

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, JUNE 17, 2009

7:45PM – Room 222

ITEMS SCHEDULED FOR DISCUSSION:

#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]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#272-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor 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 Human Resources Departments. [07/17/08 @ 9:53 AM]

#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]

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

REFERRED TO PROGRAM AND SERVICES AND FINANCE COMMITTEES

#177-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend from E-rate Receipts the sum of two hundred one thousand four hundred ninety seven dollars and fifteen cents (\$201,497.15) for the purpose of implementing the School Department wireless technology plan for Newton South, as well as district-wide management. [06/09/09 @ 5:09 PM]

#170-09 THE BOARD OF ALDERMEN offering a TESTIMONIAL RESOLUTION in praise of the work of the Commissioner of Health and Human Services and his staff in addressing the needs of the community

- #169-09 ALD. HESS-MAHAN, on behalf of Newton Dialogues for Peace and War, requesting adoption of a RESOLUTION endorsing Rep. Barney Frank's proposal for a 25% reduction in the military budget. [06/08/09 @ 2:55 PM]
- #146-09 ALD SANGIOLO requesting a discussion to explore the possibility of the sale of City of Newton-related merchandise to benefit various city departments. [05/06/09 @ 4:46 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #130-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend from Cable Receipts the sum of twenty-four thousand nine hundred eighteen dollars (\$24,918) for the purpose of purchasing equipment to provide for archived web casting of the Board of Aldermen and School Committee meetings. [4/28/09 @ 6:02 PM]
- #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]
- #95-09 TOM SHEFF requesting the Board of Aldermen appoint an advisory committee made of up persons who are not elected officials to review the daily processes of the Board of Aldermen and report recommended efficiency improvements to the Board of Aldermen. [03/26/09 @8:34 pm]

REFERRED TO PUBLIC FACILITIES AND PROGRAMS & SERVICES

- #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.

REFERRED TO PS&T AND PROGRAMS & SERVICES COMMITTEES

- #391-08 HIS HONOR THE MAYOR requesting Board of Aldermen approval to
(#122-92(3)) petition the General Court for an amendment to the legislation that
governs the appointment of a Police Chief in the City of Newton in order
to add two members to the committee: an additional representative of the
Newton Superior Officers Association and an additional citizen member.
[11/4/08 @ 12:31 PM]
- #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]
- #292-08(2) PROGRAMS AND SERVICES COMMITTEE requesting that His Honor
the Mayor develop a written policy of standards and processes that could
be uniformly followed by community groups for the use of the branch
library buildings. [11/07/08 @ 11:11 AM]

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]

**REFERRED TO PROG. & SERV., ZONING & PLANNING, PUB. FACIL.,
PUB. SAFETY 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]

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]

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]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#261-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the Director of Arts in the Parks' salary to the Arts in the Parks revolving account. [07/08/08 @ 1:29 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#259-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the salaries of the Parks & Recreation Commissioner and the Recreation Programs Director to the revolving accounts for various programs.
[07/08/08 @ 1:28 PM]

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]

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]

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]

#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]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#83-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to adopt the proportion of Governors Municipal Partnership that would allow the City to reduce employee health insurance costs by joining the Group Insurance Commission. [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 PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#267-06(3) ALD. PARKER, BURG, LINSKY, FISCHMAN, HESS-MAHAN, VANCE, HARNEY, JOHNSON, & DANBERG proposing Home Rule Legislation authorizing the City of Newton to apply the ordinance proposed in item #267-06(2) to assets held by the City's retirement system.

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.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#264-03(3) ALD. JOHNSON AND BAKER requesting update on the work of the Taxation Aid Committee established by the Board of Aldermen in March 2004 in administering aid to the elderly taxation fund.

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

**REFERRED TO PROGRAMS & SERVICES, PUBLIC FACILITIES
AND FINANCE COMMITTEES**

#309-01 ALD. PARKER requesting increase in the income eligibility level of the 30% water/sewer discount for low-income senior citizens.


