



Public Facilities Committee Report

City of Newton In City Council

Wednesday, March 22, 2017

Present: Councilors Crossley (Chair), Albright, Laredo, Brousal-Glaser, Lappin, Danberg, Gentile

Also Present: Councilors Rice, Fuller

City staff present: Associate City Engineer John Daghlian, DPW Director of Operations Shane Mark, Environmental Engineer Maria Rose, DPW Director of Utilities Ted Jerdee, Public Buildings Program Manager Alex Valcarce

#47-17 Petition for grant of location at Washington Street

EVERSOURCE ENERGY petition for a grant of location to install \pm 673 feet of conduit from Manhole #3383 approximately 43' south of Walnut Street. [(Ward 2) 01/26/16 @ 12:31 PM]

Action: **Public Facilities Approved Subject to Second Call 6-0-1 (Laredo abstaining)**

Note: Eversource Permit Representative Karen Johnson presented the petition to install approximately 673' conduit at and westerly to manhole #3383 approximately 44' south of Walnut Street. Ms. Johnson stated that because work is being done in the area, Eversource was asked to put the existing service underground. Committee members noted that the request is located at the site of a proposed development and questioned who made the request. A Committee member noted that the developer for the project stated that he was not aware of the request.

Some Councilors felt that utilities should better coordinate this work with City roadwork. Department of Public Works Director of Operations Shane Mark confirmed that the City is meeting with National Grid and Eversource to coordinate work whenever possible.

Committee members requested that Ms. Johnson provide more details related to the petition including; who made the request and the full scope of the work to be completed. The Public Hearing was opened and closed with no one wishing to speak. Councilor Albright moved approval of the item, subject to second call, pending verification of the source of the request. Committee members voted 6-0-1 with an abstention from Councilor Laredo who was not present for the presentation.

#48-17 Petition for grant of location at Washington Street

EVERSOURCE ENERGY petition for a grant of location to install one hip guy at pole #447/94 approximately 180' \pm east of Lowell Avenue [(Ward 2) 01/26/16 @ 12:31 PM]

Action: **Public Facilities Approved 7-0**

Note: Ms. Johnson presented the request to locate a hip guy on Washington Street in addition to removing three existing poles. She stated that the hip guy is necessary in order to

secure remaining utility poles. She confirmed that it will not interfere with the public way. Committee members asked that Associate City Engineer John Daghlian ensure that there is no interference. The Public Hearing was opened and closed with no comment. Councilor Albright moved approval of the item which carried 7-0.

#49-17 Petition for grant of location at Caldon Path

EVERSOURCE ENERGY petition for a grant of location to install \pm 39' of conduit southerly to pole 359/12 (adjacent to 44 Caldon Path), headed in a southwesterly direction \pm 501' to two proposed manholes. [(Ward 8) 02/06/16 @ 11:07 AM]

Action: Public Facilities Held 7-0

Note: Ms. Johnson presented the request to install approximately 539' of conduit and two manholes in Caldon Path. Because the petition is one of several in Ward 8, Committee members asked what the service upgrades include. Ms. Johnson stated that the underground service is older, direct barrier and that it has no protection from outside elements. She noted that the upgrades will increase reliability and the work will be completed sequentially. Ms. Johnson additionally stated that the increasing size of the homes in the area corresponds to greater service demands and it is possible that the new service will be built to meet those demands.

The Public Hearing was Opened.

Paul Plasky, 741 Saw Mill Brook Parkway, presented a photograph of a manhole with a broken plastic cover located on his property. After his repeated efforts to contact Eversource, over many months, the cover has not been replaced. Because Solomon Schechter students are dropped off in the area, he is concerned that there is a public safety issue. Mr. Plasky is concerned that Eversource is petitioning for additional manholes while negligent in maintaining current ones. He noted that there is a second uncovered Verizon manhole on his street. Mr. Plasky questioned the need for upgrades to the service as there have been no service issues in the area. He asked if it is possible that the service is being upgraded for neighboring communities.

Associate City Engineer John Daghlian noted that the cover that was broken is to a hand hole, providing service to one or possibly two properties. He stated that it is likely that large snow removal equipment broke the fiberglass cover to the hand hole, but noted that all manholes have cast iron covers.

Committee members stated that service upgrades are approved all over the City and Mr. Daghlian confirmed that the type of conduit was indicative of local service and not for transmission. Committee members requested that Ms. Johnson provide information to the Committee about whether the new service will be built to meet greater capacity and if the existing wires are original. Committee members were in agreement that the service upgrades may be necessary, but expressed concern about the lack of maintenance for Eversource's existing equipment. Committee members requested that Ms. Johnson collaborate with Eversource to rectify the existing safety hazard on Saw Mill Brook Parkway.

