



# Finance Committee Agenda

## City of Newton In City Council

Monday, June 15, 2020

The Finance Committee will hold this meeting as a virtual meeting on Monday, June 15, 2020 at 7:00 pm. To view this meeting use this link at the above date and time:

<https://us02web.zoom.us/j/88142911905>

Dial by your location

+1 646 558 8656 US (New York)

Meeting ID: 881 4291 1905

### Items scheduled for discussion:

#### Referred to Public Safety & Transportation and Finance Committees

#274-20

##### **Transfer \$750,000 for Fire/Rescue Overtime**

HER HONOR THE MAYOR requesting authorization to transfer the sum of seven hundred and fifty thousand dollars (\$750,000) from Acct #0110491-57HLTH Retiree Health Insurance to Acct #0121022-513010 Fire/Rescue Regular Overtime.

**Public Safety & Transportation to discuss on 06/17/2020**

#### Referred to Public Facilities and Finance Committees

#277-20

##### **Discussion on the use of parking kiosks in municipal lots**

COMMISSIONER OF PUBLIC WORKS requesting a discussion on the use of parking payment kiosks in municipal lots as required by condition 1 of Council Order #446-19.

**Public Facilities to discuss on 06/17/2020**

#272-20

##### **Transfer \$1,500 to correct an error in the FY20 Budget**

HER HONOR THE MAYOR requesting authorization to transfer the sum of one thousand five hundred dollars (\$1,500) from Acct #0111855-524050 Computer Equipment Repairs & Maintenance to Acct # 0111855-511001 Full Time Salaries to correct an error in the FY20 Budget.

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The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

**#273-20 Authorize \$420,000 to settle claims against the City**  
HER HONOR THE MAYOR requesting authorization to appropriate and expend four hundred and twenty thousand dollars (\$420,000) from June 30, 2019 Certified Free Cash for the full and final settlement of the claims by Mackay against the City.

*It is the Chairs intent to entertain a motion of No Action Necessary on the following item:*

**Referred to Public Facilities and Finance Committees**

**#114-20 Approve \$500,000 for snow and ice removal**  
HER HONOR THE MAYOR requesting authorization to transfer the sum of five hundred thousand dollars (\$500,000) from the Budget Reserve – Snow and Ice Removal Account to the following accounts:

DPW Overtime, Snow & Ice Removal  
(0140123-513010)..... \$200,000

DPW Rental Vehicles/Subcontractors  
(0140123-527301)..... \$300,000

**Public Facilities Approved 5-0 (Councilor Crossley not voting) on 02/05/2020**

**Finance Held 5-0 on 02/24/2020**

**Chairs Note:** *Chief Financial Officer Maureen Lemieux will provide an update on the expenditure of funds for COVID-19 as related to item #239-20.*

**Respectfully submitted,**

**Rebecca Walker Grossman, Chair**



RUTHANNE FULLER  
MAYOR

**City of Newton, Massachusetts**  
**Office of the Mayor**

**274-20**

Telephone  
(617) 796-1100

Telefax  
(617) 796-1113

TDD  
(617) 796-1089

E-mail  
[rfuller@newtonma.gov](mailto:rfuller@newtonma.gov)

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

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to transfer the sum of \$750,000 from Acct # 0110491-57HLTH Retiree Health Insurance to 0121022-513010 Fire/Rescue Regular Overtime. Several factors contributed to this shortfall in Overtime funds including the fact that the Fire Department has incurred more than \$300,000 for "Injured On Duty Expenses."

Funds are available in the Retiree Health Insurance account. This account is the City's match for the "working rates" charged for health insurance for municipal retirees. This availability has occurred as there were fewer retirees than anticipated this fiscal year.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller  
Mayor

2020 JUN - 1 PM 5:09  
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June 2020  
CITY CLERK  
NEWTON, MA. 02459



RUTHANNE FULLER  
MAYOR

**City of Newton, Massachusetts**  
**Office of the Mayor**

**272-20**  
Telephone  
(617) 796-1100  
Telefax  
(617) 796-1113  
TDD  
(617) 796-1089  
E-mail  
[rfuller@newtonma.gov](mailto:rfuller@newtonma.gov)

May 26, 2020

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

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to transfer the sum of \$1,500 from Acct # 0111855-524050 Computer Equipment Repairs & Maint to Acct # 0111855-511001 Full Time Salaries to correct an error in the FY20 Budget.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller  
Mayor

RECEIVED  
2020 MAY 26 PM 3:39  
CITY CLERK  
NEWTON, MA. 02459



RUTHANNE FULLER  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

273-20

Telephone  
(617) 796-1100

Telefax  
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[rfuller@newtonma.gov](mailto:rfuller@newtonma.gov)

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

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to appropriate and expend the sum of \$420,000 from June 30, 2019 Certified Free Cash as full and final settlement of Mackay et al, vs City of Newton, MICV-1981-01567. A copy of the Plaintiff's complaint filed against the City in Middlesex Superior Court is attached. A summary of the Plaintiff's claim is as follows:

During the class period (May 30, 2016 through May 30, 2019), the Plaintiffs claim the following:

- Newton agreed to pay Plaintiffs a weekly salary for a 40-hour workweek, consisting of the hours between 7 am and 3 pm.
- Newton also agreed that it would pay Plaintiffs at least their "straight time" hourly wages for all work they performed, with their straight time rate to be calculated by dividing their weekly salary by their 40-hour workweek.
- Newton also agreed to pay Plaintiffs 1.5 times their regular hourly rate of pay for all work they performed in excess of 40 hours of work.
- Notwithstanding the aforementioned agreements, during the Class Period, Newton required Plaintiffs to report to work as much as one hour before their agreed upon 7 am start time, and during this period, to perform work for its benefit, primarily, to engage in tasks necessary to arrange and schedule the work days of the employees they supervised.
- The Plaintiffs believed Newton imposed this requirement on Plaintiffs so that Plaintiffs would have the supervisees' schedules in place before the supervisees' scheduled report time of 7 am, thereby minimizing the amount of time the supervisees would be idle awaiting their daily assignments after they reported to work.
- Despite being required to report to work before their agreed upon 7 am start time, Newton still required Plaintiffs to work until the agreed upon 3 pm end time.
- As a result of this practice, in numerous weeks during the Class period, Plaintiffs worked more than their agreed upon 40-hour weeks.
- Despite this, Newton did not pay Plaintiffs either straight time or overtime wages, as it had agreed, for the additional hours it required Plaintiffs to work prior to the start time of their 7 am shifts. Rather, Newton only paid Plaintiffs for their salaries based on the agreed upon 40-hour week.

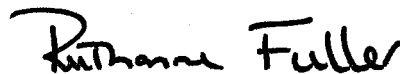
June 1, 2020  
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NEWTON, MA. 02459

This case was brought under the state Wage Act, which requires the prompt payment of wages owed by employers to employees for their regular work. The plaintiffs also claimed contractual entitlement to overtime pay, and statutory entitlement to treble damages and attorney's fees. They also made a demand for a jury trial. The statutory look-back period was approximately 3 years of wages claimed by the Foremen. The City was prepared to argue that a past practice existed, whereby the Foremen did not previously seek compensation for their prep time. The City was also prepared to argue that prep time is not covered by the Wage Act. Further, the City was prepared to argue that municipalities are exempt from an award of treble damages if it is determined that the Wage Act applied. These defenses would likely have taken years to resolve through the state courts, during which time pre-judgment interest at 12% would run against the City if the plaintiffs were ultimately successful. If the plaintiffs prevailed, the award of attorney's fees against the City would also be very substantial.

On Saturday, May 30, 2020 the parties reached an agreement of \$420,000 as full and final settlement of the case. Maureen Lemieux and Jeffrey Honig will be available to answer questions at the appropriate committee meeting.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive, flowing style.

Ruthanne Fuller  
Mayor

**FULL AND FINAL RELEASE**

***Mackay et al. v. City of Newton, Middlesex Superior Court C.A. No. 1981-01567***

1. **RELEASE AND CONSIDERATION PAID:** In consideration of the sum of FOUR HUNDRED AND TWENTY THOUSAND DOLLARS (\$420,000.00), Michael Arpino, Perry Cacciola, Chris Casto, Livio Cence, Richard Cincotta, Anthony Dethomasis, Michael Mackay, Michael Ovaska, Jason Pisano, Norman Sementelli, and Robert Sullivan, on behalf of themselves, their agents, representatives, attorneys, heirs, executors, administrators and assigns (together "Releasors" or "Plaintiffs"), hereby unconditionally and irrevocably remise, release and forever discharge the City of Newton ("the City") and its past, present and future officers, elected and appointed officers, employees, representatives, attorneys, agents, successors, affiliates, representatives, heirs, executors, administrators and assigns, or any of them, (collectively the "Releasees"), of and from any and all claims for unpaid wages that were made or could have been made in the instant litigation, *Mackay et al. v. City of Newton*, Middlesex Superior Court C.A. No. 1981-01567, including but not limited to unpaid straight or overtime wages due any state or federal law, statute, or common law claim, including the Massachusetts Wage Act, G.L. c. 149, § 148, or grievances under any applicable CBA or charges of unfair labor practice under G.L. c. 150E, from the beginning of the world to this date.

2. **PAYMENT:** The City shall issue settlement checks, subject to normal payroll deductions, to the Releasors according to the schedule attached hereto and marked as Exhibit A. The City shall issue a separate check in the amount of \$140,000.00 (One Hundred and Forty Thousand Dollars) payable to Glynn, Landry and Rice, LLP, representing full payment of all attorney's fees, for which a form 1099 shall issue.

3. **DISMISSAL WITH PREJUDICE:** Upon the disbursement of settlement funds, the parties to this agreement agree that they will file the joint motion attached hereto as Exhibit B to dismiss Plaintiffs' claims with prejudice, pursuant to Mass. R. Civ. P. 41(a)(1)(ii).

4. **NON-ADMISSION OF LIABILITY OR FAULT:** It is understood that this

Full and Final Release is the result of settlement and compromise of disputed claims and does not constitute admission of any wrongdoing, including, but not limited to, the allegations contained in the Complaint or of any other obligations or right arising either by state or federal statute or common law.

