

CITY OF NEWTON
IN BOARD OF ALDERMEN
PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, NOVEMBER 7, 2012

7:45 PM
Room 222

ITEMS SCHEDULED FOR DISCUSSION:

Re-appointment by His Honor the Mayor

#285-12 PETER JOHNSON, 121 Fairway Drive, West Newton, re-appointed as a member of the PARKS & RECREATION COMMISSION for a term to expire September 11, 2015 (60 days 12/01/12) [09-14-12 @3:04PM]

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]

Clerk's Note: The Chairman will be taking public comment on the following item:

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#254-12 ALD. HESS-MAHAN, SANGIOLO, DANBERG, KALIS, CROSSLEY proposing an ordinance relating to plastic bag reduction that would add a fee to single-use plastic and paper bags that are not at least 40% post-consumer recycled content, at certain retail establishments in Newton. [07/18/12 @4:34 PM]

#336-12 HIS HONOR THE MAYOR, ALD. BAKER, FULLER AND LAREDO, requesting a discussion to include possible uses, process, timeline, opportunity for community input and funding sources, with the affected neighborhood community and with members of the Board of Aldermen, on the potential acquisition for passive or active recreational uses of the five acre parcel in Ward 7 on Manet Road currently held by the MWRA as an obsolete open water reservoir. [10-3-12 @ 6:57PM]

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Trisha Guditz, 617-796-1156, via email at TGuditz@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

Appointment by His Honor the Mayor

#329-12 NANCY LEVINE, 379 Central Street, Auburndale, appointed as a member of THE ELECTION COMMISSION for a term to expire March 31, 2015 (60 days 01/04/13) [10-22-12 @3:17PM]

Re-appointment by His Honor the Mayor

#330-12 ROBERT KLIVANS, 69 Pine Ridge Road, Waban, re-appointed as a member of THE BOARD OF TRUSTEES OF THE NEWTON FREE LIBRARY for a term to expire June 30, 2017 (60 days 01/04/13) [10-16-12 @12:21PM]

Re-appointment by His Honor the Mayor

#331-12 THOMAS TURNER, 60 Wyoming Road, Newtonville, re-appointed as a member of THE NEWTON HOUSING AUTHORITY for a term to expire October 18, 2017. (60 days 01/04/13) [10-25-12 @ 10:51AM]

Re-appointment by His Honor the Mayor

#332-12 DANIEL GREEN, 46 Glen Avenue, Newton Centre, re-appointed as a member of THE CONSERVATION COMMISSION for a term to expire October 25, 2015. (60 days 01/04/13) [10-25-12 @ 10:51AM]

#333-12 ALD. CROSSLEY AND HESS-MAHAN, on behalf of Green Decade Newton, requesting a discussion and possible Resolution, asking that Newton join the Center for Biological Diversity's Clean Air Campaign by sending a Resolution to the US Administration and Environmental Protection Agency urging them to assert and enforce certain provisions of the nation's Clean Air Act in order to help communities achieve cuts in greenhouse gas pollution. [10-11-12 @ 5:05PM]

#334-12 ALD. SWISTON AND LINSKY requesting a discussion with the Licensing Board regarding the licensing and permit requirements for non-profit organizations. [10-10-12 @ 3:52PM]

#335-12 DAVID OLSON requesting a discussion of Mayor Warren's Executive Order #1 which authorizes the use of remote participation for City Boards and Commissions as it relates to and effects the Board of Aldermen's Committee and Full Board meetings, and to make any necessary changes to the Board Rules to allow and regulate remote participation should it be deemed acceptable. [10-3-12 @4:56PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#324-12 HIS HONOR THE MAYOR requesting the following:

- (1) To present the following levy limit override and debt exclusion ballot questions to the voters in accordance with the procedure prescribed by Massachusetts General Law Chapter 59, Section 21C(g) and (k):
 - Shall the City of Newton be allowed to assess an additional \$8,400,000 in real estate and personal property taxes for the purpose of funding municipal and school operating and capital expenses to support increased student enrollment, fund street and sidewalk paving, fund public safety personnel, address the condition and capacity of Zervas Elementary School, fund the relocation of the fire Department Wires Division, and fund the replacement of Fire Headquarters and Fire Station 3 in Newton Centre for the fiscal year beginning July 1, 2013?
Yes _____ No _____
 - Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 1/2, so called, the amounts required to pay for the bonds issued in order to renovate or replace the A.E. Angier Elementary School?
Yes _____ No _____
 - Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 1/2, so called, the amounts required to pay for the bonds issued in order to renovate or replace the Cabot Elementary School?
Yes _____ No _____
- (2) A request to call a special election to present the levy limit override and debt exclusion ballot questions to the voters and set a date of March 12 2013, for such special election.
- (3) A Request to appropriate from Budget Reserve the sum of eighty-five thousand dollars (\$85,000) for the purpose of funding the costs of a special election to present the levy limit override and debt exclusion ballot questions to the voters.

REFERRED TO PROGRAMS & SERV. AND PUBLIC FACILITIES COMMITTEES

#315-12 ALD. FULLER, RICE AND GENTILE of the Angier School Building Committee providing updates and discussion on the Angier School Building project as it develops through the site plan approval process. [10-02-12 @ 3:37PM]

REFERRED TO PUB.FAC, ZONING&PLANNING, PROG & SERV COMMITTEES

#316-12 DEPARTMENT HEADS HAVENS, ZALEZNIK, LOJEK requesting amendments to **Sec. 26-30. Licenses for cafe furniture on sidewalks.** to streamline the procedure allowing businesses to place café furniture on public sidewalks. [09/24/12 @3:17 PM]

REFERRED TO PROG & SERV, PUB. FAC., ZAP, AND FINANCE COMMITTEES

#256-12 ALD. HESS-MAHAN, SANGIOLO & SWISTON proposing and ordinance promoting economic development and the mobile food truck industry in the City of Newton. [08/06/12 @4:46 PM]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

#322-12 HIS HONOR THE MAYOR submitting the FY14-FY18 Capital Improvement Program pursuant to section 5-3 of the Newton City Charter. [10/09/12 @ 2:38 PM]

REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES

#302-12 HIS HONOR THE MAYOR, with the support of Ald. Rice, Crossley, Yates, Fischman, and Kalis, requesting authorization to execute a 99-year lease between the City of Newton and the Massachusetts Bay Transportation Authority (MBTA) for .97 miles of unused MBTA rail bed that runs parallel to Needham Street to create a multi-purpose recreational pathway. [09/24/12 @ 5:00 PM]

#230-12 ALD. SANGIOLO requesting the establishment of guidelines and policies regarding the creation of Neighborhood Area Councils particularly with respect to (1) boundary delineations and (2) description of area council authority. [08-06-12 @4:39PM]

REFERRED TO PUBLIC FACILITIES AND PROGRAMS & SERVICES COMMITTEES

#231-12 RECODIFICATION COMMITTEE recommending that **Sec. 11-11. Permit to cart trash and/or recyclable materials.** be deleted as G.L.c.111 §31A authorizes the Health Department to require registration. for “garbage,” which is addressed in Sec. 11-5.

