



Finance Committee Report

City of Newton In City Council

Monday, March 11, 2019

Present: Councilors Gentile (Chair), Ciccone, Cote, Rice, Noel, Grossman, and Lappin

Absent: Councilor Norton

Also present: Councilors Auchincloss, Crossley, and Downs

City staff present: Jim Shaughnessy (Acting Director of Assessing), Brian Davis (Assistant Assessor), Allan Cohen (Commercial Assessor), Liam Hurley (Assistant Superintendent/Chief Administrative and Financial Officer; School Department), Josh Morse (Commissioner of Public Buildings), Alissa Giuliani (City Solicitor), David Koses (Transportation Coordinator), Maureen Lemieux (Chief Financial Officer), and Sue Dzikowski (Comptroller)

#97-19 **Mayor's appointment of James Shaughnessy as Director of Assessing**
HER HONOR THE MAYOR appointing JAMES SHAUGHNESSY, as DIRECTOR OF ASSESSING ADMINISTRATION pursuant to Sec. 3-3 of the City Charter. (30 days: 04/03/19)

Action: **Finance Approved 7-0**

Note: Chief Financial Officer Maureen Lemieux stated that the Mayor is pleased to appoint Jim Shaughnessy as the Director of Assessing. He has worked in the Assessing Department as the Residential Assessor for the past 24 years and has served on the Board of Assessors since then. Mr. Shaughnessy has expert level knowledge in assessing. He brings great leadership skills and a detailed understanding of the City's real property classes and assessing database system, which he developed. Mr. Shaughnessy spoke on his appointment. He loves working for the City of Newton and plans to keep the Assessing Department moving forward and continue to help the citizens of Newton.

Jim Shaughnessy has worked with several of the Committee members, who are excited about the appointment. Several Councilors stated that Mr. Shaughnessy's appointment is well deserved, as he is always responsive and his follow through is amazing. With that, Councilor Ciccone moved approval of the appointment, which carried unanimously.

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.

Programs & Services Approved 6-0 on 03/06/19

Public Facilities Approved 6-0 (Leary not voting) on 03/06/19

Action: **Finance Approved 7-0**

Note: Assistant Superintendent of Schools Liam Hurley and Commissioner of Public Buildings Josh Morse presented the request for authorization to submit a Statement of Interest (SOI) to the Massachusetts School Building Authority (MSBA) for the Countryside Elementary School. The SOI is due no later than April 12, 2019 and requires votes from both the School Committee and City Council to authorize the submittal of the SOI. The School Committee unanimously supported submittal of the SOI on March 4, 2019. The SOI is not a commitment by either the City or the MSBA to move forward with a replacement/renovation/addition project at the Countryside Elementary School.

In the past few years, the City submitted SOIs three times for the Lincoln Eliot Elementary School and Early Childhood Program project, but the project was not accepted into the MSBA's funding cycle. The Administration has decided to move forward on that project using its own funding mechanism. The School Department changed its prioritization of school construction projects in September 2018. The Countryside Elementary School became the top priority after the ongoing Cabot and Lincoln Eliot Elementary School projects given the condition and siting of the school.

The School Department and Administration feel that Countryside Elementary School is a good project for MSBA submittal. The school is built on wetlands and experiences flooding during storms. In addition, more than 50% of the school is modular space. In addition, there is an 800 residential building project currently under review by the City in the Countryside Elementary School district, which could increase enrollment at the school by 70 students. It is on a large site and the school building can be expanded for greater capacity; therefore, the MSBA is likely to give a larger reimbursement for this project.

Franklin Elementary School in West Newton is in similar condition but there are slightly less students enrolled at Franklin this year and the upcoming few years. The Administration stated that Franklin Elementary School is currently the next planned school project with the Ward Elementary following closely behind. The Councilors are aware of the challenges in funding all the major school projects, but some schools are in tough shape and need to be addressed. There are several building improvement projects planned in the near future for many of the elementary schools that will provide much needed upgrades to the school environment. Mr. Hurley provided the Committee with the attached recommended long-range facilities planning timeline.

A demographer will be presenting school enrollment projections during the City Council's School Budget discussion on April 10, 2019. The School Department has begun to look at the impact of the Northland Development on enrollment in the area but will really focus on the enrollment number once the project is permitted.

