

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JANUARY 9, 2008

Present: Ald. Johnson (Chairman), Freedman (Vice Chair), Baker, Merrill, Hess-Mahan, Brandel; absent: Ald. Sangiolo, Parker

Others Present: Dan Funk (City Solicitor), Donnalyn Kahn (Assistant City Solicitor), Fred Guzzi (Licensing Board), Sandy Pooler (Chief Administrative Officer), Ed Spellman (City Treasurer), Karyn Dean (Committee Clerk)

Appointment by His Honor the Mayor

#396-07 SARA SCHULMAN BRASS, 1400 Walnut Street, Newton as a member of the Newton Health and Human Services Advisory Council for a term to expire on February 1, 2008. Ms. Schulman is finishing the term of Rhona Shoul who has resigned. [12-03-07 @ 3:10 PM]

ACTION: **APPROVED 6-0**

NOTE: Ms. Brass was present to meet the Committee. She shared that since she had moved to Newton a year and half ago, it was important to her to get involved in the community. Her particular interest was in public health as it was her professional career and her passion. She said she had a Masters degree in public health and worked for the last 7 years with the US Department of Health and Human Services in New England. In that role she has worked with community public health organizations and local and state departments of public health. She thought her experience would bring an interesting frame of reference for Newton in appreciating what was going on in other New England communities that were similar. It also provided an opportunity to keep an eye on emergent public health trends around New England that might be of interest to Newton.

She said she attended a Newton Health and Human Services Advisory Council meeting back in July and she was very impressed with the members, their skills and experience, and with the role the Council had in guiding the decisions of the Department. She felt her skills were new and different and would complement the skills of those already on the Council.

Ald. Hess-Mahan asked Ms. Brass if she had any public health agendas she was particularly interested in. She said she didn't have a specific programmatic agenda and felt it would be premature for her to have one before she got to know the inner workings of the department and their current priorities. She was interested in updating the website and would be happy to take that on. She said that the public health website was separate

from the human services website and she found that some of the information, links, and documents were out of date. She felt it could be a more active resource with an update.

Ald. Freedman asked about the performance measurement work she had listed on her resume. He asked if there were any direct parallels between her work on the federal level and what might be done in Newton. She said that performance measurement was a way of using specific data to track progress over time in meeting different public health objectives. Once a program has been in place for a while, it was a way to see if it was meeting the needs of the community and meeting the types of benchmarks it should. It was an objective and quantitative based analysis. She said that was the direction that things were going at local levels as well but she didn't know the extent to which it was used in Newton. She said that so much of what she's learned in her job could easily be applicable in lessons learned. She said she wouldn't say there were direct parallels in her federal work and what could happen in Newton. In fact, she said, from a federal perspective, that would be considered a conflict of interest and she had already cleared that at her job level to make sure there were no conflicts that existed.

Ald. Freedman moved Ms. Brass's appointment and the Committee voted in favor 6-0.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#382-07 **BOARD OF LICENSE COMMISSIONERS** requesting that Sec.17-11(2) of the Revised Ordinances be amended to increase the fee for Common Victualler License from \$50 to \$100, effective January 1, 2008. [11-06-07 @ 11:17 AM]

ACTION: **APPROVED 6-0**

NOTE: Fred Guzzi of the Veterans and Licensing Board presented this item. He was looking to raise the Common Vicuttaller license from \$50 to \$100. Mr. Guzzi explained that a Common Victualler is not an establishment that serves alcohol. It is an establishment that serves food and/or drinks. He said it was a Massachusetts General Law that went into effect on July 1, 2007 that allowed cities and towns to go up to \$100. The fee in Newton has been \$50 for the last 20 years. He check with surrounding cities and towns and many of them were raising their fees in a range from \$74-\$100. He said that Newton also charges a filing fee of \$100 for the paperwork. He stated that this increase will bring in approximately \$1100 to a small department that brings in about \$260,000 in fees annually.

Ald. Merrill said that this will only take effect for new applications coming in this year because as of January 1, people were required to have the license, which was still set at \$50. Next year it would take effect across the board. Mr. Guzzi said at the end of the year they send out notices for renewals and that notice would have the new fee information and it goes into their fee schedule.