As there is a City liaison to work with utilities, Councilors questioned why the utilities seemed unresponsive. Mr. Mark emphasized that there are legal limitations with respect to the City's ability to require that the utilities repair their equipment. He noted that issues may be brought to their attention, and he will raise this at the monthly meeting, the City has little power to enforce. Mr. Mark stated that the Double Pole Commission will be expanding their work to include miscellaneous utility issues.

Committee members noted that more information is necessary prior to approval of the Ward 8 grants of location. Councilors asked Ms. Johnson to provide an update on the status of the broken hand hole cover on Saw Mill Brook Parkway. Councilor Lappin motioned to hold items #49-17, #50-17, #51-17, #52-17, #73-17 and #74-17. The Committee voted unanimously to hold the items.

- #50-17** **Petition for grant of location at O'Rourke Path/Hanson Road/Callahan Path**
EVERSOURCE ENERGY petition for a grant of location to install conduit westerly from pole 359/9 a distance of 24'± in a southwesterly direction to one proposed manhole a distance of 466'± continuing southwesterly 12'± to a second proposed manhole in Callahan Path. [(Ward 8) 02/06/16 @ 11:02 AM]
- Action:** **Public Facilities Held 7-0**
- #51-17** **Petition for grant of location at Timson Path/Saw Mill Brook Parkway**
EVERSOURCE ENERGY petition for a grant of location to install conduit westerly from pole 366/8 in Saw Mill Brook Parkway a distance of 430'± in a northerly direction to a proposed manhole in front of 15 Timson Path continuing northeasterly to a second proposed manhole in front of 27 Timson Path. [(Ward 8) 02/06/16 @ 11:04 AM]
- Action:** **Public Facilities Held 7-0**
- #52-17** **Petition for a grant of location at Spiers Road/Shute Path**
EVERSOURCE ENERGY petition for a grant of location to install 141'± of conduit northwesterly from pole 371/16 on Spiers Road in a northwesterly direction to a proposed manhole in front of 147 Shute Path. [(Ward 8) 02/08/16 @ 2:55 PM]
- Action:** **Public Facilities Held 7-0**
- #73-17** **Eversource petition for grant of location at Osborne Path/Van Roosen Road**
EVERSOURCE ENERGY petition for a grant of location to install conduit from a proposed manhole in front of 112 Osborne Path in a southwesterly direction to pole 352/4 a distance of 145'± in Van Roosen Road. [(Ward 8) 02/27/2017 @ 2:54 PM]
- Action:** **Public Facilities Held 7-0**
- #74-17** **Eversource petition for grant of location at Chinian Path**
EVERSOURCE ENERGY petition for a grant of location to install one manhole 3' easterly to Chinian Path in a westerly direction 397± to a second proposed manhole in front of #49 Chinian Path continuing in a westerly direction 45'± to pole 232/22 in Wiswall Road. [(Ward 8) 02/06/16 @ 11:03 AM]

Action: Public Facilities Held 7-0
#72-17 Cellco petition for Grant of Location for wireless communication equipment
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS petitioning for a grant of location to attach wireless communication equipment to existing utility poles at the following locations [02/08/2017 @3:01 PM]:

Locations

Commonwealth Ave (at intersection of Boylston/Chestnut St) at Eversource Pole #102/200

Albemarle Rd (adjacent to 250 Albemarle) at Eversource Pole #2X

Action: Public Facilities Split the Item into 72-17(A) Commonwealth Ave (at intersection of Boylston/Chestnut St) at Eversource Pole #102/200 and **72-17(B)** *Albemarle Rd (adjacent to 250 Albemarle) at Eversource Pole #2X.*

Public Facilities Approved 72-17 (A) Subject to Second Call
Public Facilities Held 72-17 (B)

Note: The Chair introduced the item and noted that there is a question regarding the ownership of the Albemarle Road utility pole. Mr. Daghlian stated that the City's records reflect ownership of Albemarle Road poles but do not detail the extent of the ownership. He noted that it is possible that the City owns just the streetlight. He confirmed that the Law Department is working to determine ownership of the pole.

(Update: It has been determined that the City owns the Albemarle pole)

Attorney Elizabeth Mason and Radiofrequency Engineer from C-squared, Dan Brown, presented the request to locate small cell antennae at Commonwealth Avenue (at the Comm. Ave/Chestnut St intersection). Atty. Mason stated that the antennae will be side mounted at 26' and slightly wider and shorter than the previously approved equipment. She noted that the radio frequency emissions will range from 1-5% of 100% of the maximum permissible exposure levels set by the FCC. Mr. Brown stated that Verizon Wireless has identified heavy network activity, creating an unreliable signal on Commonwealth Avenue. He stated that the small cell installation is in an effort to provide additional network capacity and demonstrated the proposed location of the small cell antennae (between two existing power sectors). Committee members shared concerns related to the interference of equipment with Public Safety equipment. Mr. Brown stated that Verizon Wireless is licensed in four frequency bands and can only transmit and receive within them. He confirmed that because of this, interference with equipment in other spectrums is not possible and suggested that the installation of the antennae might enhance public safety operations.

