



Public Facilities Committee Agenda

City of Newton **In City Council**

Wednesday, November 9, 2016

7:00 PM
Room 204

Items Scheduled for Discussion:

Waneta Trabert, our new Recycling/Environmental Manager will provide an update on the status of waste and recycling programs and effectiveness across the city, improvements that are in the works and future plans. A full report will be issued at years end.

#12-16 Discussion with the DPW regarding the City's recycling and solid waste programs
COUNCILOR LEARY, NORTON, KALIS, HESS-MAHAN, ALBRIGHT, AND CROSSLEY
requesting an update from and discussion with the Department of Public Works and the Solid Waste Commission on the current status of Newton's solid waste management and recycling program operations and performance objectives, future goals and objectives, staffing, program challenges, and survey data due to be submitted to the Department of Environmental Protection. [12/28/15 @ 8:44 AM]

***Chair's note:** There will be an update from the subcommittee on Wireless Attachments to inform the committee of governing regulations ahead of resuming several petitions at our December meeting. Please review the memo from Alan Mandl and attached documents (at least the first two) to prepare for this discussion:*

Referred to Public Safety & Transportation, Public Facilities and Finance Committees

#335-16 Request for Ordinance amendments to require removal of snow from sidewalks
COUNCILOR DANBERG requesting that §26-8 through §26-9 and §20-21 of the City of Newton Rev. Ords., 2012, be amended to establish criteria and provisions for requiring removal of snow in all districts by property owners, occupants, and property managers from sidewalks abutting their property and to review and amend enforcement

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

provisions including structure of fines for snow removal violations. [09/27/16 @ 11:36 AM]

Referred to Public Facilities and Finance Committees

- #386-16** **MWRA loan financing for homeowners to replace lead service lines**
COUNCILORS CROSSLEY AND GENTILE proposing to establish policies and procedures for the use of approved Massachusetts Water Resource Authority (MWRA) no interest loan financing to encourage homeowners to participate in the lead service line replacement program. [10/26/16 @ 3:12 PM]

Referred to Public Facilities and Finance Committees

- #385-16** **Discussion about the Community Solar Share Program**
PUBLIC FACILITIES COMMITTEE requesting discussion with the Administration and Public Buildings Department about the Community Solar Share Program, which intends to provide credits resulting from solar power generated at 70 Elliot Street to qualifying low income residents. [10/26/16 @ 4:20 PM]

Referred to Public Facilities and Finance Committees

- #384-16** **Appropriate \$71,000 to build an observation deck on the greenway**
HIS HONOR THE MAYOR requesting authorization to appropriate and expend seventy-one thousand dollars (\$71,000) from Free Cash for the purpose of construction an observation on the greenway walking corridor. [10/31/16 @ 2:05 PM]

Referred to Programs & Services, Public Facilities and Finance Committees

- #387-16** **Appropriate \$250,000 for renovation of 1st Floor of the Ed Center**
HIS HONOR THE MAYOR requesting authorization to appropriate and expend two hundred fifty thousand dollars (\$250,000) from the Override Capital Stabilization Fund for the purpose of renovating the space on the 1st floor of the Ed Center which has been vacated by the relocation of the Pre-K Program to the Aquinas site to house the Central High School Program, additional professional development meeting space, and general office space. [10/31/16 @ 2:05 PM]

Chairman's Note: It is the Chairman's intention to entertain a motion for No Action Necessary on the following item:

Referred to Public Facilities and Finance Committees

- #334-16** **Request to connect Walsingham Street to City sewer system**

COUNCILORS GENTILE, SANGIOLO, AND HARNEY, on behalf of the residents of Walsingham Street, requesting the necessary approvals to connect Walsingham Street to the City sewer system. [09/22/16 @ 11:15 AM]

Items Not Scheduled for Discussion at this Meeting:

Referred to Public Facilities Committee

- #317-16 Discussion with Double Poles Working Group**
COUNCILOR LAREDO requesting a discussion with the Double Poles Working Group to receive an update on the work of the group and the status of double poles.
[07/11/2016 @ 12:44 PM]

Referred to Finance and Appropriate Committees

- #359-16 Submittal of the FY 2018 to FY 2021 Capital Improvement Plan**
HIS HONOR THE MAYOR submitting the Fiscal Years 2018 to 2022 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/11/16 @ 11:28 AM]

Referred to Programs & Services and Public Facilities Committees

- #344-16 Discussion regarding oversight of all city/school buildings to improve efficiencies**
COUNCILOR LAPPIN requesting a discussion regarding the Public Buildings Department overseeing all public buildings, including School Department facilities, to improve efficiencies. [10/07/16 @ 10:47 AM]

Referred to Programs & Services, Public Facilities and Finance Committees

- #175-16 Authorization to enter into a settlement agreement with National Grid.**
HIS HONOR THE MAYOR requesting authorization for the City to enter into a settlement agreement with Boston Gas Company d/b/a National Grid. [04/25/16 @ 6:52 PM]
- #200-15 Update on the strategic plan for street and sidewalk improvements**
ALD. LAREDO requesting that the Department of Public Works provide an update on the creation of a strategic plan for the improvement of streets and sidewalks in the City. [08/13/15 @ 11:20 AM]

Referred to Programs & Services and Public Facilities Committees

- #141-15 Discussion on tracking and improving the condition of the gas utility infrastructure**
ALD. BROUSAL-GLASER, SANGIOLO, HESS-MAHAN, COTE, NORTON AND ALBRIGHT requesting a discussion with the Director of Urban Forestry, a representative of the Department of Public Works and a representative of the Law Department about tracking and improving the condition of the gas utility infrastructure in Newton, new

state statutes governing infrastructure repairs, coordination of increased repair work with city operations, the status of negotiations with National Grid to compensate for tree deaths resulting from gas leaks, and the possibility of creating a utilities working group to monitor progress on these and related issues. [05/26/15 @ 2:52 PM]

#206-16 Resolution requesting the administration hire a composting expert
COUNCILOR LEARY requesting a Resolution to the Mayor requesting that he consider hiring a composting expert: either a consultant, a composting operator, or the Mass DEP to review the Rumford Avenue Composting site. [05/31/16 @ 4:52 PM]

#207-16 Review of the management of the Rumford Avenue site
COUNCILOR LEARY requesting the Executive Office and the Commissioner of Public Works review the management of the entire Rumford Avenue site with the input of the Solid Waste Commission and present their findings to the Public Facilities Committee within a 3 to 6 month timeframe. [05/31/16 @ 4:52 PM]

Referred to Public Safety & Transportation and Public Facilities Committees

#208-16 Update on fire prevention at the compost operation at Rumford Avenue Landfill
COUNCILOR LEARY requesting the Executive Office, the Fire Department, and the Department of Public Works provide an update on fire safety issues at the compost operation at the Rumford Avenue Landfill including details about who is currently managing the site for fires. [05/31/16 @ 4:52 PM]

#163-16 Request for discussion with DPW to consider amend Ordinance for street reconstruction
COUNCILORS CROSSLEY, LAREDO & LAPPIN requesting a discussion with the Commissioner of Public Works, to review city policy and/or ordinances governing repairs to city streets within a period of years after full reclamation and/or milling and repaving of said streets, and to consider strengthening the requirements for repairs so as to protect the public investment in said streets.

Referred to Programs & Services and Public Facilities Committees

#27-16 Updates from the Administration on the renovations at the Aquinas site
PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES requesting that the School Department and/or Executive Department provide updates on removal of asbestos and other toxic materials that were identified at the Aquinas site, the scope and timing of window replacement in particular, and renovations that may be necessary to facilitate short and long-term plans for uses and operations at the site. [01/10/16 @ 1:14 PM]

#26-16 Proposed amendments to Sec. 5-54 through 5-58 of the Ordinances

COUNCILOR CROSSLEY, ALBRIGHT, HARNEY AND SANGIOLO requesting revisions to Sections 5-54 through 5-58 of the City of Newton Ordinances to clarify the City Council's role and decision-making process with respect to design review, funding, and budget oversight during the construction process of municipal capital building projects; in particular, to better align City Council decisions with typical steps in the design development process, and where applicable, with Massachusetts School Building Authority (MSBA) and other state requirements. [01/11/16 @ 4:53 PM]

#313-15 Request for an update on the Second Water Meter Program

ALD. LAPPIN requesting an update from the Department of Public Works on the second water meter program including: the progress of the inspection and programming of the approximately 900 new outdoor irrigation meters provided by the City to property owners that have yet to be inspected and/or programmed by the City; the process going forward for the issuance, inspection, programming and tracking of second meters; and the notification of residents who already had second meters regarding the process for registering their meters. 10/26/15 @ 7:15 PM]

#237-15 Update on mitigation funds from Special Permits in Newton Centre

ALD. CROSSLEY, LAREDO, and SCHWARTZ requesting an update on funds accrued from voluntary contributions from Special Permits in Newton Centre, which can be made available to complete a safe pedestrian crossing at 714-724 Beacon Street via Special Permit Board Order #1-15 and conditions noted therein. 09/14/15 @ 10:40 AM]

Referred to Public Facilities and Finance Committees

#223-15 Discussion on the process of licensing the use of city buildings

ALD. LAREDO requesting a discussion of the process of licensing the current and future use of city building, including: (a) how licensees may request the use of city buildings; (b) the process for determining which licensees will get the use of city buildings; (c) how the fees for the use of city buildings are set; and (d) how the current process compares to the process for permitting the use of school buildings. [08/13/15 @ 11:20 AM]

Referred to Programs & Services and Public Facilities Committees

#201-15 Discussion regarding the condition of the Kennard Estate building

ALD. SANGIOLO requesting a discussion with the Commissioner of Public Buildings, the Commissioner of Parks and Recreation, and the Executive Department regarding the condition of the property located at 246 Dudley Road (Kennard Estate) and how much, if any, repairs and upgrades will be needed as the City relocates the Parks and Recreation Department to that location. [09/01/15 @ 4:00 PM].