The proposed SOI submittal to the MSBA is available on the City website by following this link: <http://www.newtonma.gov/civicax/filebank/documents/95723/03-11-9%20Revised%20Finance%20Agenda.pdf> Councilor Lappin moved approval of the submittal, which carried by a vote of seven in favor and none opposed.

Referred to Public Facilities and Finance Committees**#100-19 Request to bond \$1,364,006 for boilers at Bigelow Middle School**

HER HONOR THE MAYOR requesting authorization to appropriate one million three hundred sixty-four thousand six dollars (\$1,364,006) from bonded indebtedness for the purpose of paying costs, including incidental and/or related costs, of replacing the boilers at Bigelow Middle School for which the City may be eligible for a grant from the Massachusetts School Building Authority (MSBA). The funds are to be expended under the direction of the Commissioner of Public Buildings.

Public Facilities Approved 7-0 on 03/06/19

Action: Finance Approved 7-0

Note: Commissioner of Public Buildings Josh Morse explained that this is a request for \$1,364,006 to replace the boilers and related equipment at the Bigelow Middle School. The City submitted a Statement of Interest to the Massachusetts School Building Authority (MSBA) last year and a 32% reimbursement for the project was approved by the MSBA this February. The initial estimate for this project was significantly less but the scope of work was expanded as required by the Massachusetts School Building Authority (MSBA) to qualify for the grant funding. The MSBA requires all equipment in the boiler room to be replaced. The City must authorize the full cost of the project, as required by the MSBA. A breakdown of the required funds was attached to the agenda. The Committee understood the need for the requested funding. Councilor Rice moved approval of the item, which carried unanimously.

Referred to Public Facilities and Finance Committees

#83-19 HER HONOR THE MAYOR requesting amendment to Section 17-3 of the City of Newton Ordinances adopting the Federal Communications Commission's presumptively reasonable application fees for wireless attachments and new pole construction and conduct cost studying in the coming months to document the City's time and expenses regarding these applications.

Public Facilities Approved 6-1-1 (Gentile opposed, Lappin abstaining) on 02/20/19

Action: Finance Approved 5-1-1 a cost analysis of the wireless fee with no change to the \$750 application fee (Noel opposed; Grossman abstaining)

Note: City Solicitor Alissa Giuliani joined the Committee for discussion of this item. She reviewed her memo to Committee, which is attached. The Federal Communications Commission's (FCC) issued an order in January 2019 on wireless facilities deployment, which addresses fees for applications for small cell facilities. It states that fees must be based on a municipality's actual and direct costs for processing an application and only include objectively reasonable costs. The FCC adopted "presumptively reasonable fees" of \$500 for 1-5 applications (batched) for small wireless facilities attaching to existing poles and a \$100 fee for each additional application beyond the first five. The FCC considers "batched" applications to be multiple separate applications filed at the same time, each for one or more sites *or* a single application covering multiple sites. The Law Department, including Telecommunications Attorney Alan Mandl, is recommending that the Council amend the wireless

attachment grant of location fee to the FCC's fee guidelines and conduct an analysis to document the City's time and expenses to process the small cell facility applications.

Ms. Giuliani added that she is hopeful that the FCC will provide further guidance to municipalities including definitions and direction on setting fees. Currently, the FCC is providing enough guidance to suggest that the \$500 fee is the prudent fee for the City to charge. If there are many municipalities throughout the country that are charging fees more than the FCC's recommendation, wireless companies are likely to move towards litigation.

The Committee discussed whether to amend the fee. There was sentiment that the City is vulnerable on individual fees for batch applications when comparing to the FCC's presumptively reasonable fee of \$500 for 1-5 applications and the City's fee of \$3,750 for five applications. It is likely that there is some reduction in cost to the City when multiple applications are filed together. There was question related to whether the City could refund companies for application fees of more than \$500, if the \$500 fee is held up by the courts. Ms. Giuliani responded that the City could provide a refund but that did not guarantee that the City would not face litigation and the costs of litigation.

The Chair of the Public Facilities Committee pointed out that by reducing the fee until the City can fully justify its costs for processing and reviewing the application there is no risk of litigation. The risk of litigation may not be worth the small monetary reward from the higher fee. The City has come a long way from the \$35 fee in effect until this past October. The previous memo that includes an analysis for a \$500 fee per application is unlikely to provide enough analysis to justify the \$500 fee per wireless attachment. The City needs to do an in-depth analysis of the fees. Other communities in the vicinity of Newton, including Boston, have adopted the FCC's recommended fee.