The Chair informed Committee members that while the Wireless Subcommittee is working to draft an ordinance, guidelines and citywide plan for locating wireless equipment; the subject matter is dense and requires significant attention. The Subcommittee has interviewed one consultant, but may need to expand the search. It was noted that while several scopes of work have been established, it may take six months for the work to be incorporated into the City's standards and ordinances. The Subcommittee hopes to collaborate with utility companies when creating the citywide plan. In the interim, Subcommittee members are cognizant of service

demands. Verizon Wireless has worked with the Law Department in crafting conditions that are mutually acceptable. Committee members agreed that the proposed Commonwealth Avenue location, between the carriage road and Commonwealth Avenue, seems to be a reasonable location. Committee members asked that Fire Department Technical Director Alex Chadis review the location prior to approval and requested that Atty. Mason provide copies of the FCC licenses. (Update: Fire Department does not have concerns related to Interference at this site)

The Public Hearing was Opened and Closed with no Comment. It was noted that pending items related to wireless attachments will be before the Finance Committee after receiving a recommendation from the Subcommittee. Councilor Albright moved approval of the Commonwealth Avenue location, subject to second call, as conditioned (see attached), which carried 5-1-1; Councilor Gentile opposed and Councilors Brousal-Glaser abstaining. Councilor Albright motioned to hold the Albemarle Road location pending pole ownership information.

#189-14 Update on the Zervas School construction project

PUBLIC FACILITIES COMMITTEE requesting periodic updates on the Zervas Elementary School Project. [04/17/14 @ 10:48 PM]

Action: **Public Facilities Held 7-0**

Note: Public Buildings Project Manager Alex Valcarce presented final revisions to the Zervas School Construction project relative to the pick-up/drop-off on Beethoven Street. An earlier plan included the widening of Beethoven Street to create a separate blue zone and right hand turn lane. Mr. Valcarce stated that the community was strongly opposed to the widening of Beethoven Street. The revised plan (attached) maintains Beethoven Street at its existing width and will be a “Do Not Enter” street from Beacon and Evelyn during peak times. The space adjacent to Beethoven Street will allow for an expanded sidewalk and additional green space. It had been suggested that the street become a one way during peak times, which could increase the traffic flow. Mr. Valcarce stated that Transportation Engineers discourage the implementation of a temporary one way as it can be confusing and therefore dangerous. He confirmed that the “Do Not Enter” signs will be lit or flashing to ensure clarity for motorists. Mr. Valcarce stated that DPW is moving away from the use of an apex crosswalk after feedback from the City’s ADA Coordinator. The crosswalks have been set back to be accessible to those with visual impairments. He noted that tests confirm that the crossing guards are adequately able to manage the reconfigured intersection.

Committee members expressed concern regarding the backup of traffic on Beethoven Street during peak times. Councilors noted that while there may be initial increased traffic, the coordination and monitoring of signal timing would be instrumental in managing the intersections. Mr. Valcarce stated that the new controller and software would allow for the coordination of signals to reduce backup during peak times. Councilors noted that as done at Angier, parents might park farther away or carpool to avoid traffic during drop-off.

A Councilor stated that if in the future, modifications of the drop-off area needed to mitigate traffic impacts, the cost of relocation of utility poles at the site would be borne at that time. Councilor Laredo motioned to hold the item which carried unanimously.

Referred to Public Facilities and Finance Committees

#76-17

Appropriate \$1 million for snow and ice removal expenses

HIS HONOR THE MAYOR requesting authorization to appropriate the sum of one million dollars (\$1,000,000) from Free Cash to supplement the Department of Public Works' snow and ice operations budget.

Personnel Costs – Overtime

(0140110-513001).....\$250,000

Rental Vehicles

(0140110-5273-5273)\$750,000

[03/13/17 @ 4:39 PM]

Action: Public Facilities Approved 7-0

Note: Public Works Director of Operations Shane Mark presented the request for one million dollars to fund the remaining balance for snow and ice removal in addition to final salt bills. Mr. Mark stated that the current total for snow and ice removal is \$4,581,466 or \$84,528 per inch. Councilors asked if the cost per inch is decreasing. Mr. Mark noted that last year snow and ice removal totaled approximately \$96,000 per inch. Committee members asked if data for the expenses could be provided for the Finance Committee meeting. With a motion to approve the item from Councilor Danberg, the Committee voted unanimously in favor of the item.

