

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE REPORT

WEDNESDAY, OCTOBER 9, 2013

Present: Ald. Salvucci (Chairman), Lennon, Albright, Gentile, Crossley, Danberg, and Laredo

Absent: Ald. Lappin

Also present: Ald. Baker, Blazar, Ciccone, Fischman, Fuller, Johnson, Kalis, Linsky, Rice, Sangiolo, Schwartz, Swiston, and Yates

City officials present: John Daghlian (Associate City Solicitor), Jay Babcock (Police Sergeant), David Koses (Transportation Planner), Bill Paille (Director of Transportation), David Turocy (Commissioner of Public Works), Bob DeRubeis (Commissioner of Parks and Recreation), Josh Morse (Interim Commissioner of Public Buildings), Ouida Young (Associate City Solicitor), and Robert Rooney (Chief Operating Officer)

Public hearing assigned for October 9, 2013:

#326-13 NSTAR ELECTRIC petitioning for a grant of location to install 295' ± of conduit in HYDE STREET in a southeasterly direction from 51 Hyde Street to proposed Manhole #MH29704 in Hyde Street and continuing 30' ± into the intersection of LAKE AVENUE to an existing manhole. [09/04/13 @ 11:13 AM]

ACTION: **APPROVED 6-0 (Laredo not voting)**

NOTE: Associate City Engineer John Daghlian presented the request for a grant of location to install conduit in Hyde Street from Lake Avenue to 51 Hyde Street for upgraded electrical service. Hyde Street was repaved in 2011; therefore, NStar will be required to cold plane and pave the street from curb to curb over the entire length of the project trench. The trench would be covered with temporary patch until the spring, when it would be permanently paved. The Engineering Division of Public Works would then inspect the pavement and determine if it meets the City's standards for street paving. Generally, the City does not allow a street to be opened within five years of repaving but the new conduit is necessary to improve service to 51 Hyde Street.

The public hearing was opened and Ernest Lowenstein of 57 Hyde Street asked if he would be able to enter and exit his driveway throughout the project. Mr. Daghlian explained that Mr. Lowenstein would always have access to the street from his driveway. With that, Ald. Danberg moved approval, which carried unanimously.

REFERRED TO PS&T AND PUBLIC FACILITIES COMMITTEE

#41-11 ALD. JOHNSON, LENNON AND DANBERG requesting discussion of the elimination, except during snow emergencies, of the overnight parking ban which is in effect from November 15 through April 15. [01/18/11 @ 9:00 PM]

PUBLIC SAFETY & TRANS. HELD 7-0 10/09/13

ACTION: **HELD 7-0**

NOTE: The Committee met jointly with the Public Safety and Transportation Committee. Police Sergeant Jay Babcock presented a PowerPoint presentation (attached) of the proposal for a pilot program to establish an overnight parking program in Ward 1 during the overnight parking ban this upcoming winter. The draft ordinance for the program was attached to the agendas for both Committees. The pilot program would not override a citywide snow emergency. There was some consideration given to eliminating the overnight parking ban except during snow emergencies but that could lead to perpetually over parked streets, which would create safety issues. All vehicles would need to be off the street regardless of whether they have an overnight parking permit sticker.

The pilot program attempts to address the lack of off-street parking in Ward 1. Several residences in Ward 1 have no driveways or the driveways are small, which limits the number of cars that can fit in the driveway. Residents of Newton cannot park on the street from November 15 to April 15 between the hours of 2 AM and 6 AM without risking a ticket. Many of the residents of Nonantum receive frequent tickets for overnight on-street parking during the winter months because they do not have anywhere else to park overnight. The current ticket is \$5 per violation but there is discussion to raise the fine. If the fine is raised, there needs to be a program to assist people with overnight parking hardships.

The program would be administered by the Police Department through its Traffic Bureau. Residents of Nonantum would pay a \$20 application fee per vehicle and provide proof of residency and proof of vehicles registered to a Nonantum address. The permit program would not be available to residents, who live within 1,000' of a municipal parking lot, as the lots have available free overnight permit parking for residents. The thought is to get as many residents as possible with parking hardships into municipal lots. In addition, the permit program would not be available for commercial vehicles.

