

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICE COMMITTEE AGENDA

WEDNESDAY, APRIL 21, 2010

7:45PM - Room 222

ITEMS SCHEDULED FOR DISCUSSION:

REFERRED TO PROG & SERV AND FINANCE COMMITTEES

- #117-10 HIS HONOR THE MAYOR requesting a transfer of funds in the amount of twenty-four thousand dollars (\$24,000) from a severance account held by the Human Resources Department to a severance account held by the Law Department for the purpose of paying for severance related expenses in the Law Department. [04/13/10 @ 7:09 PM]
- #46-10(3) ALD CROSSLEY, HESS-MAHAN AND LINSKY proposing a RESOLUTION to demonstrate support by the Board of Aldermen of the Green Communities Act application for the City of Newton to achieve the designation as a Green Community. [04-12-10 @ 9:30 AM]

REFERRED TO LAND USE & PROGRAMS & SERVICES COMMITTEES

- #59-10 ALD. HESS-MAHAN proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to require that all plans, maps, photographs, and other documents and exhibits required to be filed with applications for special permits/site plan approvals and/or presented at public hearings and working sessions of the Land Use Committee must also be submitted in electronic form in order to facilitate compliance with recent amendments to the Open Meeting Law regarding recordkeeping requirements. [02/23/10 @ 3:24 PM]
- LAND USE APPROVED 8-0 ON 3/16/10**

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #207-08 ALD. BRANDEL AND SANGIOLO proposing that the following question be put before the Newton voters:
“Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 ½ the amounts required to pay for the bond issuance in order to fund Newton North High School?” [05/21/08 @ 12:58 PM]
- FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

- #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]

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #121-10 HIS HONOR THE MAYOR, in accordance with Section 5-1 of the City of Newton Charter, submitting the FY'11 Municipal/School Operating Budget totaling \$340,073,328, passage of which shall be concurrent with the FY'11- FY'15 Capital Improvement Program. [04/13/10 @ 7:09 PM]
EFFECTIVE DATE OF SUBMISSION: 04/20/10
- #100-10 ALD. JOHNSON AND SANGIOLO requesting amendment of the Rules of the Board, **Section 6. Committee Reports, A.** to "It shall be the duty of any committee to whom a subject may be specifically referred to take this item up and report thereon within three weeks from the time said subject is referred to them, or at the next meeting thereafter, or to ask for further time. No committee and hence Board action (Approved, Denied, No Action Necessary) may be taken without a discussion with the primary docketer, at a minimum, with the substantive committee." [03/21/10 @ 9:12 PM]
- #99-10 ALD. JOHNSON requesting amendment of the Rules of the Board to include the definition of "substantive committee" as referenced in **Section 3. Referral of business to Committees.** [03/21/10 @ 9:12 PM]
- #98-10 ALD. YATES requesting that the Board of Aldermen and His Honor the Mayor take all possible steps to change state law to save local costs by giving cities and towns the right to negotiate health plans on the same basis as the Commonwealth. Such steps would include, but not be limited to, joining the Coalition to Save our Communities and notifying our city legislators of our urgent concern about this matter. [03/23/10 @ 4:29 PM]

REFERRED TO PUB SAFETY & TRANS AND PROG & SERV COMMITTEES

- #20-10 ALD. HESS-MAHAN AND HARNEY requesting special legislation prohibiting the use of handheld mobile devices to send, read or receive electronic messages while operating a motor vehicle within the City of Newton and in order to protect its citizens and to limit unnecessary motor vehicle accidents, injuries, and fatalities, and that the appropriate committees conduct a public hearing to examine the feasibility thereof. [01/04/10 @ 5:07 PM]

- #394-09 ALD. BAKER requesting clarification of the Rules of the Board regarding referrals to Committee of appeals of decisions of the Traffic Council. [11/30/09 @ 9:34 AM]

REFERRED TO RULES SUBCOMMITTEE

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #376-09 HIS HONOR THE MAYOR submitting the FY11-15 Capital Improvement Program, totaling \$140,377,285 and the FY10 Supplemental Capital budget, which require Board of Aldermen approval to finance new capital projects over the next five years.

- #363-09 ALD. SANGIOLO requesting a discussion to increase the tobacco seller license fee. [09/13/19 @ 1:07 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #360-09(2) PROGRAM & SERVICES COMMITTEE requesting a discussion to explore possible sources of revenue to fund an off leash dog park system in the City. [11/06/09 @ 10:44 AM]

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

- #298-09 ALD. MANSFIELD proposing Home Rule Legislation to amend **Article 2, Section 2-1(c) Composition; Eligibility; Election and Term** of the Newton Charter to establish four-year terms for Aldermen-at-Large with the provision for one Aldermen-at-Large to be elected from each ward at each biennial municipal election. [09-29-09 @ 6:45 PM]

- #95-09(2) PROGRAMS & SERVICE COMMITTEE requesting establishment of an Advisory Committee to review processes of the Board of Aldermen and report recommended efficiency improvements to the Board of Aldermen. Members of the Advisory Committee shall be appointed by the Chairman and Vice Chairman of the Programs & Services Committee and the President of the Board. [11/16/09 @ 3:59 PM]

- #8-09 ALD. HESS-MAHAN, LINSKY, ALBRIGHT, FREEDMAN, MANSFIELD, JOHNSON, HARNEY & VANCE proposing an ordinance requiring that the installation of synthetic in-filled turf athletic fields on city-owned property shall use sustainable, recyclable, lead-free, non-toxic products to the maximum extent feasible. [12/30/08 @ 9:55 AM]

REFERRED TO LAND USE AND PROGRAMS & SERVICES COMMITTEES

- #474-08(2) ALD. HESS-MAHAN & VANCE proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to conform with a proposed amendment to Chapter 30 re transfer of the special permit granting authority to the Zoning Board of Appeals and/or the Planning & Development Board for projects that are not classified as Major Projects pursuant to Article X.

#306-08 ALD. BAKER, DANBERG, MANSFIELD & PARKER requesting discussion of how swimming at Crystal Lake might be lawfully and safely extended beyond mid-August. [08/26/08 @ 5:03 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#274-08 ALD. JOHNSON AND SANGIOLO proposing a RESOLUTION to His Honor the Mayor requesting that he create a plan to move the Child Care Commission to a self-sustaining model for FY2010. [07/17/08 @ 9:53 AM]

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

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

REFERRED TO PROG. & SERV. AND PUBLIC FACILITIES COMMITTEES

#271-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, the Parks and Recreation Department, and the Department of Public Works in order to determine the most effective and efficient way to organize the work of managing our public resources. [07/17/08 @ 9:53 AM]

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#270-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, School Department, and School Committee in order to determine the most effective and efficient way to organize the Information Technology Departments. [07/17/08 @ 9:53 AM]

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#258-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding reorganization of senior transportation services and establishment of intra-village transportation systems. [07/08/08 @ 1:29 PM]

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

#129-08 ALD. JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen stating that any new item submitted but not yet approved or accepted by the Full Board of

Aldermen is prohibited from any formal or informal discussion by any formal, informal or special committee of the Board.