#228-12 RECODIFICATION COMMITTEE recommending that **Chapter 28 VETERANS' SERVICES** be amended by deleting **Secs. 8 through-10**, which refer to “a physician to the department of veterans’ services” – a position that no longer exists.

#229-12 RECODIFICATION COMMITTEE recommending a review and possible amendment to the *Board of Aldermen Rules & Orders 2012-2013* relative to review of draft ordinances by the Law Department.

REFERRED TO PROG & SERV, PUB. FACIL & FINANCE COMMITTEES

#170-12 ALD. SANGIOLO, BAKER, BLAZAR , JOHNSON, and YATES requesting the creation of an ordinance to govern the naming of public assets of the City, including the interior and exterior features of public buildings, lands, and water bodies of the City, as well as any public facilities and equipment associated with

them, all to serve the best interests of the City and to insure a worthy and enduring legacy for the City's physical facilities and spaces, including appropriately honoring historic events, people, and places. [05/29/12 @ 1:34 PM]

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]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #273-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that the Executive and Human Resources Departments develop a comprehensive human capital strategy for the city to include: performance management, talent development, succession planning, and compensation. [07/17/08 @ 9:53 AM]
FINANCE VOTED NO ACTION NECESSARY on 3/8/10
- #205-11 ALD. SANGIOLO, GENTILE, HARNEY, LINSKY requesting a discussion with the School Committee regarding a proposal to enter into contractual relationships with the Newton Schools Foundation to sell naming rights on behalf of the Newton Public Schools. [06/22/2011 @ 8:32AM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #39-12 HIS HONOR THE MAYOR requesting authorization to establish a revolving account with an annual expenditure limit of \$2,000,000 for the purpose of receiving funds collected by the Newton Schools Foundation in connection with the sale of naming rights for Newton Public School buildings and facilities and to be distributed for the sole purpose of public school education technology and curriculum purposes. [01/30/12 @ 4:18 PM]
- #165-12 HIS HONOR THE MAYOR submitting (1) the report prepared by Kopelman & Paige PC, the consultant engaged to review the city's election procedures, and (2) proposing that Charter Sections 2-1(b) and 4-1(b) be amended to establish a particular date by which nomination papers are made available. [05/25/2012 @ 1:35PM]
- #145-12 ALD JOHNSON requesting a review by the Solicitor's office as to what constitutes "reorganization" per our City Charter. [05/16/12 @ 10:24PM]

REFERRED TO PROG. & SERV AND PUBLIC FACILITIES COMMITTEES

- #36-12 ALD. CROSSLEY & FULLER requesting Home Rule legislation or an ordinance to require inspections of private sewer lines and storm water drainage connections prior to settling a change in property ownership, to assure that private sewer lines are functioning properly and that there are no illegal storm water connections to the city sewer mains.
 A) Sewer lines found to be compromised or of inferior construction would have to be repaired or replaced as a condition of sale;
 B) Illegal connections would have to be removed, corrected, and re-inspected in accordance with current city ordinances and codes, as a condition of sale.
 [01/24/12 @ 8:07 AM]
- #164-12 ALD. YATES requesting a discussion with the Executive Secretary of the Election Commission and other appropriate officials on how to use City Hall grounds and various other locations around the city to inform Newton voters about the unusual Thursday date of the September primary. [05/24/12 @ 1:41PM]
- #144-12 ALD. HESS-MAHAN proposing to repeal the time restrictions for filing special permit applications/site plan reviews for Major Projects during July and August in Article X Section 5 of the Rules and Orders of the Board of Aldermen.
- #68-12 ALD. YATES, MERRILL asking that the Executive Department develop a detailed plan for the storage of the veterans archives currently housed in the War Memorial that allows for proper access to the records by veterans, their families, and historians, both amateur and professional. [03-05-12 @ 9:40 PM]
- #68-12(2) ALD. YATES requesting that a detailed inventory of the more than 100 photographs, paintings, drawings and other images of the Civil War, World War I, World War II in the office section of the War Memorial Hall be prepared and a plan be developed for their public display in whole or in part before or during the city's observance of the 150th anniversary of the Civil War through 2015 and the centennial of World War I from 2014-2015. [03/23/12 @ 1:43PM]
- #67-12 ALD. ALBRIGHT seeking a discussion with the Executive Department regarding a plan and timeline for funding an archivist/records manager position for the city to oversee the preservation, cataloguing, and organization of the city archives; provide guidance and assistance to city departments that are maintaining their own archives in order to ensure that records are preserved, accessible, and maintained; and, plan for future storage needs as the collection continues to expand. [03-12-12 @ 10:28 AM]

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

- #312-10 ALD. LENNON, LAPPIN, SCHNIPPER, SANGIOLO requesting a discussion with the School Committee on its plans to address space needs in the Newton public schools. [10-27-10 @ 11:07 AM]
FINANCE VOTED NO ACTION NECESSARY on 10/12/11 PUBLIC FACILITIES VOTED NO ACTION NECESSARY on 11/18/11

REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES

- #245-10 ALD. SCHNIPPER requesting discussion with National Grid regarding the possible damage to trees as a result of gas leaks. [09/01/10 4:00 PM]

