



Public Facilities Committee Report

City of Newton

In City Council

Wednesday, October 23, 2019

Present: Councilors Crossley (Chair), Leary, Norton, Kelley, Danberg, Lappin

Absent: Councilors Gentile, Norton, Laredo

Also Present: Councilor Downs

City Staff Present: Commissioner of Public Works Jim McGonagle, City Engineer Lou Taverna, Commissioner of Public Buildings Josh Morse, Chief Operating Officer Jonathan Yeo, Assistant City Solicitor Jonah Temple

Public Hearing Opened

#307-19 Eversource petition for a grant of location in Woodward Street

EVERSOURCE petitioning for a grant of location to install and maintain 693'± of conduit in WOODWARD STREET from the existing manhole #MH21030 in front of #991 Boylston Street in a northwesterly direction to a new proposed manhole in front of 38 Woodward Street, continuing on Woodward Street to a second proposed manhole at the intersection of Lincoln Street and Woodward Street thence turning and installing 182± of conduit on LINCOLN STREET in a northeasterly direction to utility pole #257/19 in front of #163 Lincoln Street. This work is necessary to perform system upgrades.

Public Facilities Held 7-0 on 09/18/19

Action: **Public Facilities Approved 5-0**

Notes: Karen Johnson, the representative from Eversource, presented the request for a grant of location on Woodward Street. The Chair stated that she had spoken to the abutters and that a grant would be conditioned on doing the work in July and August of 2020, to minimize impacts to abutters, and access to the businesses and residents must be maintained. Additionally, before the Engineering department approves the Construction Management Plan (CMP) the abutters and the local councilor should be invited to a pre-construction meeting to review the draft CMP. At This meeting, construction scheduling will be explained, parking and public safety issues will be addressed. The City Engineer Lou Taverna stated that this meeting will include the Contractor that Eversource chooses, the Engineering Department and the Newton Police Department (NPD). The NPD decides what time of day this construction can be done to ensure public safety. The Chair asked if the City can ensure that there will be a police detail on site and that the area of construction could be prioritized. Commissioner of Public

Works, Jim McGonagle, stated that he could not make that promise for the NPD but that will be discussed at the pre-construction meeting.

Public Comment:

Janice Bourque, 238 Lincoln Street, expressed her concern for the project. Her daughter lives in a Community Home on Lincoln St and many of the residents use public transportation to get to work. The T bus goes right through that intersection and there is a concern for public safety trying to get to the bus stop during construction. Additionally, during rush hour this intersection is congested, so there should be a police detail during the construction for public safety.

Paul Miller, 186 Lincoln Street, objected to the project. But if the project must be done, he rather it be done at during the day. Additionally, he wanted to ensure that Eversource must repave curb to curb after the work is complete. Mr. Miller stated this project will affect Route 9 and the flow of firetrucks in the area will be impacted by construction.

Janice Walsh, 54 Woodward Street, concurred with Mr. Miller and added that she has concerns of how she will get out of her driveway.

Robin Abber and her sister Faith, owners of Four Walls and trustees of the building located at 991- 1001 Boylston Street, objected to this project if it is not critical work. Ms. Johnson explained that Eversource is concerned about deteriorating lines and that is why the work is necessary. Ms. Abber expressed her concern for the access to the businesses in the building (near Route 9) and her concern for the safety of the children who attend preschool in the building. Ms. Abber would like for this work to be done at night to ensure public safety and so that the businesses are not impacted financially. Additionally, she expressed the importance of a police detail for the safety of the public and her concern that this a major intersection being inconvenienced for the second time within a couple of years. Faith expressed the same concerns recognizing that there is no good time to do this that would not impact the residents or the businesses. Additionally, she is concerned about the bike shop that resides in the building and that summer is the shop's busiest time. Additionally, she questioned why this work had not been done when the street was repaved. Commissioner McGonagle explained that the City does have monthly meetings with Eversource to explain what roads will be repaved in attempts to coordinate with utility company work. Eversource has their own Capital Improvement Program but may not have realized that this work needed to be done. Ms. Johnson explained that if the updates are not made this could cause outages in the area.