[03-24-08 @ 9:11 AM]

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

- #287-07(2) ALD. PARKER requesting a discussion with Parks and Recreation Department in regards to an appropriate marker or plaque to honor and recognize Olympic figure skater and Newton resident Tenley Albright and her skating exhibition at the Crystal Lake upon her return from the 1956 Olympic Games where she won a gold medal. [09/20/07 @ 1:22 PM]

- #262-07 ALD. VANCE AND HESS-MAHAN seeking approval by the Board of Aldermen of a home rule petition to the General Court that would authorize an amendment to the charter of the City of Newton that would change the length of terms of the members of the Board of Aldermen to three years and would provide for electing one-third of the aldermen, one from each ward, every year. [08/22/07 @ 3:53 PM]

- #82-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to allow the cities and towns to tax all telecommunications facilities in the City (which would yield at least \$1.6 million per year for Newton). [02/27/07 @ 10:21 PM]

- #52-07 ALD. PARKER, SANGIOLO, MANSFIELD, HARNEY, DANBERG, VANCE, LINSKY, HESS-MAHAN, BURG, ALBRIGHT & JOHNSON requesting an ordinance amendment to create a health care advisory committee whose function would be to recommend measures to control the rate of increase of health insurance costs, as recommended by the Newton Finance & Management Working Group in 2005 and the Blue Ribbon Commission on the Municipal Budget in 2007. [02/09/07 @ 12:36 PM]

- #422-06(2) ALD. HESS-MAHAN requesting that a task force be established to meet and prepare a report and recommendations regarding the regulation of

noise, air pollution and best practices with respect to the operation of power equipment used in landscaping, property and yard maintenance, including, without limitation, leaf blowers. [01/27/09 @ 3:47 PM]

- #370-06 ALD. SANGIOLO, PARKER, MANSFIELD requesting home rule legislation to allow advisory questions to be asked in a Newton special election.

REFERRED TO FINANCE AND PROGRAMS AND SERVICES COMMITTEES

- #245-06 ALD. JOHNSON AND HESS-MAHAN requesting an amendment to the City Charter to require the Mayor annually to prepare and submit to the Board of Aldermen a long-term financial forecast of anticipated revenue, expenditures and the general financial condition of the City, including, but not limited to identification of any factors which will affect the financial condition of the City; projected revenue and expenditure trends; potential sources of new or expanded revenues; anticipated municipal needs likely to require major expenditures; and a strategic plan for meeting anticipated municipal needs, to include, but not be limited to, any long or short-term actions that may be taken to enhance the financial condition of the City.
FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

- #329-05(3) ALD. YATES requesting a discussion relative to amending the noise control ordinance to (A) prohibit the cumulative noise level from multiple pieces of equipment operating simultaneously on the same site to exceed the maximum noise levels allowed when measured at the nearest lot line and (B) to eliminate various exemptions in residential districts.

- #242-03(5) PROGRAMS & SERVICES COMMITTEE requesting evaluation of the Off Leash Dog Pilot Program (Section 3-30(e) as established by ordinance Z-11) which was extended to June 30, 2010 to provide an opportunity for a fuller evaluation of the ordinance. [01/25/10 @ 4:45 PM]

- #346-99 ALD. SANGIOLO requesting creation of an ordinance that would prohibit dogs (leashed or unleashed) from all elementary school playgrounds.

Respectfully Submitted,

Amy Sangiolo, Chairman



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#117-10

Telephone
(617) 796-1100

Facsimile
(617) 796-1113

TDD/TTY
(617) 796-1089

E-mail
swarren@newtonma.gov

April 13, 2010

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

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to transfer \$24,000 from a severance account held by the Human Resources Department to a severance account held by the Law Department. These funds are required to cover severance related expenses in the Department.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren
Mayor

10 APR 13 PM 7:09
CITY CLERK
NEWTON, MA. 02159

From: HR Dept. Salaries
011091-515002 \$24,000
To: Solicitor Salaries
0110801-515002 \$25,000

04/14/2010

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

LAW DEPARTMENT



CITY OF NEWTON, MASSACHUSETTS

CITY HALL

1000 COMMONWEALTH AVENUE

NEWTON CENTRE, MA 02459

TELEPHONE (617) 796-1240

FACSIMILE (617) 796-1254

**INTERIM CITY SOLICITOR
DONNALYN B. LYNCH KAHN**

ASSOCIATE CITY SOLICITOR
OUIDA C.M. YOUNG

ASSISTANT CITY SOLICITORS
EILEEN M. MCGETTIGAN
MARIE M. LAWLOR
ANGELA BUCHANAN SMAGULA
ROBERT J. WADDICK

April 8, 2010

Mayor Setti D. Warren
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Re: Transfer of Severance Money
From Human Resources to Law

Dear Honorable Mayor Warren:

The Law Department is respectfully requesting the transfer of \$24,000 from a severance account held by the Human Resources Department to a severance account held by the Law Department.

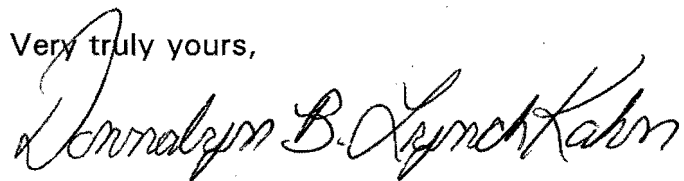
The recent elimination of an Assistant City Solicitor included a twelve-week severance package, all of which needs to be covered by the current year's fiscal budget, even though a portion of the severance will be paid in the next fiscal year. In addition, the Law Department has been utilizing the services of a temporary employee to keep us afloat until the next fiscal year. The Law Department intends to hire this individual as our backup labor counsel in July.

Without an infusion of severance money to cover the two severance packages we are currently funding, the Law Department will end up \$24,000 in arrears by the end of fiscal year 2010.

Mayor Setti D. Warren
April 8, 2010
Page Two

Therefore, I respectfully request that you docket this item seeking to transfer \$24,000 from the Human Resources Department severance account to the Law Department severance account.

Very truly yours,



Donnalyn B. Lynch Kahn
Interim City Solicitor

DBLK/dab

cc: Dolores Hamilton



Memorandum

To: Programs and Services Committee
From: David Olson
Re: Docket Item #46-10(3)
Date: April 16, 2010

Aldermen,

Attached you will find a draft of resolution to be included in the Green Communities Application that will be going to the State. This resolution has been compiled from the three resolutions that Ald. Crossley had distributed during the discussions of docket items #46-10, #46-10(2), #50-10, and #51-10.

The text of the first whereas clause was presented as part of the discussions on items #46-10 and #46-10(2) in Zoning and Planning. The items were NAN'd in ZAP as there was no need for an ordinance requiring the documentation of by-right opportunities as the Planning Department has already been documenting them.