In addition, the \$750 fee could delay wireless companies from applying for grants of location. There are large numbers of wireless dead zones in the City that need to be addressed. Some of these dead zones have an impact on emergency communications. It would be beneficial for the City to have a partnership with wireless companies to address these needs. An application process that agrees with other municipalities and the FCC could help promote a partnership.

It was noted that the Finance Committee approved the current application fee of \$750 based on a memo from the Law Department dated February 14, 2018. The memo states that the cost to the city of processing each application is \$655.50 and recommends an application fee of \$500 per location. At the Finance Committee meeting of September 12, 2018, the Finance Committee learned that the proposed \$500 fee did not include the cost of benefits in the labor rates, which increases the labor costs for each department involved in the processing and review of wireless applications. At that time, the Committee felt that a \$750 fee per application more accurately reflected the actual cost to the City based on increasing the labor rates in the Law Department's memo by 30% to account for benefits, which is common practice when calculating labor costs. The Committee believed that it is appropriate and defensible to include the benefit costs when calculating the labor costs. The Committee was also aware

that the FCC was likely to recommend a \$500 fee for 1-5 applications filed at the same time. The Chair stated that he still feels that the \$750 fee is logical and defensible.

The City can determine whether it is worth going to court if faced with litigation over the fee. The City is not currently facing any litigation because of the \$750 fee and can decide not to enter a legal battle. Ms. Giuliani pointed out that the city may not have choice regarding whether it wants to take part in a legal battle. There may be no choice but to proceed with litigation. The City has received pushback from a company on the \$750 fee, as the FCC has provided guidance on the fee.

Committee members inquired about why it will take six months for the City to do a cost analysis. The City did not receive any small cell wireless applications in 2018 and only received one application in 2017. The City needs applications to do an accurate cost analysis and will need some batch applications to analyze whether there is a cost savings associated with batch applications. The City may not receive enough applications to the analysis within six months.

Councilor Lappin moved approval of a cost analysis of the fee with the \$750 per application fee remaining in effect. Committee supported the motion by a vote of five in favor, one opposed, and one abstention.

Referred to Public Safety & Transportation and Finance Committees

#510-18 **Increase non-resident parking permit fees**
COUNCILORS DOWNS, AUCHINCLOSS, DANBERG, LEARY, MARKIEWICZ, NOEL, AND RICE
requesting an ordinance amendment to increase the non-resident parking permit fee from \$25 to a range which will include a maximum cap, to better cover costs and encourage alternatives to driving in parts of the City where demand is high.

Public Safety Approved 8-0 on 11/07/18

Action: **Approved 7-0 (fees to be set by ordinance w/ recommendation from Traffic Council)**

Note: The Committee previously discussed the above item at its January 28, 2019 meeting. When the item was presented at that meeting, the proposed amendment contained language that gave authority for the Traffic Council to set the non-resident permit parking fee. The consensus of the members of the Finance Committee was that the Council should retain the authority to set the fee. The item was held for the Transportation Coordinator David Koses to work on draft amendment language that provides for a recommendation from the Traffic Council on the appropriate fees for non-resident permits for specific districts and retains the Council's authority in setting the fees.

Mr. Koses, Councilor Downs and Councilor Auchincloss joined the Committee for the discussion of this item. A memo from Mr. Koses and Director of Transportation Jason Sobel was attached to the agenda. The memo included a request to include proposed language that provides a clear definition of what constitutes non-resident when it comes to neighborhood parking permit programs in the ordinances. At the last meeting there was concern that it was not clearly defined to state that a non-resident is considered someone that is not a resident of a specific street within a neighborhood parking

district. The memo also provides a recap of the option to authorize the Traffic Council to set the fee. Mr. Koses pointed out that if the Council chooses this option, people could appeal the fee to the City Council, either through the Public Safety & Transportation Committee or the Finance Committee. The Public Safety & Committee approved this option.

There is also the requested option where the City Council retains the authority to set the fees. There are currently three neighborhood parking permit programs that provide for non-resident parking permits. This option provides that the Traffic Council would make recommendations on any change to fees for the current non-resident parking permit fees and all future non-resident parking permit fees.