The Public Hearing was closed.

The Chair asked if the work could be done in sections so that work abutting the residential area could be done during the day, but the commercial section done at night? Ms. Johnson believes that Eversource usually does this type of work in sections. A committee member asked if Mr. McGonagle knew if the gas line in that road needed to be replaced. Mr. McGonagle explained that they do meet with the utilities on a monthly basis and will discuss this at their next meeting.

Councilor Lappin motioned approval with conditions as follows:

- the draft Construction Management Plan shall be reviewed with abutters, a representative from specialized housing and a local councilor before final approval by engineering, especially to assure safe egress to and from all adjacent properties and the preschool,
- this work will be completed within the months of July and August 2020,
- this work will be coordinated with the MBTA Bus schedules
- since the work is to be done in sections, work near the commercial area near route nine will take place primarily at night, and work near the residential areas will take place primarily during the day, to the greatest degree possible.

The motion to approve passed unanimously.

Public Hearing

#338-19 Eversource petition for a Grant of Location on Chandler Street

EVERSOURCE petitioning for a grant of location to relocate one pole (JO Pole 447/222) to the southerly side of Chandler Street 70'± east of Adams Street (in front of house #32).

Action: Public Facilities Approved 5-0

Notes: Karen Johnson, the representative from Eversource, presented the request for a grant of location on Chandler Street. The moving of this utility pole is to accommodate a new driveway for 32 Chandler Street. Ms. Johnson explained this is a lateral move on the same pole line that will be moving 16 ft. The public hearing was opened and with no member of the public wishing to speak the public hearing was closed. Councilor Leary motioned to approve which passed unanimously.

Public Hearing

#339-19 Verizon petition for a Grant of Location on Temple and Putnam Street

VERZION petitioning for a grant of location to install and maintain 140'± of conduit from existing Manhole #17/116 on Temple Street (approximately 110' northwest of Putnam Street) thence turning to a westerly direction crossing Putnam Street for approximately 30' to proposed handhole located in the sidewalk area on the westerly side of Putnam Street near #71. This work is necessary to provide new services on Putnam Street.

Action: Public Facilities Approved 5-0

Notes: Ross Bilodeau, the representative from Verizon, presented the request for a grant of location on Temple and Putnam Street. The work is to extend services on the corner of Putnam Street. The public hearing was opened and with no member of the public wishing to speak the public hearing was closed. A committee member asked why this work wasn't done while the construction of the homes was happening, and Mr. Bilodeau said he was unsure. Councilor Kelley motioned to approve which passed unanimously.

Public Hearing

#340-19 Verizon petition for a Grant of Location on Walnut Street

VERZION petitioning for a grant of location to install and maintain 213'± of conduit from existing Manhole #16/182 on the easterly side of Walnut Street crossing the street approximately 45' thence turning to a southerly direction for 155'± along Walnut street in the gutter and then in a westerly direction for 13'± to private property near #227 Walnut Street. This work is necessary to provide new service.

Action: Public Facilities Approved 5-0

Notes: Ross Bilodeau, the representative from Verizon, presented the request for a grant of location on Walnut Street. A committee member noted that there is also a petition for gas work to be done in this area. The public hearing was opened with no member of the public wishing to speak on the matter the public hearing was closed. Councilor Kelley motioned to approve which passed unanimously.

Public Hearing

#341-19 National Grid petition for a Grant of Location Walnut St/Washington St and Terr

National Grid petitioning for a grant of location to install 300'± of gas main in Walnut Street from the existing gas main in Washington Street northerly to end of #245 Walnut Street/#845 Washington Street, and to install and maintain 39'± of 6" gas main in Washington Street from the existing 24" gas main at building #885 northerly to Washington Terrace, which is a private way. This work is necessary to provide gas service to #245 Walnut Street/#845 Washington Street.