REFERRED TO PROG & SERV. AND PUB. FACIL. COMMITTEES

- #99-11 ALD. ALBRIGHT, JOHNSON, DANBERG requesting that the Department of Public Works coordinate data on the impact of the snow removal ordinance from the Departments of Public Works, Parks & Recreation, Executive and Senior Services into a monthly report for the winters 2012 and 2013, which will be sent to the Public Facilities Committee that includes the following data: (1) the number of people requesting exemptions; (2) the number of exemptions awarded; (3) the number of warning letters sent; (4) the ability of the City to maintain the same standard regarding treating the surface to preserve safe passage; and (5) cost of the implementation of the program.
PUBLIC FACILITIES COMMITTEE APPROVED 4-0 on 10/5/2011

REFERRED TO PROG. & SERV., PUB.FAC. AND FINANCE COMMITTEES

- #89-08 ALD. PARKER requesting the following:
A) review of the maintenance practices for buildings, parks and other properties owned by the City (including School Department facilities and grounds)
B) development of a comprehensive maintenance plan that includes regular schedules for preventive maintenance for each specific site or facility
C) a RESOLUTION requesting that implementation of said maintenance plan be funded using operating budget funds.
[02/13/08 @ 12:07 PM]
FINANCE VOTED NO ACTION NECESSARY ON 3/8/10
PUBLIC FACILITIES NO ACTION NECESSARY ON 11/3/10

Respectfully Submitted,
Amy Sangiolo, Chairman

#254.12

Karyn Dean

Date sent: Fri, 2 Nov 2012 15:01:06 -0400 (EDT)
Subject: Re: Plastic Bag Reduction Ordinance
From: "Ted Hess-Mahan" <thessmahan@newtonma.gov>
To: thessmahan@newtonma.gov
Copies to: asangiolo@newtonma.gov,
cmerrill@newtonma.gov,
jrice@newtonma.gov,
aldermanbaker@comcast.net,
mfischman@newtonma.gov,
rblazar@newtonma.gov,
slinsky@newtonma.gov,
dkahn@newtonma.gov,
oyoung@newtonma.gov,
kdean@newtonma.gov,
alisonlearymooradian@gmail.com,
dkalis@newtonma.gov,
dcrossley@newtonma.gov,
vdanberg@gmail.com
Send reply to: thessmahan@newtonma.gov

Thank you all for your comments. I attached redlined drafts showing proposed revisions incorporating as many of your comments as possible. The revisions include:

1. Labelling of each section of the ordinance, e.g., "purpose and findings," "definitions," "restrictions," "administration," "violations and penalties," etc.
2. Graduated fee to be phased in over a two year period increasing from \$0.05 to \$0.10 to \$0.20.
3. Section on finding and purpose of the ordinance.

I believe that the more substantive proposed changes regarding compostable vs. degradable vs. recyclable require discussion and are therefore subject to the open meeting laws.

I am sending the "clean" revised drafts to Karyn Dean so she can include them in your Friday Packets.

Thanks again. Please contact me if you have any questions.

Sincerely,

Ted Hess-Mahan
Alderman-at-Large Ward 3
871 Watertown Street
West Newton, MA 02465
508-847-4855
thessmahan@newtonma.gov

When responding, please be advised that the Secretary of the Commonwealth has determined that email may be considered a public record.

On Wed, October 31, 2012 6:50 pm, Ted Hess-Mahan wrote:
> Dear Programs & Services Committee Members:
>

> As requested by the committee, I have drafted two versions of a plastic
> bag reduction ordinance attached hereto, one which includes a fee for
> the sale of plastic and paper bags that are made from less than 40%
> recycled material, and a ban on the sale of plastic and paper bags that
> are not made from at least 70% recycled material. The ordinance
> establishing a fee is based on the highly successful ordinance passed by
> the District of Columbia. The ordinance containing an outright ban is
> based on the proposed ordinance that will be voted on at a special town
> meeting in Brookline in November. The Law Department has not reviewed
> the language of either of these draft ordinances.

>
> Based on consultations with the Law Department, I want to bring to your
> attention the restrictions on the imposition of fees by cities and towns
> in Massachusetts established in the Emerson College case and its
> progeny. Valid fees are distinguishable from invalid taxes by three
> criteria: (i) the fee is assessed for a particular government service
> benefiting the party paying the fee in a manner not shared by other
> persons; (ii) the person assessed has the option to decline the service
> and thus avoid the charge; and (iii) the amounts paid compensate the
> town for its costs and expenses of providing the services rather than
> raising revenues. *Emerson College v. Boston*, 391 Mass. 415, 427-428
> (1984). Moreover, a lawful fee is one that covers only the permit
> granting authority's reasonably anticipated costs of providing the
> services for which the fee is assessed. *Southview Cooperative Housing
> Corp. v. Rent Control Board of Cambridge*, 396 Mass. 395, 402 (1985). I
> have attached advisory opinions from the Municipal Law Division of the
> Attorney General's office regarding the validity of fees imposed by
> cities and towns in Massachusetts.

>
> Please let me know whether you have any comments or questions on the
> attached drafts by Friday, so that Karyn Dean can send them out with the
> Friday Packet.

>
> Sincerely,

>
> Ted Hess-Mahan
> Alderman-at-Large Ward 3
> 871 Watertown Street
> West Newton, MA 02465
> 508-847-4855
> thessmahan@newtonma.gov

>
> When responding, please be advised that the Secretary of the
> Commonwealth has determined that email may be considered a public
> record.

>
>

DRAFT PLASTIC BAG FEE ORDINANCE

The Revised Ordinances of the City of Newton are hereby amending by adding the following Section

— —.

(a) Purpose and Findings. The production and use of single-use carryout bags have significant impacts on the environment, including, but not limited to: contributing to unsightly litter; increasing municipal solid waste; contributing to potential death of land and marine animals through ingestion and entanglement; and requiring the use of millions of barrels of crude oil for their manufacture.

The Board of Aldermen finds and declares that to preserve the health, safety, welfare and environment of the City of Newton, the distribution of single-use carryout bags should be regulated and a fee should be collected by retail establishments that choose to provide them at the point of sale.

The purpose of this ordinance is to encourage the use of environmentally preferable alternatives to single-use carryout bags, such as reusable bags. To accomplish this purpose, retail establishments will be required to charge a fee to provide a single-use carryout bag, a portion of which will be deposited into a Plastic Bag Cleanup Fund established for the purposes set forth in this ordinance. If customers forget to bring their own reusable bags, or choose not to, this ordinance does not prevent the retail establishment from providing recyclable, compostable, marine degradable or reusable checkout bags for sale.