The text of the second whereas clause was presented in Public Facilities during the discussion of docket Item #50-10, the adoption of a policy to reduce energy use. Public Facilities approved this item 7-0

The text of the third whereas clause was presented at both the Programs & Services and Finance Committees during the discussion of item #51-10, the adoption of a policy to purchase fuel efficient vehicles. The item was approved 5-0 in Programs & Services and 7-0-1 in Finance.

This single resolution is concise, avoids redundancy, and is in a format that will be acceptable to be submitted as part of the Green Communities Application.

City of Newton
Board of Aldermen

**Resolution in Support of Newton's Application
to Qualify as a Green Community**

May 3, 2010

- Whereas; The City of Newton, as required to receive and maintain the Green Community designation, will be **documenting by-right development opportunities that exists within the city where clean energy business** (research and development and/or manufacturing pertaining to renewable and/or alternative energy) may locate within the City of Newton, which does not require discretionary permitting and which can be permitted expeditiously as per the Guidelines established by the MA DOER and which comply with DOER annual reporting and review requirements; and
- Whereas; the Board of Aldermen of the City of Newton supports and has approved Board Order #50-10, which requires the City of Newton to **execute a municipal energy action plan** that will assure reduction of energy use and emissions of at least 20% below the established FY2007 baseline energy inventory, by continued rigorous implementation of existing guaranteed energy savings (ESCO) programs, continued attention to dramatic building performance improvements as the City is able to address large scale capital renovations as well as continued investigations into new opportunities and technologies so as to accrue said reductions, and comply with DOER annual reporting and review requirements; and
- Whereas; the Board of Aldermen of the City of Newton supports and has approved Board Order #51-10, which requires the city of Newton to establish and implement a **vehicle purchasing policy** that requires vehicle replacements, when needed, be in conformance to the mileage performance standards as per the Guidelines established by the DOER, and comply with DOER annual reporting and review requirements.
- Now Therefore Be It Resolved;
That the Board of Aldermen of the City of Newton supports the application to qualify as a Green Community and hereby requests that the City of Newton complete its application; and
- Be It Further Resolved;
That the Board of Aldermen of the City of Newton requests compliance with DOER annual reporting and review requirements

in order to maintain Green Communities status, and therefore retain eligibility for DOER funding which is available each year under the terms of the Green Communities Act.

Under Suspension of Rules
Readings Waived and Item Voted
?? yeas ?? nays ?? absent

(SGD) DAVID A. OLSON, City Clerk

ARTICLE X

RULES PERTAINING TO SPECIAL PERMIT AND SITE PLAN APPROVAL PETITIONS

Pursuant to G.L. c. 40A, §9, the Board of Aldermen acting as a special permit granting authority adopts the following rules relative to the submission of applications for special permits and site plan approvals.

Section 1. Contents of Applications for Special Permits or Site Plan Approvals

All applications for special permits or site plan approvals shall contain the information required by §§ 30-23 and 30-24 of the Newton Zoning Ordinance. The Director of Planning and Development, or his/her designee, (hereafter the "Director") shall have the discretion to waive the requirement for a landscape plan in instances where the type of approval sought does not raise issues involving screening or buffering. In addition, the Director shall have the authority to require more information (hereafter "Additional Information") relating to a proposed project beyond the requirements of §§ 30-23 and 30-24 of the Newton Zoning Ordinance where the Director determines that the project is likely to raise significant questions requiring more extensive review of relevant information beyond that required by ordinance. The Director may require this Additional Information in order to assess the potential impact of the proposed project on its neighborhood, on the roads serving such project, and on other City resources in light of the criteria set out in the Newton Zoning Ordinance for such special permit or site plan approval. Applications for special permits or site plan approvals must include all information required either by ordinance or by the Director in order to be complete and ready for filing as provided below.

All plans, maps, photographs, and other documents and exhibits required to be filed with applications for special permits/site plan approvals and/or presented at public hearings and working sessions of the Land Use Committee shall also be submitted in machine readable electronic file format. "File format" means the type of data file stored on machine readable materials such as hard disks, floppy disks, CD-ROMs, DVDs, flash media cards, USB storage devices, magnetic tape, and any other media designed to store information electronically, as well as the application program necessary to view it. All documents and exhibits required to be submitted in machine readable file format by this rule shall be submitted via compact disc (CD) or digital versatile disc (DVD). The Director shall consult with the Clerk of the Board of Aldermen, the Law Department and/or the Information Technology (IT) Department and the Land Use Committee, from time to time, to determine the appropriate digital format(s) for all documents and exhibits to be submitted and preserved in machine readable file format within a framework that balances the relevant legal, technical, legibility, quality, functionality and sustainability factors as well as the publication process of the material to be submitted and preserved, and cost factors. The file format that provides this balance may change over time as new formats are adopted for creation and use. The Director shall have the discretion to waive all or part of the requirement by this rule to submit documents and exhibits in machine readable file format where the circumstances indicate that such requirement would create an undue hardship for the applicant.

- Deleted: must
- Deleted: may
- Deleted: transmitted
- Deleted: via electronic mail (email), or
- Deleted: portable media formats including, but not limited to,
- Deleted: ,
- Deleted: , flash media cards, universal serial bus (USB) storage devices, external hard drive, or diskette
- Deleted: , in consultation
- Deleted: shall
- Deleted: materials
- Deleted: ¶

#59-10

The Director shall develop guidelines or criteria to be used in determining what kinds of projects may require Additional Information, and shall have the discretion to waive all or part of such Additional Information in a particular case where the circumstances indicate that such information will not be needed for the review anticipated. The Director shall consult with the Land Use Committee from time to time regarding such guidelines/criteria. The Director may require more information beyond that specified in such guidelines/criteria if the Director deems it necessary for an appropriate review of the project. The Land Use Committee may also require more information beyond that required by the Director during its review of a request for a special permit or site plan approval.

#59.10

REFERRED TO LAND USE & PROGRAMS & SERVICES COMMITTEES

#59-10

ALD. HESS-MAHAN proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to require that all plans, maps, photographs, and other documents and exhibits required to be filed with applications for special permits/site plan approvals and/or presented at public hearings and working sessions of the Land Use Committee must also be submitted in electronic form in order to facilitate compliance with recent amendments to the Open Meeting Law regarding recordkeeping requirements.

ACTION: APPROVED 8-0

NOTE: Alderman Hess-Mahan explained that he docketed this in anticipation of the new open meeting law, which becomes effective July 1, 2010. As of that date, all documents submitted relative to an item as part of the record will have to be enumerated in and maintained as part of the "minutes" of the meeting. Electronic copies will make it easier for storage and to disseminate information and material to aldermen and citizens. The Committee voted 8-0 to approve the rules change, which will be taken up in the Programs & Services Committee.

