



## City Council Actions

### In City Council

Monday, March 4, 2019

**Present:** Councilors Albright, Auchincloss, Baker, Brousal-Glaser, Cote, Crossley, Danberg, Downs, Greenberg, Grossman, Kalis, Kelley, Krintzman, Lappin, Leary, Lipof, Markiewicz, Noel, Norton, Rice, Schwartz and Laredo

**Absent:** Councilors Ciccone & Gentile

### **The City Council discussed the following items on Second Call:**

#### Referred to Land Use Committee

**#624-18**

**Review of compliance with the Hancock Estates Special Permit #102-06(12)**

COUNCILORS LAPPIN, LAREDO, GREENBERG, GENTILE, KELLEY, ALBRIGHT, NORTON, CICCONE, LEARY, DANBERG, NOEL, KALIS & GROSSMAN requesting a review by Law, Planning and ISD of the compliance of the current Hancock Estates project with the approved special permit. Questions to be addressed: Are the “dens” legally considered bedrooms? Is the short-term rental guest suite one of the 88 units? What calculations were used to determine habitable space. What calculations were used to determine the percentage of affordable units. Is the project that was built (unit size, bedroom mix, short term rental guest suite, distribution of units, unit square footage, habitable space, crosswalk and ped. light, etc.) the same project the City Council approved? Is CHR in violation of our Inclusionary Zoning Ordinances?

**Land Use Voted No Action Necessary 8-0**

**City Council Voted No Action Necessary Unanimously by Voice Vote**

**Clerk’s Note:** Councilor Lappin placed this item on Second Call as she wanted to make sure that the Council understood that this item was about compliance and that this project is in violation of our ordinances. What came out of the discussion is that the Planning Department has changed a work sheet that it gives to developers. The problems with this project have also informed our inclusionary zoning ordinances. Planning will look more closely as to the layout of bedrooms in the future and whether dens constitute bedrooms. The text of Council Orders will be looked at more closely to make sure that what is discussed and approved in committee ends up in the Council Order.

#### Referred to Public Facilities Committee

**#23-19**

**Authorization to enter into lease negotiations for Solar Phase III project sites**

HER HONOR THE MAYOR requesting authorization to enter into negotiations for the potential lease on 18 municipal and school properties for purposes of third-party

construction, ownership, and operation of on-site renewable solar energy generation from which the City will purchase electric output and/or net metering credits.

Locations:

Oak Hill Middle School Parking Lot	Memorial Spaulding Elementary School Parking Lot
Education Center Parking Lot	Mason Rice Elementary School Parking Lot
Pleasant Street Parking Lot	Fire Station #3 and Headquarters Roof
Zervas Elementary School Roof	FA Day Middle School Roof
Angier Elementary School Gym Roof	Williams Elementary School Roof
Cabot Elementary School Gym Roof	Carr School Roof
Education Center Roof	

**Motion to Reconsider a portion of #23-19 filed by Councilor Gentile on February 20, 2019**

**City Council Denied Reconsideration Unanimously by Voice Vote**

**Clerk's Note:** Councilor Gentile filed for reconsideration of the above components of this docket item, but was unable to attend the meeting. Councilor Baker explained that Councilor Gentile's misgiving was that there was no written opinion from the Law Department relating to the use of the funds received from the solar lease. There is now a written opinion from the Law Department and the docket item need not be reconsidered.

**Referred to Public Facilities Committee**

**#23-19 Authorization to enter into lease negotiations for Solar Phase III project sites**

HER HONOR THE MAYOR requesting authorization to enter into negotiations for the potential lease on 18 municipal and school properties for purposes of third-party construction, ownership, and operation of on-site renewable solar energy generation from which the City will purchase electric output and/or net metering credits.

Newton North High School Parking Lots

- a) Lowell Avenue Parking Lot
- b) Walnut Street Parking Lot

**Reconsider the removal of the general condition requiring that all solar revenue must go to the City unless an amendment to the Council Order is approved by the Council**

**Motion to Reconsider a portion of #23-19 filed by Councilor Cote on February 20, 2019**

**City Council Denied Reconsideration Unanimously by Voice Vote**

**Clerk's Note:** Councilor Cote filed for reconsideration of the above two components because he didn't feel it was clear why the condition was removed. He is now comfortable with no on this reconsideration.

