



## Public Facilities Committee Report

### City of Newton In City Council

**Wednesday June 22, 2016**

Present: Councilors Crossley (Chair), Albright, Danberg, Lappin, Gentile, Brousal-Glaser, Lennon, Laredo  
Also Present: Councilors Rice, Schwartz, Sangiolo, Leary, Auchincloss, Baker, Hess-Mahan, Kalis  
City Staff Present: Associate City Engineer John Dahglian, Commissioner of Public Works Jim McGonagle, Director of Operations Shane Mark, Associate City Solicitor Ouida Young, Commissioner of Public Buildings Joshua Morse, Commissioner of Parks and Recreation Bob DeRubeis, Associate City Solicitor Alan Mandl

#### Referred to Programs & Services, Public Facilities and Finance Committees

**#204-16 Eversource Energy petition for grant of location on Willow Street**

EVERSOURCE ENERGY petitioning for a grant of location to install approximately 48' ± of conduit across Willow Street approximately 90 ft. Northwest of Sumner Street to provide underground service to the fire station at 31 Willow Street. (Ward 6) [05/20/16 @ 12:03 PM]

**Action: Public Facilities voted No Action Necessary 6-0 (Laredo, Lennon not Voting)**

**Note:** Associate City Engineer John Dahglian noted that the request for conduit is a lateral and as such only requires the signature of the Commissioner of Public Works. Councilor Danberg motioned to NAN the item which carried 6-0.

**#161-16 #205-16 WARREN SUCKERMAN** petitioning for a grant of location to install a 12" main drain extension from a proposed manhole in front of 30 Drumlin Road trenching in a Southerly direction 115' ± to a second proposed manhole. (Ward 8) [05/26/16 @ 9:17 AM]

**Action: Public Facilities Approved 5-0 (Lennon, Laredo, Brousal-Glaser not voting)**

**Note:** Mr. Suckerman appeared to present the petition to install and attach a main drain extension to the existing drainage system that does not adequately accommodate storm water currently. Associate City Engineer John Dahglian confirmed that this is the Engineering Department's preferred solution as there is no on site space for additional storm water storage. Drumlin Road was paved over five years ago and the trench will receive a permanent patch. The Public Hearing was closed with no comment. Councilor Lappin motioned for approval which carried 5-0.

**#109-16B2 Verizon Grant of Location petition 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:

Locations

Crafts Street (near 224 Crafts Street) at Pole # 108/30

**Action: Public Facilities Approved 6-0 Subject to Second Call (Lennon, Laredo not voting)**

**Note:** This item was previously held because the location proposed for the conduit was a double pole which was later reduced to a stub pole. Because a wire remained on the pole, it could not be removed. Attorney Elizabeth Mason, representing Cellco stated that Pole #108-30 is owned by Eversource. Commissioner of Public Works Jim McGonagle and Director of Operations Shane Mark confirmed that this double pole issue could be addressed at the monthly meetings that have been established with the utility companies. Additionally, Mr. Mark emailed the City's point of contact with Eversource. Committee members had concerns that the remaining stub pole may be a safety hazard. Councilor Gentile motioned to approve the item subject to second call. The Committee requested that Commissioner McGonagle confirm before the full Council meeting if the pole poses any safety hazards. The motion carried 6-0.

**Referred to Public Facilities and Finance Committees**

**#229-16** **Taking of a temporary construction easement for the Elliot St Bridge Project**  
**HIS HONOR THE MAYOR** recommending that the City Council acquire temporary construction easement through an eminent domain taking in the private lands of 393-396 and 404-406 Elliot Street, a distance of 135' ±, and award damages to be determined to Chatham Properties. [06-20-16 @11.26 AM]

**Action: Public Facilities Approved 7-0 (Laredo not Voting)**

**Note:** Associate City Solicitor Ouida Young reviewed the terms of the taking of an easement by eminent domain that may be necessary in order to continue construction on the Elliot Street Bridge. The City requires access along a stone wall in order for to accomplish hand work along the bridge. Commissioner McGonagle confirmed that no equipment will be on the property and that tools will be lowered from the top of the bridge. While construction is currently within the hours of 7:00 AM - 3:00 PM; it is possible that during the span of the project, the hours may increase.

Attorney Young noted that there is an agreement being crafted for a friendly taking between the property owner and the City. It was noted that the property owner wishes to be compensated in the event that tenants break their leases due to the granting of the easement. Committee members felt that it was important to specify what would suffice as evidence that the tenant left because of the construction and not due to other variables. Attorney Young stated that the City was still in the process of making these determinations. Because the costs associated with a taking by eminent domain are not inclusive of the loss of business and the total worth of the taking from the property owner's perspective, it was noted that a friendly taking is preferable and more cost effective. While there was some concern that the negotiations could set a precedent for other property owners near City construction, Attorney Young noted that this situation is different because of the proximity of the construction, the necessity of the easement to the City and the fact that the property owner has tenant obligations.

Councilor Albright motioned for approval contingent on continued negotiations with the property owner to try to resolve the easement which carried 7-0.

