,950,000

Projected Activity Timeline and Cashflow

Demolition & Abatement Activities	Total Amount	January-11	February-11	March-11	April-11	May-11	June-11	July-11	August-11	September-11	October-11	November-11
		Included w/in GMP										
Interior Abatement	Included w/in GMP											
Exterior Wall Abatement	\$ 3,360,000		\$ (340,000)	\$ (340,000)	\$ (340,000)	\$ (340,000)	\$ (340,000)	\$ (340,000)	\$ (340,000)	\$ (340,000)	\$ (340,000)	\$ (340,000)
Demolition	Included w/in GMP											
Other ACM Items (listed above)	\$ 590,000											
Final Sitework and Athletic Fields	Included w/in GMP											
Total		\$ 1,366,303	\$ 526,303	\$ (313,697)	\$ (1,301,197)	\$ (2,288,697)	\$ (2,436,197)	\$ (2,583,697)	\$ (2,583,697)	\$ (2,583,697)	\$ (2,583,697)	\$ (2,583,697)

Legend:  = Represents active work during that month

\$ 0

CITY CLERK
NEWTON, MA. 02159

11 FEB -11 P 3:05



600 West Cummings Park, Suite 5500
Woburn, Massachusetts 01801-6350
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781.932.9400
Fax 781.932.6211