**Referred to Public Facilities Committee**

**#23-19 Authorization to enter into lease negotiations for Solar Phase III project sites**

HER HONOR THE MAYOR requesting authorization to enter into negotiations for the potential lease on 18 municipal and school properties for purposes of third-party construction, ownership, and operation of on-site renewable solar energy generation from which the City will purchase electric output and/or net metering credits.

**Motion to Postpone 2) A) 1 & 2, the Brown Middle School Parking Lots, to March 4, 2019 was Approved Unanimously by Voice Vote.**

**Motion to Postpone 2) H) the Newton Free Parking Lot, to March 4, 2019 was Approved Unanimously by Voice Vote**

**On February 20, 2019, City Council Voted to postpone until March 4, 2019.**

**Council Voted to Postpone to March 18, 2019 14 Yeas, 8 Nays (Councilors Albright, Auchincloss, Crossley, Danberg, Greenberg, Leary, Noel & Norton), 2 Absent (Councilors Ciccone & Gentile)**

**Clerk's Note:** The Chair of the Public Facilities Committee called the Council's attention to the new material found in the Friday Packet for Brown Middle School and Newton Free Library. It was noted that questions were raised regarding the financial deal with the vendor, contract, pricing, etc. and she felt the written responses were quite thorough. She noted that the Library Board of Trustees cannot approve the use of their lot until further engineering work is done. On the question of the 5-58 process, the Council will have to review the expansion and repair of the lot when the plan has been engineered. Additional renderings of the Brown and Library sites have also been provided. The solar consultants also updated the current expected production at each one of the sites. All of the information requested to date is now before the Council.

Councilor Kelley raised concern that the originally posted agenda did not specifically reference the two postponed items and was concerned that sufficient notice of the discussion was not given, was concerned that it could develop into a court case and moved to postpone the items for two weeks.

The Vice President asked for a suspension of the rules to allow the City Clerk to address the discussions he had today with the Law Department regarding the open meeting law around this matter which was approved by voice vote. The Clerk stated that the docket that was in the Packet on Friday had the solar lease docket item listed twice but the specific listing of the postponement of the Newton Free Library site and Brown was not included in that listing. A revised Reports Docket was issued this morning and it was posted on the city's web site. The Law Department has looked at the situation and it was noted that the Open Meeting Law requires that the posting be sufficient enough for people to understand the discussion tonight. The Law Department believes that there was sufficient information for people to understand that these two items would be discussed tonight and if it is decided to move forward, there should not be an issue with Open Meeting Law violation.

Councilor Baker would support the motion and also feels that there should be the opportunity to look at the site in light of the new materials that have been received. Councilor Baker felt it would be helpful to look at the revised plans.

The Chair of Public Facilities felt it was important to note that the School Committee had a special meeting earlier this evening and they voted unanimously in favor of the revised proposals at the Brown Middle School. She suggested that this not be postponed to another date.

Several Councilors were comfortable moving ahead as they wanted to make sure that Brown was done over the summer.

Several Councilors felt that consideration to postpone was a process issue and that if the discussion was challenged, and there was an open meeting law violation found, any actions tonight would have to be redone. It was asked if an open meeting law violation is filed, would that mean contracts couldn't be entered into while it is pending? In response, the potential problem is if the Attorney General's office decides that there has been an open meeting law violation, the action most likely would be nullified and it would have to be redone. It was asked if two weeks would make a significant difference? The Chair of Public Facilities responded that it was hoped to get the contracts and engineering work finished in order to go forward. It was noted that the Library project will need a great deal of time to go through the process. Several Councilors felt it might be safe to postpone for two weeks.

A motion to suspend the rules to hear from Bill Ferguson was made and approved. Mr. Ferguson felt there would be more of a problem with delay at Brown Middle School because of parking problems while school is in session. He would like to move ahead as quickly as possible. Newton Free Library has much work to be done before a canopy is constructed. He asked how long it would take to construct? In response he noted that there is time involved in getting permits prior to construction.