The Transportation Division is working on additional parking districts in areas like Newton Centre and Newton Highlands. The value of parking spots in some areas of Newton are considered much higher than the current annual \$25 permit fee and a change to the ordinance would allow higher pricing for those areas of the City and allow flexibility in pricing. Mr. Koses pointed out that Newton South High School students pay \$350 a year for a parking permit to park on campus, where Newton North High School students pay a \$25 fee for parking on various streets as part of the Newton North High School Tiger Parking Program, which seems like a disparity.

Increased fees would better cover costs of the non-resident parking permit program, reflect demand pricing for premium spots, and encourage people to use other modes of transportation. Either option will provide flexibility in the permit pricing. Mr. Koses does not anticipate a large fluctuation in a permit fee for a particular program once set. In addition, he does not foresee an issue with having the Council approve the ordinance amendment.

There is some concern by the docketors that the City Council will be tempted to set the fees lower to please constituents. The thought was to have Traffic Council set the fees creates a more administrative process and gives the Department of Public Works the ability to have more dynamic pricing. It would give the City the opportunity to respond quickly to any change to the parking situation in a neighborhood parking district. It was expected that the Department of Public Works would report changes to non-resident parking permits to the City Council.

It was pointed out that the neighborhood parking permits are overall parking plans and not dynamic parking. In addition, the Traffic Council is not entirely administrative, as there is a councilor and mayoral appointees on the Traffic Council. There is not a compelling argument to have the Traffic Council set the fees. The Council can opt to take a different approach to dynamic parking associated with parking meters. There should not be a great delay in getting non-resident parking permit fees in place for neighborhood permit parking permits if the Traffic Council docketors the request to set a new fee or amend an existing fee as soon as possible.

A motion was made to approve the option to retain authority over setting existing and proposed non-resident parking permit fee by setting the fee by ordinance. The Traffic Council will recommend a fee for the permit to the Council. The motion includes adding a definition for non-resident parking

permit to the ordinances. The Committee members voted to approve the motion. Councilor Noel stated that she is voting in favor of the motion with hesitation.

#343-18 Ordinance amendment to divest of funds from fossil fuel companies

COUNCILOR NORTON proposing an ordinance amendment to divest the City of direct or indirect holdings in fossil fuel companies.

Action: Finance Held 7-0

Note: Councilor Norton was unable to attend the Finance Committee meeting and there are a few questions on the proposed ordinance that are awaiting answers. Therefore, Councilor Ciccone moved hold on the item, which carried unanimously.

#61-19 Rescind the acceptance of Section 22F of MGL Chapter 40

COUNCILOR GENITILE requesting rescission of the acceptance of Section 22F of Mass General Law Chapter 40 which authorizes certain municipal boards and officers to fix reasonable fees for the issuance of certain licenses, permits, or certificates, as provided therein.

Action: Finance Held 7-0

Note: The Chair asked the Committee to hold the item, as he has further work to do to provide additional information on the item. He intends to provide a list to the Committee of all the fees that the City Council has the authority to set. Councilor Ciccone moved hold on the item, which carried unanimously.

#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.

Action: Finance Approved 7-0

Note: This is a housekeeping item. The City Council previously approved the transfer of \$1,250,000 from the Capital Stabilization Account to the Accelerated Roads Program. The plan was always to use the Angier Elementary School Project funds for this project. The Angier Project is closed out and these funds are available. Unfortunately, the original request for the transfer did not include a request to transfer money in the Angier Elementary School Project Account to the Capital Stabilization Account. There are currently not enough funds in the Capital Stabilization Account to transfer the full amount of approved funds to the Accelerated Road Program. The approval of the above docket request will provide the necessary funds for the transfer.

There was an e-mail from a constituent stating that this money was originally earmarked for the Angier School area, therefore, the funds should be used for improvements around the Angier School.

Although it is not in close proximity to Angier Elementary School, there are traffic and roadway improvements in the development process for the area around Zervas Elementary School to address the concerns of the Waban neighborhood. Ms. Lemieux explained that the City used some operating override funds to start the Angier project. These funds will essentially reimburse the general override fund and go towards one of the stated purposes for general override funds. Ms. Lemieux has kept a careful accounting of both the debt exclusion and general override funds. The Angier project was funded through a debt exclusion override. The project came in under the estimated \$27.5 million. The City bonded approximately \$1.2 million less than anticipated, which reduces the payback for citizens.

The transfer of the funds will allow the Administration to put together the funding for the Fiscal Year 2020 Accelerated Roads Program. The City needs to plan ahead to keep this program on track. If the transfer is not approved the City will likely have to do \$8.2 million in road work instead of \$9.5 Million. It was pointed out that the City should incorporate the road funding into the budget going forward. With that, a motion for approval was made and carried unanimously.