Respectfully Submitted,

Marcia Johnson, Chairman

CITY OF NEWTON
ASSESSMENT ADMINISTRATION
INTER-OFFICE MEMORANDUM

Date: June 12, 2009

To: Alderman Marcia Johnson, Chairman of Programs and Services Committee

From:  Elizabeth Dromey, Director of Assessment Administration

Subject: #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 @ 10:27 PM]

cc: Programs and Service Committee

TELECOMMUNICATIONS PROPERTY TAX FACT SHEET

Equipment / Machinery of Wireless Companies

Status: ATB decided and SJC affirmed in the case of Bell Atlantic Mobile dba Verizon Wireless v. the Commissioner of Revenue & the City of Newton, that the equipment / machinery of wireless carriers should be taxed since the courts found that wireless carriers are not entitled to the corporate utility exemption that exempts all machinery / equipment other than generators. Since fiscal year 2007 all the machinery / equipment of wireless carriers has been taxed.

Issue: The DOR had exempted this property by centrally valuing these providers as telephone companies in fiscal years 2003, 2005 and 2006. While many cities and towns appealed the Commissioner of Revenue's determination to exempt the equipment / machinery other than generators for these wireless companies for those fiscal years, the ATB dismissed all those cases once it determined that the DOR should not have been valuing the property of the wireless carriers in the first place. As a result of these dismissals, cities and towns are left without a legal remedy to recoup the taxes lost due to the DOR's incorrect application of the exemption – even though these cities and towns appealed under their only statutory remedy.

Request: Statutorily clarify that the ATB has the authority to hear the city and town appeals under the telephone tax laws (section 21A of the proposed legislation attached hereto).

Revenue: Estimated statewide \$10 Million
Estimated Newton \$300,000

Poles and Wires over Public Ways

Status: In a case involving the landline company, Verizon New England, Inc., the Commissioner of Revenue and the Cities of Newton and Boston, the ATB ruled that poles and wires of landline telephone companies are taxable.

Issue: This decision, which reversed an earlier decision made in the late 1940's, is subject to appeal. As a result, cities and towns have been required to reserve this revenue until the case is decided at the SJC.

Request: Statutorily clarify that this property is taxable so that cities and towns can use this needed revenue (sections 21, 22 and 24 of the proposed legislation attached hereto.)

Revenue: Estimated statewide \$26 million per year
Estimated Newton \$700,000 per year

Equipment / Machinery of Landline Telephone Companies

Status: The equipment / machinery (other than generators) of landline telephone companies remains statutorily exempt.

Issue: The courts have determined that this equipment is taxable for wireless carriers. In addition, similar equipment also is taxable for cable television companies who compete with telephone companies in providing telecommunications services.

Request: Enact a statutory change that will make all telephone company machinery / equipment taxable (section 23 of the proposed legislation attached hereto).*

Revenue: Estimated statewide \$40 to \$50 Million per year
Estimated Newton \$1.4 Million per year

Sale-Lease-Back Loophole

Status: In order to avoid local property taxation, some telecommunications companies have sold all their property to leasing companies that they set up. The leasing companies then lease back the equipment to the telecommunications company that originally owned the property.

Issue: This results in the property escaping taxation entirely.

Request: Close this loophole. (section 23 (2) last sentence of proposed legislation attached hereto).*

Current Status of Legislature's Actions on these Matters

The Senate budget passed with language to codify the ATB's Verizon landline decision that poles and wires over public ways are taxable. The language is currently being reviewed in a joint budget conference committee.

No other proposals have been adopted. The language to attempt to capture for taxation the machinery of the telecommunications carriers providing landline service contains some flaws that inadvertently will overturn the finding in the ATB's decision affirmed by the SJC that wireless carriers are not entitled to the corporate utility exemption. Great care must be given to review the language that is being proposed to ensure that it does not result in removing more property from the taxation.