The Traffic Bureau would investigate each application to determine if there is an appropriate location for overnight parking in the area of the applicant's address. The decision of which streets in Nonantum could support overnight parking would be determined by the Police, Fire, and Public Works Departments; however, the approval of individual overnight parking permits is at the discretion of the Police Traffic Bureau. If the application is approved, there will be an \$80 fee per vehicle for the parking permit. The \$80 fee would cover the cost of the site visit, fuel, picture printing, and the administration of the program. The permits will not be transferable between vehicles registered at the same address.

There was concern that the program would encourage more parking on the streets in the pilot area. The proposed program limits the number of permits. The maximum number of permits allowed per dwelling unit shall be equal to the number of vehicles registered to the dwelling unit, less the number of off-street parking spaces available on the property to the residents of that dwelling unit, as determined by the chief of police, provided; however, that no more than three permits may be issued per dwelling unit. The intent of the program is to reduce the number of cars on the street by only allowing cars that meet the criteria to park overnight.

The Fire Department needs all streets to be wide enough for emergency vehicles and the Department of Public Works needs the streets to be wide enough to allow equipment for sanding, snow removal, and trash collection to get down the street. Streets that are deemed too narrow will not be available for the overnight parking permit program and the Police will consider restricting parking to one side of the street. The Police Department will attempt to give a range of spaces to eligible applicants that are within the area of their residence. If the pilot program is approved, there will be greater enforcement of the overnight parking ban in Ward 1.

Once the pilot program ends in April 2014, the success of the program will be assessed to determine if it should be continued and/or expanded. The pilot program needs to move forward in order to gather the necessary data for assessment.

Questions and Comments:

The attached memorandum dated October 16, 2013 from Assistant City Solicitor Marie Lawlor addresses the following two questions: If the program were to become permanent, is it possible to limit the program to specific areas of the City? Can the Police or Board of Aldermen exclude college students from a permit parking program?

The \$80 fee for a parking permit should be reduced for residents with a need for second and third permits as the city's cost for the permit is related to the cost of the site visits.

The municipal lots are already over parked and residents that use the municipal lots must remove their cars from the lot by 6 AM. The program should allow residents within 1,000' of a municipal lot to apply for on-street overnight parking permits.

The pilot program seems very complicated. It would be helpful to understand the particulars of the Ward 1 Area like how many municipal lots are there in Ward 1.

How many residents do not have driveways in Ward 1?

How many municipal parking spaces are there in Ward 1?

What happens during a snow emergency?

It would be helpful to have a street map of Ward 1 that highlights streets that are not wide enough to be included in the program.

What is the estimated number of permits that would be issued?

Theresa Sauro of the Nonantum Neighborhood Association raised the following questions.

How will the pilot program cars be situated on the streets?

How many pilot program spaces will there be per street in Ward 1?

Action:

Members of both Committees preferred to hold the item until the answers to the questions raised during the discussion were available. Ald. Lennon moved hold in the Public Facilities Committee and Ald. Swiston moved hold in the Public Safety and Transportation Committee. Both the motions for hold carried unanimously. A revised draft Ordinance was received from Assistant City Solicitor on October 16, 2013, which is attached.

REFERRED TO PUBLIC FACILITIES & PROGRAMS & SERVICES COMMITTEES

#325-13 HIS HONOR THE MAYOR requesting that the Board of Aldermen seek Article 97 approval from the General Court of Massachusetts permitting the temporary use of the entrance of Nahanton Park on Winchester Street for Fire Station #10, and further requests that the Board of Aldermen enter into a Memorandum of Understanding with the Parks & Recreation Commission consistent with the motion approved by the Commission permitting temporary relocation of Fire Station #10 to the entrance of Nahanton Park. [09/30/13 4:51 PM]

PROG & SERV APPROVED 6-0

ACTION: APPROVED 5-0 (Danberg, Lennon not voting)

NOTE: The Programs & Services and Public Facilities Committees met jointly to discuss the above docket item. Chief Operating Officer Robert Rooney presented the request that the Board of Aldermen pursue Home Rule Legislation to seek approval under Article 97 to use a portion of Nahanton Park for a temporary fire station for longer than six months. In addition, the docket item requests that the Board of Aldermen approve and enter into a Memorandum of Understanding (MOU) with the Mayor and the Parks and Recreation Commission. A draft of the memorandum of understanding was attached to the agendas for both Committees and provided the Parks and Recreation Commission's conditions of the use of the park for the temporary fire station. The temporary fire station is needed during the construction of the new Fire Station 10 on Dedham Street. Occupation of the temporary station is expected to be necessary until the spring of 2015.

