



Finance Committee Report

City of Newton In City Council

Monday, June 15, 2020

Present: Councilors Grossman (Chair), Malakie, Humphrey, Kalis, Norton, and Noel

Absent: Councilors Gentile and Ciccone

City staff present: Chief Financial Officer Maureen Lemieux, Comptroller Sue Dzikowski, Fire Chief Gino Lucchetti and Deputy City Solicitor Jeffrey A. Honig

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

Action: Finance Approved 6-0

Note: Fire Chief Gino Lucchetti presented the request to transfer \$750,000 from Retiree Health Insurance to Fire/Rescue Regular Overtime. Chief Lucchetti explained that due to the restrictions that were put in place because of COVID-19 the overtime budget has increased. Since March 2020 there have been ninety-eight extra tours of duty due to COVID-19 leave. The Chief has put restrictions on the six fire stations by not allowing firefighters to work in different fire stations than they are regularly assigned. This was to stop cross contamination and for the safety of the firefighters. The restriction did add to the cost of overtime for the Fire Department. Chief Lucchetti explained that as of June 15th he has removed these restrictions.

As of right now there are nineteen openings in the Fire Department. Chief Lucchetti explained that there are nine vacancies that need to be filled by entry level firefighters. Four firefighters have been interviewed and were supposed to enter the Boston Fire Academy in March 2020 but that was cancelled due to COVID-19. This has been rescheduled for December 2020 in Bridgewater. The Fire Department needs to maintain a minimum staffing per apparatus which can add to the cost of overtime. Chief Lucchetti explained that he has started the process to interview for the remaining five vacancies but there is a seven-month waiting period in between the academies. The ten remaining vacancies deal with injuries that date back to November 2019.

Maureen Lemieux, Chief Financial Officer explained that she may come back to the Council at a later date to allocate a portion of the \$750,000 to the COVID-19 fund.

Committee Members asked the following questions:

Q: What is the breakdown of the \$750,000? Are there any funds that are being anticipated in the \$750,000?

A: Ms. Lemieux explained that the City has spent a significant amount of funds on overtime over the past two years. In FY18 there was \$1.7 million spent in overtime dollars, in FY19 the City spent approximately \$1.5 million on overtime and this year the City is at approximately \$1.9 million. Ms. Lemieux explained even if the department was fully staffed the City would still expect approximately \$500,000 in overtime costs during the winter months. From January 1st to March 31st there are four employees on all six engines. The rest of the year there are three firefighters on each of the six engines, four firefighters on each of the three ladders and then four firefighters on the rescue truck. Ms. Lemieux explained that these funds include the \$200,000-\$300,000 that the City would have spent even if COVID-19 did not happen.

Q: Does the FY21 Budget reflect the current rate of overtime?

A: Ms. Lemieux explained that overtime has been reduced for the FY21 Budget. The Executive Office and Chief Lucchetti will be working with the union to see how they can control their overtime costs. Chief Lucchetti explained that in the winter months they have an extra firefighter per engine, which adds six firefighters to comply with the minimum number of firefighters on a shift. It has been difficult for the department to main staffing levels because of the timing of the academy and the retirements that occur each year. Chief Lucchetti explained that they do have a great relationship with the union, which will help with reducing the cost of overtime.

Q: Would these funds be used for Retiree Healthcare Insurance if the funds were not needed for overtime for the Fire Department?

A: Ms. Lemieux explained that when the budget is being worked on the administration makes assumptions on how many retirements there will be and what type of plans they will take. Employees pay their share and the City contributes its share out of each department's budget. These funds go into the City's Healthcare Trust Fund, which is what pays all the bills. The City did budget for more expenditures that would be coming out of the Retiree Healthcare Account that did not need to go to the Healthcare Trust Fund. The City did not have as many retirements as anticipated and there are more employees that are Medicare eligible that are retiring.

Q: How many fires are there a year in Newton?

A: Chief Lucchetti explained that fires are down this year. There were approximately 7 - 8 two-alarm fires and there were approximately 16-17 single-alarm fires. The medical calls have increased approximately 10%. The firefighters are all first responder trained and because of where the fire stations are located, they can arrive before the EMTs.

Q: Would the overtime cost decrease if smoke alarms were in every building?

A: Chief Lucchetti explained that code enforcement does contribute to the reduced number of fires. The Fire Department has also been pushing to get sprinklers into the residential area and have been working with the Inspectional Service Department on enforcing the existing codes.

Q: What details of staffing need to be negotiated with the union?