Bureau of Accounts
Informational Guideline Release (IGR) No. 02-101
March 2002

PROPOSITION 2½ DEBT EXCLUSIONS

(G.L. Ch. 59 §§21C(k) and 21D)

This Informational Guideline Release explains the policies of the Commissioner of Revenue regarding the borrowing amount covered by an approved Proposition 2½ debt service exclusion and adjustments to the annual exclusion schedule. It also includes new procedures and forms to be used by cities and towns with approved debt exclusions for obtaining a determination about the inclusion of cost increases within an exclusion or approval to use an adjusted exclusion schedule.

Topical Index Key:

Borrowing
Proposition 2½

Distribution:

Assessors
Treasurers
Accountants/Auditors
Mayors/Selectmen
City/Town Managers/Exec. Secys.
Finance Directors
City/Town Councils
City Solicitors/Town Counsels
Municipal/Regional School Superintendents
Regional School Treasurers

Informational Guideline Release (IGR) No. 02-101
March 2002

PROPOSITION 2½ DEBT EXCLUSIONS

(G.L. Ch. 59 §§21C(k) and 21D)

Under Proposition 2½, a city or town may present a debt exclusion referendum to voters. An approved debt exclusion provides a temporary increase in the amount the community can levy to fund the payment of debt service costs. Each year until the described debt is retired, the amount of the debt service payment due for that year is added to the levy limit to establish the maximum amount the community can levy. These guidelines explain the policies of the Commissioner of Revenue regarding two issues that arise when using a debt exclusion.

The first policy relates to determining the amount of borrowing covered by an approved debt exclusion. Debt exclusions are usually for major construction projects and often the details and costs change as the projects progress. Even though a dollar amount is not included in the referendum question approved by the voters for these projects, the exclusion is not unlimited and does not necessarily cover all cost increases. An exclusion covers the debt service costs on the borrowing amount authorized or contemplated for the described purpose or purposes at the time of the referendum vote. Debt service on any borrowing above that fixed amount is not excluded unless (1) it is a modest amount attributable to inflation, new regulatory requirements or minor project changes, or (2) another exclusion is approved by the voters.

The second policy relates to determining the amount excluded annually. Ordinarily, the annual debt exclusion is equal to the debt service payment due for that year net of any federal or state reimbursement being received for the project. Borrowing or reimbursement timing issues may result in sharp changes in the tax levies for some of these years, particularly at the outset. In these cases, an adjusted debt exclusion schedule may be used in order to moderate the impact on taxpayers. The total amount excluded over the life of the borrowing remains unchanged, but the annual exclusion amounts are adjusted. In fiscal years in which the exclusion taken is greater than the net debt service due that year, the excess is reserved for appropriation in later years when the exclusion to be taken is less than the net debt service due.

The Director of Accounts will determine the borrowing amount covered by a debt exclusion, and approve adjusted exclusion schedules, using the standards and procedures set forth in these guidelines.

GUIDELINES:

I. EXCLUSION SCOPE

A. Determination Policy

A city or town that increases the amount borrowed for a purpose described in a debt exclusion above the amount fixed at the time the exclusion referendum was approved may apply **one time only** to the Director of Accounts for a determination regarding the borrowing amount covered by that particular exclusion. Once a decision is issued, any additional amount, even if de minimis, must be financed within the community's levy limit unless the voters approve a supplementary referendum question.

B. Application Procedure

1. Applicant

The mayor, city/town manager or selectmen must submit the community's application for a determination regarding the scope of a particular exclusion.

2. Format

All applications must be made using Form DE-2 (attached). This form will also be used to notify the community of the action taken by the Director on the request.

3. Content

Applications must include a specific dollar amount of additional borrowing the community has or is planning to authorize for the purpose or purposes described in the debt exclusion. The Director will not act on requests for indefinite amounts nor pre-authorize an amount. **All determinations will be based on a fixed dollar amount specifically provided by the community.**

4. Submission

Applications must be mailed or faxed to the Director at the address or number shown on Form DE-2.

C. Determination Decisions

1. Standards

Additional borrowing the community has or is planning to authorize for the purpose or purposes described in the debt exclusion will be covered by the exclusion only if it (1) is modest in amount, and (2) funds the same project(s), as defined below.

a. Amount

The percentage increase in the amount being borrowed must be reasonable in comparison to standard measures of the rate of increases in (1) general inflation,¹ (2) construction costs,² and (3) costs of state and local government goods and services³, since the referendum.

The community must request a determination if the borrowing increase exceeds any of those measures regardless of the reason *unless it chooses to bypass the determination procedure and seek voter approval of a supplemental exclusion or fund the additional debt service within the levy limit.* See Section II-C-3-c below.

b. Project

The additional borrowing must also fund expenses reasonably necessary to completing the same fundamental elements of the described project(s).

¹ Index used to measure changes in the price of goods and services generally is the non-seasonally adjusted Consumer Price Index-All Urban Consumers (CPI-U) for all items typically purchased by consumers in the Boston-Brockton-Nashua area. The index is compiled by the U. S. Labor Department, Bureau of Labor Statistics and is updated bimonthly. The most current index can be obtained at www.bls.gov. [*Select Consumer Price Index/Get Detailed Statistics/Create Customized Tables/Consumer Price Index-All Urban Consumers (Current Series).*]

² Index used to measure changes in the price of construction costs in the National Composite Fixed-Weight index. The index is compiled by the U.S. Commerce Department, Census Bureau and updated monthly. The most current index can be obtained at www.census.gov. [*Select Subjects A- Z/C/Construction/Value of Construction Put in Place/Indexes/Monthly Indexes/U.S. Census Bureau –Composite Fixed-Weight Index (1st column).*]

³ Index used to measure changes in the price of goods and services typically purchased by governmental entities is the State and Local Implicit Price Deflator. The index is compiled by the U.S. Commerce Department, Bureau of Economic Analysis, and is updated quarterly. The most current index can be obtained at www.bea.gov. [*Select National Income and Product Account Tables/Table 7.1- Quantity and Price Indexes for Gross Domestic Product/Line 88.*]

These are defined as those types of involuntary expenses that voters could reasonably foresee might occur in the public construction or other capital project that is the subject of the debt exclusion. They would include, for example, (1) extra work required to meet regulatory or environmental regulations, such as unplanned drainage, removal of asbestos or other contaminants, or new fire and building code improvements, (2) extra work to address unanticipated problems encountered during construction, such as undetected structural deficiencies, or (3) higher acquisition costs resulting from damages awarded by a court to the owner of real estate taken by eminent domain. They would also include some voluntary expenses associated with the types of minor project changes that typically occur in capital projects, such as reconfiguring storage space or sewer lines.

They do not include, however, any expenses related to voluntary changes or expansions in the fundamental specifications of the project as represented to the voters. Examples of such material project changes would include (1) adding new components or amenities, such as a technology plan or air-conditioning, (2) expanding significantly the size or use of a facility or structure, or (3) replacing rather than repairing a major structural component, such as a roof, or demolishing and rebuilding, rather than renovating, a structure.