The Administration, the Fire Department and the Public Buildings Department looked at a number of sites within the fire district that Station 10 covers for an appropriate site to locate the temporary station. Only two locations met the base criteria for a temporary station - Charles River Country Club land on Winchester Street and right off the Winchester Street entrance to Nahanton Park. It was determined that the Nahanton Park location was the best location, as there are utilities including sewer lines already on site, the access to Winchester Street is safe in terms of sight lines when entering and exiting the site, and there is an existing paved driveway to the site of the proposed temporary fire station. In addition, use of the athletic fields and all other uses of Nahanton Park can be maintained. There are no utilities at the Charles River Country Club site, an entrance would need to be created for the temporary station, and several mature trees would need to be removed.

The Administration is sensitive that the proposed site is parkland and has begun discussion with the State regarding the Article 97 approval and worked with the Parks and Recreation Commission on the proposed memorandum of understanding. The Newton Conservators and the Friends of Nahanton Park are supportive of locating the temporary station at the park, as there is the likelihood that a conservation restriction will be put in place restricting the use of Nahanton Park to only park uses. The Parks and Recreation Commission approved the draft language of the MOU in July 2013.

The conditions of the proposed MOU include a requirement that the Public Buildings Department discontinue use of the existing infirmary tool house located within the park once the construction of the temporary fire station is completed. In addition, the Administration is required to provide a Phase 1 environmental review of the tool house and surrounding land and remediate any oil, asbestos, and hazardous materials. The MOU contains a requirement that the Public Buildings Department stabilizes the exterior of the tool house until the Parks and Recreation Commission determines whether to restore or demolish the building. The MOU contains a condition authorizing the Commissioner of Parks and Recreation to create a working group to develop a plan in regards to the tool house, as well as the restoration of the area of the park disturbed by the temporary fire station.

As part of the MOU, the Parks and Recreation Commissioner will negotiate with the Newton Conservators to create a statutory conservation restriction in perpetuity for the entire park. If the State through the Executive Office of Energy and Environmental Affairs fails to approve the statutory restriction, the City will put a 199-year restriction in place. The proposed conservation restriction will be subject to review and approval by the Parks and Recreation Commission. It is likely that the 199-year restriction would base the permissible uses of the park on the recent Audubon Study of the park. The restriction would be held by a non-profit group that would enforce compliance with the restriction. The enforcement of the conservation restriction is currently a point of discussion. It is likely that the Newton Conservators will take on the enforcement. There is a possibility that the Conservators could receive reimbursement by the City for the enforcement responsibility.

There are a few edits that need to be made to the MOU, which will be provided to the Board of Aldermen before the Board takes action on the docket item. Members of both Committees were pleased that the park abutters, Newton Conservators and Friends of Nahanton Park are involved in the discussions surrounding the use of a portion of the park as a temporary fire station. It is hoped that the State process for the Article 97 is smooth, as it is key to the project. Ald. Crossley moved approval in Public Facilities, which carried by a vote of five in favor and none opposed. Ald. Fischman moved approval in Programs and Services, which carried unanimously.

#112-13 VERIZON NEW ENGLAND, INC. petitioning for a grant of location to relocate Pole # 78/4 on WILLIAMS STREET northerly 65'± from its current location in order to relocate service to a customer. (Ward 3) [02/27/13 @ 9:35 PM]

ACTION: **NO ACTION NECESSARY 7-0 (Danberg, Lennon not voting)**

NOTE: Verizon New England no longer requires the requested grant of location to move a pole on Williams Street to provide service to a new house. The property owner will be accessing service from a different pole that does not need to be relocated. Ald. Danberg moved the item no action necessary, which carried unanimously.

#253-07 ALD. LINSKY ALBRIGHT, JOHNSON, HARNEY, SANGIOLO, SALVUCCI, MANSFIELD, BURG, SCHNIPPER requesting (1) a review as to how provisions of applicable ordinances, specifically 5-58, were implemented during the course of the Newton North project, and (2) consider proposed revisions of 5-58 including, but not limited to:

- (a) timely provision of documentation by the public building department to the Board of Aldermen and Design Review Committee;
- (b) establishment of liaison committees to facilitate communications and input from neighborhoods affected by projects subject to this ordinance;
- (c) approval of final design plans by the Board of Aldermen of projects subject to this ordinance;
- (d) oversight during the construction phase of projects subject to this ordinance by appropriate Board committee(s) both in respect to approval of change orders as well as design changes; and
- (e) generation of a required record detailing the entire construction process by the public building department to guide present and future oversight of projects subject to this ordinance. [08/07/07 @ 3:12 PM]
- (f) establishment of a committee to provide oversight for public building construction and renovation during all phases of planning, design and construction.