Ald. Freedman noted that the State laws can change at any time and there's no automatic notification to municipalities. He said he appreciated Mr. Guzzi's efforts in finding out about the changes and implementing them for Newton.

Ald. Merrill moved approval of this item and the Committee voted in favor 6-0.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#381-07 HIS HONOR THE MAYOR requesting an appropriation of \$20,000 (twenty thousand dollars) from Budget Reserve for the purpose of increasing the Law Department account for outside legal services to pay current and anticipated bills for services related to the negotiations and settlement of interest and penalties assessed to the City by the IRS.
[11-13-07 @ 3:27 PM]

ACTION: **APPROVED 6-0**

NOTE:

Need for Outside Counsel

Dan Funk, City Solicitor, presented this item. He said they had run into a very unusual tax matter that they'd never had before in terms of requiring skills to figure out how to file a tax appeal where the Treasurer's Office failed to pay the appropriate amounts on withholding taxes. They needed to find out what the standards were, what the legal basis for it would be, what the forums were, and so on. They felt that it made sense under those circumstances to seek outside counsel help, which they try to avoid, but this was a special case and there was a large amount of money at stake.

Cost of Outside Counsel

Last spring they brought in Edwards, Angell, Palmer and Dodge as outside counsel. The City had time constraints so they started working on this immediately. The Law Department had some money at the end of the fiscal year that they were able to transfer to pay for work done last fiscal year. When the new fiscal year began, they had a few dollars to use but they were now at the point where they owed counsel about \$12,000 and they didn't have the money. They were asking for \$20,000 to pay off that counsel and supplement the account. Mr. Funk reported that one of the cases was complete and the other case had moved on to its final stage. He was hopeful that they wouldn't have to spend all \$20,000 but felt it was a reasonable number under the circumstances.

Summary of Case

He said that the Board members received a memo last year from Sandy Pooler outlining the facts of this case. In summary, in October 2006, an employee of the Treasurer's Department incorrectly keyed in certain numbers that were designed to tell the bank how much to withdraw and transfer to the IRS for withholding of payroll taxes. This process is repeated every week for the municipal budget salaries and every other week for the school salaries and once a month for retirement. The October error was discovered in January of 2007 during a routine audit by the Treasurer's Office. At that time the

Treasurer's Office immediately contacted the IRS and immediately paid the correct amount. They thought they did all the things necessary to correct this error.

IRS Penalties and Resolution

Several months later (April), the Treasurer received a notice from the IRS that there were penalties and interest of about \$177,000. They did not expect those numbers. The Treasurer wrote a letter asking the amount to be waived as they were a municipality and not a corporation or business. The initial response from the IRS was negative and that's when the Law Department decided to bring in the outside counsel. Fortunately, there was a procedure whereby the penalties could be reduced considerably. After counsel asked the IRS to recalculate the cost, it came down to \$56,000. Mr. Funk said that recently, the IRS waived that entire amount. They haven't received a written advisory of that and they haven't received the money, but the outside counsel received a phone call from the IRS with the news. The City had to pay the \$56,000 in order not to accrue any further penalties, but they will receive that money back.

Second Case

In March of 2007, the same Treasurer's Department clerk punched in the wrong numbers by confusing the City payroll with the School payroll. That mistake was caught more quickly at the end of the month. It was immediately rectified and the initial penalty was around \$56,000. When they asked the IRS to recalculate the amount, it was brought down to about \$50,000. That case is now at the stage where they're asking the IRS to waive the entire amount. There may be further work for outside counsel on this case as it's not closed yet. Hopefully, it will come easily and not require more money but they'll have to wait and see.

Safeguards

Mr. Funk said he realized that the Committee may want to talk to the Treasurer's Office, and/or the Mayor's Office to understand why these mistakes occurred in the first place. It became apparent that the system in place was far from foolproof. The first time it was seen as a fluke incident but the second time showed them there needed to be some other system of checks and balances. A higher level employee is now performing this task. It is being done on computer. The Comptroller and the auditors have checked over the process. There is now a written record of everything and they anticipate there will be no further problems of this kind under this new set of procedures that the Treasurer's Office has implemented.

Mayor's Office Perspective

Sandy Pooler said that there is an ongoing relationship between the Treasurer's Office and the Financial Audit Subcommittee. That will continue and is an important part of keeping procedures in place to keep things running smoothly.