The community must request a determination if all or part of the borrowing will cover extra work or expenses resulting from voluntary or involuntary circumstances *unless it chooses to bypass the determination procedure and seek voter approval of a supplemental exclusion or fund the additional debt service within the levy limit.* See Section II-C-3-c below.

2. Notice

The Director will return the signed DE-2 to municipal officials to notify them of his decision.

3. Decision

a. Additional Borrowing Covered by Exclusion

If the Director determines that the additional borrowing identified by the city or town in its application is covered by the exclusion, that amount will be recorded on the DE-2. No additional amount will be covered by that particular exclusion even if de minimis.

b. Additional Borrowing Not Covered by Exclusion

If the Director determines that the additional borrowing identified by the city or town in its application is not covered by the exclusion, the DE-2 will record the exclusion amount fixed at the time of the referendum. The Director will not act on any other requests for a determination regarding that particular exclusion.

The Director will calculate the annual exclusion using the same percentage the fixed amount bears to the total debt issued for the exclusion purpose(s) unless another exclusion is approved to cover the additional borrowing as explained in Section I-C-3-c below. For example, if the exclusion covered \$20,000,000 of \$25,000,000 borrowed for the exclusion purposes, the annual exclusion would be 80% of the net debt service due for the year.

c. Approval of Supplementary Exclusions

The selectmen, town council or city council with mayoral approval if required by law may ask voters to approve another debt exclusion to cover the additional borrowing even if the Director determines the amount is covered by the original exclusion. *The community also retains the option of bypassing the determination procedure entirely and either seeking voter approval of a supplementary exclusion or funding the additional debt service within the levy limit.*

Voter action on a supplementary exclusion does not affect the original exclusion. Proposition 2½ does not contain any method for revoking or superseding an approved exclusion. Therefore, the original exclusion continues to cover the debt service costs on the borrowing fixed at the time it was voted.

If a supplementary exclusion required to cover the additional debt is not presented to or approved by the voters, the annual exclusion will be calculated on a percentage basis as explained in Section I-C-3-b above.

4. Recordkeeping

Treasurers must retain the returned application until the debt exclusion ends, *i.e.*, until the debt is retired and all adjustments to the levy limit attributable to the exclusion have been made.

II. ADJUSTED EXCLUSION SCHEDULE

A. Approval Policy

A city or town may apply to the Director of Accounts for approval to use an adjusted debt exclusion schedule in order to moderate the impact of the exclusion on its levy.

B. Application Procedure

1. Applicant

The mayor, city/town manager or selectmen must submit the community's application for approval to use an adjusted debt exclusion schedule. The assessors, treasurer and accounting officer must also sign the application.

2. Format

All applications must be made using Form DE-3 (attached). This form will also be used to notify the community of the action taken by the Director on the request.

3. Content

Applications must include the proposed exclusion schedule containing the information listed on Form DE-3.

4. Submission

Applications must be mailed or faxed to the Director at the address or number shown on Form DE-3.

C. Application Review

1. Standards

The Director of Accounts will approve use of an adjusted schedule for any municipality subject to the following conditions:

a. Excluded Debt Reserve

The accounting officer must establish an "Excluded Debt Reserve" and reserve the excess taxes raised in any fiscal year in which the exclusion taken under the adjusted schedule exceeds the actual net debt service due for that year.

The reservation of fund balance carries forward on the balance sheet and is available for appropriation for the municipality's debt service costs, or its assessed share of a regional governmental entity's debt service costs, in those years when the exclusion to be taken is less than the actual net debt service due.

b. Total Exclusion

The total amount excluded over the life of the borrowing may not exceed the municipality's net debt service costs, or its assessed share of a regional governmental entity's net debt service costs.

Reductions in future years' levy limits may be necessary if this maximum exclusion is exceeded. The Director will work with municipal officials to minimize any financial hardship that might result from such reductions.

2. Notice

The Director will return the signed DE-3 to municipal officials to notify them of his decision.

3. Recordkeeping

Treasurers must retain the returned application and adjusted schedule until the debt exclusion ends, *i.e.*, until the debt is retired and all adjustments to the levy limit attributable to the exclusion have been made.

Send to:
Bureau of Accounts
Division of Local Services
P.O. Box 9490
Boston MA 02205-9490
FAX (617) 626-2330

**DETERMINATION OF BORROWING
COVERED BY DEBT EXCLUSION**
General Laws Chapter 59 §21C(k)

DOR USE ONLY
File No.

DE-2
Rev. 3/2002

RETAIN UNTIL DEBT EXCLUSION ENDS

APPLICATION FROM CITY/TOWN OF _____
Application Date _____

INSTRUCTIONS: Provide ALL information requested.

A. AUTHORIZED SIGNATURES. Must be signed by mayor, city/town manager or majority of board of selectmen. Signature certifies that all information is true and correct and acknowledges that city/town may not amend this request, nor submit any other request, for a determination related to this particular debt exclusion once a decision has been issued.

Name	Title	Date
Name	Title	Date
Name	Title	Date
Name	Title	Date
Name	Title	Date

B. CONTACT. Provide name and telephone number of person to contact if additional information is needed to process this application.

YOU MUST ALSO COMPLETE SECTIONS C, D AND E ON REVERSE SIDE

DOR USE ONLY

FOR COMMISSIONER OF REVENUE

Base exclusion:
\$ _____

Director of Accounts

Additional debt covered:
\$ _____

Date: _____

C. DEBT EXCLUSION. Answer the following questions and attach a certified copy of the referendum vote.

1. When did voters approve the debt exclusion? ____/____/____
2. At the time of that election, how much did voters expect the project(s) described in the exclusion to cost? If the exclusion covers debt issued by a regional district, state district-wide cost, not city/town share. \$_____
3. What was the basis for that expectation?
 - Borrowing voted before election
If yes, was borrowing voted *expressly* contingent upon passage of debt exclusion in accordance with G.L. Ch. 59 §21(m)?
 Yes No
 - Borrowing scheduled for vote after election
 - Other. Specify:

D. DEBT AUTHORIZATIONS. List in chronological order all authorized/proposed debt for same purpose(s) as the debt exclusion. If the exclusion covers debt issued by a regional district, list debt authorized/proposed by the district, not city/town share.

	<u>Date Authorized/Proposed</u>	<u>Amount Authorized/Proposed</u>
1.	____/____/____	\$ _____
2.	____/____/____	\$ _____
3.	____/____/____	\$ _____
	<u>TOTAL DEBT AUTHORIZED/PROPOSED</u>	\$ _____

Continue list on attachment, in same format, as necessary.

E. EXCLUSION COVERAGE. Check all reasons that explain why the cost of the project(s) described in the debt exclusion now exceeds the amount stated in Section C-2. A brief narrative or statement may also be attached to provide any other relevant information about the circumstances.

- Inflation (higher cost of materials/labor)
- Regulatory compliance. Specify:

- Construction problems. Specify:

- Project changes. Specify:

Send to:

Bureau of Accounts
Division of Local Services
P.O. Box 9490
Boston MA 02205-9490
FAX (617) 626-2330

**ADJUSTED
DEBT EXCLUSION SCHEDULE**
General Laws Chapter 59 §21C(k)

DOR USE ONLY
File No.