A: Chief Lucchetti explained that this is a part of the collective bargaining agreement. During the winter months there is a requirement to have four firefighters per apparatus. The rest of the year there are three firefighters on each of the six engines, four firefighters on each of the three ladders and then four firefighters on the rescue truck. A firetruck cannot leave the station without meeting these requirements. Ms. Lemieux explained that when there is a fire the City releases at least two pieces of apparatus. If there is a fire the Fire Department would want to have two firefighters in and two firefighters out so if only one apparatus is released that can't be achieved. Chief Lucchetti noted that his preference would be to have four firefighters on each apparatus all year round but that is not possible with the budget of the Fire Department. During the winter months it is more difficult to perform the jobs of a firefighter and that is why extra firefighters are needed.

Committee Members thanked Chief Lucchetti for the work he and his staff do for the City.

Councilor Noel motioned to approve which passed unanimously.

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

Action: **Finance Held 6-0**

Note: The Committee received a request from the Department of Public Works to hold item #277-20. Councilor Kalis motioned to hold which passed unanimously.

#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.

Action: **Finance Approved 6-0**

Note: Chief Financial Officer, Maureen Lemieux presented the request to transfer \$1,500 to correct an error in the FY20 Budget. Ms. Lemieux explained that there was an employee that was moved from Human Resources to Financial Information Systems and there were not enough funds moved to the new department. The budget process with salaries is manual and the City was not able to

move to Munis for payroll which is more automatic for the FY21 budget. The hope is that this error has been corrected in the upcoming budget.

Councilor Noel motioned to approve which passed unanimously.

#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.

Action: Finance Approved 6-0

Note: Chief Financial Officer Maureen Lemieux and Deputy City Solicitor Jeffrey Honig presented the request to appropriate and expend \$420,000 from June 30, 2019 Certified Free Cash for a settlement.

Atty. Honig explained that this case is a result of a lawsuit that was filed with the Middlesex Superior Court under the Massachusetts State Wage Act. This was filed by several of the foremen that work in the Department of Public Works. The foremen are in a separate union than the laborers and the foremen are charged with supervising the laborers in the Public Works Department. As part of their job they set up schedules and organize projects for the laborers to go out and do. The practice for many years was that the foremen would come in an hour before their start time at 7 a.m. to do prep work. Atty. Honig explained that they did not always come in at the same time, the foremen would not always account for this time on their time sheets, and they were not paid for it. The foremen have only recently requested payment from the City.

The issue under the Wage Act is whether or not these employees were entitled to be paid for the time they were coming in before their work day started. There were also certain claims under the collective bargaining agreement that would entitle them to at least straight time and potentially overtime for these hours. Atty. Honig explained that the lawsuit was filed with the Superior Court under the Wage Act instead of the collective bargaining agreement because of a recent decision by the appellate courts. The Wage Act requires that wages need to be paid in a timely matter once they are accrued. The foremen requested that the City pay them 2 ¾ years of back wages at overtime for the hours that they worked. The Wage Act imposes severe penalties on employers that violate the statute. The penalties include treble wages and attorneys' fees.

The City did a fair amount of investigation by going through time sheets and trying to figure out what the City's defense would be. Atty. Honig explained that through this research, the City found that the foremen had been working these hours and that this was an informal practice within the department. This practice has been stopped since November 2018. The Commissioner of Public Works has ordered the foremen not to come in until their start time of 7 a.m.

The claim that was made called for treble overtime wages and attorneys' fees. The damages would cost approximately \$900,000 because of the number of employees filing claims and the amount of

time that has gone by. The foremen were also entitled to pre-judgment interest that was running against the City at 12%. Atty. Honig explained that it made more sense to come to an amicable agreement with the foremen. The agreement that the City has reached is attached.

Ms. Lemieux explained that the City was prepared to go to trial if they could not come to an agreement. The City tried to figure out what they owed these employees over the approximately two-year period. Not all the foremen documented the extra hours they worked, but the City was advised that it would be difficult to use that as a defense.

The City did consider arguments as to whether treble damages and attorneys' fees applied to the City through the Wage Act. But the tougher argument to defend was that the City did not owe them any money at all because the City was not disputing that the work was done. This work was also beneficial for the City. Atty. Honig explained that this was done inadvertently by the Department of Public Works. Once the administration found out about the practice it was taken care of immediately. The City will also be doing an audit of its practices throughout all the departments.

Committee Members asked the following questions:

Q: Is the same amount of work being accomplished, even with the foremen coming in at 7 a.m.?

A: Ms. Lemieux explained she and Atty. Honig will have a better answer for this question in the next week. The practice has been stopped since November 2018 and everything seems to be running smoothly. However, in the new Teamsters contract the heat days have been negotiated out. This means that the employees in that union will be working four ten-hour day work weeks for the summer months. The employees will either work Monday through Thursday or Tuesday through Friday and will begin at 6 a.m. and leave at 4 p.m. The City has not yet reached an agreement in changing the foremen's hours in their contract so currently the foremen are still working 7 a.m. to 3 p.m. Ms. Lemieux explained that she does not know where their contract will land. There have been no complaints with the Teamsters union as of now. Ms. Lemieux explained that they will still follow Occupational Safety and Health Administration (OSHA) guidelines to keep employees safe on hot and humid days.