Mr. Pooler said that for years this function had been performed by a supervisory employee and about a year and a half ago they decided to have one of the clerks do it. For about 6 months the clerk did fine before the mistake occurred. She was then spoken

to about the error and they felt that it wouldn't happen again. The fact that it did happen again several months later prompted them to give the task back to the supervisor. The clerk was spoken to again but they did not fire her. He said they probably felt that they asked her to do more than she was capable of doing and that was their fault, not hers. She performs all of her other functions well. From the Mayor's Office point of view, they felt the Law Department's decision to bring in outside counsel was an excellent idea considering the highly technical area of law. He also said that he thought the Treasurer did an excellent job in communicating with the Comptroller and Auditors making sure he had vetted with them the procedures that were put into place to safeguard the city's funds. They have all taken this very seriously and he felt the response on all parts has been appropriate and responsible.

Treasurer's Office Explanation of New Procedure

Ed Spellman said the old system used the telephone to dial in the payroll withholding transfer. They would receive a confirmation number but no written confirmation of the transaction as it occurred. The new online transaction provides a printout of the date of the transaction, the type of tax payment, the payroll period ending, the dollar amount, etc. That document is combined with a summary sheet from the payroll and is provided to the Deputy Treasurer and the Treasurer. They review that every time a tax is paid. At the same time, the Deputy Treasurer is reconciling one of the Bank of America accounts where the federal tax is wired out of on a daily basis. He'll go online and reconcile that account to the payroll tax amount as a triple check to the system. They sat down with the outside auditor, the Comptroller and the Financial Subcommittee to go over the plan. They all reviewed it and had no additional recommendations so it was put in place.

Further Oversight

Mr. Spellman said he has been working with Ald. Lennon as chairman of the Financial Audit Subcommittee. He has been providing the Subcommittee with a monthly reconciliation report. Ald. Lennon and the other members worked up a new format that provided increased information to the Board. It allows the Subcommittee to track reconciling items and outstanding items by each individual bank account. They have met with the Subcommittee and they offered recommendations which his office has implemented and they will continue to do so.

Written Instructions

Ald. Freedman asked who would take over this task when that supervisor is out of the office. Mr. Spellman said that when the supervisor is out, the Deputy Treasurer will take over the task and Mr. Spellman will review the process. Mr. Spellman said he would make sure there was a written set of instructions to be followed. The instructions are attached to this report.

Ald. Hess-Mahan moved to approve this item. The Committee voted to approve 6-0.

NOTE: The Committee discussed each of the items on the agenda to determine status and action to be taken.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#10-08 HIS HONOR THE MAYOR requesting an appropriation in the amount of \$73,000 from Budget Reserve for the purpose of supplementing the transportation budget in the Department of Senior Services for FY08. [01-02-08 @ 4:53 PM]

NOTE: This will be put on the 1-23-08 agenda. Jayne Colino should be present for the discussion and was notified.

#7-08 ALD. ALBRIGHT requesting to create a task force whose members will be jointly appointed by the Mayor and the Board of Aldermen to investigate the creation of a Commission on Public Art. The job of the Commission would be to raise funds, solicit commissions, and select public art for villages and/or parks. [12-18-07 @ 12:48 PM]

NOTE: Ald. Albright is out of town and will not be back until January 21st or so. At that time she will be consulted to determine when she would like this on the agenda.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#397-07 ALD. JOHNSON AND COLETTI requesting to increase the fee for dogs being off-leash except where dogs are legally able to be off-leash. [12-04-07 @ 12:22 AM]

NOTE: This will be put on the 1-23-08 agenda. Marie Lawlor of the Law Department and Ald. Coletti will be in attendance for that meeting.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#359-07 HIS HONOR THE MAYOR requesting that the sum of \$50,000 be appropriated from Free Cash to conduct a study of the properties along Crystal Lake for the purpose of developing a Master Plan for the redevelopment of these city-owned properties. [10-30-07 @ 5:17 PM]

NOTE: This would be a plan for properties the City already owns around Crystal Lake. Nick Parnell, Commissioner of Public Buildings, had requested that this be taken up at the 1-23-08 meeting and will be put on that agenda. Commissioner Parnell, Commissioner Towle, and the Mayor will be in attendance at that meeting.