DE-3

Rev. 3/2002

RETAIN UNTIL DEBT EXCLUSION ENDS

APPLICATION FROM CITY/TOWN OF _____
Application Date _____

INSTRUCTIONS: Provide ALL information requested.

A. DEBT EXCLUSION. Answer the following questions.

- When did voters approve the debt exclusion? ____/____/____
- Does the exclusion cover debt issued by:

<input type="checkbox"/> Applicant city/town	<input type="checkbox"/> Regional district to which applicant belongs?
--	--
- What is the purpose of the exclusion?

B. ADJUSTED SCHEDULE. Identify proposed changes to debt exclusion schedule in table below or in attachment containing same information.

Fiscal Year	Debt Service Payment	Reimbursement	Debt Exclusion	Over/(Under) Raised	Reserved Balance
	\$	\$	\$	\$	\$

Continue list on attachment, in same format, as necessary.

YOU MUST ALSO COMPLETE SECTIONS C AND D ON REVERSE SIDE

DOR USE ONLY

FOR COMMISSIONER OF REVENUE

Schedule approved

Schedule disapproved

Director of Accounts

Date:

C. AUTHORIZED SIGNATURES. Must be signed by (1) majority of board of assessors, (2) treasurer, (3) accounting officer, and (4) mayor, city/town manager or majority of board of selectmen. Signature certifies that all information is true and correct and acknowledges that municipality's levy limit may be reduced during or after exclusion period to ensure maximum total exclusion not exceeded.

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

Name	Title	Date
------	-------	------

D. CONTACT. Provide name and telephone number of person to contact if additional information is needed to process this application.

May 23, 2008

Dear Colleagues:

Earlier this year, Ald. Sangiolo and I docketed an item for debt exclusions for capital projects that included Newton North High School, new elementary schools and for renovation of the fire stations. As a result of the override debate, this Board decided to not put any debt exclusion questions on the ballot.

Voter rejection of the \$12 million operating override does not mark the end of the fiscal management process; it simply changes it. Earlier this year, one of the chief concerns regarding the NNHS debt exclusion was that it would be viewed as a referendum on the price or the decision to go forward on that project. That argument has been laid to rest now that the funding plan has been approved.

If this City is going to seriously consider debt exclusions as a means of funding capital projects, we need to begin to explain to the public, how a debt exclusion works, and what impact it will have on this City. Because it will take some time to get this information out to the public and to engage the public into a meaningful discussion, we need to begin the process now.

The override failure puts pressure on this Board to find ways to effectively fund services for this City. Relieving the operating budget of the debt service for NNHS is an excellent opportunity for doing just that.

We have docketed a new item to request consideration of a debt exclusion for NNHS. The timing for such a referendum should be based on when the City is ready again to consider this option, and whether other capital projects could be bundled with this.

We fully realize that a debt exclusion in no way solves all of the City's financial issues. However, it is a start. A debt exclusion is a very important financial tool that has been embraced by many different communities for various projects. It is a financial tool worthy of consideration by the taxpayers in this City. We hope to gain and welcome your support in this endeavor.

Regards,

Ald. Bill Brandel
Ald. Amy Mah Sangiolo.

09 MAY 23 PM 1:02
CITY CLERK
NEWTON, MA. 02159

PROGRAMS & SERVICES COMMITTEE REPORT
NOVEMBER 11, 2008

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#207-08 ALD. BRANDEL AND SANGIOLO proposing that the following question be put before the Newton voters:
“Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 ½ the amounts required to pay for the bond issuance in order to fund Newton North High School?” [05-21-08 @ 12:58 PM]

ACTION: **HELD 7-0 (Ald. Baker not voting)**

NOTE: Ald. Brandel said he thought this was still the best vehicle for funding the bonds for the high school. He said they did not know what the bonds were going to cost at this point because they will not go out until the spring. He asked that this item be held as they still had to go through the budget process to see what the financial landscape would be. Ald. Brandel noted that several municipalities in the Boston area had projected-related overrides and none were for an operational override.

Ald. Parker noted that the Newton North project would happen whether or not a debt exclusion passed and that eliminated much of the incentive to vote for it. He felt it was the best way to pay for the project but wondered if the public would be in agreement. Instead, he felt it would be best to use a debt exclusion for prospective projects. Ald. Brandel thought they should start thinking about a multi-question ballot item in case they wanted to use a debt exclusion for an elementary school project, for example. Ald. Sangiolo felt that as people saw the impact the high school cost was having on the city’s operating budget, they might feel differently about a debt exclusion for the high school.

Sandy Pooler felt that any proposal for an override would need people in the community to campaign for it. He noted that the Board had turned down the idea of a debt exclusion in the spring and wasn’t sure what the public support would or would not be. He said

that excluding debt gives a short break to the operating budget in a given year, but that break goes away and is not permanent. He felt it allowed for more capital spending not necessarily more money in the operating budget.

Ald. Yates moved to hold this item and the committee voted in favor.

Excerpt

affect next year's board. Ald. Lennon was concerned that the home rule petition process might take too long and would not be done in time for the beginning of the fiscal year. Ald. Sangiolo said they could decide, as a Board, on an amount to voluntarily give back to the city in order to save something else in the budget. Ald. Baker pointed out that the Mayor would still have to approve any appropriation, however.

Since this meeting, Ald. Sangiolo has gathered information from the Law Department indicating that a Home Rule petition could be employed to make a salary change. She will bring this information to the next discussion of this item.

Ald. Brandel moved to hold this item and the Committee voted in favor.

REFERRED TO PROG.& SERV., PUB. FACIL. AND LAND USE COMMITTEES

#329-08(2) ALD. JOHNSON, ALBRIGHT AND LINSKY requesting that His Honor the Mayor implement policies and procedures that engage the Ward Alderman, as appropriate, in the determination of exemptions from the noise ordinance. [02/25/09 @ 11:24 AM]

ACTION: **APPROVED 7-0 (Ald. Parker not voting)**

NOTE: Ald. Johnson spoke with Mayor Cohen and he was pleased with the Resolution proposed for this item. It is attached to this report. Ald. Baker was concerned that this might not allow for some non-emergency events that might need an exemption. Ald. Johnson said that the Mayor had spoken to Dimeo about their construction schedule and calendar. He had seen the language for this resolution and felt comfortable that it would be adequate to Dimeo's needs. The Committee voted in favor of this item.

REFERRED TO PROG. & SERV., PUB. FAC., AND LAND USE COMMITTEES

#329-08 ALD. JOHNSON, ALBRIGHT & LINSKY requesting amendment to §20-13, *Noise Ordinance*, of the City of Newton Ordinances to prohibit the City from exceeding the parameters of time and decibel restrictions unless it receives approval from the Land Use Committee of the Board of Aldermen. [09/02/08 @ 12:00 PM]

ACTION: **NO ACTION NECESSARY 7-0 (Ald. Parker not voting)**

NOTE: This item was voted No Action Necessary by the Committee because the issue was addressed in item #329-08(2).