(b) Definitions. The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner” means the Commissioner of the Newton Inspectional Services Department.

“ASTM D6400” means the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081” means ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”

“Compostable plastic bag” means a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Checkout bag” means a carryout bag provided by a store to a customer at the point of sale.

“EN 13432” means the European Norm EN 13432 established by The European Committee for Normalization, entitled "Requirements for packaging recoverable through composting and biodegradation. Test scheme and evaluation criteria for the final acceptance of packaging."

“Fund” means the Plastic Bag Clean Up Fund.

“Home compostable plastic bag” means a plastic bag that conforms to the EN 13432 standard for compostability.

“Marine degradable plastic bag” means a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.

“Person” means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

“Reusable bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment” means any retail store that satisfies at least one of the following requirements:

(1) a retail space of 2,500 square feet or larger or at least three (3) locations under the same ownership within the City of Newton that total 2,500 square feet or more; or

(2) a retail pharmacy with at least two locations under the same ownership within the City of Newton; or

(3) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

“Single-use carryout bag” means a bag of any material, commonly plastic or paper, which is provided to a consumer at the point of sale to carry purchases. The term “Single-use carryout bag” shall not include:

(1) Bags used by consumers inside stores to:

(A) Package bulk items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;

(B) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;

(C) Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and

(D) Contain unwrapped prepared foods or bakery goods;

(E) Compostable plastic bags, home compostable plastic bags, as well as marine degradable plastic bags.

(2) Bags provided by pharmacists to contain prescription drugs;

(3) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

(4) Paper carryout bags that restaurants provide to customers to take food away from the retail establishment;

(5) Reusable bags;

(c) Single-use carryout bag restrictions. Requirements for single-use carryout bags made available to customers by retail establishments.

(1) Single-use carryout bags made of paper shall:

(A) Be 100% recyclable;

(B) Contain a minimum of 40% post-consumer recycled content; and

(C) Display the phrase "Please Recycle This Bag", or a substantially similar phrase, in a highly visible manner on the bag exterior.

(2) Single-use carryout bags made of plastic shall:

(A) Be 100% recyclable;

(B) Be made of high-density polyethylene film marked with the SPI resin identification code 2 or low-density polyethylene film marked with the SPI resin identification code 4; and

(C) Display the phrase "Please Recycle This Bag", or a substantially similar phrase, in a highly visible manner on the bag exterior.

(3) Single-use carryout bags made of plastic that cannot be recycled shall not be sold or distributed, retail or wholesale, in the City of Newton.

(4) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.

(d) Establishment of fee.

(1) Within the first year after the requirements of this ordinance become effective, a consumer making a purchase from a retail establishment shall pay at the time of purchase a fee of \$.05 for each single-use carryout bag.

(2) After the one (1) year anniversary of the date after which the requirements of this ordinance become effective, a consumer making a purchase from a retail establishment shall pay at the time of purchase a fee of \$0.10 for each single-use carryout bag.

(3) After the two (2) year anniversary of the date after which the requirements of this ordinance become effective, a consumer making a purchase from a retail establishment shall pay at the time of purchase a fee of \$0.20 for each single-use carryout bag.

(4) A retail establishment shall not advertise or hold out or state to the public or to a customer directly or indirectly that the reimbursement of the fee or any part thereof to be collected by the retail establishment will be assumed or absorbed by the retail establishment or otherwise refunded to the customer.

(5) All retail establishments shall indicate on the consumer transaction receipt the number of single-use carryout bags provided and the total amount of fee charged.

(6) Each retail establishment shall retain \$.01 of each fee collected; provided, that an establishment that chooses to offer a carryout bag credit program to its customers, as set forth in subparagraph (7) of paragraph (d) of this section, shall retain an additional \$.01 from each fee collected, for a total of \$.02 for each fee collected.

(7) A retail establishment shall retain an additional \$.01 of each fee for a carryout program which:

(A) Credits the consumer no less than \$.05 for each carryout bag provided by the consumer for packaging their purchases, regardless of whether that bag is paper, plastic, or reusable;

(B) Is prominently advertised at each checkout register; and

(C) Reflects the total credit amount on the consumer transaction receipt.(8) The remaining amount of each fee collected shall be paid to the Treasury Department and shall be deposited in the Newton Plastic Bag Cleanup Fund established by paragraph (g) of this section.

(9) The Treasury Department shall develop rules for frequency and method for reporting and transmitting the fees, as set forth in subparagraph (6) of paragraph (d) of this section to the City of Newton.

(e) Administration. The Commissioner shall promulgate rules and regulations to implement this section.

(f) Violations and penalties. Each Retail Establishment located in the City of Newton shall comply with this ordinance. Violation of any of the requirements of this act shall subject a retail establishment to the penalties set forth in Section 20-21(c)(__) of the Revised Ordinance of the City of Newton, Massachusetts.

(g) Establishment of the Plastic Bag Clean Up Fund.

(1) There is established as a nonlapsing fund the Plastic Bag Cleanup Fund. The fees established by subparagraph (6) of paragraph (c) of this section for single-use carryout bags and transmitted to the Treasury Department shall be deposited in the Fund. The Fund shall be used solely for the purposes set forth in subparagraph (2) of paragraph (h) of this section and shall be administered by the Department of Public Works.

(2) The Fund shall be used solely for the purposes of cleaning up and reducing the number of single-use plastic bags in the City of Newton. Funds shall be used for the following projects in the following order of priority:

- (A) A public education campaign to educate residents, businesses, and tourists about the impact of trash on the District's environmental health;
- (B) Providing reusable carryout bags to residents of the City of Newton, with priority distribution to seniors and low-income residents;
- (C) Purchasing and installing equipment, such as storm drain screens and trash traps, designed to minimize trash pollution that enters waterways through storm drains;
- (D) Creating youth-oriented water resource and water pollution educational campaigns for students at the City of Newton public schools;
- (E) Monitoring and recording pollution indices;
- (F) Preserving or enhancing water quality and fishery or wildlife habitat;
- (G) Promoting conservation programs, including programs for wildlife and endangered species;
- (H) Purchasing and installing equipment designed to minimize trash pollution, including, recycling containers, and covered trash receptacles;
- (I) Restoring and enhancing wetlands and green infrastructure to protect the health of the watershed and restore the aquatic and land resources of its watershed;
- (J) Funding community cleanup events and other activities that reduce trash, such as increased litter collection;
- (K) Funding a program with neighboring jurisdictions to focus river and tributary clean-up efforts upstream;
- (L) Supporting vocational and job training experiences in environmental and sustainable professions that enhance the health of the watershed;
- (M) Maintaining a public website that educates City of Newton residents on the progress of clean-up efforts; and

(N) Paying for the administration of this program.