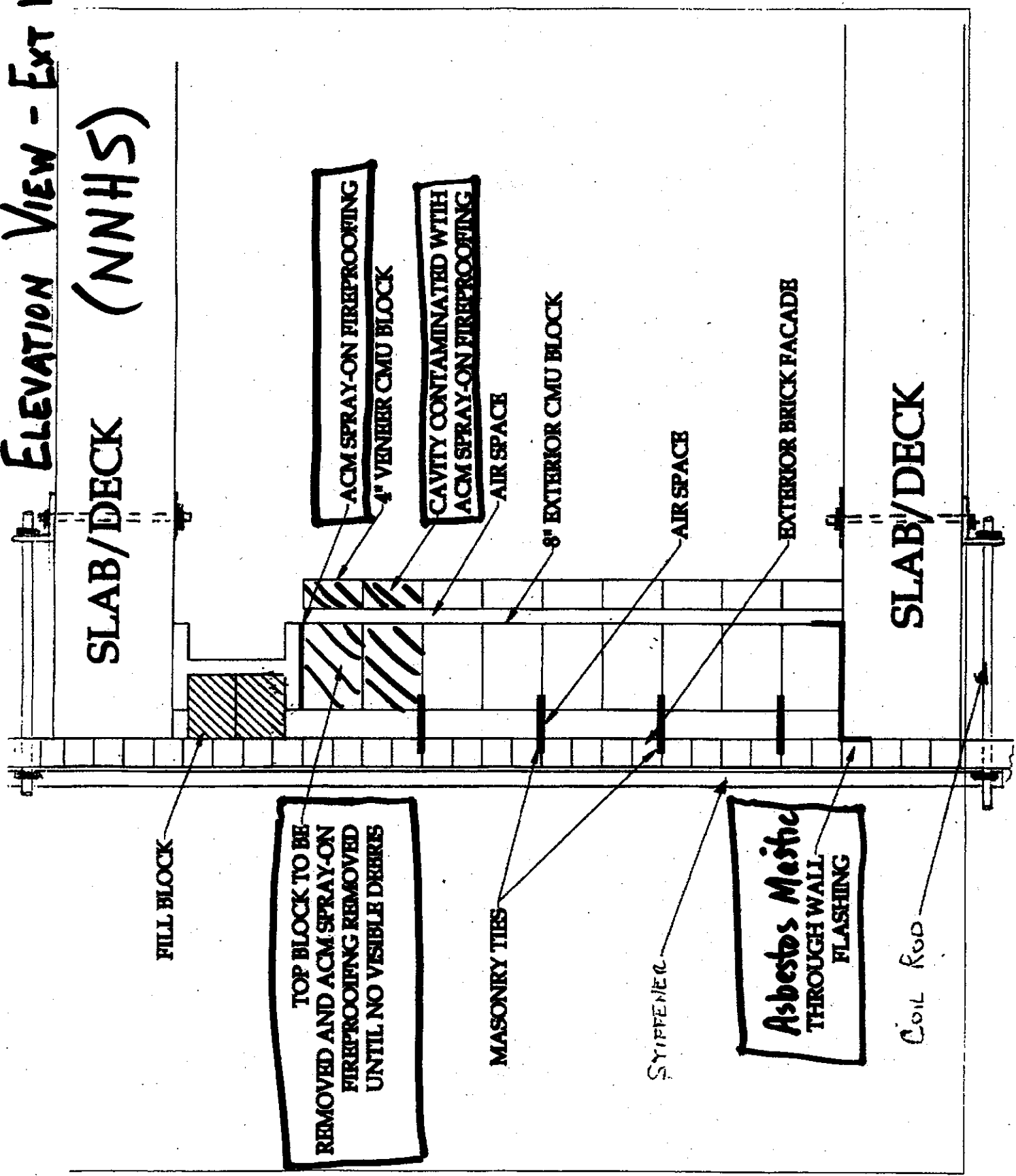
February 4, 2011

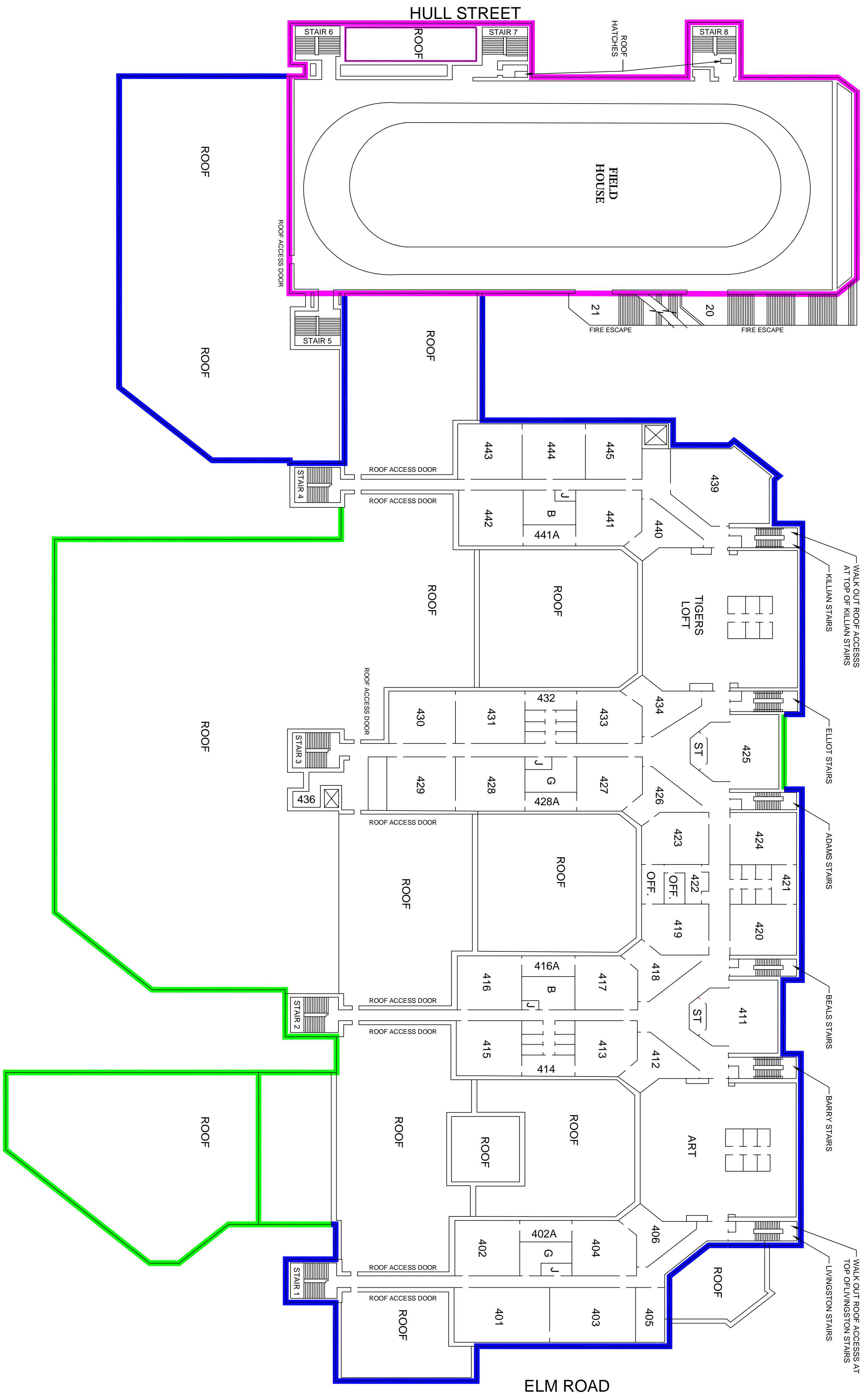
During interior demolition of the Former Newton North High School, asbestos-containing spray-on fireproofing was found on concealed structural steel beams of the exterior walls. See attached floor plan as to general areas of contamination. Inherent in the removal process, the concrete block wall will also need to be removed as contaminated material with means and methods approved by the State DEP.