Referred to Public Facilities and Finance Committees

#191-16 Funding to relocate the Zervas modulars to NSHS and Brown Middle School

HIS HONOR THE MAYOR requesting authorization to transfer the sum of five hundred thousand dollars (\$500,000) to the Public Buildings Department for the purpose of funding the relocation modular classrooms from the Zervas Elementary School to Newton South High School and Brown Middle School from the following accounts:

<u>Department</u>	<u>Account</u>	<u>Amount</u>
Executive Office	Full-time Salaries	\$40,000
Treasury	Debt Service (010772-582A48)	\$403,784
Treasury	Debt Service (010772-582A49)	\$21,216
Financial Info Systems	Full-time Salaries	\$35,000

[05/09/16 @ 4:59 PM]

#100-15 Discussion on pursuing municipal aggregation of energy purchasing

ALD. NORTON, SANGIOLO, LEARY, AND ALBRIGHT requesting that the Administration pursue municipal aggregation of energy purchasing with the goals of reducing and/or stabilizing electricity costs for resident, businesses and the City; and requiring the purchase of Class 1 RECs at some percentage above the level required by the Massachusetts Renewable Portfolio Standard. [04/06/15 @ 9:12 AM]

#83-15 Discussion and update on energy items

ALD. CROSSLEY, GENTILE, & ALBRIGHT requesting a discussion and update from the Administration on the following energy related items: status of municipal power purchasing contracts for gas and electricity; status of the Power Purchase Agreement including solar PV rooftop installations, power offset (cost benefit) to date and review of potential future projects; and an update on municipal energy consumption including the recent Green Communities report filed with the Department of Energy Resources. [03/26/15 @ 9:19 AM]

Referred to Public Facil, Programs & Serv, and Public Safety & Trans Committees

#46-15 Discussion of parking options for school and municipal parking lots

ALD. JOHNSON & CICCONE, requesting a discussion with the Commissioner of Department of Public Works and the School Department to determine and discuss parking options including use of school properties based on the current municipal parking lot programs including the issuance of permits. [02/11/15 @ 1:35 PM]

#328-14 Review of double utility poles

ALD. ALBRIGHT, DANBERG, & LAREDO requesting a review of double poles in Newton including a random sampling of ten double poles on the north side and ten double poles on the south side of Newton to determine which utility is holding up the removal of double poles. [08/19/14 @ 9:16 AM]

#189-14 Update on the Zervas School construction project

PUBLIC FACILITIES COMMITTEE requesting periodic updates on the Zervas Elementary School Project. [04/17/14 @ 10:48 PM]

#188-14 Update on the Cabot School construction project

PUBLIC FACILITIES COMMITTEE requesting periodic updates on the Cabot Elementary School Project. [04/17/14 @ 10:48 PM]

Referred to Programs & Services and Public Facilities Committees

#119-14 Discussion with ISD on plans to address City non-compliance with ADA standards

ALD. ALBRIGHT AND CROSSLEY requesting discussion with the Inspectional Services Department to explain the development of short and long term plans to identify and correct buildings, sidewalks, playgrounds, etc...that do not conform to American Disability Act (ADA) standards. The discussion should include information on how improvements will be incorporated into the Capital Improvement Plan or if less than \$75,000 into a comprehensive budget plan to correct ADA deficiencies. [03/12/14 @ 4:18 PM]

#131-13 Updates and discussion on the sewer, water and storm water systems

ALD. CROSSLEY, FULLER, SALVUCCI, JOHNSON, CICCONE requesting periodic updates and discussion, at the discretion of the members of the Public Facilities Committee or the Commissioner of Public Works, on the condition functioning, operations and management of all elements of the City sewer, water and storm water systems including the following:

- Water meters
- Implementation of the ten project area strategic plan to remove infiltration in the City sewer system
- Implementation of the long range strategic plan to repair and replace City water mains, especially to correct for fire flow
- Status of the City's Private Inflow Removal Program to resolve and disconnect illegal storm water connections to the City sewer system
- Current billing practices
- Rates analyses needed to facilitate an informed comparison of billing options to include the following options either alone or in combination: seasonal rates, second meters, tiered rates, frequency of billing, low income credits.

Referred to Finance and Appropriate Committees

#257-12 Review of Fees, Civil Fines/Non-criminal Disposition in Chapter 17 of the ordinances

RECODIFICATION COMMITTEE recommending (1) review of the Fees, Civil Fines/Non-Criminal Disposition contained in Chapter 17 LICENSING AND PERMITS GENERALLY and Chapter 20 CIVIL FINES/NON-CRIMINAL DISPOSITION CIVIL FINES to ensure they are in accordance with what is being charged and (2) review of the acceptance of G.L. c. 40 §22F, accepted on July 9, 2001, which allows certain municipal boards and officers to fix

reasonable fees for the issuance of certain licenses, permits, or certificates.

Finance Voted No Action Necessary 7-0 on 12/14/15

Referred To Programs & Services And Public Facilities Committees

#36-12

Inspection of private sewer lines and storm water drainage connections

ALD. CROSSLEY & FULLER requesting Home Rule legislation or an ordinance to require inspections of private sewer lines and storm water drainage connections prior to settling a change in property ownership, to assure that private sewer lines are functioning properly and that there are no illegal storm water connections to the city sewer mains.

A) Sewer lines found to be compromised or of inferior construction would have to be repaired or replaced as a condition of sale;

B) Illegal connections would have to be removed, corrected, and re-inspected in accordance with current city ordinances and codes, as a condition of sale.

[01/24/12 @ 8:07 AM]

Programs & Services Voted No Action Necessary 6-0 on 11/17/14

Referred to Public Safety & Transportation And Public Facilities Committees

#413-11

Updates on the renovations to the City's fire stations

ALD. CICCONE, SALVUCCI, GENTILE & LENNON updating the Public Facilities and Public Safety & Transportation Committees on the progress of renovations to the city's fire stations. [11-17-11 @11:07 AM]

#367-09

Discussion on repair of underground streetlight connections

PUBLIC FACILITIES COMMITTEE requesting discussion with the Law Department on how to resolve the dispute with NStar regarding whose responsibility it is to repair the streetlight connection between the manhole and the base of the streetlight. [10/21/09 @ 9:00 PM]

Respectfully submitted,

Deborah J. Crossley, Chair



Setti Warren
Mayor

DEPARTMENT OF PUBLIC WORKS

DIVISION OF ENVIRONMENTAL AFFAIRS

1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

12-16

TO: Newton City Council

FROM: Waneta Trabert, Recycling/Environmental Manager

DATE: November 9, 2016

RE: Progress Summary on Sustainable Materials Management Plan

While Newton has consistently been an environmental leader among communities in Massachusetts by offering a comprehensive range of waste and recycling services, there are numerous policies and practices that could be improved to reduce waste generation, reduce costs, and increase material recovery.

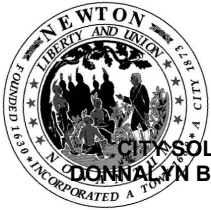
In May 2016, the Newton City Council passed a resolution requesting that DPW develop a long range plan to improve the City's recycling rate and reduce trash tonnage by December 31, 2016. In order for the long range plan to be as effective as possible, the Recycling/Environmental Manager has drafted a framework report to gather all the information necessary for the development of a long range plan. The purpose of the framework report is to describe the current sustainable materials management practices, policies, and operations within the City of Newton; propose solutions for program improvement; and formulate long term goals. The framework report will be released by December 31, 2016 and be used in Spring 2017, along with stakeholder input, to develop a long range plan for sustainable materials management in Newton.

The City commits to environmental sustainability as part of its Outcomes-Based Budget and includes increasing recycling initiatives as one strategy for achievement. In addition to the environmental benefits, there is often a financial incentive to generate less waste and recover more material.

LAW DEPARTMENT

**CITY OF NEWTON, MASSACHUSETTS
CITY HALL**

**1000 COMMONWEALTH AVENUE
NEWTON CENTRE, MA 02459
TELEPHONE (617) 796-1240
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MAURA E. O'KEEFE
ALAN D. MANDL
JULIE B. ROSS
JILL M. MURRAY
SUZANNE P. EGAN

To: Public Facilities Committee
From: Alan Mandl
Date: November 4, 2016
Re: Wireless Communications Facilities in Public Ways

Attached are 3 documents that address your questions about municipal authority over the placement of wireless communications facilities in Public Ways:

1. An Executive Summary of municipal grant of location authority
2. A more detailed memo on municipal grant of location authority
3. A summary of law that applies when a party submits a request to attach covered by the federal "eligible facilities request" statute and FCC regulations

A significant amount of work has been done to draft grant of location and eligible facilities request standards, application instructions and application forms. These documents will need to be reviewed with other departments as well as you.

