

**LEGISLATIVE COUNCIL REGULAR MEETING  
COUNCIL CHAMBERS, 3 PRIMROSE STREET, NEWTOWN, CT  
WEDNESDAY, OCTOBER 20, 2021**

**MINUTES**

**PRESENT:** Jordana Bloom, Alison Plante, Chris Smith, Phil Carroll, Ryan Knapp, Judit DeStefano, Paul Lundquist, Chris Eide, Matthew Mihalcik, Cathy Reiss, Andy Clure, Dan Honan

**ALSO PRESENT:** First Selectman Dan Rosenthal, Finance Director Bob Tait, Superintendent Dr. Lorrie Rodrigue, BOE Chair Michelle Embree Ku, Facilities Director Bob Gerbert; 1 public, 0 press

**CALL TO ORDER:** Mr. Lundquist called the meeting to order with the Pledge of Allegiance at 9:01 pm.

**VOTER COMMENT:** None

**MINUTES:** Ms. DeStefano moved to accept the minutes of the September 15, 2021 Legislative Council Regular Meeting. Seconded by Mr. Honan. All in favor. Motion passes (12-0).

**COMMUNICATIONS:** Letter from the Transportation and Climate Initiative. *See attachment A.*

**COMMITTEE REPORTS:**

Ordinance Committee – Mr. Knapp submitted an agenda for the next meeting to be held this Tuesday October 26<sup>th</sup> in the Edmond Town Hall gymnasium. Mr. Knapp is unable to attend and Mr. Smith will lead the meeting.

**FIRST SELECTMAN’S REPORT:** Mr. Smith asked First Selectman Rosenthal about the recent car break-ins all over town. The First Selectman replied that these car thefts in town have been ongoing, and it seems to be plaguing Fairfield County. He stresses that the best way to mitigate it is to lock your vehicles and not leave keys in your car. They've been more crimes of convenience, rather than smash and grabs.

**NEW BUSINESS**

*Discussion and Possible Action*

- BOE request to appropriate \$55,000 from the Board of Education Non-Lapsing account for additional unforeseen expenditures incurred during replacement of the NHS track

Dr. Rodrigue shared her letter to the Legislative Council requesting \$55,000 from the non-lapsing account. *See attachment B.* As the contractor began work on the track, they discovered that the previous track was not sealed properly. Mr. Gerbert further explained that this is atypical for a cold climate such as New England and it was an unanticipated setback that the contractor encountered. It was necessary to put a proper sealer on the entire track in order to proceed with the installation of the new track. They are hoping to use the non-lapsing account to cover the additional expense. Ms. Plante asked if we have any recourse with the old vendor who put the sealer down 20 years ago. Mr. Gerbert said he does not believe that the old contractor is even still in business. Dr. Rodrigue mentioned that Purchasing Agent Rick Spreyer found the original paperwork from the first installation 20 years ago and there were indications of unspecified issues back then. Mr. Eide asked if there are inspection requirements when a track like this is installed so we are not in a similar predicament in the future. Mr. Gerbert said before the final payment is issued to the vendor, they are required to do an inspection.

Ms. DeStefano moved to approve the BOE request to appropriate \$55,000 from the Board of Education Non-Lapsing account for additional unforeseen expenditures incurred during replacement of the NHS

track. Seconded by Mr. Knapp. All in favor. Motion passes (12-0).

Mr. Clure commented that the work done on the scoreboard and field look great.. Mr. Knapp added that he is glad that we have these non-lapsing funds available to be used for something like this when something unforeseen comes up.

- Consideration of an allocation of \$2,500,000 in American Rescue Plan grant funds

Mr. Lundquist explained that this allocation would be used towards the Hawley HVAC project. First Selectman Rosenthal spoke on the BOS and the BOF already having acted unanimously and favorably on this. This does not change the number that the public will have to vote on. By using the American Rescue Plan funds, it fits within the scope of the plan. The idea is to reduce the bonding that benefits all the taxpayers, and they'll have an idea of how much goes on the credit card versus how much granting will go towards it. Ms. Reiss asked should the Hawley project not pass with the voters, how would we decide what to do with this. The First Selectman answered that we would reappropriate it. Once the new BOS, BOF and LC are seated, we should have a working group on how to allocate the remaining funds. We have until 2024 to decide. We're starting to get requests from other groups. He feels that what we end up using the money towards should benefit everyone. Ms. Reiss asked how they arrived at this amount and why it wasn't more. First Selectman Rosenthal said it seemed like a reasonable amount and it would lighten the load for the taxpayers by reducing our bonding. He said we could always opt for more later - he didn't want to do a disservice to other needs until we vet all other considerations. Ms. Bloom asked if there is a plan to notify the voters. The First Selectman stated that the challenge is that we can't put it in the explanatory text but that it has been reported on social media and the Newtown Bee. Ms. DeStefano appreciates the application of this money to this project. She agrees that it is helpful if voters know where the funds are coming from. Mr. Eide asked what the impact would be to debt service on the yearly budget by taking \$8 million off. The First Selectman stated it is somewhere between \$200,000-\$225,000 and that we are \$1.4 million over on unassigned fund balance.