ACTION: HELD 4-0 (Danberg, Laredo, Lennon not voting)

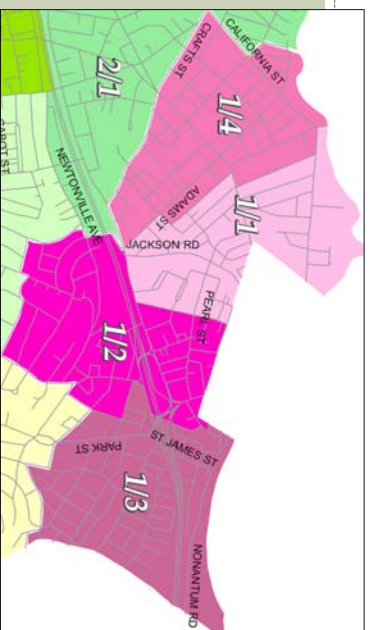
NOTE: The item was held in order to docket a new item with reworked language that addresses the current 5-58 process. Ald. Albright moved hold, which carried unanimously.

Respectfully submitted,

Anthony J. Salvucci, Chairman

WINTER OVERNIGHT PARKING BAN OVERRIDE PERMIT PROGRAM

*Joint Public Safety and Public Safety and Transportation Committee Meeting
October 9, 2013*



WARD 1 PILOT

Problem Statement

- **Lack of off-street parking availability**
 - Some residents have no driveway
 - Some residents have more cars than driveway space
 - Cannot park on the street Nov 15 – April 15, 2-6AM
 - Some residents receive very frequent tickets during winter months
 - ✦ Current ticket only \$5
 - ✦ *Future fee increase possible*
 - ✦ Fee increase would hit some homeowners hard
 - Option: Develop an overnight winter **parking ban override program**

“Winter Parking Ban Waiver” Characteristics

- **Proposed Approval Process:**
 - Residents apply in person at Traffic Bureau
 - Applicant must provide the following:
 - ✦ Proof - residency
 - ✦ Proof - vehicles registered to address
 - Traffic Bureau investigates each application
 - ✦ Site visit; determination of approved parking location (i.e., block)
 - ✦ Traffic Bureau decision in conjunction with Fire, DPW
 - Approved parking location is at the discretion of the Traffic Bureau
 - ✦ No appeals process
 - ✦ Subject to change

“Winter Parking Ban Waiver” Characteristics

- **Proposed Fee:**
 - Application fee of \$20 (non-refundable) per vehicle
 - If request is approved, fee to receive permit is \$80 per vehicle
 - May reapply if conditions change – but requires new application fee
 - \$5 replacement fee

“Winter Parking Ban Waiver” Characteristics

- **Proposed Characteristics of the Permit:**
 - Issued by the Traffic Bureau for a particular location
 - Permits come in the form of a sticker
 - ✦ Sticker must be affixed to windshield, lower left corner, driver-side
 - Valid between November 15, 2013 and April 15, 2014
 - Does NOT OVERRIDE CITYWIDE SNOW EMERGENCY
 - ✦ Permit may be revoked if vehicle is not removed after declared snow emergency

“Winter Parking Ban Waiver” Characteristics

- **Other Characteristics and Examples:**
 - Only one permit allowed beyond available off-street spaces
 - Only one permit allowed per individual
 - No more than three permits allowed per dwelling unit

“Winter Parking Ban Waiver” Characteristics

- **Other Proposed Characteristics of the Program:**
 - Not available to Commercial Vehicles
 - Valid within Ward 1 only (during pilot period)
 - ✦ Board of Aldermen to review program after winter season
 - Not available to residences located within 1,000 feet of a public parking lot

Traffic Bureau Staffing

- **New responsibilities**
 - Permits related to Newton North Neighborhood Parking Plan
- **Anticipated future responsibilities**
 - Permits related to Auburndale Village parking plan
 - Additional neighborhood parking plans
- **Pilot Parking Waiver**
 - Requires staff time for on-site research for each permit issued