#98-19 Request to amend the FY 19 Budget Council Order (#250-18)

HER HONOR THE MAYOR requesting amendments to Page 9 of Council Order #250-18, the FY 19 Budget by authorizing the following changes:

- Amend the Sewer Fund Benefits column by decreasing Sewer Maintenance & operation by \$188,067 and increasing Retirement by \$188,067.
- Amend the Water Fund Benefits column by decreasing Water Maintenance & Operation by \$302,283 and increasing Retirement by \$302,283.

Action: Finance Approved 7-0

Note: Chief Financial Officer Maureen Lemieux presented the request to amend the Fiscal Year 2019 Budget Order. There are corrections needed in the sewer and water fund benefits columns, as listed in the above item. Councilor Noel moved approval of the item, which carried by a vote of seven in favor and none opposed.

#99-19 Request to re-appropriate unspent bond funds

HER HONOR THE MAYOR requesting re-appropriation of unspent bond funds for completed projects to new projects with loan terms of an equal or longer period as follows:

From Council Order	Project	Amount
#211-13	Lower Falls Community Center Improve	\$4,400
#286-15	NNHS Baseball Backstop	\$71,600
#191-16	NSHS Modulars	\$2,000
#219-15	NSHS Tennis Courts	\$108,081
To Council Order	Project	Amount
#494-18	Carr School Air Conditioning Units	\$186,081

From Council Order	Project	Amount
#52-13	Fire Station #10 Improvements	\$268,500
#470-14	City Hall War Memorial Elevator	\$38,500
To Council Order	Project	Amount
#511-18	Crafts Street Garage Roof	\$307,000
From Council Order	Project	Amount
#467-14	FA Day Water Heater Replacement	\$25,000
#220-15	DPW Snow Equipment	\$4,105
#274-16	2017 DPW Construction Equipment	\$3
#273-16	2017 DPW Street Sweeper	\$11
#307-16	2017 Fire Pumper Truck	\$95,800
To Council Order	Project	Amount
#537-18	2 6-Wheel Dump Trucks	\$124,919

Action: Finance Approved 7-0

Note: Chief Financial Officer Maureen Lemieux presented the request to re-appropriate \$618,000 in unspent bond funds from completed capital projects to new bonded capital projects. The transfer will reduce the bond for each of the new capital projects. It is a legal use of unspent bond funds. Ms. Lemieux made sure that funds were being re-appropriated to projects with the same loan terms. Councilor Lappin moved approval, which carried unanimously.

The Committee adjourned at 9:32 PM and all other items before the Committee were held without discussion. Draft Council Orders for the above items that are recommended for City Council action are attached.

Respectfully submitted,

Leonard J. Gentile, Chair

CITY OF NEWTON

IN CITY COUNCIL

2019

ORDERED:

That, in accordance with the recommendation of Her Honor the Mayor and with the confirmation of the Honorable City Council, be it known that JAMES SHAUGHNESSY is hereby appointed as DIRECTOR of ASSESSING ADMINISTRATION effective March 18, 2019.

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON, City Clerk

CITY OF NEWTON

IN CITY COUNCIL

March 19, 2019

Resolution to the Newton Superintendent of Schools Authorizing the Superintendent to Submit to the Massachusetts School Building Authority a Statement of Interest for the Countryside Elementary School by April 12, 2019

BE IT RESOLVED: Having convened in an open meeting on March 18, 2019 prior to the closing date, the City Council of Newton, in accordance with its charter, by-laws, and ordinances, has voted to authorize the Superintendent to submit to the Massachusetts School Building Authority the Statement of Interest Form dated April 12, 2019 for the Countryside Elementary School located at 191 Dedham Street which describes and explains the following deficiencies and the priority category(s) for which an application may be submitted to the Massachusetts School Building Authority in the future for: replacement, renovation or modernization of school facility systems, such as roofs, windows, boilers, heating and ventilation systems, to increase energy conservation and decrease energy related costs in a school facility; and the replacement of or addition to obsolete buildings in order to provide for a full range of programs consistent with state and approved local requirements; and hereby further specifically acknowledges that by submitting this Statement of Interest Form, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the Newton School District to filing an application for funding with the Massachusetts School Building Authority.