**Referred to Programs & Services, Public Facilities, and Finance Committees**

**#357-15**

**Request for CPA funding for the Newton Highlands Playground**

COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of two million five hundred thousand dollars (\$2,500,000) from the Community Preservation Fund's open space and general reserves or fund balance to the Parks & Recreation Department, for the rehabilitation of the Newton Highlands Playground at Winchester and Dedham Streets, as described in the proposal submitted to the Community Preservation Committee in November 2015. [12/15/15 @ 12:32 PM]

**Action: Public Facilities Approved 8-0.**  
**Programs & Services Approved 8-0**

**Note:** The Public Facilities Committee and Programs and Services Committee met jointly to hear the request for CPA funding to rehabilitate the Newton Highlands Playground. Jim Robertson, Chair of Community Preservation Committee reviewed the request to spend 2.5 million dollars of CPC funds to rehabilitate the playground. Currently the playground is underused due to flooding and neglect. Mr. Robertson is confident that the renovations will revitalize the playground.

Commissioner of Parks and Recreation Bob DeRubeis expressed excitement in starting the rehabilitation and noted that the improvements will include the tennis and basketball courts, fields and paths. Some Committee members had concerns that changing the field into a little league field would displace current users. Commissioner DeRubeis confirmed that this would not be the case and that there is separate funding to make improvements at other baseball fields. Additionally, it was noted that no synthetic turf will be used. The Chair of the Public Facilities Committee requested that cisterns be considered when designing irrigation systems. Commissioner DeRubeis stated that 75% of the project will be from CPC funds and the remaining 25% will be funded by a combination of additional City and private funds. Committee members asked and the Commissioner confirmed that private donors will not be given preference to the fields.

On site parking will include 27 proposed spaces adjacent to the play structure and tennis courts and improvements are planned for the Upland Road extension as well. A collaborative effort to increase parking options with a neighboring garage owner was suggested. Community members and Councilors are very supportive of the project and happy to see the playground rehabilitated as it draws residents from all over the City. Commissioner DeRubeis feels that construction could begin in Fall 2016. Councilor Lappin motioned for approval in Public Facilities which carried unanimously. Programs and Services voted 6-0 in favor of the item.

**#222-16**

**Waiver of site plan approval for a support building at the Highlands Playground**

COMMISSIONER OF PARKS AND RECREATION requesting a waiver of City of Newton Ordinance Sec. 5-58. Site plan approval for construction or modification of municipal buildings and facilities. for a support building to be constructed as part of the

rehabilitation of the Newton Highlands Playground in Newton Highlands. [06/13/16 @ 12:56 PM]

**Action: Public Facilities Approved 8-0.**

**Note:** Commissioner of Public Buildings Joshua Morse presented the request to waive the site plan for a support building as part of the Newton Highlands Playground Rehabilitation. Commissioner Morse indicated that because of the scope and simplicity of the project and its similarity to a previous support structure, DRC involvement is not necessary. Commissioner Morse confirmed that funding approval will still come before the Committee and there is still opportunity to discuss the building orientation, quality and solar energy options. It was noted that while the attempt was made to have gender neutral restrooms, the Plumbing Board did not grant the request. Councilor Danberg motioned for approval which carried unanimously.

### **Referred to Programs & Services and Public Facilities Committees**

#141-15

**Discussion on tracking and improving the condition of the gas utility infrastructure**

ALD. BROUSAL-GLASER, SANGIOLO, HESS-MAHAN, COTE, NORTON AND ALBRIGHT requesting a discussion with the Director of Urban Forestry, a representative of the Department of Public Works and a representative of the Law Department about tracking and improving the condition of the gas utility infrastructure in Newton, new state statutes governing infrastructure repairs, coordination of increased repair work with city operations, the status of negotiations with National Grid to compensate for tree deaths resulting from gas leaks, and the possibility of creating a utilities working group to monitor progress on these and related issues. [05/26/15 @ 2:52 PM]

**Action: Public Facilities Held 8-0.**

**Note:** The focus of the discussion was to work collaboratively to provide feedback on draft comments to be submitted during the DPU Rulemaking Comment period that requires submission by July 5.

At the June 8<sup>th</sup> Public Facilities meeting, The Committee requested that Associate City Solicitor Alan Mandl draft comments to the Department of Public Utilities reflecting the sentiments of the Committee and provide specific recommendations to the DPU's proposed rules. Attorney Mandl provided drafts in the packet. Recommendations that the Committee made included:

- Require utility companies to publish gas leak locations, classifications and repair history to public safety officials and with the DPU, organized by community. It was noted that recent utility company annual reports lose track of some previously identified gas leaks. These leaks are not identified as repairs, but are no longer reported. Committee members emphasized the importance of holding the gas companies accountable. Commissioner Morse also recommended that a description, location and length of the repair be listed because not all repairs are permanent and the details will help quantify the extent of the repair.

- Provide a defined level of authority and appropriate recourse for public safety officials in reevaluating gas leaks.
- Notification and comment period for municipal and public safety officials if a utility asks for an exception. Clarification on the DPU's authority relating to allowing exceptions to statutory obligations.