It was noted that several residents and members of the Ward 8 delegation were concerned about some of the siting at Brown.

The Council voted to postpone for two weeks.

**The City Council voted without discussion 22 Yeas, 2 Absent (Councilors Ciccone & Gentile) to Accept the Committee Recommendations on following items:**

**Referred to Land Use Committee**

Tuesday, February 26, 2019

- #26-18(2) Request for an Extension of Time to Exercise Special Permit #26-18**  
SCOTT ROSS petition for an EXTENSION OF TIME to EXERCISE Special Permit Council Order #26-18, creating two attached dwelling units, allowing waivers to the lot area requirements and lot area per unit requirements, to reduce the side setback requirement,

to reduce the lot coverage requirement, to allow a driveway within 10' of a side lot line and to allow parking within 20' of a side lot line at 20 Dale Street/19 Simpson Terrace, Ward 2, Newtonville, on land known as Section 22, Block 14, Lot 03, containing approximately 5,968 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4, 3.2.4, 6.2.3.B.2 of the City of Newton Rev Zoning Ord, 2015.

**Land Use Approved 8-0**

- #130-17(2) Request for an Extension of Time to Exercise Special Permit at 164 Highland Avenue**  
ROBERT AND CINDY LAUGHREA petition for an EXTENSION OF TIME to EXERCISE Special Permit Council Order #130-17 for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish a portion of the rear dwelling, front porch and detached garage and construct a two-story rear addition and attached garage for more than three vehicles and in excess of 700 sq. ft. increasing the FAR to .28 where .27 is allowed and .19 exists at 164 Highland Avenue, Ward 2, on land known as Section 24, Block 12, Lot 20, containing approximately 22,230 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3, 7.4, 3.1.9, 3.4.2.C.1 of the City of Newton Rev Zoning Ord, 2015.

**Land Use Approved 8-0**

- #41-19(2) Extension of Time to Open Public Hearing for Special Permit at 24-26 Elliot St**  
CYPRESS TREE MANAGEMENT, INC agrees to an EXTENSION OF TIME to open the public hearing until MARCH 26, 2019 for Special Permit petition #41-19 for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Council Order #288-18 to allow retail marijuana sales in conjunction with as the approved RMD (Registered Medical Dispensary), to waive the 25% façade transparency requirement, to waive minimum stall dimensions, to waive minimum aisle width for two-way traffic, to waive perimeter screening requirements, to waive interior landscaping requirements and to waive lighting requirements at 24-26 Elliot Street, Ward 5, Newton Highlands, on land known as Section 51 Block 25 Lot 01, containing approximately 25,320 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec 7.3.3, 7.4, 6.10.3.D, 4.4.1, 6.10.3.E.15, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.C.1, 5.1.8.C.2, 5.1.13, 5.1.9.A, 5.1.9.B, 5.1.10.A, 5.1.10 of the City of Newton Rev Zoning Ord, 2017.

**Land Use Approved 8-0**

- #566-18 Petition to allow multi-family dwellings at 424-432 Cherry Street**  
DENNIS CAMERON/CRM MANAGEMENT, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert an existing single-family dwelling to construct a six-unit residential dwelling ~~with~~, to construct a second three-story 34.5' residential dwelling with three units, to allow ground floor units, to allow a reduction in the parking requirements to 1.25 per dwelling unit, to waive minimum stall width requirements, to reduce the minimum aisle width requirements, to waive the minimum driveway width, to waive perimeter landscape screening requirements and to waive lighting requirements in Ward 3, West Newton, at 424-432 Cherry Street, Section 33 Block 11 Lot 2, containing approximately 14,204 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1,

4.1.2.B.3, 4.1.3, 5.1.4.A, 5.1.13, 5.1.8.C, 5.1.8.B.1, 5.1.8.D.1, 5.1.9.A, 5.1.10.A of the City of Newton Rev Zoning Ord, 2017.