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON, City Clerk

CITY OF NEWTON

IN IN CITY COUNCIL

2019

ORDERED:

That for the purpose of paying costs of paying the costs of replacing the boilers at Bieglow Middle School, 42 Vernon Street, Newton, MA 02458, and any and all other costs associated therewith, there be and hereby is appropriated and authorized to be borrowed under and pursuant to Chapter 44, Section 7(1) of the Massachusetts General Laws, as amended and supplemented or pursuant to any other enabling authority, the sum of one million three hundred sixty-four thousand six dollars (\$1,364,006)

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) RUTHANNE FULLER
Mayor

Date: _____



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Office of the Mayor

#83-19

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

Honorable City Councilors,

I write to request that your Honorable Council amend Sec. 17-3 of the City Code to adopt the FCC's presumptively reasonable application fees for wireless attachments and new pole construction and to conduct cost studies in the coming months to document the City's time and expenses regarding these applications.

Attached is a background and recommendation memo from the City Solicitor. The memo details the current wireless attachment fees, the FCC's order limiting fees, xxxx

Thank you for your consideration of this matter.

Sincerely,

Mayor Ruthanne Fuller

February 13, 2019

RECEIVED
Newton City Clerk
2019 FEB 13 PM 3:10
Ruthanne Fuller, ONI
Newton, MA 02459

**CITY OF NEWTON
LAW DEPARTMENT**

INTEROFFICE MEMORANDUM

To: Deborah Crossley, Chair - Public Facilities Committee
Leonard Gentile, Chair - Finance Committee

cc: Maureen Lemieux - Chief Financial Officer
Jonathan Yeo - Chief Operating Officer

From: Alissa Giuliani - City Solicitor

Date: February 13, 2019

Re: Wireless Grant of Location Application Fees

The Law Department provides its recommendations to the City Council regarding the current wireless grant of location application fee under City Code Sec. 17-3.

The Law Department recommends that the City Council (1) amend Sec. 17-3 of the City Code to adopt the FCC's presumptively reasonable application fees for wireless attachments to existing poles and for construction of new poles for wireless purposes and (2) conduct cost studies in the coming months to document the City's time and expenses regarding these applications.

Current Wireless Grant of Location Application Fee

On September 17, 2018, the City Council amended Sec. 17-3 of the City Code to establish a wireless grant of location application fee of \$750 per pole location. This charge was based on two components: (1) \$500 in labor costs, exclusive of any costs based on loading factors (based on a wireless working group cost study); and (2) \$250 intended to capture costs associated with loading factors (the Law Department has not seen any documentation in support of the cost of loading factors). We understand that the Finance Committee regards the \$750 fee per location fee as conservative, i.e., below the City's actual costs.

Federal Communications Commission Order Limiting Small Cell Application Fees

On September 27, 2018, just a few days after the City Council amendment, the Federal Communications Commission ("FCC") adopted an Order in which it created guidelines for municipal wireless application fees for small cell installations located within the public ways:

- The fee must be a reasonable approximation of the municipality's actual and direct costs
- The fee can only include objectively reasonable costs

- The fee can be no higher than the fees charged to similarly-situated competitors in similar situations; and
- The fees must be publicly disclosed

The FCC did not mandate any specific accounting methods for documenting actual and direct costs. The FCC did not expressly determine whether “actual and direct costs” are limited to labor hours x labor rates plus disbursements or whether they may include labor-related overheads, such as fringe benefits, and additional costs such as common overheads, e.g., administrative costs.

The FCC adopted the following “presumptively reasonable fees” (fees not prohibited under federal law) as benchmarks:

- A \$500 application fee that applies to 1-5 small wireless facilities (a \$500 fee that applies to 1 location and covers up to 5 locations) attached to existing poles
- A \$100 fee for each small wireless facility in excess of 5 attached to existing poles
- A \$1000 application fee for permission to erect a new pole for wireless attachments
- The FCC allows a municipality to charge *higher* application fees *if* it can satisfy the 4 requirements listed above: (1) the fee must be a reasonable approximation of the municipality’s actual and direct costs; (2) the fee can only include objectively reasonable costs; (3) the fee can be no higher than the fees charged to similarly-situated competitors in similar situations; and (4) the fees must be publicly disclosed.

The FCC’s Order became effective as of January 14, 2019.