*** Section 23 of the attached proposal contains certain flaws that our attorney, Richard Chmielinski, cautions be re-drafted to undo the introduction of a statutory conflict between Paragraphs 1 and Paragraph 2 of Chapter 59, Section 16. Richards' comments are below:**

1. 1st sentence of section 23 introduces a conflict between what now exists under 59-5-16-para 1 (treats inc tel cos who pay corporate excise tax under 63-52A as utility corporations thus granting the machinery exemption) as opposed to new modified 59-5-16-2 (attempts to treat inc tel cos who pay corporate ex tax under 63-52A as business corporations thus denying machinery exemption). This is an obvious statutory conflict.
2. 1st sentence of section 23 uses the term "telephone or telegraph corporation" which is too narrow and will exclude other telecommunications carriers who provide internet, cable tv, data, etc... (like is expressed in new section 24).
3. 1st sentence of section 23 uses the term "telephone or telegraph corporation" and under the BAM SJC decision all wireless cellular carriers were held to NOT constitute a telephone company. Thus, the language use of "telephone or telegraph corporation" will EXCLUDE all cellular wireless carriers and their machinery will suddenly become exempt (the EXACT OPPOSITE of what is intended here!!!)
Hope that helps.
RC

SECTION 21. Section 5 of chapter 59 of the General Laws, as so appearing, is hereby amended by inserting after the word "than", in line 220, the following words:- a telephone or telegraph corporation subject to tax under section 52A of chapter 63 or.

Deleted: taxed

SECTION 21A. For fiscal years 2003 through 2009 the appellate tax board shall have jurisdiction over and shall hear and decide the subject matter of each appeal otherwise duly filed pursuant to chapter 59 Section 39 of the General Laws, regardless of whether or not the taxpayer whose value has been certified by the commissioner of revenue is a telephone or telegraph company, from the commissioner of revenue's certified valuation of the machinery, poles, wires and underground conduits, wires and pipes of all commercial mobile radio service providers.

SECTION 22. Said section 5 of said chapter 59 of the General Laws, as so appearing, is hereby further amended by inserting after the words "two A", in line 223, the following words:- , other than a telephone or telegraph corporation,.

SECTION 23. Clause Sixteenth of said section 5 of said chapter 59 of the General Laws is hereby further amended by striking out paragraph (2), as inserted by section 2 of chapter 173 of the acts of 2008, and inserting in place thereof the following paragraph:-

(2) In the case of (a) a business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation, or (b) a telephone or telegraph corporation subject to tax under section 52A of chapter 63, all property owned by the corporation other than the following:- real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be considered to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function. Notwithstanding the preceding sentence, a telephone or telegraph corporation shall be subject to property tax assessment on machinery used in the conduct of its business and leased to it by a corporation that is not a telephone or telegraph corporation, and the telephone or telegraph corporation shall include such property on its list to the board of assessors where the property is situated under section 29 of this chapter.

SECTION 24. Clause Fifth of section 18 of said chapter 59, as appearing in the 2006 Official Edition, is hereby amended by adding the following 2 sentences:-
Poles, wires and underground conduits, wires and pipes of all telecommunications providers laid in or erected upon public or private ways and property shall be assessed to their owners in the cities or towns where they are laid or erected. For purposes of this clause, telecommunications providers shall include all entities which provide any, television service, internet service, telephone service, voice service, broadband service, video service, data service and/or any other form of telecommunications service,

Deleted: companies

Deleted: companies

Deleted: cable

Deleted: providers

Telecom - Effective Dates

SECTION 92. Sections 21, 22 and 23 of this act shall take effect on January 1, 2009 and shall not be construed to affect the outcome of any cause of action arising under the law in effect prior to January 1, 2009.

SECTION 93. Section 24 of this act shall take effect as of January 1, 2008 and shall apply to property taxes assessed for fiscal years beginning on or after July 1, 2008. Notwithstanding any general or special law to the contrary, for fiscal year 2009, the assessors of any city or town may assess taxes for any personal property taxable under section 24 not included in the fiscal year 2009 annual tax assessment to its owner in the manner and within the time provided by section 75 or 76 of said chapter 59.