Proposed Schedule

#41-11

- **September 2013**
 - PS&T presentation and comment
 - Draft ordinance language
- **October/November 2013**
 - PS&T, Public Facilities, Finance, BOA approval
 - Traffic Bureau orders stickers, hiring
- **November 2013 – April 2014**
 - Pilot Underway
- **2014**
 - Review pilot, modification, expansion

Questions and Comments

LAW DEPARTMENT MEMORANDUM

TO: Members of the Public Safety and Transportation Committee, and
Members of the Public Facilities Committee

FROM: Marie M. Lawlor, Assistant City Solicitor

DATE: October 16, 2013

RE: Item #41-11 Overnight On-street Resident Parking Permit Program Pilot

The following two questions concerning the proposed Overnight On-Street Resident Parking Permit Program pilot, were referred to me for response.

Question 1: May the Board may exclude college students from eligibility?

In my opinion, the Board may not exclude students who are bona fide residents of a dwelling unit within the eligible Ward and who otherwise qualify for a permit. The Board may, however, (1) clarify requirements for proof of residency, and (2) exclude dormitories by clarifying that eligibility is limited to residents of legally zoned single, two-family and multi-family dwellings.

(1) Proof of Residency: The proposal as previously drafted simply required “such proof of residency as may be required by the Chief of Police.” In order to tighten up the level of acceptable proof of residency, the attached redline of the proposed ordinance clarifies the required level of proof by referring to the proof of residency requirements of the overnight municipal lot resident parking program, Section 19-200. Section 19-200(A)(2) defines acceptable proof of residency as follows:

“... either (A) a signed, current lease showing the applicant’s name as a tenant or a signed written statement from the property owner or landlord affirming that the applicant is a resident of that property; or (B) a current registration certificate issued by the Registry of Motor Vehicles, Commonwealth of Massachusetts, stating the information required in section 1; or (C) a current registration certificate issued by the Registry of Motor Vehicles, Commonwealth of Massachusetts, accompanied by a Massachusetts Registry of Motor Vehicles “Change of Address Form”, properly completed and stating the information required in subsection (1). The police department may require the Registry of Motor Vehicles “Change of Address Form” to be completed by the applicant and left with the department for mailing directly to the Registry of Motor Vehicles if there is any doubt as to the authenticity of the applicant’s proof under subsection (2)(C)...”

This level of proof of residency will ensure that only those students who are also bona fide residents of an eligible dwelling unit will be eligible for a permit.

(2) Limit eligibility to single, two-family and multi-family dwellings

In my opinion, the Board may clarify that eligibility is limited to residential dwellings and does not include dormitories. The attached redline adds the following new eligibility requirement:

“(5) Eligibility is limited to residents of legally zoned single family, two-family or multi-family dwellings as defined in section 30-1 of the zoning ordinance.”

The zoning ordinance (section 30-1) defines a “*dwelling unit*” as “... one (1) or more rooms forming a habitable unit for one family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation. A “*two-family dwelling*” is defined as containing two dwelling units with common floor-ceiling or common wall connectors, and a “*multi-family dwelling*” as a building or structure containing three or more dwelling units. An “*apartment house*” is defined as the same as a multi-family dwelling. A “*dormitory*”, however, is separately defined as a “... building owned or controlled directly or indirectly by a religious or educational non-profit institution ... providing sleeping quarters for five (5) or more unrelated persons.”

Thus, limiting eligibility in this manner will effectively exclude persons residing in dormitories from the permit program, but will include residents of legally zoned residential dwellings and apartments.

Question 2: If the Board renews the program after the pilot, may the Board limit the program to certain Wards or neighborhoods of the City and exclude others?

In my opinion, the Board may limit program eligibility to certain areas of the City where there is rational basis to do so. Since the very purpose of this program is to alleviate parking hardship for residents of congested areas of the City which have a high percentage of residential properties with little or no parking available on-site, limiting the program to those areas while excluding areas with a high percentage of properties that do have adequate on-site parking is both rational and in keeping with the purpose of the program.

CC: Sergeant Jay Babcock, NPD

David Koses, Transportation Planning Coordinator

Item # 41-11 10/16/2013 DRAFT FOR DISCUSSION PURPOSES

19-206. Overnight on-street resident parking permit program

Notwithstanding the provisions of Section 19-174(b), there shall be a resident overnight on-street parking permit program (the "program") in the City of Newton to govern overnight on-street parking of residents' motor vehicles during the winter. Such program shall commence on November 15, 2013 and expire on April 15, 2014 unless renewed or modified by the board of aldermen. The program shall be administered by the chief of police or his designee.