Attachments



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To: Public Facilities Committee
 From: Alan Mandl
 Date: November 1, 2016
 Re: Executive Summary of City Council authority to regulate (1) wireless attachments to utility poles located in public ways and (2) construction of new poles dedicated to the provision of wireless communications services

The Public Facilities Committee requested clarification of City Council authority to regulate (1) wireless attachments to utility poles located in public ways and (2) construction of new poles dedicated to the provision of wireless communications services. This Executive Summary addresses these questions. A more detailed "Summary of Grant of Location Requirements for Wireless Communications Facilities" is attached.

- Under state law, municipalities are limited in how they may regulate the use of public ways by providers of wireless communications services. A municipality may regulate the location and height and impose use conditions in order to avoid undue interference with the public use of public ways.
- The exercise of municipal authority is limited by federal laws. There can be (1) no unreasonable discrimination between functionally equivalent services; (2) no effective prohibition of the provision of wireless service; and (3) no regulation based on RF emissions that exceed compliance with FCC standards.
- If a utility pole has a pre-existing wireless attachment, it is considered a "base station" under federal law. In this instance, a municipality is limited to reviewing whether proposed wireless attachments constitute the collocation of "transmission equipment" which does not "substantially change" the base station under FCC regulations. If the application does not qualify, it can be resubmitted and considered under the above state and federal standards.

City Council Authority Under State Law

G.L.c.166, §§21, 22

<u>Standard</u>	<u>Examples</u>
Location of the attachments	<ul style="list-style-type: none"> -avoid placement directly in front of a residence; compliance with ADA requirements regarding use of sidewalks; -address safety concerns regarding the use of public ways by a motorist or pedestrian
Height of the attachments	<ul style="list-style-type: none"> visual concerns; -compliance with industry safety standards; set standards for residential vs commercial areas; -compatibility with existing poles
Clearance above ground	<ul style="list-style-type: none"> -safety; set out of reach of the public; -coordination with tree pruning minimums; -compliance with ADA requirements regarding use of sidewalks; -address safety concerns such as endangering the use of public ways by a motorist or pedestrian -assure emergency vehicle access
Aesthetics	<ul style="list-style-type: none"> -regulate location on scenic roads or near historic sites; -regulate a village entry point; -require compatibility with city master plans regarding design standards, public use of streets, color, shape, dimensions of facilities; -number of attachments on a single pole; -new pole compatibility with existing pole height and spacing; limiting new poles if existing poles are available
Radio frequency emissions	<ul style="list-style-type: none"> -require continuing compliance with FCC standards
Noise and vibration	<ul style="list-style-type: none"> -apply noise and vibration standards and require suppression capability
Lighting	<ul style="list-style-type: none"> -no lighting annoying to abutters, pedestrians or motorists
Existing City Code	<ul style="list-style-type: none"> -e.g., pole height, indemnification, performance bond
Scenic roads	<ul style="list-style-type: none"> -relates to location, height, number of attachments, appearance
Historical areas	<ul style="list-style-type: none"> -relates to location, height, number of attachments, appearance

Federal Limitations

47 U.S.C. §§332(c)(7), 1455

Even if a City acts properly under state law, its action would violate federal law if it is:

- A. Unreasonable discrimination among functionally equivalent services
- B. Effective prohibition on the provision of personal wireless services
- C. Regulation of radio frequency emissions that comply with FCC standards
- D. Failure to base a decision on substantial evidence; formal decision requirements not met
- E. Unreasonable delay in acting on the application (longer than 90 days¹ is presumed to be unreasonable, but if sued, the city can try to rebut the presumption in federal court; city and applicant can enter into a written tolling agreement to allow more time for a decision)
- F. Once a utility pole has a wireless attachment, it becomes a “base station”
 - 1. State law standards do not apply; need for separate application form and instructions
 - 2. The city may only review the application to determine whether the proposed modifications (a) involve a collocation of new transmission equipment, removal of transmission equipment or replacement of transmission equipment ; and (b) do not substantially change the physical dimensions of the “base station”²
 - 3. A decision must be issued within 60 days after the filing of the application; unless a tolling agreement, a delay results in the application being deemed permitted by operation of law
 - 4. If application is properly denied, the applicant may file a new grant of location petition, which would be subject to review under G.L.c.166, §22.

City-owned Property

As a landlord or licensor, the City may require conditions for attachments to city-owned poles or streetlights in the public ways.

¹ The applicability of the 90 vs 150 day “shot clock” interval is discussed in the attached “Summary of Grant of Location Requirements for Wireless Communications Facilities.”

² These terms are defined by 47 U.S.C. §1455 or FCC orders and regulations. The definitions are provided in the attached “Summary of Grant of Location Requirements for Wireless Communications Facilities.”

ATTACHMENT 1

SUMMARY OF GRANT OF LOCATION REQUIREMENTS FOR WIRELESS COMMUNICATIONS FACILITIES

ELIGIBLE FACILITIES REQUESTS TO MODIFY AN EXISTING WIRELESS BASE STATION

A State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. 47 U.S.C. §1455.

The FCC has adopted regulations to govern state and local review of a subset of wireless facilities that meet the definition of “eligible facilities requests” under this federal statute, the federal Spectrum Act of 2012 *These federal laws apply to utility poles that have a pre-existing wireless attachment (a “base station”).*

Eligible Facilities Request means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

Transmission equipment includes antennas and other equipment associated with and necessary to their operation, including radio transceivers, antennas, coaxial or fiber-optic cable, and regular and back-up power supply. The term includes wireless equipment associated with wireless communications, including but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. 47 CFR§1.40001(b)(8).

Base station includes structures other than towers that support or house an antenna, transceiver, or other associated equipment that constitutes part of a “base station” at the time the relevant application is filed with state or local authorities, even if the structure was not built for the sole or primary purpose of providing such support, but does not include structures that do not at that time support or house base station components. 47 CFR§1.40001(b)(1)

The modifications must involve “collocation” of new “transmission equipment,” removal of “transmission equipment,” or replacement of “transmission equipment” “Collocation” means the “... mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. “ 47 CFR §1.40001(b)(2).

Substantial change- A modification “substantially changes” the physical dimensions of a base station (as measured from the dimensions inclusive of any modifications approved prior to the passage of the Spectrum Act) if it meets any of the following criteria:

- a. for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
- b. for all base stations, it protrudes from the edge of the structure more than 6 feet;
- c. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets;
- d. It entails any excavation or deployment outside the current site of the base station;
- e. It would defeat the existing concealment elements of the base station; or
- f. It does not comply with conditions associated with the prior approval of the base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds. 47 CFR§1.40001(b)(7)

Limited City Review

Scope limited-The City must determine whether an application is an “eligible facilities request”... “for a modification of an existing wireless... base station” and whether the proposed modification would “substantially change the physical dimensions of such ... base station.” This is the only substantive review that the City is allowed to conduct. If the application does not qualify, it can be treated in accordance with the grant of location standards and 47 U.S.C. §332(c)(7) limitations on local permitting authority. *The City will need to decide how to address a rejected “eligible facilities request”* (e.g., requiring a separate, new application in accordance with grant of location guidelines)

Application requirements limited- A state or local government may require applicants to provide documentation or information “only to the extent reasonably related to determining whether the request meets the requirements of this section.” 47 CFR§1.40001(c)(1). 2014 FCC *Report and Order*, ¶¶ 211-221.

Codes of general applicability apply- States and localities may continue to enforce and condition approval upon compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety. *Report and Order*, ¶¶ 211-221.

Deadline for a decision Within 60 days from the date of filing, accounting for tolling, a state or local government shall approve an application covered by Section 6409(a) unless it determines that the application is not covered by Section 6409(a). 47 CFR§1.40001(c)(2). *There is no rebuttable presumption on a time frame for a decision -this is a firm deadline.* However, the running of the 60 day period may be tolled by mutual agreement or upon notice from the City that an application is incomplete, such notice provided in accordance with the same deadlines

and requirements applicable under Section 332(c)(7), but not by a moratorium on the review of applications. In addition, a second or subsequent notice of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness. 47 CFR§1.40001(c)(3).

Failure to act results in approval by operation of law- An application filed under Section 6409(a) is deemed granted if a state or local government fails to act on it within the requisite time period. “The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.” 47 CFR§1.40001(c)(4).

Disputes- Parties may bring disputes-including disputes related to application denials and deemed grants- in any court of competent jurisdiction (but not at the FCC). 47 CFR§1.40001(c)(5). *Report and Order* at ¶¶226-236. The FCC will handle complaints based upon a locality denying a permit based upon radio frequency emissions.

Section 6409(a) applies only to state and local governments acting in their role as land use regulators and does not apply to these governments acting in their proprietary capacities

The FCC ruled that ...”Section 6409(a) applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities.” It further found, “Like private property owners, local governments enter into lease and license agreements to allow parties to place antennas and other wireless service facilities on local-government property...” and determined that Section 6409(a) does not apply in these circumstances.

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To: Public Facilities Committee
From: Alan Mandl
Date: November 1, 2016
Re: Summary of Grant of Location Procedures and Scope of City Council Authority
Regarding the Placement of Wireless Communications Facilities in Public Ways

This memo covers (1) grant of location procedures under state and federal law; and (2) the scope of municipal authority to regulate the deployment of wireless communications facilities in public ways under state and federal law.¹

¹ *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 720-721 (9th Cir. 2009) described the competing demands for high capacity, ubiquitous wireless service and protection of the public ways by reference to Camillo Sitte, *City Planning According to Artistic Principles*, 110 (Rudolph Wittkower ed., Random House 1965 (1889):

The tension between technological advancement and community aesthetics is nothing new. In an 1889 book that would become a classic in city planning literature, Vienna's Camillo Sitte lamented:

[T]here still remains the question as to whether it is really necessary to purchase these [technological] advantages at a tremendous price of abandoning all artistic beauty in the layout of cities. The innate conflict between the picturesque and the practical cannot be eliminated merely by talking about it; it will always be present as something intrinsic to the very nature

GRANT OF LOCATION PROCEDURES²

Who may petition: “A company incorporated for the transmission of intelligence by electricity or by telephone, whether by electricity or otherwise...may, under this chapter, construct lines for such transmission upon, along, under and across the public ways...; but such company shall not incommode the public use of public ways....” General Laws Chapter 166, Section 21.