Committee members felt that the utilities should be held accountable for public shade tree deaths and damage by gas leaks, as trees are property as defined in the law. However, the Committee felt that there should be a distinction between leaks that pose an imminent danger to people versus a threat to property. DPW Commissioner McGonagle also noted that a proliferation of Grade 1 leak classifications requiring immediate repair may further complicate the coordination of street work. Committee members determined that while it was not appropriate to classify leaks proximate to trees as Grade 1 leaks requiring immediate repair, that a new classification should be created relating to leaks threatening shade trees. Alternatively, it was suggested that the utilities should provide monetary compensation for trees lost due to gas leaks. Written feedback from Boston University Professor Nathan Philips suggested the DPU incorporate a grading system for leak volume in prioritizing leaks.

Committee members complimented Attorney Mandl's work and emphasized the importance of strong presentation at the Public Hearing on July 14<sup>th</sup>. Committee members suggested that Attorney Mandl correspond with neighboring communities to invite them to submit comment in support of the commentary provided by the City of Newton. It was discussed that to be most effective, the City should submit the comments signed by both representatives of the City Council and the Mayor. The Chair requested that Attorney Mandl send a final draft of the letter prior to submission. Councilor Laredo motioned to hold the item which carried unanimously.

Follow Up: Comments were submitted to the DPU on July 5, 2016 and are attached.

### **Referred to Public Facilities and Finance Committees**

**#226-16**

**Transfer \$233,013.67 within the DPW snow removal line items**

HIS HONOR THE MAYOR requesting authorization to transfer the sum of two hundred thirty-three thousand thirteen dollars and sixty-seven cents (\$233,013.67) from the Public Works Regular Overtime Snow Operations Account to the Public Works Snow Removal Rental Vehicles/Buildings/Schools. [06/13/16 @ 3:49 PM]

**Action: Public Facilities Approved 8-0.**

**Note:** Commissioner of Public Works, Jim McGonagle appeared to request the funding to cover \$85,000 that remains expenses due to snow removal expenses including salt, contractors and repairs to equipment. It was requested that Commissioner McGonagle provide a total breakdown of snow removal costs for finance. Councilor Danberg motioned for approval which carried unanimously.

**Referred to Public Facilities and Finance Committees**

**#227-16**

**Request to appropriate \$13,129,065 for Fire Station 3/HQ Project**

HIS HONOR THE MAYOR requesting authorization to appropriate the sum of thirteen million one hundred twenty-nine thousand sixty-five dollars (\$13,129,065) from bonded indebtedness for the purpose of funding the Fire Station 3/Headquarters Construction Project. [06/13/16 @ 3:49 PM]

**Action: Public Facilities Approved 8-0.**

**Note:** Commissioner of Public Buildings Joshua Morse presented the request to appropriate the balance of funding required for the construction of Fire Station 3/HQ. He stated that he would provide a comprehensive review of the finances for the Finance Committee.

Commissioner Morse stated that as project progresses, the contingency may be absorbed. He noted that while some evidence (recent high bids) that the project could be as much as \$300,000 over the revised budget; there are still a number of reserves that could be used. Additionally, "de-scoping" of the project may help to simplify and refocus contractors on the scope of the project and so reduce the cost. Commissioner Morse noted that the majority of bids are coming in under budget and he is confident that the project will remain under the revised budget. Some bids; including the windows & HVAC system, came in higher than anticipated and Commissioner Morse stated that the City could negotiate with the lowest bidder to determine if they fully understand the scope and what can be simplified. He also added where allowances are carried for certain items, Commodore Builders (CM at risk) who will work with contractors to find the most efficient and cost effective option. Mr. Morse stated that in regard to early bid packages, the contractors are so far ahead of schedule and change orders are at a rate of less than 1%.

The Chair asked about the adequacy of the storm water system design that was raised at the DRC meeting, specifically to assure that runoff from the steep drive will not cause flooding of the bays. Commissioner Morse stated that the Design Review Committee did not have further concerns with the storm water management system at the fire station as designed, as it is designed to capture runoff funneling down the steep drive. Mr. Morse confirmed that the storm water system will be built to meet a greater than one hundred year storm.

It was confirmed that the de-scoping sessions have begun and involve a number of different contractors. Councilors interested are welcome to attend the wrap up session that will summarize the efforts of the de-scoping sessions. Councilor Danberg motioned for approval which carried unanimously.