Action: Public Facilities Approved 5-0

Notes: Barbra Kelleher, the representative from National Grid, presented the request for a grant of location on Walnut St/Washington St and Washington Terrace. Mr. Taverna explained that this is a direct connection to an existing 24" main gas line in Washington Street. Ms. Kelleher explained that the existing pipe is cast iron but had been completely sealed from the inside to eliminate gas leaks. The public hearing was opened and with no one wishing to speak on the matter the public hearing was closed. Councilor Danberg motioned to approved which passed unanimously.

Public Hearing

#342-19 Eversource petition for Grant of Location in Beacon Street

EVERSOURCE ENERGY petitioning for a grant of location to install 122.9'± of conduit in a southerly directly from existing pole 125/19 across Beacon Street, thence turning and continuing in an easterly direction to a point 80± west of Tudor Road.

Action: Public Facilities Approved 5-0

Notes: Karen Johnson, the representative from Eversource, presented the request for a grant of location on Beacon Street. Mr. Taverna confirmed that this is not a recently paved section of Beacon street and stated that Engineering had no concerns about this project. Ms. Johnson explained that this work is due to the renovating of the Longyear Museum. The public hearing was opened.

Public Comment:

Chris Malford, from the Longyear Museum, questioned if he would have to come back to the City for a grant of location to add conduit for Fire Department emergency communications. Mr. McGonagle explained that the request would have to go through the Fire Department and then the Fire Department would come to Engineering for approval. Mr. Malford asked if both projects could be in the same trench. Ms. Johnson explained that Eversource would not allow another conduit in their trench. Mr. McGonagle explained that if there was a problem with Eversource's conduit and the trench was reopened there could be a possibility of the Fire Department's conduit being damaged. Additionally, Mr. McGonagle explained that the work could be coordinated with Eversource and the Fire Department, but it is unlikely that the City would allow two Contractors working side by side, even with different trenches.

The public hearing was closed.

Councilor Danberg motioned to approve which passed unanimously.

Referred to Public Facilities and Finance Committees

#346-19 Accepting Green Communities Program grants funds

HER HONOR THE MAYOR requesting to accept Green Communities Program grant funds of one hundred eleven thousand two hundred and seventeen dollars (\$111,217) from the Massachusetts Department of Energy Resources. The grant will be used for lighting at the Newton South High School tennis court and field house. The Public Buildings Department requesting authorization to spend \$24,406 out of the Energy Stabilization Fund to supplement the state grant funds and complete this lighting

Action: **Public Facilities Approved 5-0**

Notes: Commissioner of Public Buildings Josh Morse presented the request to accept Green Communities grant funds. This is for LED lamp replacements in Newton South High School. This is the 7th Green Communities Grant that the City has received. Mr. Morse explained that Bill Ferguson, Project Manager, started work on this grant application last year and the Department of Energy Resources (DOER) notified the City that the program is now more competitive; the maximum grant in any cycle is \$250,000. Two projects were selected by the state, one with a 2.1 year payback and the other with a 4 year payback. The DOER was looking for all LED lighting projects for streetlights and buildings. Additionally, the DOER wants to see projects that drive down energy use as quickly as possible. This project does that by swapping out lighting and lighting controls. Chief Operating Officer Jonathan Yeo explained that the new lights are superior without spreading into the neighborhood. A committee member confirmed that the grant does not cover the whole project and that the Building Department is asking for \$24,406 from the energy stabilization fund. Mr. Morse explained that the total project cost before incentives for each project is \$96,348 and \$88,452. After the Eversource rebate the delta is \$24,406. Councilor Lappin motioned to approve which passed unanimously.