Wireless service providers are authorized under General Laws Chapter 166, Section 25A (the pole attachment statute) to attach to utility poles. Such rights are also recognized under federal pole attachment law. Wireless service providers also have been recognized as “public service corporations” entitled to seek exemptions from zoning by-laws under General Laws Chapter 40A, Section 3. *Dispatch Communications of New England d/b/a Nextel Communications, Inc.*, D.P.U./D.T.E. 95-59B/95-80/95-112/96-13 (Jan. 8, 1998). It is highly probable that wireless service providers are authorized to file petitions under Chapter 166, Section 21.

Distributed antenna systems and small cell facilities (including those of a neutral host) that are or will be used for the provision of personal wireless facilities, are likely authorized to file grant of location petitions.

Pre-petition guidelines: Under federal law, the City must have a code provision, ordinance, application instruction or otherwise publicly-stated procedures that require the information to be submitted as part of the application. There must be objective standards in place for the review of the petition and the reasons for any decision must be based on these standards. The current City Code’s grant of location section has very few specifics on required information and review standards.

Written petition: A written petition for a grant of location is required under General Laws Chapter 166, Section 22. After facilities are constructed, a company may petition for an “...increase in the number of wires or cables, and direct an alteration in the location of the poles...or in the height of the wires or cables.” This latter petition is not required to go through a public notice and hearing process, although the City Council may elect to conduct a public hearing after notice. *It is recommended that the City adopt an application form and guidelines for the submission and review of WCF grant of location filings.*

Filing the petition: The City Code provides how grant of location petitions are handled. The Commissioner of Public Works reviews the petition and the plans of the applicant before they are submitted to the City Council. Any comments by the Commissioner must be provided within

of things.

² **Eligible facilities requests:** A subset of collocation is covered by a separate fast track procedure under federal law. 47 U.S.C. §1455 and related FCC regulations. Since the substantive and procedural standards for eligible facilities requests differ from those that apply to first time wireless attachments to utility poles, they are addressed separately in Attachment 1 to this memo. These applications may be reviewed only to the extent necessary to determine whether the eligible facilities would “substantially change” the existing structure (utility pole), as defined by the FCC.

30 days and included in the application submitted to the City Council. The contents of the petition and the requirements for a plan should be reviewed with the Commissioner of Public Works. The current City Code does not address wireless attachments to utility poles (nor does Chapter 166, Section 22). It also suggests that no plan is required if wires are to be attached to a pole that already has wires lawfully attached to it.

Federal Procedural Requirements- Establishment of the filing date and prompt review of the filing for completeness are critical in light of the following federal requirements:

Federal “shot clock” for wireless service facilities applications-90 days to issue a decision unless a longer time frame is agreed to by the applicant or the City can demonstrate that a period longer than 90 days is not unreasonable A local government must “...act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government..., taking into account the nature and scope of such request.” 47 U.S.C. §332(c)(7)(B)(ii). The FCC has created rebuttable presumptions of unreasonable delay of 90 days for “collocation” and 150 days for other requests. A failure to act within the applicable interval enables the applicant to file a complaint in federal court. A municipality is afforded an opportunity to rebut the presumption of unreasonable delay. The municipality must produce evidence of the reasonableness of its delay under the circumstances of the particular application.

DAS or Small Cell Facilities Applications are Covered by the FCC’s Shot Clock Requirements- The FCC has clarified that applications for DAS or small cell facilities, including third party facilities such as neutral host deployments, that are or will be used for the provision of personal wireless services, are subject to the shot clock standards and the presumptively reasonable timeframes established by the FCC. 2014 *Report and Order* at ¶248.

Collocation defined: For shot clock purposes, an application is a request for collocation if it seeks authorization to place an antenna on an existing structure and does not involve a “substantial increase in...size,” as that phrase is defined in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“NPA”). 2014 *Report and Order* at ¶273. The NPA was amended on August 3, 2016 and defines “collocation:” as “...the mounting or installation of an antenna³ on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.”

The amended NPA sets forth detailed guidelines for the collocation of small wireless antennas and associated equipment on non-tower structures outside of and within historic districts. Outside of historic districts, there are volume limits on each individual antenna of 3 cubic feet and for all antennas, 6 cubic feet overall. Collocations of 21 cubic feet for all other wireless equipment on a utility pole that can support fewer

³ “Antenna” covers cabling, power sources, equipment and cabinets under the NPA definition.

than 3 providers. 28 cubic feet for pole collocations that can support at least 3 providers. Separate standards apply to the collocation of small or minimally visible wireless antennas and associated equipment in historic districts. These guidelines were adopted for purposes of determining when Section 106 historic review is required under federal law.

It is arguable that if an application involves wireless pole attachments that exceed the dimensions specified in the NPA that the application should be subject to the 150 day shot clock and not the 90 day collocation shot clock. Dimensional information would need to be requested and verified.

Shot clock starts when application is filed: The shot clock begins to run from the filing date of the application

Review of application for completeness within 30 days: The running of the interval may be tolled upon timely and specific notice by the City to the applicant that its application is incomplete; notice must be given within 30 days of the application filing date and must specifically identify: all missing information; the code provision, ordinance, application instruction or otherwise publicly-stated procedures that require the information to be submitted. *The City cannot raise an application incompleteness issue that was not brought to the attention of the applicant within 30 days after the filing of its application.*

Continued incompleteness: The City may reach a subsequent determination of incompleteness of the application “based solely upon the applicant’s failure to supply specific information that was requested within the first 30 days” after the filing of the application.

Resumption of shot clock: the shot clock begins to run again when the applicant makes its first supplemental filing; however, the shot clock may be tolled again if the City notifies the applicant within 10 days of the supplemental filing, specifically identifying the information that the applicant failed to provide in response to the initial request to supplement.

Moratorium: A local moratorium does not toll the shot clock

Shot clock tolling agreements: The applicant and the City may negotiate a formal agreement to extend the applicable shot clock presumption (“tolling agreement”).

Public hearing process: Notice of a public hearing on the petition must be posted and mailed to abutters at least 7 days prior to the public hearing per MA General Laws Chapter 166, Section 22.

Formal public hearing record required: A formal record of the public hearing should be developed (the application, hearing transcript or tape, all documents submitted during the public hearing). MA General Laws Chapter 166, Section 22; 47 U.S.C. §332(c)(7)(B)(iii)(as to personal wireless service facilities). Grant of location hearings have been characterized as adjudicatory

hearings. *Boston Edison Co. v. Bd. of Selectmen of Concord*, 355 Mass. 79, 83-84 (1968).

Written decision and statement of reasons: A written decision should be issued, accompanied by a written statement of reasons for the basis of the decision and supported by substantial evidence. 47 U.S.C. §332(c)(7)(B)(iii). (as to personal wireless service facilities). *Boston Edison Co. v. Bd. of Selectmen of Concord*, 355 Mass. 79, 91-93 (1968). 47 U.S.C. §332(c)(7)(B)(iii).

Burdens on Applicant: The burden is on the petitioner to demonstrate that its proposed facilities would not incommode the public use of the public ways. City Council action cannot be arbitrary and unreasonable *Boston Edison Co. v. Bd. of Selectmen of Concord*, 355 Mass. 79, 91-92 (1968) (also, City Council action is subject to limitations under federal law). *Applicants may present evidence to support an appeal on the ground that a denial violates one or more limitations on municipal authority.*⁴

SCOPE OF GRANT OF LOCATION AUTHORITY

Scope of authority under state law

Action by the City Council must come within the scope of its authority under Massachusetts law and the City Code. *Boston Edison Co. v. Town of Sudbury*, 356 Mass. 406, 423 (1969) and cases cited.

By statute: Under Chapter 166, Section 22, a municipality may specify:

- Location of poles and wires
- The kinds of poles that may be used
- The number of wires and cables that may be attached to a pole
- The height of the cables and wires

These terms can be read to cover wireless antennas and related equipment. Pole owners have internal construction standards that apply to WCF attachments to their poles. Also, the current edition of the National Electrical Safety Code contains standards that apply to WCF

⁴ More research is needed on the question whether the applicant can appeal from a denial on federal grounds without having presented evidence on unreasonable discrimination or on an effective prohibition of personal wireless services. The federal district court makes the determinations on these issues and may take new evidence not in the administrative record in doing so. Courts have ruled that the local authority should base its decision on local criteria. However, some courts have suggested that the local authority should take evidence and make findings on these federal standards. In some cases, communities have “safety valve” rules that allow it to grant exceptions to specific requirements if a failure to do so would have the effect of prohibiting the provision of personal wireless services. A safety valve provision would enable the applicant to request an exception and for the local authority to grant the request upon a proper showing.

attachments. The Eversource standards have been requested and it has been recommended that the City purchase the 2017 NESC, released in August 2016.