A. *Overnight on-street resident parking permit, eligibility*

(1) A resident overnight on-street parking permit of a design specified by the chief of police shall be issued by the police department to an owner or lessor of a motor vehicle which is registered in the Commonwealth of Massachusetts or other state, with a registered gross weight of under two and one-half (2 ½) tons, principally garaged in the City of Newton, owned or leased by a resident of Ward 1 of the City of Newton who otherwise qualifies for of issuance of a permit under this section.

(2) Residents of properties located within one thousand (1,000) feet of a municipal parking lot shall not be eligible to receive a permit.

(3) Commercial vehicles shall not be eligible to receive a permit.

(4) Eligibility is limited to residents of Ward 1.

(5) Eligibility is limited to residents of legally zoned single family, two-family or multi-family dwellings as defined in section 30-1 of the zoning ordinance.

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(6) Acceptable proof of residency for subsection (1) will be the same as set forth in section 19-200 (2) of these ordinances.

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B. *Locations and number of overnight parking permits*

(1) (a) The chief of police, with guidance from the fire chief and the commissioner of public works, shall determine the locations where overnight on-street permit parking will be allowed. Approved parking locations are subject to change.

(b) The chief of police shall, in the exercise of his discretion, determine which location to assign to a particular resident based on consideration of the street conditions, street capacity, availability

of spaces, proximity, as well as considerations of public safety. No resident is guaranteed a permit or an assignment to any particular location.

(2) The maximum number of permits allowed is as follows:

(a) No more than one permit is allowed per individual for no more than one vehicle;

(b) The maximum number of permits allowed per dwelling unit shall be equal to the number of vehicles registered to the dwelling unit, less the number of off-street parking spaces available on the property to the residents of that dwelling unit, as determined by the chief of police, provided, however, that no more than three permits may be issued per dwelling unit.

C. *Procedure and fees*

(1) Applications for a permit shall be submitted on such form and in such manner as the chief of police may specify.

(2) The following non-refundable fees to defray the costs of program administration shall be payable as directed by the chief of police:

Application fee:	\$20.00 per vehicle
Permit Fee:	\$80.00 per vehicle
Permit replacement fee:	\$ 5.00

(3) Each application shall be accompanied by:

- (a) A non-refundable application fee of \$20.00;
- (b) ~~Such p~~roof of residency; ~~as may be required by the chief of police;~~
- (c) Such proof of the number of vehicles registered to the applicant's address as may be required by the chief of police.

(4) Upon receipt of an application, the chief of police shall investigate each application by conducting a site visit in order to determine the number of off-street parking spaces available for the applicant's dwelling unit.

(5) In the event the chief of police determines an applicant to be eligible for a permit, he shall determine and assign the location for which the permit shall be valid, and shall notify each applicant of any determination. Determinations of the chief of police under this section shall be final.

(6) Upon notification of eligibility and location assignment, the applicant shall pay an additional non-refundable permit fee of \$80.00 in order for the permit to issue.

(7) Any outstanding fines for parking violations attributable to the motor vehicle for which a permit is requested must be paid in full before such permit is issued.

D. *Display of overnight resident parking permit*

The chief of police shall establish rules governing display of permits. A permit that is not properly displayed or visible shall not be a valid permit. Each permit shall visibly display the registration number of the vehicle to which it is assigned, the assigned location, and the expiration date of the permit.

E. *Effect of overnight on-street resident parking permit*

(1) Vehicles which display a valid permit shall be exempt from the winter overnight parking restrictions specified in section 19-174(b). Such permit shall not be valid in any street or in any location other than the location to which it is assigned.

(2) Permits shall not be in effect during the period of a declared snow emergency.

(3) The chief of police may temporarily suspend the effect of permits in any location if he determines such suspension is necessary for public safety purposes.

(4) A permit is not valid for any vehicle other than the vehicle for which it was issued and whose registration number is displayed on the permit.

(5) Until its expiration, surrender or revocation, a permit shall remain valid until April 15, 2014.

F. *Revocation of permits*

(1) A permit shall be revoked if it is transferred to a different vehicle than the vehicle to which it was assigned.