Referred to Public Facilities and Finance Committees

#77-17

Ordinance amendment to include ordinances on illicit discharges to storm drains

HIS HONOR THE MAYOR requesting amendments to the City of Newton Revised Ordinances, 2012 to include new sections related to illicit discharges to storm drains that meet the requirements set forth under the City's Municipal Separate Storm Sewer System Permit. [03/13/17 @ 4:39 PM]

Action: Public Facilities Approved 7-0

Note: Director of Utilities Ted Jerdee and Environmental Engineer Maria Rose presented details of the ordinance amendments to prohibit illicit discharges to the storm drain system. Mr. Jerdee noted that the ordinance, drafted by Ms. Rose, has been reviewed by himself, Conservation Commission Senior Planner Jennifer Steele and Associate City Solicitor Bob Waddick. He confirmed that the draft ordinance would meet the requirements of the Municipal Separate Storm Sewer System Permit (MS4). Mr. Jerdee stated that the existing drain ordinances do not address water quality issues and the proposed ordinance gives the DPW legal authority to enforce water quality issues.

Mr. Jerdee reviewed the proposed ordinance (attached). Ms. Rose noted that the ordinance is required for the MS4 permit. She stated that DPW receives calls from residents regarding dumping of waste or salt into the storm drains and there are currently no penalties. Ms. Rose drafted the ordinance by incorporating the Adoption of Local Stormwater Bylaws produced for Mass. municipalities in tandem with the MS4 permit and ordinances from other communities. Mr. Jerdee confirmed that DPW could enforce discharges into the storm drain on behalf of a developer

if they identified conditions were not being maintained. Ms. Rose stated that sand and salt is on the list of exemptions because there is a public safety need. The Chair noted that there is an item to address the use of salt for snow and ice removal but that the increase in street sweeping frequency should help minimize discharges to the storm drain system.

It was noted that there are some sites in the City that cannot adequately contain stormwater runoff on site. The Committee discussed a specific residence where this is an ongoing concern. Mr. Jerdee confirmed that DPW is working to find a solution at this residence and hope to have more details by summer.

Councilor Laredo moved approval of the item which carried unanimously.

Referred to Public Facilities and Finance Committees

#78-17 Appropriate \$71,800 for engineering services

HIS HONOR THE MAYOR requesting authorization to appropriate and expend seventy-one thousand eight hundred dollars (\$71,800) from the Storm Water Surplus Account for the purpose of funding professional engineering services in the design and construction engineering phases of the rehabilitation of the Flowed Meadow Pump Station. [03/13/17 @ 4:39 PM]

Action: **Public Facilities Approved 7-0**

Note: Mr. Jerdee presented the request to appropriate \$71,800 for design, engineering and construction administration of the Flowed Meadow Pump Station. The pump station controls the water flow in the area to eliminate flooding for mosquito abatement. The water at the site can rise up to ground level if not pumped. Mr. Jerdee's presented the poor and unsafe conditions at the station. The renovations to the pump station will include a new roof, door, a new electrical system and permanently sealed windows. Committee members suggested that the work seemed extensive and noted that it might be more cost effective to locate a new, pre-engineered building at the site. Mr. Jerdee believes that the building is structurally sound and should be renovated as opposed to replaced.

Although the pump station is regularly checked, it is subject to frequent vandalism. These occurrences can interfere with the functionality of the SCADA equipment that relays information to DPW. The department intends to put a fence around the pump station as part of the project. Committee members suggested that if there is an ongoing vandal concern, a camera or sign could be installed as a deterrent.

Mr. Jerdee estimates that the total cost of construction will be approximately \$300,000 but stated that it could be less. Councilors questioned the cost benefit of the pump station and if it remains necessary. Mr. Jerdee noted that without the pump station, swamp-like conditions could manifest. He confirmed that he would get additional data from the Health Department regarding the magnitude of the mosquito problem in the area.

A Committee member asked how the most competitive pricing can be guaranteed if the project does not go out to bid. Mr. Jerdee noted that while there are some projects that should go through a competitive procurement process, this contractor is intimately familiar with the details and maintenance of the Flowed Meadow Pump Station. He added that the cost estimate for design and engineering may decrease but will not exceed \$71,800. With a motion to approve the item from Councilor Danberg, the Committee voted unanimously in favor.