Referred to Public Facilities and Finance Committees

#347-19 Appropriate \$1,160,066 for the Day Middle School Boiler Replacement Project

HER HONOR THE MAYOR requesting authorization to appropriate and expend one million one hundred sixty thousand and sixty six dollars (\$1,160,066) for the Day Middle School Boiler Replacement Project, of which approximately three hundred sixty thousand seven hundred and fifty-three dollars (\$360,753) will be funded by a grant from the Massachusetts School Building Authority's Accelerated Repair Program and authorization to apply any premium received upon the sale of the bonds or notes, less the cost of preparing, issuing, and marketing them, and any accrued interest received upon the delivery of the bonds or notes to the costs of the project and to reduce the amount authorized to be borrowed for the project by like amount.

Action: **Public Facilities Approved 5-0**

Notes: Commissioner of Public Buildings Josh Morse presented the request for funds for the Day Middle School Boiler Replacement Project. This item is on a deadline by the Massachusetts School Building Authority's Accelerated Repair Program (MSBA) to be voted out by the City Council by November 6th. The MSBA process requires a vote from elected officials to move further into the project. Mr. Morse explained that the costs are on track with the budget for the project. When asked when the work would start, Mr. Morse explained that it would start Summer 2020. Councilor Kelley motioned to approve which passed unanimously.

#250-19 Inflow and Infiltration Mitigation Ordinance

CITY ENGINEER requesting amendments to Chapter 29 of the City of Newton Ordinances to create an Infiltration and Inflow Mitigation Ordinance that would codify mitigation requirements for development projects over a certain size, potential for fees in lieu of mitigation and waiver of fees by the City Council.

Public Facilities Held 5-0 (Councilors Lappin and Laredo not voting)

Action: **Public Facilities Approved 5-0**

Notes: Commissioner of Public Works Jim McGonagle, City Engineer Lou Taverna and Assistant City Solicitor Jonah Temple presented the proposed Infiltration and Inflow (I&I) mitigation ordinance. I&I is clean rainwater or groundwater that leaks into sewers, thereby reducing the capacity of the system for the intended use.

Mr. Taverna explained that their goal is to codify current City policy, which sets a fee for new development connecting to the City sewer system, to be used toward increasing sewer capacity by eliminating I&I. The ordinance will apply I&I mitigation to new development seeking special permits, comprehensive permits as well as by-right projects.

In each case, a full or partial waiver may be granted, depending on a number of factors, including the condition of the sewer system in a given area. For projects seeking special permits; the requirement may be waived by the City Council, for projects seeking a comprehensive permit, the Zoning Board of Appeals, and for by-right projects, a waiver would be determined by the Commissioner of Public Works. In the current policy, the City normally takes a cash payment and preforms the related work as part of its ongoing I&I removal program. However, the developer has the option to perform the necessary work, under the supervision of the department. It is the Law Department's recommendation that this option be explicit in the ordinance, even though all developers to date have opted to pay the fee.

Mr. Taverna explained that the fee is based upon the cost per gallon of I&I removed from the system, which is based on the average cost since the program began. Costs vary from contract to contract and year to year. Today the calculated average cost is \$19.77 per gallon of flow that is removed. The draft calculation for 2020 is expected to go up.

A committee member explained in the special permit process there is negotiation and other criteria involved and asked what the criteria would be for the Commissioner to waive any of the fees for a by-right project. Commissioner McGonagle explained that this process will be the same as the special permit. The Chair commented that the DEP does not require the developer to pay for the I&I mitigation. Rather, the City must have a plan to remove four times the I&I to increase capacity in the system and allow new connections. The DEP requires I&I mitigation to be removed at a minimum rate of 4 to 1, but the City determines to what extent the developer contributes to sewer I&I mitigation. Mr. Taverna explained the DEP requirements were written long before communities had begun funding Sewer Infrastructure Improvement Plans on their own. The I&I mitigation fee must be put into the Sewer Enterprise account and may not be used for anything else.