Case law: In *Boston Edison Co. v. Bd. of Selectmen of Concord*, 355 Mass. 79, 90-91 (1968), the Supreme Judicial Court found that a local board could deny a grant of location for facilities that would incommode the public use of a public way. It also concluded that even if the proposed facilities did not incommode the public use of the public way, a denial would be upheld as long as the denial were not arbitrary nor capricious. This decision suggests that a local board may consider factors that fall within its oversight of the use of public ways, but which do not incommode the public use of the public way. It appears to stand for the proposition that a local board can exercise its authority under Chapter 166, Section 22 without having to base its action upon the “incommode” standard.

Meaning of Incommode: “Incommode” involves more than a physical impediment to the travel of cars or pedestrians. *Boston Edison v. Bd. of Selectmen of Concord*, 355 Mass. 79, 89-91 (1968). Aesthetic considerations are one factor that may be considered. *Boston Edison Co. v. Bd. of Selectmen of Concord*, 355 Mass. 79, 92-93 (1968). A “high level of annoyance” among residents, based on the public hearing record in that case, provided an adequate basis for the local board to conclude that the proposed facilities would incommode the public.

More recently, courts in other jurisdictions where the “incommode” standard applies also have concluded that it is within the authority of the community under state law to deny proposed wireless attachments to utility poles at a location in public ways based on aesthetic considerations. *See, e.g., Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 725 (9th Cir. 2009) (“...[A] company can ‘access’ a city’s rights-of-way in both aesthetically benign and aesthetically offensive ways. It is certainly within a city’s authority to permit the former and not the latter.”).

The *City of Palos Verdes Estates* decision contains helpful discussion. One example is its noting that “public use” of a public way is not limited to travel:

“It is a widely accepted principle of urban planning that streets may be employed to serve important social, expressive, and aesthetic functions.” 583 F.3d at 723.

Compare, T-Mobile USA, Inc. v. City of Anacortes, 572 F.3d 987, 994-995 ((9th Cir. 2009) (factors such as height of a tower, proximity to residential structures, nature of uses of nearby properties are legitimate concerns for a locality).

Determinations of this nature are fact-specific. For example, proposed wireless facilities may not raise any aesthetic concerns if they are located far from a residence or an entrance to a village. The height and dimensions of proposed facilities may have different impacts on the use of public ways based on their respective locations.

Illustrative Factors

The Public Facilities Committee has requested advice on what types of conditions and limitations might be placed upon the construction of wireless communications facilities in public ways. Specific conditions and limitations would (1) need to be authorized under G.L.c. 166, §22; (2) not violate any federal limitation of local permitting; (3) need to be fully supported by a hearing record; (4) need to be issued in writing based on a written hearing record; and (5) need to be ordered within a reasonable time. Specific limitations and requirements should have a reasonable relationship to (1) specific provisions in Chapter 166, Section 22 (location, number and height of attachments); and (2) the use and enjoyment of public ways, management of public ways, and public safety and public welfare considerations.

An illustrative list of conditions and limitations, drawn primarily from a review of the Village of Evergreen Park IL Ordinance No. 14-2016 I(April 2016) Regulations and Standards and similar ordinances, is provided for discussion. They are representative of a small sample of local ordinances. As of this writing, we have not verified whether the municipalities apply these types conditions and limitations under an “incommode” standard or under state laws similar to G.L.c.166, §22.

- (1) Number limitation-unless authorized, not more than 1 personal wireless telecommunications service antenna or antenna may be located on a single utility pole
- (2) Separation and setback requirements- attachments to a utility pole no closer than 100 feet to a residential building and no closer than 1000 feet from any other personal wireless services antenna; a lesser setback may be allowed if the applicant establishes that a lesser setback is necessary to close a significant gap in the applicant’s personal telecommunications service and the proposed facility is the least intrusive means to do so
- (3) Co-location- unless authorized based on good cause shown, only 1 personal wireless service antenna allowed on each pole for the use of a single wireless services operator
- (4) Municipally owned infrastructure – no attachments to streetlights or traffic lights unless authorized by the mayor
- (5) New monopole- not permitted except by special permit
- (6) Attachments to utility poles-limitations-
 - surface areas of antenna can’t exceed 7 feet, no single dimension can exceed 7 feet, whip or omnidirectional antenna can’t exceed 7 feet, not including any pole extension
 - volume of all above ground wireless equipment can’t exceed 15 cubic feet
wireless equipment shall be located wherever possible at height no lower than 8 feet above grade
 - Height- antenna shall not be more than 35 feet above ground level. The highest

point of the support structure and in combination with antenna extension shall not exceed 35 feet

- Color- should blend with the pole; wiring must be covered with an appropriate cover or cable shield
- Antenna panel covering- radome, cap or other antenna panel covering or shield blending with color of the pole
- Wiring and cabling- per then current electrical code; can't interfere with wiring or cabling of cable TV, other video, electric and telephone providers
- Grounding- per then current electrical code
- Guy wires- not to be used unless the existing support structure already has them
- Pole extensions- specifies materials capable of withstanding wind forces and ice loads in accordance with TIA/EIA Section 222-G standards
- Structural integrity- related to wind and ice per above standards without use of guy wire
- Signage- only those required by federal law or regulations
- Screening- when required
- Permission to use utility pole or alternative antenna structure-approval of pole owner must be submitted; approval must include a guarantee to cause removal of abandoned equipment
- Licenses and permits- all required approvals must be provided by applicant

Other provisions include variances, abandonment and removal requirements, application fees, insurance, performance bonds and indemnity.

Please note that we have not found case law that determines the propriety of these types of limitations and requirements in light of federal standards discussed below.

FEDERAL LIMITATIONS ON MUNICIPAL GRANT OF LOCATION AUTHORITY

Assuming that the City Council has acted within the scope of its authority under Massachusetts law, the City Council's regulations, requirements and decisions are subject to federal limitations. For example, in *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716,725 (9th Cir. 2009), the Court stated that a city that invokes aesthetics as a basis for a public way permit denial is required to produce substantial evidence to support its decision, and "even if it makes that showing, its decision is nevertheless invalid if it operates as a prohibition on the provision of wireless service in violation of 47 U.S.C. §332(c)(7)(B)(i)(II)." *See also, Industrial Tower and Wireless, LLC v. Haddad*, 109 F. Supp. 3d 284 (D. Mass. 2015) at 296-297. Municipal regulation of wireless use of public ways is subject to 47 U.S.C. §332(c)(7) even though not a zoning permit matter. *GTE Mobilenet of Cal. Ltd. Partnership v. City and County of San Francisco*, 440 F.Supp.2d 1097, 101-1102 (N.D. CA 2006).

- **No unreasonable discrimination among functionally equivalent services**-“The regulation of the placement, construction, and modification of personal wireless service facilities by any...local government...(I) shall not unreasonably discriminate among providers of functionally equivalent services; 47 U.S.C. §332(c)(7)(B)(i).

A municipality can *reasonably* discriminate as between functionally equivalent services that have different aesthetic or safety impacts or different structure, placement or cumulative impact. *Nextel Communications of Mid-Atlantic, Inc. v. City of Cambridge*, 246 F.Supp. 118, 125 (D. Mass. 2003). *Compare, Second Generation Props. L.P. v. Town of Pelham*, 313 F.3d 620, 634 (1st Cir. 2002).

- **No effective prohibition of the provision of personal wireless services-** and “The regulation of the placement, construction, and modification of personal wireless service facilities by any...local government... (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. §332(c)(7)(B)(i).

The “effective prohibition” standard inquiry involves a 2 part analysis requiring (1) the showing of a “significant gap” in service coverage and (2) some inquiry into the feasibility of alternative facilities or site locations. *Industrial Tower and Wireless, LLC v. Haddad*, 109 F.3d 284 (D.Mass. 2015) at 296-297.

“[S]ignificant gap” determinations are extremely fact- specific inquiries that defy any bright-line legal rule.” *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 733 (9th Cir. 2005). The relevant service gap must be truly significant-the TCA does not guarantee wireless service providers coverage free of small dead spots. *City of Palos Verdes Estates*, 583 F.3d at 726-727 (citing the *MetroPCS* decision and discussing context-specific factors considered in other court decisions). Resident comments on the general availability of the applicant’s service and drive test results may illustrate that the applicant’s existing network is “...at the very least, functional.” *Id.* at 728.

In deciding whether a coverage gap is “significant” a court may consider (1) the physical size of the gap; (2) the area in which there is a gap; (3) the number of users the gap affects; (4) whether all of the carrier’s users in that area are similarly affected by the gaps. Percentages of unsuccessful calls or inadequate service during calls in the gap area may be considered. *Industrial Tower and Wireless, LLC v. Haddad*, 109 F.3d 284 (D.Mass. 2015) at 296-297, 301-302. *Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 49 (1st Cir. 2009).

The applicant has the burden of showing that its plan is the only feasible plan based on an investigation of the possibility of other viable alternatives. *Id. Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 40 (1st Cir. 2014). If the applicant has produced this type of evidence, the municipality must be prepared to submit its own evidence of potential alternatives in order to support a denial. *Industrial Communications & Electronics, Inc. v. O’Rourke*, 582 F.Supp.2d 103 (D. Mass. 2008)(court review of competing sites).

The fact that one service provider covers an area does not support a denial of the application of another service provider that does have a significant coverage gap.