Respectfully submitted,

Deborah J. Crossley, Chair

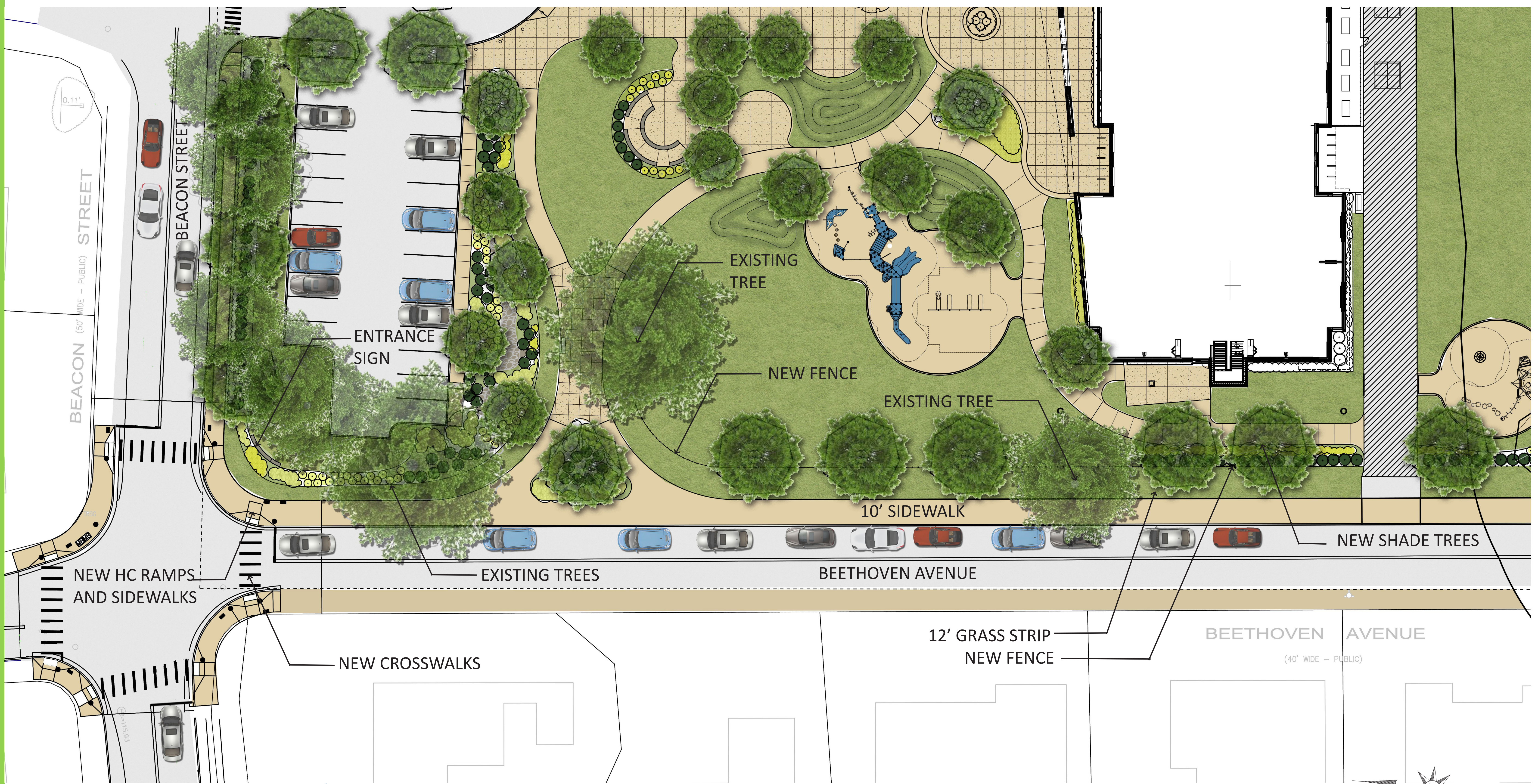
DRAFT CONDITIONS #72-17

1. As a condition of this grant of location order (the "Order"), prior to installing the approved small cell antenna and related equipment described in the plans identified in this Order (collectively, the "Small Cell Attachment") on the designated utility pole (the "Pole"), the Petitioner shall submit to the Commissioner of the Department of Public Works a letter or license from the owner(s) of the Pole authorizing the attachment of the Small Cell Attachment to the Pole.
2. The Small Cell Attachment shall not include any lighting or blinking light unless required under applicable federal or state law.
3. The Small Cell Attachment shall comply with the Noise Control Ordinance of the City of Newton (Newton Ordinances, Section 20-13). In the event that the Small Cell Attachment fails to comply with this ordinance, the Petitioner shall install noise suppression equipment as needed to reduce noise emitted by such Attachment to below applicable ordinance levels.
4. The color of the Small Cell Attachment shall be similar to or blend with (a) existing equipment on the Pole or (b) the color of the Pole.
5. The Small Cell Attachment shall not project over the public roadway or the sidewalk beyond the berm or curb, or otherwise interfere with the public use of the public way or sidewalk.
6. The Small Cell Attachment shall not interfere with the operation and maintenance of any wires, cables or equipment already attached to the Pole as of the date of this Order, including but not limited to streetlights and cable, electrical and telecommunications facilities. Streetlights already attached to the Pole as of the date of this Order shall not be moved unless required by the Pole owner(s), and then only to the extent permitted under any applicable agreement between the Pole owner and the City or, absent such agreement, formally consented to by the Commissioner of Public Works. Signage already attached to the Pole as of the date of this Order shall not be moved without the prior written consent of the City department that controls the placement of the signage.