**Respectfully Submitted,**

**Deborah J. Crossley**

LAW DEPARTMENT



CITY OF NEWTON, MASSACHUSETTS

CITY HALL

1000 COMMONWEALTH AVENUE

NEWTON CENTRE, MA 02459

TELEPHONE (617) 796-1240

FACSIMILE (617) 796-1254

CITY SOLICITOR

DONNALYN B. LYNCH KAHN

ASSOCIATE CITY SOLICITOR  
OUIDA C.M. YOUNG

ASSISTANT CITY SOLICITORS

MARIE M. LAWLOR  
ANGELA BUCHANAN SMAGULA  
ROBERT J. WADDICK  
MAURA E. O'KEEFE  
JEFFREY A. HONIG  
ALAN D. MANDL  
JULIE B. ROSS  
JILL M. MURRAY  
SUZANNE P. EGAN

July 5, 2016

Mark D. Marini  
Secretary  
Department of Public Utilities  
One South Station  
Boston, MA 02110

Re: D.P.U. 16-31  
Comments of City of Newton

Dear Secretary Marini:

Pursuant to the Department's May 18, 2016 Notice of Public Hearing and Request for Comments, the City of Newton, through Setti D. Warren, Mayor, City Council President Scott Lennon and City Council Public Facilities Chair Deborah Crossley, submits these Comments on the Department's proposed regulations, 220 C.M.R. §114.00. Appended to the City's Comments is Attachment A, which provides the City's recommended textual revisions to the Department's proposed regulations. Copies are being hand delivered and filed electronically. Any questions regarding this filing may be directed to:

Alan D. Mandl- Assistant City Solicitor  
City of Newton-City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459  
Telephone: (617) 796-1240

Thank you for your assistance.

Sincerely yours,

Alan D. Mandl

Enclosures (original and 2 copies)

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

Investigation of the Department of Public Utilities,  
on its own motion, instituting a rulemaking pursuant  
to G.L.c.164, §144, G.L.c. 30A, §2, and 220 CMR  
§2.00 *et. seq.*, establishing requirements for Uniform  
Gas Leak Classification

D.P.U. 16-31

**INITIAL COMMENTS OF THE CITY OF NEWTON**

**INTRODUCTION**

The City of Newton (“Newton” or the “City”) submits these Initial Comments regarding the Department’s proposed uniform gas leak classification requirements regulations, in accordance with the Department’s May 18, 2016 Order Instituting Rulemaking.

The Department has recognized that natural gas leaks may result in injury to persons and property, environmental and public health damages resulting from continuous levels of methane emissions, service interruptions and higher gas utility rates.<sup>1</sup> It has been long recognized that gas leaks cause damage to public shade trees.<sup>2</sup>

As a result of the negative impacts of natural gas leaks upon the City, the Department’s rulemaking is of critical importance the City, its residents and businesses. National Grid has

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<sup>1</sup> Report to the Legislature on the Prevalence of Natural Gas Leaks in the Natural Gas System, D.P.U. 15-GLR-01 (September 18, 2015) at 2-6.

<sup>2</sup> See, e.g., *City of Salem v. Salem Gas Light Co.*, 241 Mass. 438 (1922).



estimated that about 83% of its distribution system mains in Newton are leak prone<sup>3</sup>, much higher than the 46% average of the Boston Gas system as a whole.<sup>4</sup> Newton continues to experience a high number of gas leaks associated with National Grid's infrastructure.<sup>5</sup> The continuous emission of methane from gas leaks increases the City's carbon footprint and poses a threat to public health. The extent and frequency of gas leaks undermines the City's ability to keep roadways in good repair. The loss of public shade trees as a result of gas leaks has increased City expenses and taken away the many benefits provided by public shade trees in urban environments.

The City has taken pro-active steps to address the problems associated with the excessive amounts of leak prone infrastructure and gas leaks. Monthly meetings are held with National Grid and City departments, including Department of Public Works, Fire and Law. The City's Sustainability Director and Director of Urban Forestry maintain regular contacts with National Grid. The City reviews National Grid's annual gas leak reports as well as its Gas System Enhancement Plan filings. The City has obtained monthly reports on the number and location of Grade 1 and Grade 2 gas leaks which have been repaired during the previous month. The City now requires that street opening permits identify the grade of the leak to be repaired. The Director of Urban Forestry requests information on the presence of gas leaks in areas where the

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<sup>3</sup> National Grid advised the Department of Public Works by email that of 304 miles of mains in Newton, 254 are considered leak prone based on the type of material (e.g., cast iron).

<sup>4</sup> *Report to the Legislature on the Prevalence of Natural Gas Leaks in the Natural Gas System*, D.P.U. 15-GLR-01 (September 18, 2015) at 35.

<sup>5</sup> According to Home Energy Efficiency Team ("HEET"), the 2015 annual gas leak report of National Grid lists 497 leaks in Newton, an increase from the 2014 annual gas leak report. See, [www.heetma.org/squeaky-leak/natural-gas-leaks-maps/](http://www.heetma.org/squeaky-leak/natural-gas-leaks-maps/)

City plans to plant public shade trees. Ongoing efforts are made to coordinate municipal and gas company work in order to reduce the number of street openings and openings of newly paved roads.

The Department's rulemaking affords an opportunity to better protect municipalities and their residents from the harms caused by excessive gas leaks. To this end, the City recommends (1) several changes to the Department's proposed rules, which are submitted as Attachment A to its Comments, and (2) commencement of a rulemaking under the Department's general supervisory powers to establish requirements for the protection of public shade trees from gas leaks.