Costello Dismantling Inc. has prepared an asbestos abatement work plan to remove the materials that are contaminated in a manner as described as follows:

- There will be two abatement contractors working at opposite ends of the building (Section 1 & 5) to meet in the middle (Section 3).
- The exterior brick will be shored up using a system that was designed by a structural engineer from Costello Dismantling, to use the exterior brick intact to act as containment for the work done on the interior concrete block walls.
- Negative air pressure containments will be set up on the interior of the building in multiple phases. Once the work area is under containment, the asbestos abatement contractor will clean and remove the 6" & 8" CMU block walls. The CMU block will be demolished using a Bob Cat and ram attachment, not yet removing the exterior brick.
- The CMU block will be properly containerized and disposed of in a hazmat landfill along with remaining asbestos-containing spray-on fireproofing on the structural steel that was located in the wall.
- The contractor will then utilize mechanical methods to remove the slab edge mastic (non-friable material).
- Once the contaminated materials are completely removed, the exterior brick will be removed for disposal.
- Throughout the process, HEPA vacuums and power washing will help manage the material in a safe manner. Inspections will be continuous by ATC as well as air quality testing.

ELEVATION VIEW - EXT WALL SLAB/DECK (NNHS)

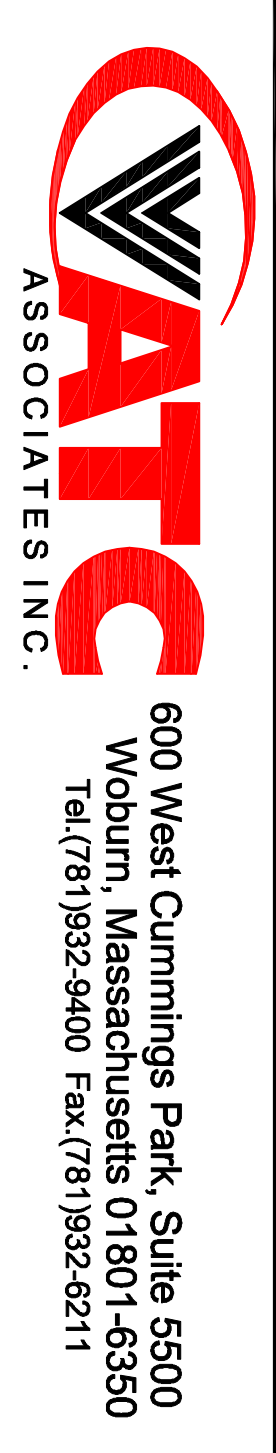




LEGEND

- ASBESTOS CONTAINING WATERPROOFING OBSERVED ON STRUCTURAL STEEL
- ASBESTOS CONTAINING WATERPROOFING OBSERVED ON CONCRETE
- ASBESTOS CONTAINING SPRAY-ON FIREPROOFING OBSERVED ON EXTERIOR BEAMS

GENERAL NOTE: Drawings indicate locations of asbestos-containing materials in which it is technically feasible to show on a floor plan (e.g., spray-on fireproofing, floor tiles and associated mastic). See Table 1 of survey report for additional types and locations of asbestos-containing materials.



SCALE: NTS
 DRAWING DATE: 3/19/10
 ACAD FILE: XCAD1801\ASBESTOS\NEWTON NORTH\ACMEX

**ASBESTOS LOCATION DRAWING
 BUILDING EXTERIOR**

CLIENT: NEWTON NORTH HIGH SCHOOL
 LOCATION: 360 LOWELL AVENUE NEWTONVILLE, MA, 02460

PM: RV
 PE:
 CHECKED BY: DETAILED: RM PROJECT NO.: 060.23835.0003
 FIGURE: ACMEX

CITY OF NEWTON

IN BOARD OF ALDERMEN

2011

ORDERED:

That, in accordance with the recommendation of the Public Facilities and Finance Committees through their respective Chairmen Sydra Schnipper and Leonard J. Gentile, a transfer of funds in the amount of two million five hundred eighty-three thousand six hundred ninety-seven dollars and eleven cents (\$2,583,697.11) to amend the budget for the Newton North High School construction project to provide funding for the additional abatement work related to the demolition phase of the project be and is hereby approved as follows:

<u>From</u>		
Administrative support salaries	\$81,878.91	
Work by other departments	\$306.33	
Rental of equipment	\$100,000.00	
Solid waste disposal	\$10.53	
Building systems commissioning	\$40,000.00	
Blueprinting	\$42,648.25	
Legal services	\$54,530.21	
Postage	\$85.74	
Printing	\$29.50	
Advertising	\$300.00	
Athletic transportation	\$160,000.00	
Owner's contingency	\$2,000,000.00	
Audio-visual equipment	\$8.69	
Classroom furniture	\$103,898.95	
<u>To</u>		
Construction manager at risk		\$2,583,697.11
Total	\$2,583,697.11	\$2,583,697.11

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

, 2011

ORDERED:

That, in accordance with the recommendation of the Public Facilities Committee through its Chairman Sydra Schnipper and the Finance Committees through its Chairman Leonard J. Gentile, a transfer of funds in the amount of three hundred thousand dollars (\$300,000) to supplement the snow and ice budget for the Department of Public Works be and is hereby approved as follows:

	<u>Account Number</u>	<u>Department</u>	<u>Amount</u>
From:	0110301-511001	Executive	\$10,000
	0110501-511001	Purchasing	\$15,000
	0110601-511002	Assessing	\$15,000
	0110901-511001	Human Resources.....	\$35,000
	0111103-511001	Information Technology.....	\$40,000
	0111401-511001	Planning.....	\$25,000
	0140103-511002	DPW-Vehicle Maint.....	\$35,000
	0140104-511002	DPW – Street Maint	\$25,000
	0150101-511001	Health & Human Svcs Adm.....	\$50,000
	0160103-511001	Newton Free Library	\$50,000
To:	0140110-513001	Snow & Ice – Overtime.....	\$100,000
	0140110-5273	Snow & Ice – Rental Veh.....	\$100,000
	0140110-5532	Snow & Ice – Sand/Salt.....	\$100,000

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

DATE: _____

DRAFT FOR DISCUSSION PURPOSES:

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO.

February , 2011

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended with respect to Section 20-13 **Noise Control**, as most recently amended by Ordinance Z-32, by:

- 1. Deleting, after the phrase “shall be fined in an amount not to exceed” contained in Section 20-13(j) *Penalties* the following language: “one hundred dollars (\$100.00) and inserting in its place the following language: “three hundred dollars (\$300.00).

BE IT FURTHER ENACTED that the Revised Ordinances of Newton 2007, as amended be and are hereby further amended with respect to both subsection (c) Department of Inspectional Services and subsection (d) Police Department of Section 20-21, *Enforcing persons and revised ordinances subject to civil fine*, by:

- 1. Deleting the following language:

“Section 20- 13 Noise Control
 () Any Offense \$50.00”

and by:

- 2. Inserting in place thereof the following language:

“Section 20-13 Noise Control
 () First offenseWarning
 in calendar year

- () Second offense.....\$100.00
in calendar year
- () Third offense\$200.00
in calendar year”
- () Fourth or subsequent offense....\$300.00
in calendar year

Approved as to legal form and character:

DONNALYN B. LYNCH KAHN
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

CITY OF NEWTON
IN BOARD OF ALDERMEN

2011

ORDERED:

That in accordance with the recommendation of the Program and Services Committee through its Chairman Amy Mah Sangiolo and the Finance Committee through its Chairman Leonard J. Gentile, two revolving accounts be and are hereby established. The first under the control of the Commissioner of Parks and Recreation for accepting donations as well as fees collected from sale of permits with an expenditure limit of \$75,000 for the purpose of maintenance and improvements to designated off-leash areas. The second account to be under the control of the City Clerk for accepting an administrative fee for the processing of off-leash permits with an expenditure limit of \$5,000 for administrative expenses related to off-leash permit issuance.

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

DATE: _____

DRAFT FOR DISCUSSION PURPOSES ONLY 2/17/11

Chapter 20

Insert a new ARTICLE X REGULATION OF PUBLIC TREES

Sec. 20-72 Public Tree Regulation

(a) Purpose

The purpose of this ordinance is to promote a diverse, healthy and sustainable urban forest in order to provide for the general welfare of Newton's citizens. A healthy urban forest improves the quality of air and water, controls erosion, moderates air temperature, absorbs carbon, reduces noise, enhances appearance and increases property values. Public trees also define public spaces and create civic identity. This ordinance sets out measures to protect trees located on city property and on public rights of way from construction and other preventable damage; to establish conditions for long-term preservation and expansion of the urban forest; to extend the protections afforded by the Tree Preservation Ordinance to city-owned trees and supplement Chapter 87 of the Massachusetts General Laws.