The 230 Lake Avenue acquisition item was taken up at Finance on 1-14-08 and the motion to approve failed to carry.

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

#358-07 HIS HONOR THE MAYOR submitting the FY09-FY13 Capital Improvement Program pursuant to section 5-3 of the Newton City Charter which requires Board of Aldermen approval of a plan to finance \$194,907,647 of new local projects over the next several years:

SUMMARY

PUBLIC WORKS (CITY AND GRANT/FEE FUNDED)	\$ 67,632,500
PUBLIC SAFETY	\$ 6,230,535
PUBLIC BUILDINGS	\$ 16,772,295
SCHOOL DEPARTMENT	\$ 94,259,767
PARKS AND RECREATION	\$ 7,366,000
OTHER	\$ 2,646,546
 TOTAL	 \$194,907,647

NOTE: This will be taken up during the Budget discussions.

#349-07 ALD. LINSKY AND ALD. BURG requesting adoption by the Board of a resolution to be forwarded to Newton’s congressional delegation on behalf of the citizens of Newton, who are signatories to a petition containing said resolution, in conjunction with similar resolutions and actions being taken by communities nationwide to:

- (a) strongly urge the President and the Defense Department to commence immediately an orderly and rapid withdrawal of all United States military personnel from Iraq;
- (b) strongly urge the President and the Department of State to act in accordance with international law by pursuing the security and stability of Iraq through diplomacy with the cooperation of other nations and the United Nations;
- (c) and strongly urge members of Congress to use their legislative powers to bring about an end to the war and the adoption of other means to
- (d) assist Iraq and defend the safety of the United States [10-25-07 @ 10:53 AM]

REFERRED TO 2008-2009 BOARD (with recommendation to approve)

NOTE: There was concern that there would be a lengthy discussion on the floor of the Board. Because it was the end of they year and there was much business to be completed, the Committee referred this to the new Board. Ald. Johnson suggested this be put on the 1-23-08 agenda.

Ald. Merrill said he would like to have some language added to address the healthcare needs of the veterans. Ald. Linsky provided an amendment to this resolution that will be attached to the 1-23-08 agenda.

#287-07 ALD. PARKER requesting a Testimonial Resolution to honor and recognize Olympic figure skater and Newton resident Tenley Albright and to request a discussion with the Parks and Recreation Department in regards to an appropriate marker or plaque to honor 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]

NOTE: Ald. Baker suggested that the Testimonial Resolution of this item be split off as it has already occurred. A parents (2) was formed to address the issue of the marker or plaque and has been placed on the docket and added to the new agenda. Ald. Parker has been contacted to find out what his discussions have been with the Parks and Recreation Department around this item.

REFERRED TO LAND USE & PROGRAMS & SERVICES COMMITTEES

#274-07 ALD. SANGIOLO proposing that Article X of the Rules & Orders of the Board relative to Special Permit and Site Plan Approval Petitions be amended to require the applicant to post on the subject property a notice that would include but not be limited to identifying the subject matter and the date and time of the public hearing.

NOTE: Ald. Baker said he was talking with Ouida Young in the Law Department about generating the proper language for this item. The Land Use Committee needs to act on this item first.

#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]

NOTE: Ald. Hess-Mahan said they did not have language for this yet but it could be taken up at any time, and language prepared.

#130-07 ALD. LENNON proposing amendments to Section 20-56, **Musical performers; regulations; license.**

NOTE: Ald. Lennon was contacted and asked to explain this item and at the time of this report, his reply had not yet been received.

#114-07 ALD. LINSKY requesting to evaluate whether the present location of the Johnny Kelley statue represents the best possible location for achieving the established purpose when it was erected. [04-10-07 @ 7:39 PM]

NOTE: Carol Stapleton of the Parks and Recreation Department said she was working on a low-maintenance landscaping plan as an alternative to moving the statue. She predicted that a move would cost a considerable amount of money. Ald. Linsky reported to the Committee Clerk that he would inform the Committee of his progress on this item soon.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#86-07 HIS HONOR THE MAYOR requesting an appropriation in the amount of \$2,300,000 from bonded indebtedness for the purpose of funding the construction of a new synthetic turf recreation complex at Newton South High School. [03-13-07 @ 7:04 PM]
FINANCE VOTED NO ACTION NECESSARY ON 10-22-07

NOTE: This item can not be taken up until the drainage study has been completed.