## **COMMENTS**

### **A. ANNUAL REPORTING REQUIREMENTS-220 CMR 114.07**

The annual reporting requirements covered in proposed 220 CMR 114.07 should be revised in the following respects: (1) annual gas leak reports should be provided to the Department in a searchable electronic spreadsheet format; (2) annual gas leak reports should be provided by gas companies in the same format directly to public safety officials who request them; (3) annual gas leak reports should identify any gas leaks that were reported at the end of the previous year as unrepaired, but not listed as repaired or unrepaired at the end of the next year's annual gas leak report; and (4) annual gas leak reports should include a separate section which provides gas leak data on a community by community basis.

**1. Annual gas leak reports should be provided to the Department and made available to municipal public safety officials in a searchable electronic spreadsheet format**

In recognition of the unworkable format now used by National Grid and perhaps other gas utilities, the Department previously indicated that it "...may also consider directives to gas distribution companies regarding the format in which companies should report SQ gas leak data." <sup>6</sup> The City has requested that National Grid provide it with its annual gas leak report in an Excel spreadsheet format or provide it with separate, community-specific data. National Grid has failed to do so. Department action is needed. The Department's rules should require that National Grid file with the Department and make available to municipal officials through the Department's web site, annual gas leak reports in a searchable electronic spreadsheet format.

There is a need to adopt this requirement. The 2014 and 2015 annual gas leak reports filed by National Grid, as posted in the Department's File Room, are produced in extremely small print and made available only in hard copy. Gas leak information is not organized on a separate, community basis. The extraction of community-specific data requires a time-consuming manual effort spanning over a hundred pages. It is extremely burdensome for public officials (individually and in the numerous communities served by National Grid) to examine multi-community gas leak data, cull out specific line items for their individual communities and create separate spreadsheet records of their community-specific gas leaks, year after year after year. In the case of Newton, where there are hundreds of reported gas leaks, the burden of identifying and organizing community-specific leak data is substantial. Conversely, there is little or no burden placed on National Grid to provide its annual gas leak reports in a searchable

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<sup>6</sup> *Report to the Legislature on the Prevalence of Natural Gas Leaks in the Natural Gas System*, D.P.U. 15-GLR-01 (September 18, 2015) at 35.

electronic spreadsheet format. A more usable annual gas leak report will benefit public safety officials by making it more efficient for them to identify and track gas leak locations. This increased efficiency reduces burdens on public safety officials who want to verify that Grade 2 leak repairs are being made in a timely manner year over year. It also enables improved tracking of Grade 3 leaks and identification of locations with longstanding or numerous Grade 3 leaks. This information may better enable public safety officials to identify Grade 3 leaks that should be checked and, if necessary, reevaluated.

In many Department proceedings, both the Department and the Attorney General ask for and receive information from public utilities in a searchable electronic spreadsheet format.<sup>7</sup> It is not burdensome for National Grid and other gas companies to make available annual gas leak reports in this practical format.

**2. Annual gas leak reports should be provided by gas companies directly to requesting public safety officials at the same time that they are filed with the Department**

The Department should revise proposed rule 220 CMR 114.07 to allow public safety officials to obtain the annual gas leak report directly from gas companies at the same time that the report is filed with the Department. This option would enable those communities that want prompt access to the annual gas leak report to obtain it when it is filed.<sup>8</sup> Such a complementary requirement would (1) reduce burdens of making and responding to requests otherwise placed on

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<sup>7</sup> For example, D.P.U. 16-GREC-03 (First Set of Information Requests of the Department, Instruction 4, requires that where applicable, workpapers and calculations be provided “in the form of working Microsoft Excel spreadsheets with all cell references and formulae intact.”).

<sup>8</sup> Newton searches the Department File Room for the annual service quality report filing that contains the annual gas leak report. When the information is discovered, it is forwarded to public safety officials, the Department of Public Works and the Sustainability Director.

the Department and numerous municipalities and (2) increase efficiency for communities like Newton, which search the Department File Room for the annual service quality report filing that contains the annual gas leak report.

The provision of annual gas leak reports directly to public safety officials is consistent with the existing requirement that gas companies file their emergency response plans with the emergency management director of each municipality within their service area.<sup>9</sup> The proposed rule is not unduly burdensome, given the ability of gas companies to electronically transmit the report and the limitation that the direct provision of the report is limited to public safety officials who have made a standing request to receive them.

**3. Annual gas leak reports should include in a separate section those gas leaks that were reported at the end of the year as unrepaired, but not reported as repaired or unrepaired at the end of the current year's annual gas leak report**

The City recommends that proposed rule 220 CMR 114.07 be revised to require that gas companies provide in their annual gas leak reports a separate section on gas leaks (1) which were reported as unrepaired at year end in the immediately preceding annual gas leak report and (2) which are not listed as repaired or unrepaired in the current annual gas leak report. This information should include (1) a list of these gas leaks on a community by community basis; (2) the grades and locations of these gas leaks; (3) a description of all efforts made by the gas company to determine the cause of each of these gas leaks being omitted from the current annual report's repaired and unrepaired gas leaks; (4) an explanation for the omission of each such gas leak; and (5) a detailed description of any repair of each such gas leak.