(b) Definitions

Aggregate diameter: The combined diameter of a multiple trunk tree measured at breast height.

Building: The term "building" shall be as defined in section 30-1.

Caliper: The measure of a newly installed tree and is determined in the following manner - Caliper measurement of the trunk shall be taken six inches above the ground up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches, the caliper should be measured at twelve inches above the ground.

Certified arborist: An arborist certified by the Massachusetts Arborists Association, or any successor organization.

Diameter breast height (DBH): The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

Drip line: A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Public Tree or public shade tree.

Pruning standards: Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.

Public tree: Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land owned by the City of Newton.

Public Shade Tree: Any tree within the City that fits the definition of Public Shade Tree under MGL Ch. 87

Remove (including removing and removal): The cutting down of any Public Tree or Public Shade Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a Public Tree, including, but not limited to, excessive or improper pruning.

Tree Manual: The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)

Tree warden: The commissioner of parks and recreation or his designee.

(c) *Applicability:* The terms and provisions of this article shall apply be administered by the tree warden and shall apply to any public shade tree as defined in G.L. c. 87 and to any public tree located on land owned and managed by the City of Newton, with the exception of the land under the auspices of the Conservation Commission.

(d) *Permit:* No person other than the tree warden shall remove, prune, or alter a public tree or public shade tree located on land subject to the provisions of this article without first obtaining a tree permit from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(e) *Activities requiring a Tree Permit:* A tree permit issued by the tree warden is required prior to any of the following activities:

1. Any exterior work that requires the removal of a public tree;
2. Any construction on City property within the dripline of a public tree;
3. Removal of a public shade tree. This requirement is in addition to the requirements of G.L. c. 87 pertaining to removal of a public shade tree;
4. Construction within that portion of the dripline of a public shade tree that is located over the public right of way.
5. Pruning or treatment for the benefit of the health, safety, or overall well being of a Public Shade Tree and/or Public Tree, as deemed appropriate by the tree warden, by anyone other than the tree warden or his designee as provided in G.L. Ch. 87;
6. Planting of a tree in the public right of way or on City property by anyone other than the tree warden or his designee as outlined under G.L. Ch. 87;
7. Pruning or altering of a public shade tree and/or public tree for the purposes of overhead utility line clearance;
8. Affixing or hanging anything from a public shade tree or public tree.

(f) *Permit application; fee:* An application for a tree permit shall be submitted to the tree warden. Such application shall be on a form prescribed by the tree warden and shall include any materials or information required by the tree warden based on the nature of the activity for which application is made. The application for a tree permit shall be accompanied by an administrative fee of \$150.00. Such fee shall be waived if the applicant is a city department, agency, commission or other public instrumentality of the city or if the tree warden determines in writing that the proposed activity will benefit the health of the tree or the wellbeing of the public.

(g) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article and with any rules or regulations promulgated hereunder. The tree warden shall date stamp or otherwise record the date of filing of each application for a tree permit. The tree warden shall complete the review of each tree permit application no later than ten (10) business days after the submission of a completed application to the tree warden except in the case of a request to remove a public shade tree which shall be subject to the procedures set forth in G.L. c. 87.

(h) *Conditions:* The tree warden may condition issuance of a tree permit upon such measures as he deems necessary to protect existing public trees or public shade trees. Such conditions shall be in writing. The tree warden shall make a determination that the prescribed protected measures have been adequately provided before site disturbance related to the permitted activity may begin.

(i) *Construction:* Except as provided in a tree permit, construction activities on City owned property and public right of ways under the drip line of a public tree or public shade tree are prohibited. Prohibited construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.

(j) *Suspension or revocation:* The tree warden may suspend or revoke a tree permit at any time upon written notice to the permit holder that the permit holder has failed to comply with any provisions of this section, or with any rules or regulations promulgated hereunder, or with conditions of the permit. Written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree permit upon compliance, where practicable. The suspension or revocation of a tree permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(k) *Public Tree Removal:* The tree warden shall notify the Urban Tree Commission upon receipt of an application to cut down or remove a public tree, and no public tree shall be removed pursuant to a permit until five (5) days after its issuance unless such removal of the tree(s) is necessary based on a determination by the Tree warden that at least one of the following conditions are met.