(2) A permit shall be revoked if the vehicle's registration address changes, or if the applicant no longer resides at the address.

(3) A permit may be revoked if the vehicle is not removed from the location during a declared snow emergency or during a temporary period of suspension for public safety purposes.

- G. If any provision of this section or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

**Memorandum of Understanding
to Use Nahanton Park**

This Memorandum of Understanding is entered into between Newton Parks and Recreation Commission and the Executive Office and the Board of Aldermen regarding the temporary use of Nahanton Park for Fire Department Station 10 (“TFS10”).

Whereas, TFS10 must be located in Fire District 6 and have safe, direct access to a major thoroughfare. The most viable alternative site (the Charles River Country Club on Winchester St.) would require the destruction of trees and a curb cut in Winchester St. that would not be as safe as the existing one at Nahanton Park; and

Whereas, the conditions of the Urban Self-Help grants that assisted in the creation of Nahanton Park limit its use for non-park and recreation purposes; and

Whereas, the Newton Conservators and the Friends of Nahanton Park support the temporary location of TFS10 at Nahanton Park in consideration of a conservation restriction that would prevent further non-park uses of Nahanton Park; and

Whereas, the Newton Fire Department used the Winchester St. entrance to Nahanton Park for fire hose training that has caused some damage to the entrance and possibly to the existing building (the Toolhouse); and

Whereas, while the Infirmary Lands, including the Toolhouse, were transferred to the Recreation Commission in 1968, the Public Buildings Department has used the Toolhouse as a workshop since 1965 and bears the responsibility for maintaining this structure.

Consequently, the Parks and Recreation Commission concurs with the Newton Fire Chief and Public Buildings Commissioner that during the time a new Fire Station #10 on Dedham Street is under construction, Fire Station #10 may be temporarily relocated to the area immediately next to the Winchester Street entrance of Nahanton Park, such temporary station to consist of a modular building to house firefighters and a modular tent structure to house a fire truck and equipment, subject to the following conditions:

1. The Public Buildings Department shall promptly following completion of the new Fire Station #10:
 - (i) remove from the interior of the Toolhouse all hazardous substances and materials, and all debris and inoperable equipment;
 - (ii) undertake a Phase 1 environmental review of the Toolhouse and immediately surrounding land including remediation of any oil, hazardous wastes, hazardous materials, or asbestos or asbestos-containing material found during such environmental review; and

- (iii) stabilize the exterior of the Toolhouse if the Commission decides to retain the building, or demolish the Toolhouse and restore the site of the demolished building and immediately surrounding land if the Commission decides not to retain the building.
2. The Public Buildings Department shall terminate its use of the Toolhouse and remove any volatiles from the building prior to commencement of operation of TFS10 at Nahanton Park;
 3. Funds will be allocated within the budget for TFS10 so that upon cessation of operational use as a fire station (est. Dec. 2015), remediation will be completed in a timely manner (within six (6) months) to include removal of asphalt, utilities infrastructure related to the modular structures, addition of plantings, improved fencing, entrance and any "reasonable" measures, to include any hazardous clean-up, as determined by the Commission relating to the area directly impacted by the temporary facility and its operations. These include, but are not limited to:
 - (i) cover the costs of restoration of the area impacted by TFS10;
 - (ii) remediate any release of oil, hazardous wastes or hazardous substances from TFS10; and
 - (iii) restore greenspaces, plants and pavement worn or damaged by TFS10 use.

Funding to accomplish the work described in Paragraph 3 above will also be included in the budget for TFS10.

4. All Parties agreed that the Mayor and Board of Aldermen shall seek Art. 97 approval as well as relief from the Urban Self-Help grants to allow the temporary use of the park for TFS10.
5. The Parks and Recreation Commissioner shall commence negotiations with the Newton Conservators to develop a statutory conservation restriction that would encompass the entire park and permit the current Parks and Recreation sponsored activities or activities similar to the current activities to continue. If a statutory conservation restriction is not approved by EOEEA, the term of such restriction shall be 199 years. The final terms of the Conservation Restriction shall be subject to review and approval by the Commission.

In witness whereof, the parties have caused their proper representatives to execute this Memorandum of Understanding.

By:

Parks and Recreation Commission

Date: _____

By:

Board of Aldermen

Date: _____

Scott F. Lennon, President

By:

Mayor

Date: _____

Setti D. Warren