Whether or not an effective prohibition has occurred depends on each case's unique facts and circumstances and there can be no general rule classifying what is an effective prohibition. Whether local action constitutes an effective prohibition is decided by the federal district court, which may take additional evidence in making a determination. *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 38-40 (1st Cir. 2014). However, our recommendation is that the grant of location application and public hearing process allow (1) an applicant to claim that denial of the location, limits on the number of attachments and height of attachment limitations, for example, would be preempted by federal law based on unreasonable discrimination or an effective prohibition of the provision of personal wireless service and (2) the granting of exemptions from one or more requirements in order to avoid a violation of federal limitations.

Application of the “effective prohibition” standard to pole attachments- The tests for “effective prohibition” discussed above were developed in the context of cell towers, not pole attachments. Small cells might not address a “significant gap in wireless service coverage” as that term has evolved in court cases. Propagation studies, drive by tests and data on dropped calls are used to illustrate the presence of a coverage gap and whether it is significant.

Given heavy demand for wireless services, users may exhaust the capacity of a portion of a wireless service provider's network, leading to losses in speed and other service-affecting problems. In this latter situation, a wireless service provider may propose to build small cells to provide increased capacity in a small geographic area and free up capacity at a larger macro cell that is now capacity deficient.

To date, I have not discovered court decisions on the application of the “effective prohibition” standard to a situation involving capacity-relieving facilities. A coverage gap differs from a capacity deficiency, although wireless providers have stated that users would have the same experience in both instances.

- **No regulation based on radio frequency emissions that comply with FCC regulations-** “No...local government...may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's [FCC's] regulations concerning such emissions.” 47 U.S.C. §332 (c)(7)(B)(iv).

It is not uncommon for local boards to require a showing that the proposed facilities comply with FCC rules and ongoing testing to establish continuing compliance. The City should determine how often compliance filings are made with the FCC and if they cover pole by pole facilities. Also, it should be determined whether the FCC reviews the combined impact of wireless pole attachments located in a small geographic area.

GUIDELINES FOR DECISION-MAKING

Decisions Supported by Substantial Evidence

There are dozens of federal court decisions that review municipal denials of wireless facilities permit applications. Most of them involve towers and not wireless facilities located in public ways. These cases are very fact-specific. For extensive discussion of the substantial evidence standard, *see* 72 ALR Fed. 67 (2013) (discussing denials based on a proposed facility's impact on community, neighbors or nearby landowners) and 73 ALR Fed. 49(2013) (discussing denials or restrictions relating to need for facility or facility design or location).

In order to be supported by substantial evidence, the reasons for a decision must be based on the objective criteria in existence-governing bodies cannot arbitrarily invent new criteria. Reasons for denying an application must be limited to reasons stated by voting members during the Board meeting, memorialized in meeting minutes (there should be a formal order with statement of reasons). Unscientific, anecdotal testimony from a small group of residents may not be sufficient to raise a genuine issue of fact as to the existence of a coverage gap (the applicant presented extensive scientific evidence in support of a significant coverage gap). *Industrial Tower and Wireless LLC v. Haddad*, 109 F.Supp.3d 284 (D. Mass.2015).

Retention of Consultant

In cases involving towers, it is not uncommon for the municipality to retain a consultant to evaluate the application and present evidence during public hearings. While it is not suggested that every grant of location application requires retention of a consultant, serious consideration should be given to doing so on a case by case basis. A consultant should be considered to advise on applications based on the need for additional capacity and applications for new poles (in excess of 40 feet).

#335-16 DRAFT FOR DISCUSSION 11/3/2016

Sec. 26-8. Removal of snow and ice from sidewalks in certain districts.

Every owner or occupant of a building or lot of land abutting upon a sidewalk which is within a business, mixed use or manufacturing district, as defined by chapter 30, and every owner or occupant of a building situated in any other district than a business district as defined by such chapter and which is used for a commercial or institutional purpose or contains a residential dwelling of more than four dwelling units ~~purpose permitted in districts zoned for business but not permitted in districts zoned for single, private or general residences~~, whether or not such uses are is a nonconforming uses under the provisions of such chapter, which building abuts upon a sidewalk, or stands upon a lot of land abutting upon a sidewalk, shall cause any snow to be removed from the sidewalk and any ice on the sidewalk to be removed, sanded or salted within twenty four (24) twelve (12) hours after such snow has ceased to fall or such ice has come to be formed. The preceding provision shall apply to snow and ice on accessible curb ramps in the sidewalk, and shall apply to snow and ice which falls from buildings, other structures, trees or bushes as well as to that which falls from clouds. (Rev. Ords. 1973, § 19-8; Ord. No. T-127, 3-4-91; Ord. No. T-165, 8-12-91; Ord. No. U-3, 2-22-94)

State law references—Removal of snow from sidewalks, G.L. c. 85, § 5; G.L. c. 40, § 21(2), (3), (4)

Sec. 26-8A. City snow clearing—Clearing of sidewalks used as school routes.

The commissioner of public works shall clear snow from certain city sidewalks including portions of both school pedestrian routes and specific arterial and collector roadways, subject to appropriation and the availability of city personnel and equipment. The commissioner, after consultation with the superintendent of schools, chief of police and other appropriate city personnel, shall determine the total number of miles of city sidewalks to be cleared for the purposes of this ordinance based on the availability of personnel, vehicles and funding. Each year during the month of November, the commissioner shall publish a list of said sidewalk snow clearing routes. Said list shall include the street names and, where appropriate, the names of intersecting streets up to which the sidewalks will be cleared. The commissioner shall send a copy of said list to the chief of police and the superintendent of schools. (Ord. No. U-23, 7-11-94)

Sec. 26-8B. Same—Snow clearing assistance.

The commissioner shall annually prepare lists of persons available to provide snow clearing assistance either for a fee or on a volunteer basis. The lists shall be prepared in consultation with appropriate school and senior services department personnel, interested neighborhood organizations, houses of worship, parent-teacher associations, and other similar groups that indicate a willingness to participate in snow clearing assistance. Said lists shall be made available during the month of November each year. The list of persons available to provide snow clearing assistance for a fee shall be available upon request to any Newton resident. Low income elderly or low income people with disabilities ~~handicapped persons~~ requesting volunteer snow clearing assistance shall be referred to the senior services department to be matched with available volunteers. For the purposes of this section, "elderly" shall be defined as a person sixty (60) years of age or older, "handicapped person with disability" shall be defined as a person with a physical condition which substantially limits the ability to engage in physical snow clearance activities and "low income" shall be defined in accordance with guidelines established by the United States Department of Housing and Urban Development for the Community Development Block Grant Program. (Ord. No. U-23, 7-11-94; Ord. No. 175, 05-26-05)

Sec. 26-8C. Same—Snow clearance standards.

The commissioner of public works shall endeavor to minimize the blocking of sidewalks and intersections with plowed snow so as not to hinder pedestrian passage. The commissioner shall remove plowed snow from sidewalks and intersections that block pedestrian access, to the extent that such removal is feasible, as determined by the commissioner, and subject to appropriation. (Ord. No. U-23, 7-11-94)

Sec. 26-8D. Trial program for removal of snow and ice from sidewalks.

In order to allow for safe pedestrian and wheelchair passage, every owner or occupant of a building or lot of land abutting upon a paved sidewalk or any person having charge of such property shall use reasonable efforts to remove snow and ice from the sidewalk and ~~handicap-accessible~~ curb ramps, and shall use reasonable efforts to treat said sidewalk and ramps to allow for a safe passageway of approximately thirty-six (36) inches in width, provided that where such sidewalk is less than thirty-six (36) inches in width the passageway shall encompass its entire width and ~~handicap-accessible~~ curb ramps. Snow and ice shall be removed, and sidewalks and ramps shall be treated, within thirty (30) hours after such snow has ceased to fall or such ice has formed. This section shall apply to snow and ice which falls from buildings, other structures, trees or bushes, as well as to that which falls from clouds. This section shall not apply to owners or occupants of a building or lot covered by Section 26-8. The mayor or his designee is authorized to coordinate volunteer snow clearing assistance or to grant an exemption, renewable annually, for citizens who upon written petition demonstrate hardship due to a combination of health and financial duress. The provisions of this section shall take effect on November 1, 2011 and shall expire on November 1, 2015~~17~~ unless terminated earlier or renewed or modified by the board of aldermen. During this trial period, enforcement shall be limited to issuance of notices of non-compliance for violations of any provision of this section. (Ord. No. Z-83, 3-21-11, Ord. No. A-8, 01-22-13; Ord. No. A-49, 12-01-14)

Sec. 26-9. Putting snow and ice upon streets, sidewalks and bridges.

(a) No person shall block, obstruct or otherwise hinder or impair pedestrian or vehicular traffic on the public ways of the city by placing snow or ice or permitting or causing snow or ice to be placed upon a street, sidewalk or bridge, except that snow or ice removed from a sidewalk may be piled in the adjoining gutter or on the loam border between the sidewalk and the street. This section shall not apply to municipal snow removal operations.

(b) Without limiting the applicability of the foregoing paragraph (a), the owner or occupant of property whose driveway or sidewalk is cleared of snow shall be responsible for promptly removing snow placed on the public way (street, sidewalk and/or bridge) adjoining the owner's property as a result of clearing snow from the driveway or sidewalk of the owner. For purposes of this paragraph, "clearing snow" shall include, but is not limited to, plowing, shoveling, sweeping and any other similar means of removing snow from the driveway or sidewalk. This section shall not apply to municipal snow removal operations. (Rev. Ords. 1973, § 19-9; Ord. No. T-166, 8-12-91; Ord. No. X-97, 07-12-04)

**ARTICLE III.
CIVIL FINES/NON-CRIMINAL DISPOSITION**

Sec. 20-20. Certain ordinance violations subject to civil fine.