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

#276-06(2) HIS HONOR THE MAYOR requesting an appropriation in the amount of \$1,800,000 from bonded indebtedness for the purpose of funding the construction of a new synthetic turf recreation complex at Newton South High School.
FINANCE VOTED NO ACTION NECESSARY ON 10-22-07

NOTE: This item can not be taken up until the drainage study has been completed.

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]

NOTE: The Committee believed that there had been some action by the General Court around this item. Further information will be provided.

#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]

NOTE: Ald. Yates was asked when he would like to have this taken up. At the time of this report, the Committee Clerk had not yet received his reply.

#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]

NOTE: Ald. Baker said there's been a question about this in the Assessing Department and they set a reserve aside because it hadn't been settled as a matter of law. This was an item initiated by Ald. Parker. Ald. Johnson said she would look into this.

REFERRED TO PROGAMS & SERVICES AND FINANCE COMMITTEES

#36-07 ALD. JOHNSON, LINSKY, VANCE, SANGIOLO, HESS-MAHAN, ALBRIGHT, FISCHMAN, MANSFIELD, LIPOF, LAPPIN, BURG, PARKER, & DANBERG proposing the use of general overrides and/or debt exclusions of Proposition 2 ½ limits in addition to other revenue enhancing or cost saving measures as proposed by the *Blue Ribbon Commission* to close the gap between revenue and expenses and enhance the City's ability to invest in annual capital maintenance requirements. [02-13-07 @ 8:57 AM]

NOTE: Ald. Johnson said this was a result of having an item to make it possible to talk about Proposition 2 ½. The Committee decided to see what came out of the Mayor's office. It will likely be voted No Action Necessary as this is a discussion item and the Mayor will be coming out with an action item.

Ald. Baker said that the Board could vote an override and put it on a ballot. They would still have to have an appropriation to fund a special election so the Mayor would be involved in that.

#422-06 ALD. HESS-MAHAN requesting creation of an ordinance prohibiting the use of portable gasoline-powered leaf blowers within the City limits.

NOTE: Ald. Johnson and Ald. Hess-Mahan suggested bringing this item up and having another public meeting on 2-6-08. However, Public Facilities and PS&T is having a public hearing on that date and will be using the Chamber. Therefore, this will be put on the 2-20-08 agenda with a public meeting scheduled for that evening.

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

NOTE: This was originally Ald. Parker's idea of having choices of answers to a question on the ballot. This is not urgent and can be taken up at a later time.

REFERRED TO PROGRAMS & 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.

NOTE: This item is related to Darfur. Ald. Johnson said she and Ald. Hess-Mahan need to figure this out. She recalled that they passed a restriction on investment.

REFERRED TO FINANCE AND PROGRAMS & 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.

NOTE: Ald. Johnson and Ald. Hess-Mahan will research this item as well.

#109-06 ALD. PARKER proposing charter amendments to improve the operation and accountability of City government.

NOTE: Ald. Johnson will speak to Ald. Parker about this item.

#329-05 ALD. JOHNSON & ALD. ALBRIGHT requesting that the **Noise Ordinance** be revised and updated to better reflect the noise problem being faced by the City.

NOTE: Ald. Johnson and Ald. Hess-Mahan suggested bringing this item up and having another public meeting on 2-6-08. However, Public Facilities and PS&T is having a public hearing on that date and will be using the Chamber. Therefore, this will be put on the 2-20-08 agenda with a public meeting.

REFERRED TO PROG.& 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.

NOTE: The Committee questioned the status of this item and a query has been sent out to Elizabeth Dromey. At the time of this report, a reply had not been received. The Committee Clerk will follow up.

REFERRED TO PROG. & SERV., PUB. FAC. 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.

NOTE: Ald. Johnson will speak to Ald. Parker about this item. There was also discussion of a sister item.

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

NOTE: Ald. Johnson will speak to Ald. Sangiolo about this item.

Respectfully Submitted,

Marcia Johnson, Chairman