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<sup>9</sup> G.L.c. 164, §85B. The Department has ample authority under G.L.c.164, §§76 and 144 to require gas companies to provide annual gas leak reports directly to public safety officials upon prior request.

Annual gas leak reports are less meaningful if, year over year, there are reported, unrepaired gas leaks that simply drop out of the annual reporting system established to enable tracing of gas leaks and confirmation of their repair.<sup>10</sup> Leaks that simply disappear from the books cannot be reviewed by public safety officials for compliance with repair and re-inspection interval requirements or to determine whether a Grade 3 leak should be reclassified. General explanations by gas companies about potential causes for “missing leaks” do not adequately address municipal interests in public safety, service reliability, reduced methane emissions and reduced ratepayer impacts of gas leaks.

**4. Annual gas leak reports should include a section which provides gas leak data on a community by community basis.**

It would further benefit municipalities and public safety officials if the Department required gas companies to add a separate section to the annual gas leak report which would provide gas leak data on a community-specific basis. In the double pole context, the semi-annual double poles reports filed by Verizon on behalf of the utility pole owners are organized by community and make aggregate community specific data very easy to find.<sup>11</sup> It would not be burdensome for gas companies to supplement their annual gas leak reports by adding a section with community by community gas leak data.

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<sup>10</sup> HEET has provided missing leaks by community on its website. It identified 86 missing leaks for Newton which were reported in the 2014 annual gas leak report as unrepaired, but not reported as repaired or unrepaired as of the end of 2015.

<sup>11</sup> Docket No. 03-87. The information includes backlog and new double poles totals by community at the start and end of the reporting period. Municipalities also have access to the NJUNS double poles database, which provides the street address locations of double poles within the community.

## **B. REEVALUATION OF GRADE 3 LEAKS- 220 CMR 114.04**

The Department should revise this section in order to provide a more explicit process regarding public safety official requests for reevaluation of Grade 3 leaks and gas company responses to such requests. In particular, this section should:

- Specify that a request for reevaluation be made in writing and list the information that should be included in a request
- Require each gas company to provide public safety officials with the name and contact information for the person to whom such requests should be made
- Require each gas company to respond in writing to such requests within a reasonable time not to exceed seven (7) days
- Require each gas company to provide the steps taken to reevaluate the leak in question, the results of its reevaluation and the reasons for its conclusion
- Provide for municipal recourse to the Director of the Pipeline and Safety Division of the Commission if the gas company fails to timely provide a reevaluation or if the public safety official disagrees with the reevaluation

The 2014 Act and the proposed rule do not provide any process for requesting the reevaluation of a Grade 3 leak based on a public safety official's belief that the Grade 3 leak poses a threat to public safety. They do not cover whether, how and when a gas company is required to respond to such requests. It would be helpful to both public safety officials and gas companies if the Department modified the proposed rule by adding uniform, objective procedures for submitting and reviewing Grade 3 leak reevaluation requests.

## **C. APPLICATIONS FOR EXCEPTIONS-220 CMR 114.03**

### **1. The Department's authority to grant exceptions is limited**

The City questions whether the Department has legal authority to grant an exception to gas company performance of statutory obligations under G.L.c.164, §144. The statute does not give the Department express authority to grant exceptions to the performance of gas company obligations under the statute.

The City recognizes that proposed 220 CMR 114.03 tracks an existing Department rule, 220 CMR 107.02. This existing rule, however, was adopted pursuant to the Department's supervisory rulemaking authority under G.L.c. 164, §76C, and the exceptions provision is not inconsistent with any other provision of law. The same cannot be said of the proposed rule, which appears inconsistent to the extent that it would enable the Department to excuse gas companies from complying with a statute. Any exceptions provision should apply only to rule requirements that are not also statutory obligations.

### **2. The Attorney General and municipal officials should be notified of any request for exceptions and provided with an opportunity to be heard**

Assuming that the Department has legal authority to grant a request for exceptions to any part of its final rule, the exceptions provision should be revised to provide that (1) notice of a gas company request for an exception be given to the Attorney General and each affected municipality; (2) an opportunity to submit a statement of position on the request be afforded to such stakeholders, as well as an opportunity to request a Director of the Pipeline Engineering and Safety Division hearing on the request; and (3) such stakeholders have the right to appeal the decision by the Director of the Pipeline and Safety Division.



Any exception to a gas company's generally applicable obligations regarding gas leaks is potentially a serious matter. Municipalities and the general body of utility consumers represented by the Attorney General may be specifically and substantially affected by a request for an exception and should be afforded procedural rights needed to protect their interests.

**3. Grants of exceptions should not be permanent**

The City recommends that any exceptions granted by the Department be temporary in nature and subject to periodic review. Gas companies should be required to demonstrate a continuing need for an exception.