(a) As an alternative to initiating criminal proceedings, the sections of these revised ordinances which are listed in section 20-21 may be enforced in the manner provided in General Laws c. 40, section 21D.

(b) Any such enforcing person, as listed in section 20-21, who takes cognizance of a violation of such an ordinance may give to the offender a written notice to appear before the clerk of the district court for Newton at any time during the court's office hours, not later than twenty-one (21) days after the date of such notice.

(c) *Non-criminal disposition upon payment of notice of violation.* Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the city clerk together with the notice such specific sum of money as established under section 20-21 as penalty for violation of the ordinance. Upon receipt of such notice and payment, the city clerk shall forthwith notify the district court clerk of such payment and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this subsection shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of a district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

(d) *Right of appeal and hearing in the district court.* If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section and G.L. c. 40 § 21D, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money established as a penalty as aforesaid or such lesser amount as the judge, clerk or assistant clerk shall order, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that the violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this subsection shall operate as a final disposition of the case. Proceedings held pursuant to this subsection shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.

(e) *Failure of appeal and return to criminal process.* If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money established as a penalty after a hearing and finding as provided in subsection (d), the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a criminal complaint for the violation of the appropriate ordinance. (Ord. No. V-255, 8-9-99)

Sec. 20-21. Enforcing persons and revised ordinances subject to civil fine.

(d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

.....PENALTY
 () Warning \$0.00

Sec. 26-8. Removal of snow and ice from sidewalks in certain districts.

- () First offense in calendar year..... \$100.00
- () Second offense in calendar year \$200.00
- () Third and subsequent offenses in calendar year \$300.00

Sec. 26-9. Putting snow and ice upon streets, sidewalks and bridges

- () Placing snow or ice on a public way (street, sidewalk or bridge)
 - First offense in calendar year \$100.00
 - Second offense in calendar year \$200.00
 - Third offense and subsequent offenses in calendar year \$300.00
- () Causing or permitting snow or ice to be placed upon a public way (street, sidewalk or bridge)
 - First offense in calendar year \$100.00
 - Second offense in calendar year \$200.00
 - Third offense and subsequent offenses in calendar year \$300.00

#335-16**PROPOSED SNOW ORDINANCE AMENDMENT (11/3/2016):****Current Sec. 26-8 *Removal of snow from sidewalks in certain districts:***

- 24 hour time period for compliance
- Applies to all properties in zoned business districts and to buildings "... situated in other than a business district ... and which is used for a purpose permitted in districts zoned for business but not permitted in districts zoned for single, private or general residences."

Changes proposed to Sec. 26-8 *Removal of snow from sidewalks in certain districts*

- Would reduce time period for compliance from 24 hours to 12 hours
- Would add mixed use and manufacturing districts to business districts (in which all properties must comply)
- Would simplify by removing outdated reference to "single, private or general residence districts" and by clarifying that section applies to commercial uses in other districts
- Would add multi-family properties containing more than 4 dwelling units and institutional uses in other districts
- Would add language clarifying that sidewalk snow removal requirements also apply to accessible curb ramps in sidewalk

Changes proposed to Sec. 26-8B *Snow Clearing Assistance*

- Would replace phrases "handicapped persons" and "handicapped person" with phrases "people with disabilities" and "person with disabilities"

Changes proposed to Sec. 26-8D *Trial Program for removal of snow and ice from sidewalks*

- Would replace phrase "handicap access ramps" with phrase "accessible curb ramps"

CITY OF NEWTON

DOCKET REQUEST FORM

2016 OCT 26 PM 3:12

DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council NO LATER THAN 7:45 P.M. ON THE MONDAY PRIOR TO A FULL COUNCIL MEETING.

To: Clerk of the City Council

Date: October 26, 2016From (Docketer): Deb Crossley

Address: _____

Phone: _____

E-mail: _____

Additional sponsors: _____

1. Please docket the following item (it will be edited for length if necessary):

COUNCILORS CROSSLEY & GENTILE proposing to establish policies and procedures for the use of approved MWRA no interest loan financing to encourage homeowners to participate in the lead service line replacement program.

2. The purpose and intended outcome of this item is:

- ☐ Fact-finding & discussion
☐ Appropriation, transfer,
☐ Expenditure, or bond authorization
☐ Special permit, site plan approval,
☐ Zone change (public hearing required)

- ☐ Ordinance change
☐ Resolution
☐ License or renewal
☐ Appointment confirmation
☒ Other: _____

3. I recommend that this item be assigned to the following committees:

- | | | |
|---|---|--|
| <input type="checkbox"/> Programs & Services | <input checked="" type="checkbox"/> Finance | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Zoning & Planning | <input type="checkbox"/> Public Safety | <input type="checkbox"/> Special Committee |
| <input checked="" type="checkbox"/> Public Facilities | <input type="checkbox"/> Land Use | <input type="checkbox"/> No Opinion |

4. This item should be taken up in committee:

- ☐ Immediately (Emergency only, please). Please state nature of emergency:

- ☒ As soon as possible, preferably within a month
☐ In due course, at discretion of Committee Chair
☐ When certain materials are made available, as noted in 7 & 8 on reverse
☐ Following public hearing

PLEASE FILL OUT BOTH SIDES

5. I estimate that consideration of this item will require approximately:

386-16

- | | |
|--|--|
| <input type="checkbox"/> One half hour or less | <input checked="" type="checkbox"/> Up to one hour |
| <input type="checkbox"/> More than one hour | <input type="checkbox"/> An entire meeting |
| <input type="checkbox"/> More than one meeting | <input type="checkbox"/> Extended deliberation by subcommittee |

6. The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, *especially relevant Department Heads*):

City personnel

Citizens (include telephone numbers/email please)

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

☐ _____

7. The following background materials and/or drafts should be obtained or prepared by the Clerk's office prior to scheduling this item for discussion:

8. I ☐ have or ☐ intend to provide additional materials and/or undertake the following research independently prior to scheduling the item for discussion. *

(*Note to docketer: Please provide any additional materials beyond the foregoing to the Clerk's office by 2 p.m. on Friday before the upcoming Committee meeting when the item is scheduled to be discussed so that Councilors have a chance to review all relevant materials before a scheduled discussion.)

Please check the following:

9. ☐ I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.
10. ☐ I would like the Clerk's office to contact me to confirm that this item has been docketed. My daytime phone number is:
11. ☐ I would like the Clerk's office to notify me when the Chairman has scheduled the item for discussion.

Thank you.

Deb Crossley

Signature of person docketing the item

[Please retain a copy for your own records]

RECEIVED
Newton City Clerk

CITY OF NEWTON

2016 OCT 26 PM 4:20

DOCKET REQUEST FORM

DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council **NO LATER THAN 7:45 P.M. ON THE MONDAY PRIOR TO A FULL COUNCIL MEETING.**

To: Clerk of the City Council

Date: October 26, 2016From (Docketer): Deb Crossley

Address: _____

Phone: _____

E-mail: _____

Additional sponsors: _____

1. Please docket the following item (it will be edited for length if necessary):

The Public Facilities Committee requesting discussion with the Administration and Public Buildings Department about the community solar share program, which intends to provide credits resulting from solar power generated at 70 Elliot Street to qualifying low income residents, its administration and costs.

2. The purpose and intended outcome of this item is:

- ☒ Fact-finding & discussion
☐ Appropriation, transfer,
☐ Expenditure, or bond authorization
☐ Special permit, site plan approval,
☐ Zone change (public hearing required)

- ☐ Ordinance change
☐ Resolution
☐ License or renewal
☐ Appointment confirmation
☐ Other: _____

3. I recommend that this item be assigned to the following committees:

- ☐ Programs & Services
☐ Zoning & Planning
☒ Public Facilities

- ☒ Finance
☐ Public Safety
☐ Land Use

- ☐ Real Property
☐ Special Committee
☐ No Opinion

4. This item should be taken up in committee:

- ☐ Immediately (Emergency only, please). Please state nature of emergency:

- ☒ As soon as possible, preferably within a month
☐ In due course, at discretion of Committee Chair
☐ When certain materials are made available, as noted in 7 & 8 on reverse
☐ Following public hearing

PLEASE FILL OUT BOTH SIDES

5. I estimate that consideration of this item will require approximately:

385-16

- | | |
|--|--|
| <input type="checkbox"/> One half hour or less | <input checked="" type="checkbox"/> Up to one hour |
| <input type="checkbox"/> More than one hour | <input type="checkbox"/> An entire meeting |
| <input type="checkbox"/> More than one meeting | <input type="checkbox"/> Extended deliberation by subcommittee |

6. The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, *especially relevant Department Heads*):

City personnel

Citizens (include telephone numbers/email please)

- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

7. The following background materials and/or drafts should be obtained or prepared by the Clerk's office prior to scheduling this item for discussion:

8. I ☐ have or ☐ intend to provide additional materials and/or undertake the following research independently prior to scheduling the item for discussion. *

(*Note to docketer: Please provide any additional materials beyond the foregoing to the Clerk's office by 2 p.m. on Friday before the upcoming Committee meeting when the item is scheduled to be discussed so that Councilors have a chance to review all relevant materials before a scheduled discussion.)

Please check the following:

- 9. ☐ I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.
- 10. ☐ I would like the Clerk's office to contact me to confirm that this item has been docketed. My daytime phone number is:
- 11. ☐ I would like the Clerk's office to notify me when the Chairman has scheduled the item for discussion.

Thank you.