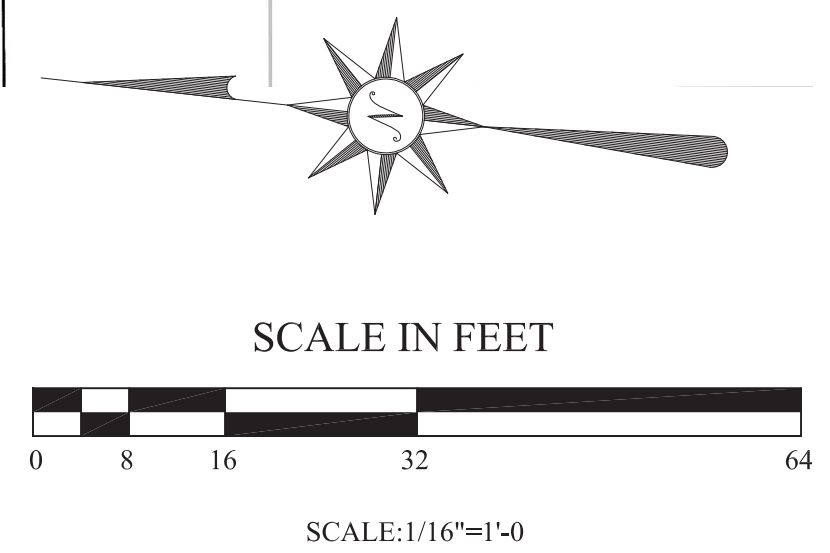
7. The Small Cell Attachment allowed under this Order is limited to that specifically described in the plans identified in this Order. Any increase in the number or height of Small Cell Attachment components after Small Cell Attachment construction shall be subject to City Council approval in accordance with applicable law. No City Council order is required for renewing, repairing or replacing the Small Cell Attachment. In the event that after the Order and before construction the position of a Small Cell Attachment component needs or is required to be moved, the Petitioner shall submit any revisions to its plans to the Commissioner of Public Works, who may authorize the change so long as the change does not reduce ground clearance or increase the height of the Small Cell Attachment. By acceptance of this Order, the Petitioner has committed and agreed that for purposes of its use of the Pole, the attachment of a Small Cell Attachment to the Pole shall not: (1) change the primary purpose of the Pole, which shall remain the purpose(s) for which the Pole owner(s) originally installed the Pole; or (2) cause the Pole to be a “wireless tower or base station”, within the meaning of Section 6409 (a) of the Spectrum Act, 47 U.S.C. §1455.
8. Within 30 days after completion of construction, the Petitioner shall provide the Commissioner of the Inspectional Services Department with as-built drawings of the Small Cell Attachment in paper and electronic forms.
9. The Small Cell Attachment shall comply with all applicable FCC regulations, including but not limited to regulations regarding radio frequency emissions. The Petitioner shall provide the Commissioner of the Inspectional Services Department with an annual certification of continued compliance with such FCC regulations regarding radio frequency emissions.
10. The Small Cell Attachment shall be covered by a performance bond in accordance with City Code Section 23-11.
11. The Small Cell Attachment shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the National Electrical Code, the National Electrical Safety Code, the engineering and construction standards of the Pole owner(s) and applicable law.
12. The Small Cell Attachment shall be tagged or marked in accordance with the engineering and construction standards of the Pole owner(s) and applicable law.

13. In the event that the Pole is being removed and replaced by the Pole owner(s), the Petitioner shall transfer the Small Cell Attachment to the replacement pole in accordance with the pole attachment agreement(s) between the Petitioner and the Pole owner(s). In the event the Pole is being removed by the Pole owner(s) and not replaced, the Petitioner shall remove the Small Cell Attachment, and the grant of location allowed by this Order shall terminate.

14. The Small Cell Attachment shall be subject to removal pursuant to the procedures established under M.G.L. Chapter 166, §§22A-22N.



ZERVAS ELEMENTARY SCHOOL



February 16, 2017



City of Newton, Massachusetts
Office of the Mayor

SETTI D. WARREN
MAYOR

#77-17

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March 13, 2017

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

RECEIVED
Newton City Office
2017 MAR 13 PM 4:39
David A. Olson, CMC
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to authorize the addition and acceptance of Illicit Discharges to Storm Drains Ordinance Section 29-134 through 29-147.

Thank you for your consideration of this matter.