Ms. DeStefano moved to authorize the allocation of \$2,500,000 in American Rescue Plan grant funds to be applied to the Hawley School Ventilation and HVAC project if approved at referendum on November 2, 2021. Seconded by Mr. Eide. All in favor. Motion passes (12-0).

Mr. Knapp commented that this project would be a natural fit based on the circumstances surrounding the Covid pandemic and he's glad the BOS initiated it.

- Non-Lapsing Education Fund Policy from the BOF, BOE, LC Joint Workgroup

Mr. Lundquist thanked Mr. Eide, Ms. Reiss and everyone who worked on this. He added that this is not a final document. *See attachment C and D.* When it was finished, it was reviewed by legal counsel and Attorney Grogens did not have any suggestions for revisions. The BOE attorney, however, also reviewed it and did have suggestions for some revisions. Mr. Eide feels this represents the best of what the three bodies came to agree on. Ms. Reiss added that what they ended up with was a regulation that the BOE already had in place – it just makes the LC part of the process. Mr. Lundquist commented that this is memorializing their policy into a joint policy. He also added that this is just a mutually agreed upon policy, and would not go into the code book or become a regulation. Mr. Knapp questioned wording in section 4 – how would we interpret educational purposes. Mr. Eide replied that the language comes directly from state statute. Reading through the document, Ms. Plante asked for confirmation on what the BOF's role would be in this. Ms. Reiss replied that the Legislative Council would be the fiscal authority on this. Mr. Eide interjected that the BOF is strictly advisory on this document. Ms. Plante feels that nothing should be done on this yet until the BOE counsel has had time to review it. Ms. Ku spoke on the revisions that were recommended which included editing some of the text to make it more readable, adding dates and removal of most of the preamble. The BOE did not take any action on it at their last meeting. Mr. Lundquist suggested that no action be taken tonight and to wait until the BOE

decides on the language. All were in agreement.

**VOTER COMMENT:** None

**ANNOUNCEMENTS:** Mr. Lundquist wanted to acknowledge the passing of Bob Mitchell and to publicly thank him for his many years of service.

**ADJOURNMENT:** There being no further business, Mr. Honan moved to adjourn the meeting at 9:47 pm. Seconded by Ms. Reiss. All in favor.

*Respectfully submitted,  
Rina Quijano, Clerk*

**THESE MINUTES ARE SUBJECT TO APPROVAL BY THE LEGISLATIVE COUNCIL  
AT THE NEXT MEETING.**

*Attachment A*

Dear Newtown Council Members,

I'm writing to follow up on my email inviting you to join with dozens of elected officials in Connecticut and the region in urging our state to formally join the Transportation and Climate Initiative (TCI).

With the disastrous storms and the IPCC report on the climate emergency a "code red for humanity," TCI is an urgently-needed climate solution that will invest millions of dollars annually into our communities for clean transportation infrastructure.

Will you sign on today to support TCI to create jobs, clean our air, and protect our communities?

You can view and sign on the letter here: <https://protectingamerica.net/regional-transportation-climate-initiative/>

To add your name, you can also reply to me at [outreach@protectingamerica.net](mailto:outreach@protectingamerica.net) with your title, municipality, and email. If you have any questions, please call fm. State Rep. Alex Cornell du Houx at (207) 319-4511.

Sincerely,

Roland Lemar  
House Chair of the Transportation Committee  
Connecticut State Representative, District 96



Dear Newtown Council Members,

The multitude of climate tragedies this summer and the IPCC report has sounded the alarm that the time to act on the climate crisis is running out.

In our state, 38% of greenhouse gas pollution comes from the transportation sector. Pollution from transportation costs lives and billions of dollars, exacerbating the toll of the COVID-19 pandemic, and the natural disasters we experienced. As elected officials, we have a responsibility to serve our constituents and provide a sustainable future.