Deb Crossley

Signature of person docketing the item

[Please retain a copy for your own records]



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#384-16

Telephone
(617) 796-1100

Telefax
(617) 796-1113

TDD
(617) 796-1089

E-mail
swarren@newtonma.gov

October 31, 2016

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

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to authorize the appropriation and expenditure of \$71,000 from June 30, 2016 Certified Free Cash for the purpose of constructing an observation deck on the greenway walking corridor. The proposed project involves the removal and replacement of a wooden overlook deck on an existing railroad bridge over the Charles River.

Thank you for your consideration of this matter.

Sincerely,

Setti D. Warren
Mayor

RECEIVED
Newton City Clerk
2016 OCT 31 PM 2:05
David A. Olson, Clerk
Newton, MA 02459

City of Newton



Setti D. Warren
Mayor

DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE COMMISSIONER
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

October 31, 2016

To: Maureen Lemieux, Chief of Staff, and Chief Financial Officer

From: James McGonagle, Commissioner
Louis M. Taverna, P.E., City Engineer

Subject: Request for Docket Item for Construction Funds
Rail Trail Observation Deck Construction

I request a total of \$71,000.00 for construction and installation of the rail trail observation deck at the Charles River. This includes engineering services during construction.

Brief Description of the Project: BETA Group has completed the structural design of the observation deck. Bids were received on October 20, 2016. The low bidder, D&C Construction, has bid \$66,000.00. We require \$5,000 for engineering services during construction.

Please docket this request with the Honorable City Council for their consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. McGonagle", is written over the printed name and title.

James McGonagle
Commissioner Public Works



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#387-16

Telephone
(617) 796-1100

Telefax
(617) 796-1113

TDD
(617) 796-1089

E-mail
swarren@newtonma.gov

October 31, 2016

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

RECEIVED
Newton City Clerk
2016 OCT 31 PM 2:05
David A. Olson, Clerk
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to appropriate and allow the expenditure of \$250,000 from the Override Capital Stabilization Fund for the purpose of renovating the space on the 1st floor of the Ed Center which has been vacated by the relocation of the Pre-K Program to the Aquinas Site.

This space will now be used to house the Central High School Program, additional Professional Development meeting space, as well as general office space. Further details are attached.

Thank you for your consideration of this matter.

Sincerely,

Setti D. Warren
Mayor

City of Newton



PUBLIC BUILDINGS DEPARTMENT

Josh Morse, Building Commissioner

Telephone (617) 796-1600

FAX (617) 796-1601

TTY: (617) 796-1608

52 ELLIOT STREET

NEWTON HIGHLANDS, MA 02461-1605

Setti D. Warren

Mayor

September 29, 2016

Mayor Setti D. Warren
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

RE: Request for funds: Education Center Basement

Dear Mayor Warren:

The Public Buildings Department requests the sum of \$250,000.00 to fund renovations in the basement level of the Education Center which will house the Alternative High School Program.

Should you have any questions regarding the above, please feel free to contact my office.

Sincerely,

Josh Morse
Public Buildings Commissioner

cc: Maureen Lemieux, Chief Financial Officer
Alex Valcarce, Program Director
Dori Zaleznik, Chief Admin Officer



Liam Hurley

*Assistant Superintendent
Chief Financial and
Administrative Officer*

Newton Public Schools

100 Walnut Street, Newtonville, MA 02460

Phone: (617) 559-9025

Fax: (617) 559-9026

liam_hurley@newton.k12.ma.us

TO: Maureen Lemieux, Chief of Staff / CFO

FROM: Liam Hurley, Assistant Superintendent/Chief Financial and Administrative Officer

DATE: October 26, 2016

RE: Request to Docket Appropriation \$250,000 for the Education Center

As requested, please add to the City Council docket the appropriation of \$250,000 from the City of Newton to Newton Public Schools.

The funds will be used for demolition and construction work on the 1st floor of the Education Center which will be primarily used for the relocation of Central High School. The remainder of the space will be used for professional development conference space and office space for Information Technology, Understanding our Differences and Newton Schools Foundation.

With the relocation of Central High School from the annex building, both the Middle School Stabilization Program and the Connection program, currently located in the annex, will be able to expand into the vacated space. The annex building space is ideal for both of these programs as it is quiet and separate from the typical school environment.

Please see the attached Facilities Update, Section V. that was presented to School Committee on October 24th, 2016 providing more information.

Thank you.

CC: David Olson, City Council Clerk
David Wilkinson, Comptroller

NEWTON

PUBLIC SCHOOLS

100 Walnut Street, Newtonville, MA 02460

AREA CODE (617) 559-9025

Memorandum

TO: School Committee

FROM: Liam Hurley, Assistant Superintendent/Chief Financial and Administrative Officer
Michael Cronin, Chief of Operations
Julie Kirrane, Long-Range Planning Manager

DATE: October 24, 2016

RE: Facilities Updates
Zervas Elementary School Project
Cabot Elementary School Project
NECP/150 Jackson
Short-term space/Modulars/Ed Center

This update addresses information on progress on major facilities projects in the district over the past month.

I. Zervas Elementary School Project

The construction phase has progressed to the point where exterior and interior framing is underway and has been completed in one section of the building. Masonry work is also underway.

The City Traffic Council and others continue to evaluate Beethoven Road for conversion to a one way road during designated school hours to allow for a parent drop-off with a passing lane. A designated passing lane is expected to be important to avoid vehicular congestion and unsafe conditions going forward.

III. Cabot School Project

The Cabot School project has passed several critical milestones in the past month. A site visit was conducted by Massachusetts DEP on October 4, 2016 related to compliance with the Massachusetts Environmental Policy Act (MEPA). The site visit was routine with no substantive issues identified. The Massachusetts Historic Commission completed its review of the project submission and issued a positive letter with comments in support of the planned restoration and other project elements that highlight the historic 1929 building. The MSBA project scope and budget conference was held October 17, 2016 to review the budget submission; there were no substantive issues with budgeted costs. This is a normal step in advance of the November 9th board meeting where approval is anticipated. The City Council Public Facilities Committee meeting to initiate 5-58 site plan review and approval was held on October 19, 2016; the site plan was approved by the committee and is being

forwarded to Finance Committee for their review on October 24, 2016. The City Council is expected to act on site plan approval on November 21, 2016.

IV. NECP/150 Jackson Road

The former Aquinas property has had a new address designated at 150 Jackson Road; the 15 Walnut Park entrance is no longer the address of record. Preschool has continued to settle into the new space and awaits the completion of some limited punch list items and access via a vertical lift to the upper floor and to a new playground. The weather so far has enabled neighborhood walks during outdoor time and they have used their heavily scheduled indoor gross motor/OT/PT space to the extent possible. Both the playground and installation of the lift is taking longer than originally hoped due to lead time for site preparation and ordering and installing equipment. The installation of playground equipment has begun. It is the stairway vertical lift which requires interior demolition and construction that has the longest timeframe; estimates are for completion in December. City and schools are working diligently to ensure no further delays occur and that the aggressive schedule stays on track. The window installation is in its final phase.

V. Short-term Space/Modulars/Ed Center

The contract for the modular installation has been awarded to Caruso & McGovern. Both the Brown and Newton South installation sites are on scheduled for preparatory and foundation work starting this week. Both City Public Buildings and the contractor are committed to completing the installations at South and Brown while fall weather remains favorable.

In anticipation of the internal renovations to the Ed Center ground level, city and schools have been working to line up the various on call trades to complete the limited demolition and construction work including plasterboard, electrical, painting, flooring and bathroom renovation work. The district has been reviewing several options for schematic design provided by Raymond Design Associates in late August/early September. The programmatic needs for the ground level of the Ed Center have now been finalized and work will be able to start in earnest.

The south wing of the ground level will be used for Central High School, a specialized high school program to meet the educational and therapeutic needs of students with a range of emotional and learning needs. Central High School has been based in the Ed Center annex building.

The annex space consists of two masonry construction buildings built in 1966. One building will continue to house the Middle School Stabilization Program (MSP) which supports students with short-term placements during times of crisis or transition. The space is suited to students in this program because it is quiet and separate from the typical school environment. The Connections program has a home base at the annex for post-graduate students (18-22 years old) who spend a portion of their days in supported outside placements for developing independent living, vocational skills, and community involvement and life skills. With Central High School's relocation, both programs will be able to expand their space to better meet student needs. The life skills component of the Connections program can now be supported by real-life independent living and vocational training spaces that are being developed in the additional space.

Also on the Ed Center ground level, space is planned for an additional professional development conference space. IT management, with some adjustments, will be returning to their former space adjacent to IT services already located on the basement level. This will ease crowding and allow for some space reorganization on the Ed Center first and second floors. Understanding our Differences and the Newton Schools Foundation will also be accommodated on the lower level.

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Shawna Sullivan

From: Lenny Gentile <lennypmgi@aol.com>
Sent: Thursday, September 22, 2016 11:16 AM
To: Shawna Sullivan
Subject: Fwd: asangiolo@newtonma.gov,jharney@newtonma.gov

-----Original Message-----

From: Lenny Gentile <lennypmgi@aol.com>
To: sgentile <sgentile@fbchomeloans.com>
Sent: Thu, Sep 22, 2016 11:02 am
Subject: asangiolo@newtonma.gov,jharney@newtonma.gov

docket please

Ald Gentile on behalf of the residents of Walsingham St requesting the necessary approvals to connect to the City sewer system.

PF and Finance

Jay and Amy sign on if you would like