The Current City Fees Are Not In Line With the FCC’s “Presumptively Reasonable” Fees

The current application fee in the City of Newton (1) exceeds the FCC’s presumptively reasonable fee for attachments to existing poles and (2) appears to be less than the presumptively reasonable fee for new pole applications.

The City’s \$750 fee per location for wireless attachments to existing poles is greater than the FCC’s “presumptively reasonable” application fee:

	<u>City</u>	<u>FCC</u>
1 location:	\$750	\$500
2 locations:	\$1500	\$500
3 locations:	\$2250	\$500
4 locations:	\$3000	\$500
5 locations:	\$3750	\$500
6 locations:	\$4500	\$600

These fees are not currently supported by documentation of the City’s actual and direct costs and a demonstration that its costs are objectively reasonable costs.

The City’s \$750 fee for a new pole application per location is less than the FCC’s “presumptively reasonable” application fee of \$1000.

City Council Options

The City Council has 3 primary options:

1. Amend Sec. 17-3 of the City Code to track the FCC's presumptively reasonable small wireless application fees and conduct a more thoroughly documented analysis of the City's actual and direct costs, based on a review of inputs and assumptions
2. Amend Sec. 17-3 of the City Code to track the FCC's presumptively reasonable small wireless application fees and conduct no further cost analysis
3. Take no action regarding the currently effective \$750 application fee per location and conduct no further cost analysis

Law Department Recommendations

The Law Department recommends that the City Council pursue Option 1 above, namely (1) amend Sec. 17-3 of the City Code to adopt the FCC's presumptively reasonable application fees for attachments to existing poles and for construction of new poles and (2) and conduct updated cost studies regarding these applications.

Our recommendation takes into account the following considerations:

- Service Quality and Public Safety Considerations: Two expected applicants have expressed serious reservations about the existing application fee; the ripple effect of accepting fees above the FCC's presumptively reasonable fees exposes these parties to the risk of higher, non-cost based fees in Newton and other communities; an applicant may decide not to proceed with a planned attachment, such as one moving forward in Waban near the Zervas School that is needed to improve service quality and public safety.
- Risks and Costs of Litigation: Adoption of the FCC's presumptively reasonable fees limits the City's exposure to the risks and costs of litigation. If the City does not do so, an applicant may decide to challenge the City's fee as inconsistent with current FCC standards. The costs of defending such a challenge could be substantial, including retention of expert witnesses or special counsel to defend the cost basis for its fee. It is possible that the City's cost analysis performed to derive \$500 labor costs may not be sufficient under the FCC's guidelines. The City would be subject to discovery (interrogatories, requests for production of documents, depositions) regarding the basis for the \$500 labor costs. The incremental \$250 also would be subject to discovery (at this time, the Law Department is unaware of cost inputs, assumptions and calculations which support the increase in the application fee amount to cover loading factors and it does not know what specific loading factors were taken into account). Moreover, FCC guidelines do not expressly address

whether loaded labor rates fall under “actual and direct cost” so defending fees based on such costs may pose even more challenging and costly.

In addition, the time involved in such litigation is likely to be substantial. Critical work will likely force a long delay, work that has public safety implications as cellular service quality (e.g., adequate coverage and capacity) will continue to be spotty.

A further litigation risk exists if the actual handling of applications is different than the handling assumed when the \$500 labor cost estimate was derived. The \$500 labor cost relied upon labor time estimates for a number of departments that were expected to play a role in the review of applications for completeness and compliance with the City Council’s standards. At present, it does not appear that the application review process will be consistent with the inputs and assumptions used to derive the \$500 labor cost. DPW has determined that it can effectively review the applications in a form that is more streamlined than originally discussed. This issue can be discussed further with DPW.

- Batch Application Issues: The FCC has required municipalities to accept “batch” applications; the City declined to allow batch applications. The City has not yet conducted a specific cost study regarding the processing of batch applications or a group of separate applications for each location.
- Ability to Increase the Application fee for New Poles: Amending Sec. 17-3 would allow the City to increase the application fee for a new pole primarily used for wireless communications (an amendment would enable the City to clarify what fee applies where the attachment requires the replacement of an existing pole).
- Benefits of Reviewing the Cost Support for the Application Fee: A review of the cost basis for the application fee would allow the City to evaluate it based upon any criteria that it applies in determining all cost-based City fees. This review also would enable the City to fully document and demonstrate that the fee is a reasonable approximation of the City’s costs and that only objectively reasonable costs are factored into the fees. In other words, once we document our costs, we will be able to charge the fee in the future that meets the FCC requirements.
- The Additional Revenue Derived from the Existing Fee does not Offset the Significant Drawbacks Associated with Taking No Action: The potential costs associated with taking no action are not offset by the potential revenue derived by the existing fee. Moreover, taking time to improve upon the cost support for application fees may result in defensible fees which are above the FCC’s currently established presumptively reasonable levels.