(3) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the City of Newton at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subparagraph (2) of paragraph (h) of this section without regard to fiscal year limitation.

(i) Effective date. All of the requirements set forth in this act shall take effect 90 days after its effective date.

The Revised Ordinances of the City of Newton are hereby amending by adding the following Section 20-21(c)():

Sec. ___-___ Plastic Bag Fee Ordinance

() If it is determined that a violation has occurred, the City of Newton shall issue a warning notice to the Retail Establishment for the initial violation.

() If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the City of Newton shall issue a notice of infraction and shall impose a penalty against the retail establishment.

() The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense

C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court, pursuant to Sec. 20-20 and Massachusetts General Laws c. 40, section 21D.

() No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

() A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.

() The penalty shall double after fifteen (15) calendars days if the Retail Establishment does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

DRAFT PLASTIC BAG REDUCTION ORDINANCE

The Revised Ordinances of the City of Newton are hereby amending by adding the following Section

— —.

(a) Findings and Purpose. The production and use of plastic checkout bags have significant impacts on the environment, including, but not limited to: contributing to unsightly litter; increasing municipal solid waste; contributing to potential death of land and marine animals through ingestion and entanglement; and requiring the use of millions of barrels of crude oil for their manufacture.

The Board of Aldermen finds and declares that to preserve the health, safety, welfare and environment of the City of Newton, the distribution of plastic bags should be regulated and prohibited.

The purpose of this ordinance is to encourage the use of environmentally preferable alternatives to plastic checkout bags, such as reusable bags. If customers forget to bring their own bags, or choose not to, this ordinance does not prevent the retail establishment from providing recyclable, compostable, marine degradable or reusable checkout bags for sale. This effort will lessen the negative impact on our environment caused by single-use plastic checkout bags.

(b) Definitions. The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner” means the Commissioner of the Newton Inspectional Services Department.

“ASTM D6400” means the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081” means ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”

“Compostable plastic bag” means a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Checkout bag” means a carryout bag provided by a store to a customer at the point of sale.

“EN 13432” means the European Norm EN 13432 established by The European Committee for Normalization, entitled "Requirements for packaging recoverable through composting and biodegradation. Test scheme and evaluation criteria for the final acceptance of packaging."

“Home compostable plastic bag” means a plastic bag that conforms to the EN 13432 standard for compostability.

“Marine degradable plastic bag” means a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.

“Person” means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

"Recyclable paper bag" means a paper bag that is 100 percent recyclable overall and contains at least 70 per cent recycled content, and displays the word "Recyclable" in a highly visible manner on the outside of the bag.

“Reusable bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment” means any retail store that satisfies at least one of the following requirements:

(1) a retail space of 2,500 square feet or larger or at least three (3) locations under the same ownership within the City of Newton that total 2,500 square feet or more; or

(2) a retail pharmacy with at least two locations under the same ownership within the City of Newton; or

(3) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

(c) Plastic bag restrictions.

(1) If a retail establishment provides plastic checkout bags to customers, the bags shall comply with the requirements of being compostable or home compostable plastic bags, as well as marine degradable plastic bags.

(2) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.

(d) Administration. The Commissioner shall promulgate rules and regulations to implement this section.

(e) Violations and penalties. Each Retail Establishment located in the City of Newton shall comply with this ordinance. Violation of any of the requirements of this act shall subject a retail establishment to the penalties set forth in Section 20-21(c)(__) of the Revised Ordinance of the City of Newton, Massachusetts.

(f) Effective date. All of the requirements set forth in this ordinance shall take effect 90 days after its effective date.

The Revised Ordinances of the City of Newton are hereby amending by adding the following Section 20-21(c)()::

Sec. ___-___ Plastic Bag Reduction Ordinance

() If it is determined that a violation has occurred, the City of Newton shall issue a warning notice to the Retail Establishment for the initial violation.

() If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the City of Newton shall issue a notice of infraction and shall impose a penalty against the retail establishment.

() The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense

C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court, pursuant to Sec. 20-20 and Massachusetts General Laws c. 40, section 21D.

() No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

() A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.

() The penalty shall double after fifteen (15) calendars days if the Retail Establishment does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

Ashland Fall Annual Town Meeting of October 18, 2000---Case # 1417

Case Comment

The Attorney General cautions the town to be sure that the imposition of **alarm fees** does not result in an **impermissible tax**.

March 2, 2001

Cindy L. Watling, Town Clerk
101 Main Street
Ashland, MA 01721

RE: Ashland Fall Annual Town Meeting of October 18, 2000---Case # 1417
Warrant Articles # 14, 18, 20 and 21 (General)
Warrant Articles # 29 and 31 (Zoning)

Dear Ms. Watling:

I return the amendments to the town by-laws adopted under Articles 14, 18, 20, 21, 29, and 31 of the warrant for the Ashland town meeting that convened on October 18, 2000, with the approval of this Office.

Article 21 - Article 21 amends the Chapter A352 captioned, "Fees, of the town" by-laws by changing the amount of the fees charged under Chapter 77. Chapter 77 pertains to fees for alarm systems, and would require fees up to \$500 for connection fees. While we are unable to ascertain that, as a matter of law, the overall fee structure of the by-law is facially inconsistent with state law, we caution the town that application of the by-law's fee provisions could foreseeable result in municipal revenues brushing up against or exceeding the limits imposed on local government by the Constitution and the statutes of the Commonwealth. Valid fees are distinguishable from invalid taxes by three criteria: (i) the fee is assessed for a particular government service benefiting the party paying the fee in a manner not shared by other persons; (ii) the person assessed has the option to decline the service and thus avoid the charge; and (iii) the amounts paid compensate the town for its costs and expenses of providing the services rather than raising revenues. Emerson College v. Boston, 391 Mass. 415, 427-428 (1984). The town may wish to discuss this further with town counsel.