5. FULL AND FINAL RELEASE: The Releasors hereby understand and acknowledge that this Full and Final Release is an integrated writing and contains the entire agreement between the parties hereto, that the terms of this Full and Final Release are contractual and not a mere recital and may not be annulled, voided, or modified, except in a writing specifically referring hereto and duly executed by the Releasors and by, or on behalf of, the Releasees herein identified.

6. MASSACHUSETTS LAW: This Full and Final Release is deemed to be made in the Commonwealth of Massachusetts and shall be governed and construed according to the laws of the Commonwealth of Massachusetts.

7. LEGAL ADVICE: In entering into this Full and Final Release, the Releasors represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their choice, and that they have completely read the terms and effects of this Agreement and had the opportunity to inquire of their attorneys about these terms and effects prior to executing this Agreement, and that those terms and effects are fully understood and knowingly and voluntarily accepted by them.

8. BINDING NATURE OF AGREEMENT: This Agreement shall be binding upon the Parties and their heirs, administrators, representatives, executors, successors, and assigns.

9. LIMITATIONS ON USE OF THE AGREEMENT AS EVIDENCE OF LIABILITY OR WRONGDOING: This Agreement may not be used as evidence in any proceeding of any kind, except a proceeding (a) in which one of the Parties alleges a breach of the terms of this Agreement, or (b) in which one of the Parties elects to use this Agreement as a

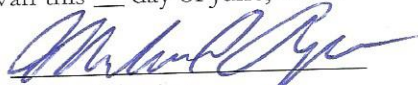


defense to any claim. This Agreement shall not constitute an admission or acknowledgment of liability or wrongdoing on the part of any or all of the Releasees.

10. NON-ASSIGNMENT: The Releasors hereby warrant and represent that they have not sold, assigned, granted, or transferred to any other person or entity any such claim, demand, or cause of action, or any part thereof, that they have or may have had against the City.

11. COUNTERPARTS: The parties agree that this AGREEMENT may be executed in counterparts, each of which shall be deemed to constitute an executed original. Signed counterparts transmitted by facsimile or by e-mail will be deemed to constitute an original.

IN WITNESS WHEREOF, Michael Arpino, Perry Cacciola, Chris Casto, Livio Cence,  
Richard Cincotta, Anthony Dethomasis, Michael Mackay, Michael Ovaska, Jason Pisano,  
Norman Sementelli, and Robert Sullivan this 11<sup>th</sup> day of June, 2020.


  
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Michael Arpino


  
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Perry Cacciola


  
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Chris Casto


  
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Livio Cence

  
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Richard Cincotta


  
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Anthony Dethomasis

  
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Michael Mackay

  
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Michael Ovaska

  
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Jason Pisano

  
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Norman Sementelli

  
\_\_\_\_\_  
Robert Sullivan

CITY OF NEWTON

By:

\_\_\_\_\_  
MAUREEN LEMIEUX, CFO

**EXHIBIT A**

MICHAEL ARPINO	32,883.20
PERRY CACCIOLA	26,163.87
CHRIS CASTO	18,163.65
LIVIO CENCE	21,892.48
RICHARD CINCOTTA	29,823.20
ANTHONY DETHOMASIS	30,935.81
MICHAEL MACKAY	28,667.75
MICHAEL OVASKA	48,250.90
JASON PISANO	7,450.51
NORMAN SEMENTELLI	17,879.18
ROBERT SULLIVAN	17,889.45
<b>TOTAL</b>	<b>280,000.00</b>

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT  
MICV NO. 1981-01567

MICHAEL MACKAY, JASON PISANO, PERRY  
CACCIOLA, JR., NORMAN SEMENTELLI,  
RICHARD CINCOTTA, ANTHONY DETHOMASIS,  
LIVIO CENCE, MICHAEL OVASKA, ROBERT  
SULLIVAN, CHRISTOPHER CASTO, and MICHAEL  
ARPINO  
PLAINTIFFS

v.

CITY OF NEWTON,  
DEFENDANT

**PARTIES' JOINT MOTION TO DISMISS PURSUANT TO MASS. R. CIV. P.  
41(a)(1)(ii)**

Now come the parties and pursuant to Mass. R. Civ. P. 41(a)(1)(ii) jointly move to  
dismiss the above-referenced action with prejudice.

THE PLAINTIFFS

By their Attorney,

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Daniel W. Rice, BBO # 559269  
Glynn, Landry & Rice, LLP  
25 Braintree Hill Office Park,  
Suite 408  
Braintree, MA 02184  
(781) 964-8377  
daniel.rice@glhrlaw.com

DEFENDANT CITY OF NEWTON

By its attorney,

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Jeffrey A. Honig, (BBO# 563972)  
Deputy City Solicitor City of Newton  
Law Department  
1000 Commonwealth Avenue  
Newton Centre, MA 02459  
Tel: (617) 796-1240  
Fax: (617) 796-1254  
[jhonig@newtonma.gov](mailto:jhonig@newtonma.gov)

Dated: \_\_\_\_\_