**Public Hearing Opened on January 8, 2019 and February 26, 2019**

**Land Use Approved 8-0; Public Hearing Closed February 26, 2019**

**Referred to Zoning & Planning Committee**

Monday, February 25, 2019

**#55-19**

**Reappointment of Kelley Brown to the Planning Board**

HER HONOR THE MAYOR reappointing KELLEY BROWN, 457 Waltham Street, West Newton, as a member of the PLANNING & DEVELOPMENT BOARD for a term to expire February 1, 2024. (60 days: 4/5/19)

**Zoning & Planning Approved 7-0**

**#74-19**

**Reappointment of Daniel Green to the Conservation Commission**

HER HONOR THE MAYOR reappointing DANIEL C. GREEN, 38 Everett Street, Newton Centre, Newton to the CONSERVATION COMMISSION for a term to expire January 1, 2022. (60 days: 4/16/19)

**Zoning & Planning Approved 7-0**

**Referred to Public Facilities Committee**

Wednesday, February 20, 2019

**Referred to Public Facilities and Finance Committees**

**#84-19**

**Approve a \$500,000 for snow and ice removal**

HER HONOR THE MAYOR requesting authorization to transfer the sum of five hundred thousand dollars from the Budget Reserve – Snow and Ice Removal Account to the following accounts:

Rental - Vehicles (0140110-5273).....	\$350,000
Regular Overtime (0140110-513001).....	\$150,000

**Finance Approved 6-0 on 02/25/19**

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

**Motion to suspend the Rules to allow the Chair of Public Facilities to Poll her Committee to amend the amount to \$1,250,000 was Approved by Voice Vote**

**Public Facilities Approved 7-0 as amended to \$1,250,000**

**Referred to Finance Committee**

Monday, February 25, 2019

**#81-19**

**Amend 17-23(d) to include fines for overtime parking violations**

PUBLIC SAFETY & TRANSPORTATION COMMITTEE requesting amendments to Section 17-23(d) of the City of Newton Ordinance by deleting "other, in any other area where parking is permitted for a limited period of time in excess of the time allowed (Sec. 19-166) where it appears in Sec. 17-23(d) under the listing for Sec. 19-9 penalty for parking violations, and insert in its place the following:

Overtime parking in excess of posted time limits (Sec. 19-181):

- a) metered space \$15.00
- b) non-metered time restricted space \$15.00

**Finance Approved 5-0 (Cote not voting)**

**#79-19**

**Mayor's reappointment of Charles Grillo, Jr. as a Constable**

HER HONOR THE MAYOR reappointing CHARLES V. GRILLO, 1011 Washington Street, Newtonville as a Constable for the City of Newton for a term of office to expire January 31, 2022. (60 days: 3/16/19)

**Finance Approved 6-0**

**Referred to Public Facilities and Finance Committees**

**#84-19**

**Approve a \$500,000 for snow and ice removal**

HER HONOR THE MAYOR requesting authorization to transfer the sum of five hundred thousand dollars from the Budget Reserve – Snow and Ice Removal Account to the following accounts:

Rental - Vehicles	
(0140110-5273).....	\$350,000
Regular Overtime	
(0140110-513001).....	\$150,000

**Public Facilities Approved 7-0 on 02/20/19**

**Finance Approved 6-0**

**Motion to suspend the Rules to allow the Vice Chair of Finance to Poll her Committee to amend the amount to \$1,250,000 was Approved by Voice Vote**

**Finance Approved 6-0 as amended to \$1,250,000**

**#80-19**

**Authorize Administration to apply bond premiums to capital project costs**

HER HONOR THE MAYOR requesting that each prior order of the City Council that authorizes the borrowing of money to pay costs of capital projects is hereby supplemented to provide that, in accordance with Chapter 44, Section 20 of the General Laws, as most recently amended by the Municipal Modernization Act, so-called, the

premium received by the City upon the sale of any bonds or notes thereunder, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to pay project costs and the amount authorized to be borrowed for each such project shall be reduced by the amount of any such premium so applied.