In reviewing the packet of materials submitted to our Office, we would like to comment on the excellent job that you did in preparing the packet for review by our Office. Your submission allowed us to expedite our review of your packet.

Very truly yours,

THOMAS F. REILLY
ATTORNEY GENERAL

by: Kelli E. Lawrence, Assistant Attorney General
Municipal Law Unit
436 Dwight Street
Springfield, MA 01103-1317
(413) 784-1240, x 46

enc.
pc:

Town Counsel

Bridgewater Special Town Meeting of November 10, 2003 — Case # 2784

Case Comment

The town is cautioned to discuss with **town counsel** whether its **dog kennel license fees**, collectively and as applied, amount to a tax not specifically authorized by the Legislature and therefore unlawful. The town's dog hobby kennel license fee is \$90 and its commercial kennel license is \$225. Valid fees are distinguishable from invalid taxes by three criteria identified in **Emerson College v. Boston**.

December 24, 2003

Ronald R. Adams, Town Clerk
64 Central Square
Bridgewater, MA 02324

Dear Mr. Adams:

Articles 1, 2, and 5 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Bridgewater special town meeting that convened on November 10, 2003.

Article 5 - The amendments adopted under Article 5 make a number of changes to Article XXXXIII, "Dog By-Law." One such change amends the amount for kennel licenses. As amended, hobby kennel licenses – for six or more dogs not to exceed ten dogs – the fee is \$90.00. For commercial kennels - a kennel maintained from more than four litters per year– the fee is \$225.00.

In approving the fees established in Article XXXXIII, we remind the town that fees cannot exceed the limits imposed on local government by the Constitution and the statutes of the Commonwealth. Valid fees are distinguishable from invalid taxes by three criteria: (i) the fee is assessed for a particular government service benefiting the party paying the fee in a manner not shared by other persons; (ii) the person assessed has the option to decline the service and thus avoid the charge; and (iii) the amounts paid compensate the town for its costs and expenses of providing the services rather than raising revenues. Emerson College v. Boston, 391 Mass. 415, 427-28 (1984). Moreover, a lawful fee is one that covers only the permit granting authority's reasonably anticipated costs of providing the services for which the fee is assessed. Southview Cooperative Housing Corp. v. Rent Control Board of Cambridge, 396 Mass. 395, 402 (1985). The town might wish to discuss with town counsel whether the fee provision established by the proposed by-law, collectively and as applied, amounts to a tax not specifically authorized by the Legislature and is therefore unlawful.

Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect until the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting

and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Very truly yours,

THOMAS F. REILLY
ATTORNEY GENERAL

by: Kelli E. Gunagan, Assistant Attorney General
By-law Coordinator, Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, MA 01103-1629
(413) 784-1240, x 117

enc.
pc:

Town Counsel

Tewksbury Special Town Meeting of October 1, 2002 — Case # 2278

Case Comment

The Attorney General cautions the town to apply its sewer connection fees by-law in a manner consistent with **G.L. c. 80 and 83** and the **Emerson College v. Boston** case, which pertains to the issue of "lawful fee versus unlawful tax." This new section would "assess sewer connection fees" on owners of land abutting a public sewer line installed after January 1, 2003, in accordance with a listed schedule. The assessment is referred to as a "connection fee," where "the time of assessment of connection fees abutting a sewer line shall be that date upon which the sewer system with appurtenances is 'approved for use' as so designated by the **Superintendent of Public Works.**"

December 13, 2002

Elizabeth A. Carey, Town Clerk
1009 Main Street
Tewksbury, MA 01876

RE: Tewksbury Special Town Meeting of October 1, 2002 — Case # 2278
Warrant Articles # 3 and 4 (General)
Warrant Articles # 23, 26, 27, 28, 29, and 31 (Zoning)

Dear Ms. Carey:

Articles 3, 4, 23, 26, 27, 28, 29, and 31 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Tewksbury town meeting that convened on October 1, 2002, and the map pertaining to Article 31.

Article 4 - The vote under this Article amends the general by-laws of the town by adding a new Section 12.04.400 to Chapter 12.04 "Streets." This new section would "assess sewer connection fees" on owners of land abutting a public sewer line installed after January 1, 2003, in accordance with a listed schedule. The assessment is referred to as a "connection fee," where "[t]he time of assessment of connection fees abutting a sewer line shall be that date upon which the sewer system with appurtenances is 'approved for use' as so designated by the Superintendent of Public Works." Section 12.04.410 (2). We construe "sewer system" as used in Section 12.04.400 to mean any "sewer line installed after January 1, 2003," and we interpret the section as establishing an assessment that is collectible from the properties abutting the line upon designation by the Superintendent of Public Works that the sewer line has been "approved for use."

The threshold question occurring to us is whether – apart from the assessment's label as a "fee" – the assessment is a true fee or rather a tax or other assessment authorized by the General Laws. In answering this question, we fall back upon the three-factor test advanced in **Emerson College v. Boston**, 391 Mass. 415, 424-25 (1984), where the Court said that fees share common traits that distinguish them from taxes:

[1] they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society;

[2] they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge;

[3] the charges are collected not to raise revenue but to compensate the governmental entity providing the services for its expenses.

(Emphasis added.)

The “Executive Summary” given for Article 4 states that “[t]he purpose of the article is to establish by by-law the amount and method of sewer fee connection assessment in order to finance part of the costs of implementing the Master Sewer Plan.” We would find more comfort were the summary to have focused on the particular costs and benefits of new sewer lines; instead we are left with rather vague references to the town’s “Master Sewer Plan,” albeit that some part of that plan might include the sewer line extensions mentioned in this new Section.

Section 12.04.420 pertains to connection fee payments. Subsection 1 of that Section states:

Except as herein provided in section 12.04.265 and the provisions of the Massachusetts General Laws Chapter 83 relative to the assessment, apportionment, division, re-assessment, abatement and collection of sewer assessments, to liens therefore (sic), and interest thereon shall apply to assessments made under these regulations, and the Tax Assessor of the Town shall have all the powers conveyed by the Massachusetts General Laws.

At the outset, we note that this subsection consists of one sentence and that the sentence has no subject. We generously interpret this section as provided below, but its grammatical imprecision leaves the section vague and uncertain in its meaning and reach.