1. The public tree is interfering with existing structure, utilities, streets, sidewalks or proposed necessary improvements, and there is no alternative to removal;
2. The public tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon rights of way, or poses a threat to pedestrian or vehicular safety.
3. The removal of the public tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the tree warden by a certified arborist.

(l) Appeal: Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal request. The mayor or his designee shall include in the decision the rationale there for. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman for the ward in which the trees are located. There shall be no further appeal of the matter decided by the mayor or his designee. No public trees shall be removed while an appeal is pending.

(m) Permit length: Any permit issued by the tree warden shall be valid for sixty (60) days from issuance. Length may be extended by tree warden following written request by the applicant. The tree warden may grant the extension for any length of time as he deems necessary and appropriate.

(n) Emergencies: A public tree or public shade tree may be removed without first obtaining a written permit as otherwise required by this section only if the tree warden determines that the condition of the public tree or public shade tree is hazardous and immediately endangers the public health, safety or welfare or causes an immediate disruption of public services such that immediate removal is required. If such determination is made, the tree warden may remove the tree or provide oral authorization for its removal, utilizing such professional criteria and technical assistance as he deems necessary. The tree warden shall memorialize in writing each such oral authorization to remove a hazardous tree and keep a record of same.

(o) Waiver: The requirements of this section may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God.

(p) Tree replacement: The tree warden may require that replacement of a removed public tree or public shade tree in the manner required in section 20-35 of these ordinances and in any rule or regulation or the tree warden

(q) Payment in lieu of planting replacement tree(s): In lieu of planting a replacement tree as provided in section (p) above, a person who has been granted a tree permit may make a

contribution to the tree replacement fund as established in section 20-36 in an amount equal to the cost to replace the tree in accordance with the provisions of section 20-35, which cost shall be determined by the tree warden who shall maintain on file the City's current tree planting costs.

(r) *Rules and regulations:* The tree warden is authorized to promulgate reasonable rules and regulations to implement administration and enforcement of this section

(s) *Enforcement:* The commissioner of parks and recreation, in his capacity as tree warden, or such other municipal official as may hereafter be assigned the duties of tree warden, shall be authorized to enforce the provisions of this section. The tree warden shall provide written notice to the offender of the specific violation and provide a reasonable time for compliance. Such notice shall be sent by certified mail, return receipt requested, or by hand delivery. Thereafter, the tree warden may impose the fines described in (t) below.

(t) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with conditions of a permit, or failure to replace any removed tree as required by the tree warden, or failure to pay the required amount into the tree replacement fund shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Nothing herein shall be construed to require the city to make a payment for violation of this section; however the city agency that caused the violation shall be responsible for the costs of replacement or repair of the tree(s) which were damaged or removed.

(u) *Severability:* The provisions of this article are severable. If any section, provision, or portion of this article is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this article shall continue to be valid.

(v) *Conflict of laws:* Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special permit procedures as provided in section 30-24 and to the extent that any provision hereof conflicts with said special permit procedures, such provision shall not be valid. Nothing herein is intended to conflict with any state law regulating public utilities and to the extent that any provision hereof conflicts with state law, such provision shall not be valid.

CITY OF NEWTON
IN BOARD OF ALDERMEN

, 2011

ORDERED:

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

#307-10 PROGRAMS AND SERVICES COMMITTEE proposing a RESOLUTION to the Interim Director of Health and Human Services to increase the tobacco seller's license fee.

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

, 2011

ORDERED:

That, in accordance with the recommendations of the Community Preservation Committee through its Chairman Nancy Grissom; the Committee on Community Preservation through its Chairman Alderman Susan Albright; the Public Facilities Committee through its Chairman Alderman Sydra Schnipper; and, the Finance Committee through its Chairman, Alderman Leonard J. Gentile, the following item be and is hereby voted NO ACTION NECESSARY:

#147-08 COMMUNITY PRESERVATION COMMITTEE recommending that the sum of \$359,400, including \$2,000 for legal costs, be appropriated from the FY'08 Community Preservation Fund's historic resources and general reserves, for a project to rehabilitate and expand storage space for the research library and archives at the Newton History Museum, to preserve the existing collections, and enhance public access to the collections
(B) BALANCE OF PROJECT ESTIMATE \$321,900.00

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

(SGD) DAVID A. OLSON, City Clerk