**Finance Approved 6-0**

## **Public Hearings were assigned for the following items:**

### ***Public hearing assigned for March 20, 2019***

#### **#94-19 National Grid petition for grant of location in College Road**

NATIONAL GRID petition for a grant of location to install and maintain 115'+/- of 8" main in College Road from the existing 8" gas main in front of #66 College Road in a northerly direction to house #72. The proposed service is part of an MWRA 36" water main replacement project. (Ward 7)

### ***Public Hearing reassigned for March 26, 2019***

#### **#41-19 Petition to amend Council Order #288-18 to allow adult use-sales at 24-26 Elliot St**

CYPRESS TREE MANAGEMENT, INC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Council Order #288-18 to allow retail marijuana sales in conjunction with as the approved RMD (Registered Medical Dispensary), to waive the 25% façade transparency requirement, to waive minimum stall dimensions, to waive minimum aisle width for two-way traffic, to waive perimeter screening requirements, to waive interior landscaping requirements and to waive lighting requirements at 24-26 Elliot Street, Ward 5, Newton Highlands, on land known as Section 51 Block 25 Lot 01, containing approximately 25,320 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec 7.3.3, 7.4, 6.10.3.D, 4.4.1, 6.10.3.E.15, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.C.1, 5.1.8.C.2, 5.1.13, 5.1.9.A, 5.1.9.B, 5.1.10.A, 5.1.10 of the City of Newton Rev Zoning Ord, 2017.

### ***Public Hearing Assigned for March 26, 2019***

#### **#87-19 Special Permit Petition to allow increased FAR at 370 Linwood Avenue**

MATTHEW HAAG AND LAUREN NICHOLS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct an attached two-car garage and second floor master suite, creating an FAR of .63 where .53 is allowed and .43 exists at 370 Linwood Avenue, Ward 2, Newtonville, on land known as Section 21 Block 24 Lot 05, containing approximately 7,219 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref. 7.3.3, 7.4, 3.2.3, 3.2.11 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

### ***Public Hearing Assigned for April 2, 2019***

#### **#88-19 Petition to allow a rear-lot subdivision at 41 Washington Street**

JANE O'CONNOR petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a rear lot subdivision to create two lots, abandon the two-family use in the existing structure and creating a second single-family on the rear lot, extending the existing non-conforming



side setback at 41 Washington Street, Ward 1, Newton, on land known as Section 71 Block 29 Lot 07, containing approximately 25,964 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3, 7.4, 3.5, 3.1.10, 3.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**The following 2 items were filed after the close of the Docket and motions to suspend the rules to accept the items to the Docket and refer them to Committee were approved by voice vote**

**Referred to Finance Committee**

**#51-19(2) Request to transfer \$1.25 million to use unexpended funds for accelerated roads**  
HER HONOR THE MAYOR requesting an amendment to Council Order #51-19 by authorizing the transfer of one million two hundred fifty thousand dollars (\$1,250,000) from the Angier Elementary School Project Account to the Capital Stabilization Account for the Accelerated Roads Program.

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

**#101-19 Authorization to submit an SOI to the MSBA for Countryside School**  
SUPERINTENDENT OF SCHOOLS requesting authorization to submit a Statement of Interest (SOI) – Core Program to the Massachusetts School Building Authority (MSBA) for consideration of funding for a renovation/addition of Countryside Elementary School, designated as the highest priority for a major project after Cabot Elementary School and Lincoln–Eliot Elementary School and Newton Early Childhood Program.

**The City Council voted without discussion 21 Yeas, 1 Nay (Councilor Cote), 2 Absent (Councilors Ciccone & Gentile) to Approve the Committee recommendations on the following item:**

**Referred to Public Facilities and Finance Committees**

**#541-18 Amendments to the Stormwater Use Charge**  
HER HONOR THE MAYOR requesting Chapter 29, Section 120 (a) Stormwater Use Charge of the City of Newton Revised Ordinance, 2017 be amended by deleting the current rate structure and replacing it with the following effective July 1, 2019:

Every owner of property in the city shall pay a charge for use of public main drains and stormwater facilities, which shall be based on the following annual rates. Such charge shall be billed quarterly:

- 1. 1-4 family dwellings \$100.00

2. All other properties: \$0.0425 per square foot of impervious surface area, except that if the square footage charge multiplied by the total impervious area of the parcel equals a sum less than \$150.00, then the annual fee shall be \$150.00.

**Public Facilities Approved as Amended 5-0 on 02/06/19**

**Finance Approved as Amended 5-0 (Cote not voting)**