Subsection 1 of Section 12.04.420 seems to say that G.L. c. 83 shall govern the assessments made under the by-law; yet Chapter 83 has no direct application to a true “fee” but is rather operative only when the assessment is one established under the authority of G.L. c. 83, §§ 14 and 15 (which mandate a “fixed uniform rate” or “a rate based upon a uniform unit method.” There are several problems here. First, we assume that the Town meant to refer in the subsection to Chapter 80, dealing generally with betterments and assessments, and not Chapter 83. Chapter 80 establishes the procedural requirements for assessments made under Chapter 83. We assume that the Town meant to say that it wishes to adopt the procedural scheme of G.L. c. 80 in implementing its connection fee. Yet, Section 13 of Chapter 80 provides that the taxpayer – note here that the section applies to taxes, not fees – may pay the assessment in up to 20 annual assessments, four times longer than the five year maximum provided in Section 12.04.420 (3). While this might be taken as evidence that a true fee was intended and not a tax assessment authorized under G.L. c. 83, §§ 14 and 15, we must return to the Emerson analysis and determine whether the assessment qualifies as a fee under the three part test.

The most troublesome part of the new section is its apparent inconsistency with the second of the Emerson factors; that is, it does not appear to offer property owners the option of not utilizing the governmental service. Yet it does seem that the first and third factors are satisfied by the new Section if we do not read too much into the words chosen for the Executive Summary. It is more

important how the by-law works in fact than the words chosen to describe its purpose.

We are disinclined to find a by-law inconsistent with state law where a credible case can be made for its consistency as applied. In this regard, the Courts have said that the second Emerson factor may not be determinative, and “is arguably only subsidiary to, and an additional manifestation of, the analytically more comprehensive first factor, particularized private rather than general public benefit.” Berry v. Town of Danvers, 34 Mass App. Ct. 507, 512 n. 6, (1993). See also Bertone v. Department of Pub. Util., 411 Mass. 536 (1992), Sidney A. Morton et al v. Town of Hanover, 43 Mass. App. Ct. 197 (1997).

While it may not be entirely clear on the face of the materials submitted to us for approval that the charge established qualifies as a “fee,” there certainly can be circumstances where sufficiently particularized benefits entail improvement costs that justify the allocation of those costs equitably and fairly to new users of the system. This determination must be made on due consideration of the unique facts and circumstances of the case. No one-size-fits-all rule can be laid down that yields confident conclusions in all cases. The matter at hand is no exception.

Consistency with state law would be clearer were the assessment to be made upon connection to the system rather than upon the determination of the Superintendent that the system is approved for use. Likewise, the case for consistency would be clearer had the town made clear that it was merely modeling the procedures of fee collection on Chapters 80 and 83 rather than referring to those sections as if they had a direct application as they would if the charge were a statutorily authorized tax.

We conclude with the caution that the town reflect on whether the legislative intent is to establish an assessment (i.e., a statutory tax) under G.L. Chapters 80 and 83, or to impose a fee satisfying the criteria of Emerson. The by-law’s consistency with state law depends on it being a fee rather than a tax, and our approval is so limited. We suggest that the town consult with Town Counsel on the manner in which the by-law is to be applied and that Town Counsel’s guidance be obtained on the manner in which unpaid assessments are to be treated to avoid inconsistency with state laws relating to taxation. We further suggest that the town consult with Town Counsel as to whether a revision of the text of subsection 1 of Section 12.04.420 would dispel uncertainty on the questions raised in this letter.

Very truly yours,

THOMAS F. REILLY
ATTORNEY GENERAL

by: Robert W. Ritchie, Assistant Attorney General
Director, Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, MA 01103-1629
(413) 784-1240, x 116

enc.

WPM\$UUB

pc:

Town Counsel

WPM\$UJB



SETTI D. WARREN
MAYOR

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Office of the Mayor

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swarren@newtonma.gov

November 1, 2012

Alderman Amy Sangiolo, Chair
Members of the Programs and Services Committee
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

RE: Possible Acquisition of Waban Hill Reservoir from the Commonwealth

Dear Ladies and Gentlemen:

This letter is intended to accompany Docketed Item #336-12 to provide further information to support a discussion of the possible acquisition of the Waban Hill Reservoir property, currently owned by the MWRA. Attached is a summary of the background of the reservoir history and the current situation that has presented itself (Enclosure A). Additionally in Enclosure B, is a listing of the acquisition timeline as gleaned from previous municipal acquisitions of a similar nature.

Additionally, for your convenience, I have included a location of the reservoir just north of Commonwealth Avenue in Ward 7. I look forward to discussing this opportunity with the Committee at your convenience.

Sincerely,

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

Robert R. Rooney
Chief Operating Officer

Encl.

WABAN HILL RESERVOIR in Chestnut Hill

October 31, 2012

Background:

The Waban Hill Reservoir was built by the City of Newton in 1877 with a 1100 foot long earthen dam at 22 feet in height. It was used as a primary source of water for Newton but subsequently, the City constructed a covered reservoir on higher ground, just up the street from the Waban Hill Reservoir, replacing the need of the Waban Hill Reservoir for providing water service to the City.

The Waban Hill Reservoir, which is comprised of approximately five acres, was sold to the Metropolitan Water Board of the Commonwealth of Massachusetts on October 12, 1900 for the sum of \$60,000. The Waban Hill reservoir is currently owned by the Massachusetts Water Resources Authority (MWRA), and includes a building known as a "pump house" located on top of the dam, which controls the release of water from the reservoir. The open reservoir is approximately 13 feet deep and is filled only by surface runoff. In recent years it was used by the MWRA only as a back-up water supply.

Current Situation:

Today, with further improvements to the MWRA's system, the Waban Hill Reservoir is no longer needed by the MWRA. Although as the owner, the MWRA is required to maintain it and comply with regulations governing dam safety. The MWRA has indicated to the City that it now wants to surplus this property, in part due to the recurring resources needed to maintain the facility. The process of changing ownership is similar to that in Newton when we declare properties surplus. MWRA must notify the Division of Capital Asset Management (DCAM) of the Commonwealth of its desire to surplus the reservoir, which provides the City of Newton an opportunity to assess its interest in acquiring the Waban Hill Reservoir property.

A similar acquisition process was recently followed in Town of Brookline in 2010, involving the Fisher Hill Reservoir. Discussions with the town have helped lay the groundwork for Newton in terms of what to expect and timing. A listing of milestones for a generic acquisition process is provided in Enclosure B, which potentially could take up to 4 years to complete a transaction of this type.