**D. THE DEPARTMENT SHOULD CONDUCT A SEPARATE RULEMAKING PURSUANT TO ITS GENERAL SUPERVISORY POWERS IN ORDER TO SAFEGUARD PUBLIC SHADE TREES FROM DEATH OR DAMAGES DUE TO GAS LEAKS**

**1. Public shade trees benefit municipalities and require safeguards against death and damage due to gas leaks**

Newton has a robust public shade tree program. The Newton Director of Urban Forestry has estimated that there are about 21,000 street trees in the City. According to the Newton Tree Conservancy, a non-profit organization established in 2008, the benefits of shade trees include: carbon sequestration; shading and cooling; watershed protection; storm runoff protection/protection from flooding; and air filtration.

There is a compelling need for Department gas leak rules that protect municipal interests in public shade trees. Like other Massachusetts communities, Newton has experienced shade tree damage attributable to gas leaks. For example, a January 2011 study of Newton's shade trees by Gas Safety, Inc., identified 378 gas leaks in close proximity to public shade trees that could

have been responsible for tree damage/death. Residents continue to report shade tree damages adjacent to confirmed gas leaks, which have remained unrepaired due to their Grade 3 classification. The failure to make prompt repairs to these leaks is believed to have caused the loss of shade trees.

**2. The existing gas leak classification system does not safeguard public shade trees**

**a. While a gas leak posing an existing or probable threat to a public shade tree is literally a Grade 1 leak, in practice such a gas leak has not been treated as a Grade 1 leak**

A gas leak that represents an existing or probable hazard to persons or property is classified as a Grade 1 leak.<sup>12</sup> Public shade trees are recognized by the Legislature as public property.<sup>13</sup> A gas leak posing an existing or probable threat to public shade trees would appear to be a Grade 1 leak.

However, it has not been municipal or National Grid practice to treat such gas leaks as Grade 1 leaks. "Property," for the limited purpose of gas leak classification, appears to have been equated with homes and buildings. The classification of gas leaks harming public shade trees as Grade 1 leaks may not be practical, depending upon the number of gas leaks that pose a hazard to public shade trees. Limited resources available for emergency repairs could be stretched thin. Residents might object to more frequent disruptions of public ways due to gas leak repairs. There might be disagreement whether a gas leak represents an existing or probable hazard to a

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<sup>12</sup> G.L.c.164, §144(b)(2).

<sup>13</sup> The Legislature has recognized the need to protect public shade trees. "All trees within a public way...shall be public shade trees...." G.L.c.87, §1 (also describing public shade trees as public property). G.L.c. 87, §12 (liability to a town for damage to trees due to negligent or willful action).

public shade tree. For these reasons, public shade trees have not been protected from gas leaks by the Grade 1 classification.

**b. The twelve month interval between discovery and repair of Grade 2 leaks is too long to afford protection against further public shade tree damage and loss**

According to the City's Director of Urban Forestry, a Grade 2 classification would not likely afford protection against public shade tree damage and loss because the twelve month interval between leak discovery and leak repair for this classification is simply too long.<sup>14</sup>

**c. A Grade 3 classification affords no protection against public shade tree damage and loss**

Given the lack of any obligation under G.L.c.164, §144 for a gas company to repair a Grade 3 leak that appears to be damaging a public shade tree, a Grade 3 classification fails to protect public shade trees. Newton has experienced this problem as public shade trees along a street are damaged in the presence of Grade 3 leaks.

**3. The Department should exercise its supervisory authority and adopt rules that safeguard public shade trees from gas leaks**

If the Department does not require Grade 1 classification of gas leaks that present an existing or probable hazard to public shade trees, the City recommends that the Department exercise its supervisory authority and conduct a rulemaking to adopt safeguards against the damage to public shade trees that arises from gas leaks.<sup>15</sup> G.L.c.164, §144 does not preclude the

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<sup>14</sup> The City understands that National Grid divides its Grade 2 leaks into two categories, one of which calls for a repair within six months after discovery. This practice may not extend to a gas leak believed to be causing or about to cause public shade tree damage. A rigid interval may not enable the avoidance or minimization of public shade tree damage.

<sup>15</sup> G.L.c.164, §§76, 76C.

Department from adopting rules to protect public shade trees from damages caused by gas leaks.<sup>16</sup>

The regulations should enable the rapid repair of gas leaks that are reasonably believed to present an existing or probable hazard to public shade trees. These rules ought to include: (1) notice by and to gas companies upon discovery of a gas leak in proximity to a public shade tree; (2) deadlines and procedures for inspection of the gas leak and public shade tree by qualified personnel, taking into account the gas leak and condition of the affected public shade tree; (3) a gas company report on findings to the municipality; (4) a timeline for leak repair required to prevent any further damage to the public shade tree, based upon specific findings; and (5) notice of completion of the leak repair. These types of requirements would help protect public shade trees from severe damage or loss due to gas leaks. They would better enable communities to replant shade trees as needed after the gas leak repair has been made.

Input from municipal, environmental and gas company stakeholders should assist the Department in developing appropriate regulations to safeguard public shade trees.