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#207-08 ALD. BRANDEL AND SANGIOLO proposing that the following question be put before the Newton voters:
"Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 ½ the amounts required to pay for the bond issuance in order to fund Newton North High School?" [05/21/08 @ 12:58 PM]

ACTION: **HELD 7-0 (Ald. Parker not voting)**



NOTE: Ald. Sangiolo said she had received inquiries from the newspaper about what was happening with this item. She felt that this issue merited some further discussion. Because they know that \$10M in interest payments are going to come due.

Ald. Sangiolo thought the question would have to be dealt with before the tax rate was set, which was generally around November 15th. She thought it would be a good idea to have the referendum question during the municipal election.

Ald. Baker did not feel it was an appropriate time to put this on the ballot and organizing a campaign around it would be difficult. Ald. Brandel agreed that it was not a good time to be asking the public for this, but he understood the City was going to be facing financial constraints and it was a problem that needed to be wrestled with. He felt they should be thinking about whether a debt exclusion was necessary, would it be a good solution to the problem, and would it be a good time to be dealing with this politically and financially. He explained that an override is an increase to the levy that gets circulated on every one's tax base incrementally, and a debt exclusion gets amortized simply so the largest payment comes first. He didn't feel the timing was right for a debt exclusion because of that. He said they needed some clarification on how a debt exclusion operates. He also felt there might be some other smaller projects that might be a better test for the debt exclusion concept. He noted that the type of overrides that passed in the last elections around the state were almost all debt exclusions. Many communities were doing multi-question ballots. It gave people the ability to pick what they would like to support. Ald. Sangiolo felt that the Newton North project was a perfect opportunity for a debt exclusion. It would free up the \$10M from the operating budget and pay the Newton North debt separately.

Ald. Johnson said that the Blue Ribbon Commission had suggested an override in the past and that the Citizen's Advisory Group recommended increasing the revenue stream but she wasn't sure if overrides were part of that. Ald. Johnson said that there is huge debt from the Newton North High School project and there are a number of elementary schools that are in need of renovation or replacement. The CAG has noted that the infrastructure, capital planning, and budgeting processes in the City are not working. The budgeting process should include this concept of debt exclusion as a topic of conversation. All things need to be looked at carefully.

Ald. Hess-Mahan suggested having David Wilkinson or Susan Burstein, Craig Manseau and somebody from the Law Department come in to establish how this would be set up and how it would work if they decided to move forward with a debt exclusion. Ald. Merrill thought it was important to educate the public on the differences between a debt exclusion and an override.

Attached is an excerpt from the March 15, 2006 Committee of the Whole meeting at which former Associate City Solicitor, Gayle Smalley, explained overrides and debt exclusions. Also attached are explanations of the same from the Massachusetts Department of Revenue website.

COMMITTEE OF THE WHOLE
EXCERPT
WEDNESDAY, MARCH 15, 2006

Debt Exclusions, Overrides, and Voter Involvement

Gayle Smalley presented information from her memo of March 10, 2006. She addressed how to calculate the amount of debt exclusion. She stated that the calculation is the total principal and interest payment due net of any reimbursement received from the state or federal government for the project.

On the question of who can docket a Proposition 2 ½ Debt Exclusion, Ms. Smalley found that the provisions of Proposition 2 ½ do not specify who may place a Debt Exclusion proposal before the Board. Thus, it is left to Newton's local rules, which allow that any person may docket an item to propose that the Board approve a debt exclusion. The Mayor, however, must submit the subsequent bond authorization, to the Board.

Ms. Smalley reported that according to the Mass. Department of Revenue, either the city can approve a debt exclusion before, or after, the debt is authorized and issued. The City may also place a package of bond projects in a single ballot question, but according to the Department of Revenue, it is more typical to see a city or town use separate ballot questions for each project.

Alderman Sangiolo asked if the City decided to do an override after the project was underway, could that new money go to pay the bill for Newton North or anything else we need? Ms. Smalley stated that this could be done. Her response was supported by Mr. Pooler who stated that it could go to pay whatever bills the City wanted to pay.

Alderman Mansfield stated that he felt that doing a debt exclusion after the project had started was not a wise course of action. If the City were faced with the need for additional funds after the project had started, an override would be the better way to go. Alderman Mansfield then stated that if a debt exclusion was passed by the voters before the beginning of the project, and the Mayor chose not to exercise that debt exclusion, which is his prerogative, then the options would become very limited.

Alderman Coletti commented that he saw quite a few options. Unfortunately, some of them were not that great. He believes that this project will have to go forward with a funding source that is accurate. That means that the Mayor will have to request an entire bond for everything less the money that we are going to get from state reimbursement. He cannot come forward with a proposal that talks about the use of new growth, because if it does not materialize then we have to do tax anticipation notes (TANs), bond anticipation notes (BANs), or revenue anticipation notes (RANs). The City will have to borrow money depending on how the Executive Department expects to

pay for the project. The board could go forward and approve up to \$80 million in bonds; it does not matter what type, to construct this project and four years down the road the City can be in a position where there is no growth and will have to sell some short term revenue notes to generate the funds to build the building while we wait for the revenue to come in - whether it is tax, state aid, bonds or revenue notes. If none of those materializes, and you now have a debt payment, you can request a debt exclusion override to raise the money to make that payment. It is a fifth way, and the best way, for the city to raise the money. It is pay as you go, so you do not have to pay it down in the future. You can begin raising the money immediately through that capacity. It gives the City some flexibility.

Alderman Coletti went on to say that he would like to see a funding mechanism that is hooked to the hotel/motel tax because that is a known \$1.4 million a year. You could easily sell tax anticipation notes in order to generate the money that is offset by that hotel/motel money as it comes in. We have the debt exclusion option to bridge the gap so that we can continue to move forward.

The Mayor is going to have to ask for the full complement of funding. He cannot come in with a plan to build a new school and build it with 30-years of new growth. That is not a legal funding mechanism because it is invisible money at this point. Aldermen Coletti hopes that the Mayor is not going to try to do that and that the Law Department can clarify that statement. It is impossible to do a project with the financing that way. We are going to have to approve the entire amount in bonds.

Alderman Albright asked if we could do a debt exclusion on some of the bonding and not all of the bonding.

Ms. Smalley emphasized that the ballot question is prescribed by law. The ballot question is about the particular project not the amount - there is no dollar amount on the ballot. Mr. Pooler added that the Department of Revenue also states that if you vote the debt exclusion, but the community has other resources that you want to use to pay the interest and principle payments, the city is not obligated to use property taxes to the full extent.

Alderman Albright asked how you explain to the voters what the impact might be if you cannot include a number?

Mr. Pooler responded that you do a projection of the debt overtime and you assume that the exclusion is going to cover the full cost of it.