At this point in time, it is suggested that Newton explore the possible uses for the Waban Hill Reservoir with the community, costs and funding sources to acquire it, and if desired, initiate the acquisition process with the Commonwealth.

Enclosure A

ANTICIPATED MAJOR MILESTONES FOR ACQUISITION OF WABAN HILL RESERVOIR

(BASED ON BROOKLINE - FISHER HILL PROCESS)

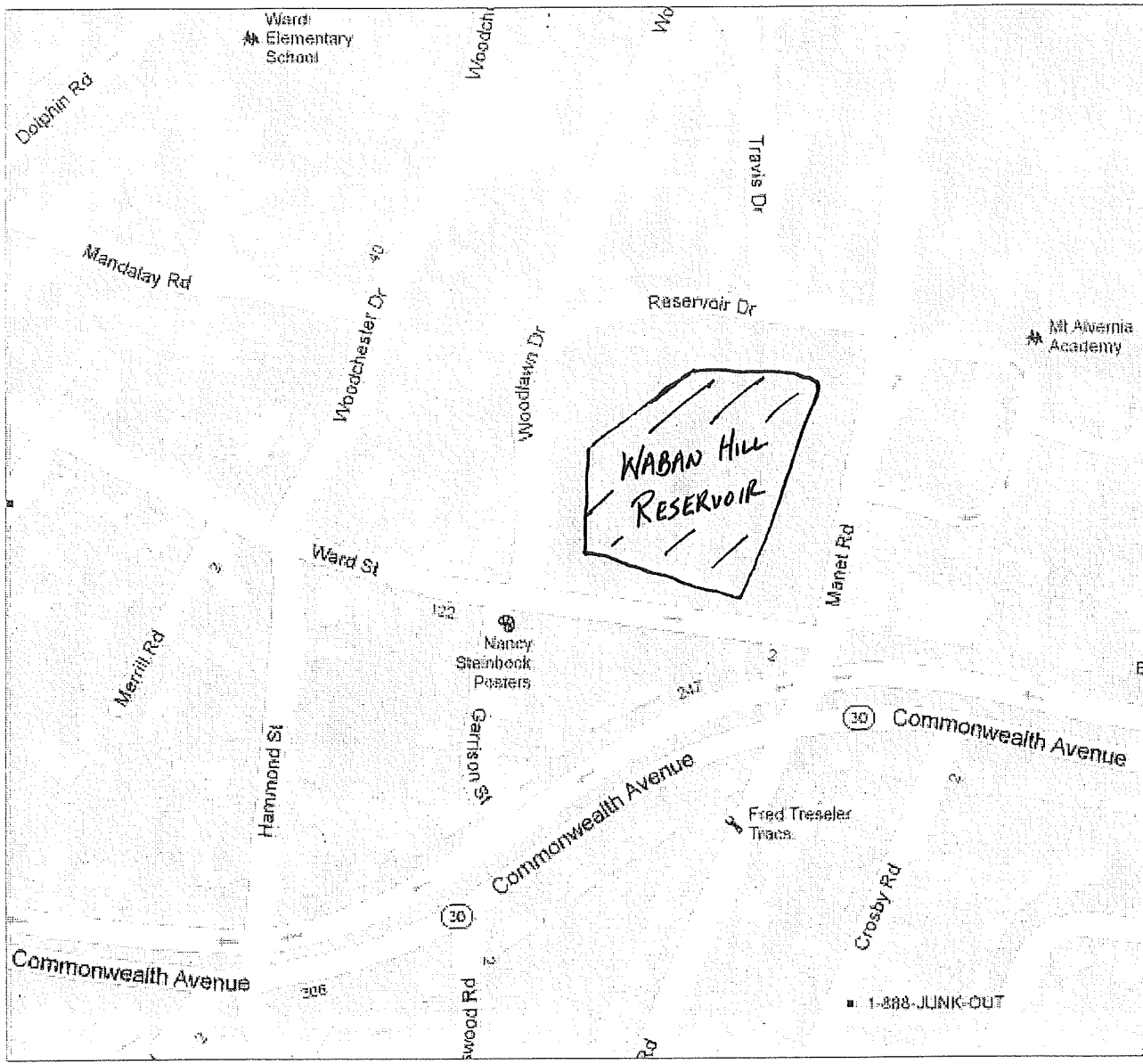
October 2012

- CITY OF NEWTON NOTIFIES MWRA THAT IT IS INTERESTED IN ACQUIRING THE PROPERTY
- MWRA NOTIFIES DCAM THAT IT NO LONGER HAS A USE FOR THE PROPERTY
- DCAM CONDUCTS REVIEW AND MAKES DETERMINATION THAT THE PROPERTY IS SURPLUS
- DCAM NOTIFIES NEWTON THAT THE PROPERTY IS SURPLUS AND AVAILABLE¹
- NEWTON ESTABLISHES REUSE PLANS FOR THE PROPERTY
- LEGISLATION CRAFTED AND PASSED BY GENERAL COURT TO AUTHORIZE DISPOSITION AND SET FORTH TERMS AND CONDITIONS OF REUSE
- ENVIRONMENTAL NOTIFICATION FORM SUBMITTED TO EOEEA
- NEWTON OBTAINS NECESSARY PERMITS AND SIGN OFFS (I.E. MEPA, DEP, NPDES, MASS HISTORIC, CON COM, ETC.)
- SITE SURVEY CONDUCTED
- APPRAISAL CONDUCTED
- NEWTON AUTHORIZES PURCHASE AND APPROPRIATES FUNDING FOR PURCHASE
- PROPERTY CONVEYED TO NEWTON

Total time for process without the housing component that Fisher Hill included (see below note), a rough “start-to-finish” timeline is about **4-6 years**.

¹ Brookline was notified in June of 2001 that the Fisher Hill Reservoir was available. The conveyance of the property to Brookline occurred in February of 2010. However, the conveyance of the reservoir property was delayed by an estimated 3-4 years because of Brookline’s planning and development activities with respect to a housing project that that was part of the overall development on Fisher Hill. The conveyance did take place approximately 2 years from the time the legislation was passed by the General Court.

Enclosure B



LOCATION MAP of Waban Hill Reservoir
(Ward 7)