## CONCLUSION

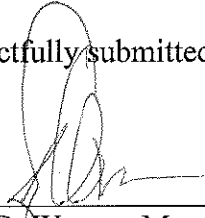
The City of Newton thanks the Department for conducting this rulemaking and requests

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<sup>16</sup> 39 Mass. Prac., Administrative Law & Practice, §750 (2015). *Grocery Manufacturers of America, Inc. v. Department of Public Health*, 379 Mass. 70 (1979) at 76 (“Specific statutory authority to act in a particular respect does not bar consistent action under general statutory authority.”).

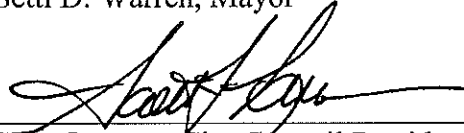
that the Department adopt the City's recommendations.

Respectfully submitted,



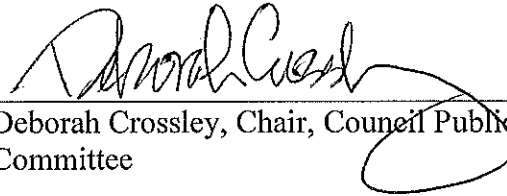
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Setti D. Warren, Mayor



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Scott Lennon, City Council President



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Deborah Crossley, Chair, Council Public Facilities  
Committee

Dated: July 5, 2016

**CITY OF NEWTON COMMENTS-D.P.U. 16-31**

**ATTACHMENT A**

**Proposed Rule 220 CMR 114.07-Changes Recommended by the City of Newton**

Add the following:

- (5) Each Gas Company shall provide the Annual Service Quality Report required under 220 CMR 114.07(2) in a searchable electronic spreadsheet format which enables users to locate and organize reported gas leaks on a community-specific basis.
- (6) Upon written request by a municipal public safety official, each Gas Company shall provide directly to such municipal public safety official a copy of the Annual Service Quality Report required under 220 CMR 114.07(2) in a searchable electronic spreadsheet format which enables users to organize the location of reported gas leaks on a community-specific basis.
- (7) Each Gas Company shall provide as part of its Annual Service Quality Report required under 220 CMR 114.07(2) a section in which gas leaks are reported separately for each municipality.
- (8) Each Gas Company shall provide as part of its Annual Service Quality Report required under 220 CMR 114.07(2), by community, location and Grade:
  - (a) gas leaks that were reported as unrepaired in the immediately preceding Annual Service Quality Report and not reported as repaired or unrepaired in the current Annual Service Quality Report;
  - (b) a description of (i) all efforts made by the Gas Company to determine the cause of each of these gas leaks not being reported as repaired or unrepaired in the current Annual Service Quality Report; and (ii) repairs made to each of these gas leaks.
  - (c) specific explanations for the omission or each such gas leak from the current Annual Service Quality Report.

**Proposed Rule 220 CMR 114.04-Changes Recommended by the City of Newton**

Add the following:

- (4) A public safety official seeking a Gas Company reevaluation of a Grade 3 leak shall submit a written request for reevaluation to the Gas Company. Such written request shall:
  - (a) be submitted to a Gas Company representative designated in writing by the Gas Company;

- (b) specify the location of each gas leak for which reevaluation is being requested by street name and the number of the residence (if any) adjacent to the gas leak; and
  - (c) the basis for the public safety official's belief that the Grade 3 leak poses a threat to public safety.
- (5) A Gas Company that receives a public safety official's request for reevaluation of a Grade 3 leak shall:
- (a) conduct a reevaluation of the Grade 3 leak as soon as practicable, but in no case later than five days after receipt of the request:
  - (b) respond to the request in writing within seven days after receipt of the request. Such response shall include the steps taken to reevaluate the Grade 3 leak, the results of the reevaluation and the reasons for the Gas Company's conclusions; and
  - (c) where appropriate, repair the leak based upon a change in classification from Grade 3.
- (6) Any public safety official aggrieved by a Gas Company's reevaluation of a Grade 3 leak or failure to comply with 220 CMR 114.04(5) may request a review by the Director of the Pipeline Safety Division.

**Proposed Rule 220 CMR 114.03-Changes Recommended by the City of Newton**

Insert after the second paragraph:

Any request for an exception shall be served upon the Attorney General and upon a designated public safety official in each municipality in the Gas Company's service area.

The Attorney General and each municipality in the Gas Company's service area shall be afforded fourteen days to submit to the Department a statement of position on the proposed exception and to request a hearing by the Director of the Pipeline Engineering and Safety Division. The Director has discretion to review the request for an exception without a hearing, but shall issue a written decision on the request. The Attorney General and a municipality shall have the right to appeal the Director's decision as set forth below.

Insert after the first sentence of the third paragraph:

An exception granted by the Department shall not exceed two years from the date granted. If circumstances warrant, the Department may rescind the exception based upon the safety consequences resulting from the exception. A person who has been granted an exception may reapply to the Department for an extension of up to two years. A reapplication must be filed at least four months prior to the expiration of the existing exception.