Sincerely,

Setti D. Warren
Mayor

City of Newton



DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE COMMISSIONER
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

Setti D. Warren
Mayor

March 10, 2017

To: Maureen Lemieux, Chief of Staff, and Chief Financial Officer

From: James McGonagle, Commissioner
Theodore J. Jerdee, Utilities Director

Subject: Request for Docket the addition and acceptance of Illicit Discharges to Storm Drains Ordinance-Section 29-134 through 29-147

I request for consideration the addition and acceptance of Illicit Discharges to Storm Drains ordinance, Section 29-134 through 29-147 (see attached)

Brief Description: The City of Newton is required under the Municipal Separate Storm Sewer System (MS4) permit to systematically find and eliminate sources of non-stormwater discharges to its municipal separate storm sewer system and implement procedures to prevent such discharges. The City needs adequate legal authority to prohibit illicit discharges, that authority consists of a current effective ordinance. The attached ARTICLE 5 Section 29-134 through 29-147 meets the requirements set forth in the city's existing MS4-2003 permit and will be renewed on July 1, 2017.

Please docket this request with the Honorable City Council for their consideration.

Sincerely,

James McGonagle
Commissioner Public Works

CITY OF NEWTON, MASSACHUSETTS
(To be added as **Article V** in **Chapter 29** of the City of Newton Ordinances)

Last updated on:
February 14, 2017

DRAFT

ARTICLE V. Prohibition of Illicit Discharges to the Storm Drain System

29-134 Purpose

- (a) Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the natural resources and infrastructure of the City of Newton (hereafter the "city"), and to safeguard the public health, safety, welfare and the environment.
- (b) The objectives of this article are:
- (1) To prevent pollutants from entering the city's municipal storm drain system (MS4);
 - (2) To prohibit illicit connections and unauthorized discharges to the (MS4);
 - (3) To require the removal of all such illicit connections;
 - (4) To comply with state and federal statutes and regulations relating to stormwater discharges; and
 - (5) To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring, and enforcement.

Editor's Note: The term "MS4" as used in federal and state regulations is an acronym for "municipal separate storm sewer systems." As used in this article, "MS4" refers to the city's municipal storm drain system.

29-135 Definitions

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

Best Management Practice (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

CFR: The Code of Federal Regulations

CMR: The Code of Massachusetts Regulations

Commissioner: The commissioner of the department of public works or his/her designee.

Discharge of Pollutants: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

Discharger: A person or persons who discharge or allows to be discharged any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

Groundwater: Water that comes from or resides in the ground.

Illicit Connection: A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed or approved before the effective date of this article.

Illicit Discharge: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted herein. The term does not include a discharge in compliance with an NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit or to discharges or flows exempted pursuant to the provisions of section 29-141 hereof.

Impervious Surface: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

MS4: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, or other drainage structure(s) that together comprise the storm drainage system owned or operated by the city. MS4 is an acronym for "municipal separate storm sewer system." As used in this article, MS4 refers to the city's municipal storm drain system.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes and regulates the discharge of pollutants to waters of the United States.

Non-Stormwater Discharge: Discharge to the MS4 not composed entirely of stormwater.

Notice of Violation: A written notice given to a person by the commissioner that states that said person has violated the provisions of this article on any specified occasion.

Outfall: the terminus of a storm drain or other stormwater structure where stormwater is discharged.

Person: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person, or any other entity.

Pollutant: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

- (1) paints, varnishes, and solvents;

- (2) oil, gasoline and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes;
- (7) sewage, septage, fecal coliform and pathogens;
- (8) dissolved and particulate metals;
- (9) animal wastes;
- (10) rock, sand, salt, soils;
- (11) construction wastes and residues; and
- (12) noxious or offensive matter of any kind.

Process Wastewater: Water which during manufacturing or processing comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Recharge: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Stormwater: Runoff from precipitation or snow melt.

Surface Water Discharge Permit: A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorize the discharge of pollutants to water of the Commonwealth of Massachusetts.

Toxic or Hazardous Material or Waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. c.21C and c.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Watercourse: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Waters of the Commonwealth: All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

Wastewater: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

29-136 Applicability

This article shall apply to flows entering the MS4, a watercourse, and any waters of the Commonwealth located within the boundaries of the City of Newton. The provisions of this article shall take precedence over any conflicting provisions of any ordinances or parts of ordinances of the city.

29-137 Authority

This article is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule Procedures Act, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

29-138 Responsibility for Administration and Enforcement

The commissioner of the department of public works or his/her designee shall administer, implement and enforce the provisions of this article.

29-139 Regulations

The commissioner may promulgate rules and regulations to effectuate the purposes of this article. Failure by the commissioner to promulgate such rules and regulations shall not have the effect of suspending or invalidating the provisions of this article.

29-140 Prohibited Activities

- (a) **Illicit Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the MS4, into a watercourse, or into the waters of the Commonwealth.
- (b) **Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- (c) **Obstruction of the MS4.** No person shall obstruct or interfere with the normal flow of stormwater into or out of the MS4 without prior consent from the commissioner. No person shall dump or dispose of yard waste (leaves, grass clippings, etc.) into the open watercourses (swales, brooks and streams) that make up the MS4.