Mr. Yeo explained that there will be situations where a fair amount of I&I work has already been done in a given area, and while new development may create the need for I&I removal, not at a 4 to 1 ratio. The City doesn't need excessive amounts of money coming into the Sewer fund; which is well funded.

Mr. Taverna explained that sewer flow is calculated based on 110 gallons per bedroom per day, which is the Massachusetts Title V standard for designing a septic system. However, most developers propose an alternate flow because of low flow fixtures. The Engineering department can monitor the actual flow of new development through Weston & Sampson.

The Chair referenced Section 29-150(D), in the draft ordinance, and stated that if there is an event where the developer wanted to pay for I&I mitigation themselves then the project would need to be followed closely by the city DPW and Weston & Sampson. There should also be field supervision and the Chair noted that the City should make it clear to the developer that the City will determine where and when the work will be completed. Attorney Temple explained that Section 29-153 states that if the developer would like to do the work themselves, the project is still subject to the Commissioner of Public Works and the calculations approved by the City Engineer. The Chair asked about the cost that is related to the supervision of the project. Mr. Taverna explained that the developer would pay for the cost of Weston & Sampson if they are the City's agent in the field and in practice that is how the cost will be paid.

The Chair asked whether this should be stated in the ordinance. Attorney Temple stated that this should be left more open ended as it is to be a user fee and not a tax. The Chair commented that the draft ordinance does say they can do the work themselves instead of paying the fee, but the draft ordinance does not say the developer must pay for Weston & Sampson's pre and post testing. Commissioner McGonagle explained the project would only be approved with requiring that Weston & Sampson oversee the developer's work and that the City has the right to charge the developer for the cost.

A committee member questioned if the draft ordinance should state in Section 29-151 that for comprehensive permits the fee can be waived by the Zoning Board of Appeals (ZBA)? Attorney Temple stated that it is not listed because the ZBA already has the authority to waive the fee but there is no harm in adding that in which he will do.

The Chair commented that the City needs to be careful on what counts as existing flow. For example, there is ongoing construction in Waban where there used to be a nursing home and now there will be a 24-unit housing project that will use a lot less water. The Chair questioned how that change will be calculated. Mr. Taverna explained a couple of methods: using the water bill or using the DEP's standard 110 gallons per day per bedroom in the preexisting use. Mr. Taverna added that the nursing home probably did not use low-flow fixtures and the new developer will and that change will be accounted for. The draft ordinance does allow a reduction based on existing flow. Mr. Taverna explained that existing flow will vary from project to project. Mr. McGonagle commented that existing use is a difficult number to calculate. The Chair questioned if the Committee wants it written in the ordinance that the city gives credit towards existing flow? Attorney Temple confirmed that the proposed ordinance does state that the city engineer is responsible for calculating the flows and fees.

Attorney Temple stated that Section 29-152 should say the calculation of wastewater flow is based on the flow to be generated. Additionally, the Chair noted that in Section 29-150 (A) the proposed ordinance should state infiltration/inflow must be removed from the public sewer at a minimum rate of four gallons of infiltration/inflow for each gallon of flow. Mr. Taverna agreed with this change. Mr. Temple explained that he disagreed with adding the word "minimum" because 4 to 1 is the standard.

The Chair noted that in the future there should be criteria written in order to evaluate project eligibility for a fee waiver. Attorney Temple explained the three factors: - the expected impact of the development on I&I, - whether the I&I mitigation has been done in that area and - if it is in the best interest of the city.

Mr. Taverna noted that in Section 29-150 (C) the draft ordinance should state water resources or nitrogen and phosphorous sensitive areas. Attorney Temple explained that he would have to investigate if that was possible because the language came right from the DEP. Mr. Yeo explained at this point the city is not seeing overflows.

The Chair requested that for the Council, Land Use Committee and ZBA, a copy of the ordinance be accompanied by a memo from the Law Department explaining what "good cause" means including the three factors that Attorney Temple stated for waiving the I&I mitigation fee.