We would be glad to discuss our recommendations and answer any questions. We also would be glad to provide you with an excerpt from the FCC’s September 27, 2018 Order relating to municipal fees.

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO. B-

4, 2019

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Chapter 19. MOTOR VEHICLES AND TRAFFIC.** and **Chapter 17. FEES FOR LICENSING AND PERMITS; AND CIVIL FINES GENERALLY** as follows:

- 1. **DELETE** the first sentence of sentence of section 19-202(b)(3)a) and **INSERT** in place thereof the following sentence: A limited number of parking stickers or permits may be made available to non-residents of a particular street within a neighborhood parking district in accordance with such rules and regulations for that district.
- 2. **DELETE** section 19-202(b)(3)f) in its entirety and **INSERT** in place thereof the following: The cost of non-resident parking stickers or permits shall be determined by the City Council and shall be listed in Chapter 17.
- 3. **DELETE** section 17-3(j) in its entirety
- 4. **INSERT** a new section 17-13(j) as follows:

(j) Neighborhood district non-resident permits (Sec. 19-202(2)(3))

Newton North High School Tiger Parking Permits.....	\$25.00
Auburndale Village Parking District	\$25.00
Newtonville Village Parking District.....	\$25.00

Approved as to legal form and character

CITY OF NEWTON

IN IN CITY COUNCIL

2019

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Leonard J. Gentile, Council Order #51-19(2) is hereby amended to include a transfer of one million two hundred fifty thousand dollars (\$1,250,000) from the Angier elementary School Project Account to the Capital Stabilization Account to supplement funding for the Accelerated Roads Program, as follows:

From:	Angier School Project (32C1-593039)	\$1,250,000
To:	Capital Stabilization Fund (39-49703039).....	\$1,250,000

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) RUTHANNE FULLER
Mayor

Date: _____

CITY OF NEWTON

IN IN CITY COUNCIL

2019

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Leonard J. Gentile, Council Order #250-18 be and is hereby amended. as follows:

- Amend the Sewer Fund Benefits column by decreasing Sewer Maintenance & operation by \$188,067 and increasing Retirement by \$188,067.
- Amend the Water Fund Benefits column by decreasing Water Maintenance & Operation by \$302,283 and increasing Retirement by \$302,283.

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) RUTHANNE FULLER
Mayor

Date: _____

CITY OF NEWTONIN CITY COUNCIL

2019

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Leonard J. Gentile, in accordance with Massachusetts General Law Chapter 44, Section 20, the sum of six hundred eighteen thousand dollars (\$618,000) to be appropriated from completed capital project accounts to new capital project accounts as detailed below, be and is hereby appropriated, granted, and expenditure authorized.

#99-19

Request to re-appropriate unspent bond funds

HER HONOR THE MAYOR requesting re-appropriation of unspent bond funds for completed projects to new projects with loan terms of an equal or longer period as follows:

From Council Order	Project	Amount
#211-13	Lower Falls Community Center Improve	\$4,400
#286-15	NNHS Baseball Backstop	\$71,600
#191-16	NSHS Modulars	\$2,000
#219-15	NSHS Tennis Courts	\$108,081
To Council Order	Project	Amount
#494-18	Carr School Air Conditioning Units	\$186,081
From Council Order	Project	Amount
#52-13	Fire Station #10 Improvements	\$268,500
#470-14	City Hall War Memorial Elevator	\$38,500
To Council Order	Project	Amount
#511-18	Crafts Street Garage Roof	\$307,000
From Council Order	Project	Amount
#467-14	FA Day Water Heater Replacement	\$25,000
#220-15	DPW Snow Equipment	\$4,105
#274-16	2017 DPW Construction Equipment	\$3
#273-16	2017 DPW Street Sweeper	\$11

#307-16
To Council Order
#537-18

2017 Fire Pumper Truck
Project
2 6-Wheel Dump Trucks

\$95,800
Amount
\$124,919

Under Suspension of Rules
Readings Waived and Approved