29-141 Exemptions

The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters

provided that the source is not a significant contributor of a pollutant to the MS4, as determined by the commissioner:

- (1) Waterline and hydrant flushing;
- (2) Flow from potable water sources;
- (3) Discharge of flow resulting from fire fighting activities;
- (4) Discharge from de-chlorinated swimming pool water (less than one part per million chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- (5) Discharge from landscape irrigation or lawn watering;
- (6) Water from individual residential car washing;
- (7) Discharge from street sweeping;
- (8) Dye testing, provided verbal notification is given to the commissioner prior to the time of the test;
- (9) Water from exterior foundation drains, footing drains overflow from infiltration structures (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- (10) Flow from springs;
- (11) Natural flow from riparian habitats and wetlands;
- (12) Diverted stream flow;
- (13) Rising groundwater;
- (14) Non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the written approval, waiver, or order and applicable laws and regulations; and
- (15) Discharge for which advanced written approval is received from the commissioner as necessary to protect public health, safety, welfare or the environment. In particular, this exemption shall apply to sand and salt that is applied to driveways, sidewalks, streets and parking lots for de-icing and public safety purposes.

29-142 Emergency Suspension of Storm Drainage System Access

- (a) The commissioner may suspend MS4 access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any

person fails to comply with an emergency suspension order, the commissioner may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

- (b) No person shall reinstate MS4 access that has been suspended or terminated without the prior written approval of the commissioner.

29-143 Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES storm water discharge permit may be required to provide proof of compliance with said permit in a form acceptable to the commissioner prior to the allowance of discharges to the MS4. The commissioner shall be permitted to enter and inspect facilities subject to regulation as often as may be necessary to determine compliance with this article.

29-144 Watercourse Protection and Maintenance

Every person owning or in control of property through which a watercourse passes, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly restrict the flow of water through the watercourse. The provisions in this section are intended to complement, not replace, maintenance responsibilities of the city where a drainage easement has been established.

29-145 Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the MS4, a watercourse, or waters of the Commonwealth, said person shall take all necessary steps to ensure containment, and cleanup of the release in accordance with the provisions of this article and any regulations promulgated pursuant to this article. Further, in the event of a release of oil or hazardous materials, the person shall immediately notify the city's fire department and the commissioner. In the event of a release of other pollutants, the person shall notify the commissioner no later than the next business day. Notification of a release to the commissioner shall include all pertinent information regarding the release including proof of notification to the Massachusetts Department of Environmental Protection if such notification was required.

29-146 Enforcement

- (a) The commissioner shall enforce the provisions of this article and any regulations promulgated hereunder and may issue and prosecute violation notices and enforcement orders and may pursue all civil and criminal remedies for such violations.
- (b) **Entry to Perform Duties Under This Article:** To the extent permitted by state law, upon reasonable notice to the owner or other party in control of the property, or if authorized by the owner or other party in control of the property, the commissioner, his/her agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this article and the regulations promulgated hereunder and may make or cause to be made such examinations, surveys or sampling as the commissioner deems reasonably necessary. What constitutes reasonable notice shall be determined by the commissioner in his/her sole discretion, based upon the nature and the imminence of a threat to the city's natural resources, environment, infrastructure, public health,

public safety or public welfare.

- (c) **Civil Relief:** The commissioner may seek injunctive relief in a court of competent jurisdiction to restrain a person from continued violations of the provision of this article or the regulations promulgated hereunder, or any notices, orders or written approvals or to compel said person to abate or remediate violations hereunder.
- (d) **Orders:** The commissioner may issue a written order to enforce the provisions of this article and the regulations promulgated hereunder, which may include:
 - (1) elimination of illicit connections or discharges to the MS4;
 - (2) performance of monitoring, analyses, and reporting;
 - (3) that unlawful discharges, practices, or operations shall cease and desist;
 - (4) remediation of contamination in connection therewith;
 - (5) payment of a fine to cover administrative and remediation costs; and
 - (6) implementation of source control or treatment BMPs.
- (e) If the commissioner determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
- (f) Within thirty (30) days after completion by the city of all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the commissioner within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the commissioner affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall accrue on any unpaid costs in accordance with the provisions of Massachusetts law.
- (g) Notices of Violation and Orders shall be written and shall be served by the city upon the persons to whom or to which they apply.
- (h) **Criminal Penalty:** Any person who violates any provision of this article, the regulations promulgated hereunder, or an order or written approval issued hereunder, shall be subject to a fine not to exceed three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense. Violations may result in the revocation of city licenses.
- (i) **Non-Criminal Disposition:** As an alternative to criminal prosecution or civil action, the city may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, §21D.

- (j) Appeals: The decisions or orders of the commissioner shall be final. Further relief shall be to a court of competent jurisdiction.
- (k) Remedies Not Exclusive: The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

29-147 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.