With that Councilor Danberg motioned to approve the item which passed unanimously.

Respectfully Submitted,

Deborah Crossley, Chair

**ARTICLE VII.
INFILTRATION AND INFLOW MITIGATION**

Sec. 29-167. Definitions.

For purposes of this article, the meaning of the terms used shall be as follows:

Infiltration: Water other than wastewater that enters the sewer system (including sewer service connections and foundation drains) from the ground through means which include, but are not limited to, defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Infiltration/Inflow: The quantity of water from both infiltration and inflow without distinguishing the source.

Inflow: Water other than sanitary flow that enters the sewer system (including sewer service connections) from sources which include, but are not limited to, roof leaders, cellar drains, yard drains, area rains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Sec. 29-168. Purpose.

Infiltration and inflow causes a range of problems including reducing the ability of wastewater treatment facilities to adequately cleanse sanitary flows, increasing operations and maintenance costs for sanitary pumping equipment, limiting capacity for sanitary flows, and creating sanitary system overflows. The city's existing sewer infrastructure is old and has limited capacity. Particularly during intense rain events, the city's public sewer system has insufficient capacity to accommodate the flows, thereby creating flooding and surcharges or overflows at manholes or into buildings, particularly into below grade plumbing fixtures. New developments substantially increase the burden on the system and detrimentally impact its capacity and capability. The purpose of the mitigation requirement is to decrease the burden on the city's capacity-limited and overtaxed public sewer system by ensuring that infiltration/inflow is removed in sufficient amounts to accommodate the increased demand on the public sewer system resulting from new developments. Mitigation of infiltration/inflow is necessary for the protection of the infrastructure of the city and to safeguard the public health, safety, welfare and the environment.

Sec. 29-169. Mitigation Requirement.

(a) For all new residential and commercial building connections to the public sewer and for all existing residential and commercial connections where the existing building is demolished or substantially remodeled or rehabilitated, infiltration/inflow must be removed from the public sewer at a rate of four gallons of infiltration/inflow removal for each gallon of wastewater that will be discharged to the public sewer.

(b) A property is "substantially remodeled or rehabilitated" when: (1) a building is renovated and/or gutted more than 50% or (2) a dwelling or structure has an addition constructed that

increases the footprint by more than 1,000 square feet or increases the total square footage more than 1,000 square feet.

(c) The city engineer may require a higher removal rate per gallon of sewer flow in sensitive areas, such as where there are frequent sewer overflow events, where overflows have the potential to impact wetlands, water resources or nitrogen sensitive areas, or where the area is so burdened by infiltration/inflow as to be a hazard to public health, as confirmed by the city's department of public health and human services.

(d) The removal of infiltration/inflow and/or payment of any monetary fee assessed in accordance with this article is required prior to the issuance of a building permit for the subject property.

Sec. 29-170. Exemptions.

Residential and mixed-use buildings that include four or fewer residential dwelling units on any parcel or contiguous parcels comprising a development site are not subject to the infiltration/inflow mitigation requirement contained in this article.

For by-right projects, the Commissioner of Public Works, for good cause shown upon petition, may abate in whole or in part the infiltration/inflow mitigation fee for a particular building or project.

For projects subject to a special permit, the City Council, for good cause shown, may abate in whole or in part the infiltration/inflow mitigation fee for a particular building or project.

For projects seeking a Comprehensive Permit pursuant to M.G.L. c. 40B, the Zoning Board of Appeals, for good cause shown, may abate in whole or in part the infiltration/inflow mitigation fee for a particular building or project

Sec. 29-171. Calculation of Wastewater Flow.

In accordance with the Department of Environmental Protection regulations for the calculation of wastewater flows at 310 CMR 15.203, flow rate is based on the following:

- (a) For residential dwellings, the flow rate is based on the number of bedrooms and the flow rate of 110 gallons per day per bedroom.
- (b) For commercial buildings, the flow rate is based on the estimated generated flow for the proposed use set forth in 310 CMR 15.203.