President Baker asked if there were any further questions for Assistant City Solicitor Smalley and seeing none, he thanked her and allowed her to depart the meeting. He then introduced Building Commissioner Nick Parnell and Cost Estimator Craig Holmes from Rider, Hunt, Levett and Bailey to discuss cost estimation.

The Official Website of the Department of Revenue (DOR)

Mass.Gov

Department of Revenue

Home > Local Officials > Municipal Data and Financial Management > Municipal Knowledge Base > Levy Limits >

What is a Debt Exclusion ? What is a Capital Outlay Expenditure Exclusion ?

Proposition 2½ allows a community to raise funds for certain purposes above the amount of its levy limit or levy ceiling. A community can assess taxes in excess of its levy limit or levy ceiling for the payment of certain capital projects and for the payment of specified debt service costs. An exclusion for the purpose of raising funds for debt service costs is referred to as a debt exclusion, and an exclusion for the purpose of raising funds for capital project costs is referred to as a capital outlay expenditure exclusion. Both exclusions require voter approval with very limited exceptions. These exceptions are explained in the topic entitled What is a Special Exclusion.

The additional amount for the payment of debt service is added to the levy limit or levy ceiling for the life of the debt only. The additional amount for the payment of the capital project cost is added to the levy limit or levy ceiling only for the year in which the project is being undertaken. Unlike overrides, exclusions do not become part of the base upon which the levy limit is calculated for future years.

Reimbursements such as state reimbursements for school building construction are subtracted from the amount of the exclusion.

A capital outlay expenditure exclusion or debt exclusion is effective even in the rare case when the exclusion would bring the community's levy above its levy ceiling.

Both of these exclusions require a two-thirds vote of the community's selectmen, or town or city council (with the mayor's approval if required by law) in order to be presented to the voters. A majority vote of approval by the electorate is required for both types of exclusion.

Questions presented to exclude a debt obligation must state the purpose or purposes for which the monies from the debt issue will be used. Questions presented to exclude a capital outlay expenditure exclusion must state the amounts and purposes of the expenditure.

Below we highlight how exclusions are added to the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%.

A. FY2000 Levy Limit	\$1,000,000
B. (A) x 2.5 %	\$25,000

Adding to the levy limit amounts of certified new growth added to the community's tax base:

C. FY2001 New Growth	\$15,000
-----------------------------	-----------------

Adding to the levy limit amounts authorized by override votes:

D. FY2001 Override	\$100,000
---------------------------	------------------

E. FY2001 Subtotal (A + B + C + D)	\$1,140,000
---	--------------------

Comparing the FY2001 levy limit to the FY2001 levy ceiling and applying the lesser number (compare E and F)

F. FY2001 Levy Ceiling **\$2,500,000**

\$1,140,000
Applicable FY2001 Levy Limit
(lesser of E and F)

Calculating FY2001 levy limit with debt exclusion or capital outlay expenditure exclusion:

H. FY2001 Levy Limit **\$1,140,000**

I. Add FY2001 Debt Exclusion or **\$50,000**
Capital Outlay Expenditure Exclusion

\$1,190,000
Applicable FY2001 Levy Limit with Debt Exclusion
or Capital Outlay Expenditure Exclusion

In FY2001, this community can levy up to \$1,190,000, its applicable levy limit with this debt exclusion or capital outlay expenditure exclusion.

What is an Override?

The Official Website of the Department of Revenue (DOR)

Mass.Gov

Department of Revenue

Home > Local Officials > Municipal Data and Financial Management > Municipal Knowledge Base > Levy Limits >

What is an Override?

Proposition 2½ allows a community to assess taxes in excess of the automatic annual 2.5 percent increase and any increase due to new growth by passing an override. A community may take this action as long as it is below its levy ceiling, or 2.5 percent of full and fair cash value. An override cannot increase a community's levy limit above the level of the community's levy ceiling.

When an override is passed, the levy limit for the year is calculated by including the amount of the override. The override results in a permanent increase in the levy limit of a community, which as part of the levy limit base, increases at the rate of 2.5 percent each year.

A majority vote of a community's selectmen, or town or city council (with the mayor's approval if required by law) allows an override question to be placed on the ballot. Override questions must be presented in dollar terms and must specify the purpose of the override. Overrides require a majority vote of approval by the electorate.

Below we highlight where the amount of an override is added in the calculation of the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%.

A. FY2000 Levy Limit	\$1,000,000
B. (A) x 2.5 %	\$25,000

Adding to the levy limit amounts of certified new growth added to the community's tax base:

C. FY2001 New Growth	\$15,000
----------------------	----------

Adding to the levy limit amounts authorized by override votes:

D. FY2001 Override	\$100,000
E. FY2001 Subtotal (A + B + C + D)	\$1,140,000

Comparing the FY2001 levy limit to the FY2001 levy ceiling and applying the lesser number (compare E and F)

F. FY2001 Levy Ceiling	\$2,500,000
------------------------	-------------

\$1,140,000
Applicable FY2001 Levy Limit
(lesser of E and F)

The community can levy up to its levy limit of \$1,140,000 in FY2001.

DRAFT FOR DISCUSSION PURPOSES ONLY 4/16/2010

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: Is 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 as well as the owner of the real property from which the tree is removed.

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 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 a 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.

(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 the conditions of the permit. Written notice shall be sent by certified or registered 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: If any Public Tree or Public Shade Tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the tree warden to remove such tree, utilizing such professional criteria and technical assistance as he deems necessary, and the Public Tree or Public Shade Tree may be removed without obtaining a written permit as otherwise required by this article. The tree warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the 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. (Ord. No. V-275, 12-6-99)

(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 (q) 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) *Penalties*

1. *Removal without a permit:* Each instance in which a Public Tree is removed without a permit shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

2. *Failure to replace trees or make payment:* Each failure to replace a tree or make a payment into the tree replacement fund shall constitute a separate violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

3. *Damage to Public Tree or Public Shade Tree:* Carving, breaking of limbs, poisoning, shaving of roots, girdling, nailing, topping or otherwise damaging, injuring or putting a Public Tree or Public Shade Tree at risk is prohibited and may be subject to a penalty of \$300.00 and/or corrective actions shall be required. Each day such violation continues shall constitute a separate offense.

4. *Failure to obtain a permit:* Each instance in which an action requiring a permit under this ordinance is conducted without a permit shall constitute a violation of this ordinance which shall be subject to a fine in the amount of three hundred dollars (\$300). Each day such violation continues shall constitute a separate offense.

5. *Failure to comply with the Tree Warden Regulations:* Each instance in which an action violates the Tree Warden Regulations shall constitute a violation of this ordinance which shall be subject to a fine in the amount of three hundred dollars (\$300). Each day such violation continues shall constitute a separate offense.

6. Nothing herein shall be construed to require the city to make a payment for violation of this article; however the City of Newton agency that caused the violation shall be responsible for the costs of replacement or repair of the tree(s) which were damaged or removed.

(t) **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 and issue written notice of the following violations:

(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.