Q: If the practice was stopped in November 2018, then why is the City settling through a certain date in 2019?

A: Atty. Honig explained that the look back period under the Massachusetts Wage Act is three years. The foremen filed in June 2019, so that would look back to June 2016. The City limited their damages when they stopped the practice in November 2018. The total damages span approximately 2 ¾ years.

Q: Was the extra hour in the morning mandated?

A: Atty. Honig explained that there is some dispute over this. There was no document where the City had required the foremen to come in early. There was a concern among the foremen if they did not

come in early a supervisor could have said something to them. But there is no evidence that they were directed to come in early. The Courts did state the burden does fall on the employer to set the work day and if this practice was permitted or if the City was aware this was happening by the City then it can be argued that the City expected these employees to come in early.

Councilor Noel motioned to approve which passed unanimously.

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

Action: Finance voted No Action Necessary 6-0

Note: Chief Financial Officer, Maureen Lemieux, explained that these funds do not to be moved because the Department of Public Works spent less money this year on snow and ice removal than expected.

Councilor Norton motioned no action necessary which passed unanimously.

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

Note: Ms. Lemieux explained that this again will be a verbal report. There have not been many changes since the last Finance Committee meeting on June 1st. On June 5th, the application for the CARES Act reimbursement was due. The goal is to apply for FEMA reimbursements first. There are categories that will not receive FEMA reimbursements, but the CARES Act allows the City to be reimbursed for those categories. There was \$200,000 worth of staffing cost which include overtime in the Fire Department and there has been approximately \$8,400 for quarantine/isolation cost due to COVID-19. This included the cost of moving the ambulance staff out of the fire stations and the cost of having employees quarantine at the Homewood Suites if needed.

Ms. Lemieux explained that the City has spent approximately \$6,600 on the accelerated telework capacity. This is a category that is not covered by FEMA, but it is covered by the CARES Act.

The City has spent approximately \$60,000 on personal protective equipment (PPE). Ms. Lemieux explained that they have also spent approximately \$85,000 on cleaning and disinfecting supplies on the city side and about \$28,000 on the school side.

Ms. Lemieux explained that she has not applied for reimbursement for any of the money that the School Department has spent and will be discussing with the School Department on what options they have to reimburse these funds.

The City does have the potential to receive \$7.8 million from the CARES Act, which may possibly be able to be used for lost revenue as well as reimbursements. If the money never becomes available for lost revenue, then the City will look towards what the CPA has spent to be able to be reimbursed for those funds. The City is looking to maintain as much flexibility as they can during this time.

Regarding the food banks, the City has spent approximately \$80,000 and the School Department has spent approximately \$75,000. Ms. Lemieux explained that she expects the School Department will be able to be reimbursed for these funds so she has only applied for reimbursement for the city side. These numbers reflect the spending through the end of May. The City is spending about \$10,000 per week on the Grab and Go program. The School Department has sent Ms. Lemieux a report of the funds they have spent every week.

Ms. Lemieux explained that the City is reconfiguring many different office spaces to be able to social distance and the cost of this will be reimbursed through the CARES Act. The Commissioner of Public Buildings was unable to provide the cost of this project at this time. But this will be a large expenditure. The overtime accrued by the Commissioner's staff will also be a large expenditure.

Another large expenditure is the funds being spent on COVID-19 absences. If a salaried employee is unable to work this can't be submitted for reimbursement because the City had budgeted for the person's salary for the year. The City will be reimbursed for the overtime accrued by these employees. In total the City has spent just under \$800,000 on the COVID-19 pandemic. Ms. Lemieux explained that she will continue to look for ways for these funds to be reimbursed.

The Committee adjourned at 8:35 p.m.

Respectfully submitted,

Rebecca Walker Grossman, Chair

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.

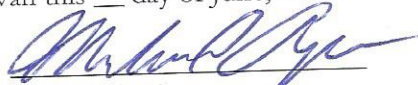
9. LIMITATIONS ON USE OF THE AGREEMENT AS EVIDENCE OF LIABILITY OR WRONGDOING: This Agreement may not be used as evidence in any proceeding of any kind, except a proceeding (a) in which one of the Parties alleges a breach of the terms of this Agreement, or (b) in which one of the Parties elects to use 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 11th day of June, 2020.



Michael Arpino



Perry Cacciola




Chris Casto




Livio Cence




Richard Cincotta




Anthony Dethomasis



Michael Mackay




Michael Ovaska



Jason Pisano



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
TOTAL	280,000.00

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,

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

DEFENDANT CITY OF NEWTON

By its attorney,

Jeffrey A. Honig, (BBO# 563972)
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Fax: (617) 796-1254
jhonig@newtonma.gov

Dated: _____