The calculation of wastewater flow is based on the flow to be generated by the proposed development or the proposed building renovation, minus the wastewater flow generated by the existing building(s) based on the flow rates provided in this Section. For the purpose of encouraging the installation of water-efficient fixtures and equipment, the city engineer shall use the low of (1) the manufacturer's specifications for such fixtures and/or equipment proposed to be installed as part of any development or (2) the estimated flow set forth in 310 CMR 15.00.

The city engineer is responsible for calculating the current and proposed flows and fees for the use of any building or portion thereof for which a building permit application is submitted and will

provide applicants with a detailed response to their application within ten (10) business days of its filing.

Sec. 29-172. Application.

Applicants required to perform the infiltration/inflow mitigation requirement pursuant to this article may elect to pay a fee based on the project's infiltration/inflow calculated requirement. The fee will be deposited into a dedicated account that funds public sewer system rehabilitation and sewer cleaning and lining projects administered by the department of public works.

The per-gallon fee shall be established annually by the commissioner of public works on the first day of each calendar year based on the program costs to remove infiltration/inflow and shall be made available to the public. This fee shall be calculated by the city engineer based on a capital cost analysis report prepared by the city's consulting engineer and retained in the files of the engineering division of the department of public works.

Alternatively, applicants have the option of implementing the public sewer system capital improvement program, subject to the approval of the commissioner of public works and in accordance with plans and calculations approved by the city engineer, and it shall be the applicant's responsibility for completing the infiltration/inflow removal project prior to connecting to the public sewer.

Sec. 29-173. Effective Date.

The requirements of this Article VII shall not apply to any building permit, special permit or comprehensive permit issued prior to the effective date of this amendment of January 1, 2020.

Sec. 29-174. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

November , 2019

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON that the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Chapter 29** as follows:

- I. **INSERT, after Section 29-166 of ARTICLE VI of CHAPTER 29 a new ARTICLE VII. INFILTRATION AND INFLOW MITIGATION as follows:**

**Article VII
INFILTRATION AND INFLOW MITIGATION**

Sec. 29-148. Definitions.

For purposes of this article, the meaning of the terms used shall be as follows:

Infiltration: Water other than wastewater that enters the sewer system (including sewer service connections and foundation drains) from the ground through means which include, but are not limited to, defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Infiltration/Inflow: The quantity of water from both infiltration and inflow without distinguishing the source.

Inflow: Water other than sanitary flow that enters the sewer system (including sewer service connections) from sources which include, but are not limited to, roof leaders, cellar drains, yard drains, area rains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Sec. 29-149. Purpose.

Infiltration and inflow causes a range of problems including reducing the ability of wastewater treatment facilities to adequately cleanse sanitary flows, increasing operations and maintenance costs for sanitary pumping equipment, limiting capacity for sanitary flows, and creating sanitary system overflows. The city's existing sewer infrastructure is old and has limited capacity. Particularly during intense rain events, the city's public sewer

system has insufficient capacity to accommodate the flows, thereby creating flooding and surcharges or overflows at manholes or into buildings, particularly into below grade plumbing fixtures. New developments substantially increase the burden on the system and detrimentally impact its capacity and capability. The purpose of the mitigation requirement is to decrease the burden on the city's capacity-limited and overtaxed public sewer system by ensuring that infiltration/inflow is removed in sufficient amounts to accommodate the increased demand on the public sewer system resulting from new developments. Mitigation of infiltration/inflow is necessary for the protection of the infrastructure of the city and to safeguard the public health, safety, welfare and the environment.

Sec. 29-150. Mitigation Requirement.

(a) For all new residential and commercial building connections to the public sewer and for all existing residential and commercial connections where the existing building is demolished or substantially remodeled or rehabilitated, infiltration/inflow must be removed from the public sewer at a rate of four gallons of infiltration/inflow removal for each gallon of wastewater that will be discharged to the public sewer.

(b) A property is "substantially remodeled or rehabilitated" when: (1) a building is renovated and/or gutted more than 50% or (2) a dwelling or structure has an addition constructed that increases the footprint by more than 1,000 square feet or increases the total square footage more than 1,000 square feet.

(c) The city engineer may require a higher removal rate per gallon of sewer flow in sensitive areas, such as where there are frequent sewer overflow events, where overflows have the potential to impact wetlands, water resources or nitrogen sensitive areas, or where the area is so burdened by infiltration/inflow as to be a hazard to public health, as confirmed by the city's department of public health and human services.

(d) The removal of infiltration/inflow and/or payment of any monetary fee assessed in accordance with this article is required prior to the issuance of a building permit for the subject property.

Sec. 29-151. Exemptions.

Residential and mixed-use buildings that include four or fewer residential dwelling units on any parcel or contiguous parcels comprising a development site are not subject to the infiltration/inflow mitigation requirement contained in this article.

For by-right projects, the Commissioner of Public Works, for good cause shown upon petition, may abate in whole or in part the infiltration/inflow mitigation fee for a particular building or project.

For projects subject to a special permit, the City Council, for good cause shown, may abate in whole or in part the infiltration/inflow mitigation fee for a particular building or project.

For projects seeking a Comprehensive Permit pursuant to M.G.L. c. 40B, the Zoning Board of Appeals, for good cause shown, may abate in whole or in part the infiltration/inflow mitigation fee for a particular building or project

Sec. 29-152. Calculation of Wastewater Flow.

In accordance with the Department of Environmental Protection regulations for the calculation of wastewater flows at 310 CMR 15.203, flow rate is based on the following:

- (a) For residential dwellings, the flow rate is based on the number of bedrooms and the flow rate of 110 gallons per day per bedroom.
- (b) For commercial buildings, the flow rate is based on the estimated generated flow for the proposed use set forth in 310 CMR 15.203.

The calculation of wastewater flow is based on the flow to be generated by the proposed development or the proposed building renovation, minus the wastewater flow generated by the existing building(s) based on the flow rates provided in this Section. For the purpose of encouraging the installation of water-efficient fixtures and equipment, the city engineer shall use the low of (1) the manufacturer's specifications for such fixtures and/or equipment proposed to be installed as part of any development or (2) the estimated flow set forth in 310 CMR 15.00.

The city engineer is responsible for calculating the current and proposed flows and fees for the use of any building or portion thereof for which a building permit application is submitted and will provide applicants with a detailed response to their application within ten (10) business days of its filing.

Sec. 29-153. Application.

Applicants required to perform the infiltration/inflow mitigation requirement pursuant to this article may elect to pay a fee based on the project's infiltration/inflow calculated requirement. The fee will be deposited into a dedicated account that funds public sewer system rehabilitation and sewer cleaning and lining projects administered by the department of public works.

The per-gallon fee shall be established annually by the commissioner of public works on the first day of each calendar year based on the program costs to remove infiltration/inflow and shall be made available to the public. This fee shall be calculated by the city engineer based on a capital cost analysis report prepared by the city's consulting engineer and retained in the files of the engineering division of the department of public works.

Alternatively, applicants have the option of implementing the public sewer system capital improvement program, subject to the approval of the commissioner of public works and in accordance with plans and calculations approved by the city engineer, and it shall be the applicant's responsibility for completing the infiltration/inflow removal project prior to connecting to the public sewer.

Sec. 29-154. Effective Date.

The requirements of this Article VI shall not apply to any building permit, special permit or comprehensive permit issued prior to the effective date of this amendment of January 1, 2020.

Sec. 29-155. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Approved as to legal form and character:

ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) RUTHANNE FULLER
Mayor