To that end, Connecticut and a group of Northeastern states have launched a regional program to invest in modern, efficient, and resilient transportation infrastructure to create jobs and reduce pollution.

I am writing because a group of local and state elected officials has written a letter thanking Governor Lamont for committing Connecticut to join TCI. By fully committing to participate in the TCI program, Connecticut will bring in urgently-needed sustainable infrastructure to our communities.

Will you sign the letter now?

The Transportation and Climate Initiative (TCI) is a regional cap and invest program that will bring up to \$3 billion in revenue to build clean infrastructure projects to make our communities more walkable and bike-friendly, clean our air, and improve quality of life. The Connecticut Legislature has proposed a commitment to invest 50 percent of funds in overburdened and underserved communities.

If you have any questions, feel free to call Former State Rep. Alex Cornell du Houx, 207-319-4511.

Please encourage your colleagues to join. The more support we can demonstrate at the local level, the more successful the initiative will be for the region.

To join the letter, please click [here](#) or reply to me at [outreach@protectingamerica.net](mailto:outreach@protectingamerica.net) with your title, municipality, email address, and phone number (your contact information will be kept private).

Thank you for considering!

Sincerely,  
Roland Lemar  
House Chair of the Transportation Committee  
Connecticut State Representative, District 96  
Leadership Council Member, Elected Officials to Protect America

Sign on the letter today

Elected Officials to Protect America  
20 Main Street  
Rockland, ME 04841  
United States

September 30, 2021

Paul Lundquist  
Legislative Council Chair  
Town of Newtown  
Newtown, CT

Dear Mr. Lundquist,

At the regular Board of Education meeting of September 21st, 2021, the Board voted unanimously to request the approval from the Legislative Council for an appropriation in the amount of \$55,000 of the current balance of \$292,506 from the Board of Education Non-Lapsing account.

The funds would be used for additional unforeseen expenditures that were incurred during the replacement of the Newtown High School track. As part of the project, Field Turf oversaw the entire turf and track installation. They subcontracted the work for the installation of the track to Classic Turf.

During the installation of the new track that began in August, it was discovered that the original track, which had been put into place approximately 12 years prior, had been improperly sealed. This impeded the laying of the new track, which required the entire area of the existing track to be resealed before the work could be completed. As of today, October 1st, the project is still ongoing.

Bob Gerbert, Facilities Director was made aware at this point and brought it to our attention. While the work needed to be completed, we began investigating the source of this issue and the previous installer. Rick Spreyer, our Purchasing Agent, became involved and began discussing the issue with the installer of the track, Classic Turf (CT), to gain an understanding of the previous installation and the issues that CT had encountered. It was determined that this could not have been anticipated or avoided, since the sealing process is customary during the installation of track, especially in colder weather conditions like New England.

We would be glad to discuss this further with the Legislative Council.

Sincerely,

Dr. Lorrie Rodrigue  
cc: Newtown Board of Education

# Town of Newtown

## Non-Lapsing Education Fund

### Joint Work Group

## Board of Education, Board of Finance & Legislative Council

TO: Keith Alexander Chair Board of Finance  
Michelle Embree Ku Chair Board of Education  
Paul J. Lundquist Chair Legislative Council

FROM Joint Non-Lapsing Work Group:  
Dan Delia Board of Education  
Chris Eide Legislative Council  
Debbie Leidlein Board of Education  
John Madzula II Board of Finance  
Cath Reiss Legislative Council  
Ned Simpson, Chair Board of Finance

Attached is the work product of the Board of Finance Joint Non-Lapsing Work Group. We ask that your body review and act upon this recommendation.

The Work Group has been meeting since March 2021. Our efforts started with a compilation of pertinent documents. Discussion with Town Attorney D. Grogen and School District Attorney M. Ritter occurred at our May 3<sup>rd</sup> meeting. This was followed by discussions with town Finance Director, Robert Tait and schools Director of Business & Finance, Tanja Vadas. With that base of knowledge available, the Work Group worked to craft the attached document.

This agreement constitutes the entire agreement between the BOE, BoF, and LC members of the Joint Committee on the Non-Lapsing Fund. Such agreement was made notwithstanding any existing agreements, policies, and understandings, both written and oral, between the parties and policies of the parties with respect to the subject matter hereof regarding the roles, flows, and approvals for funds going into the Non-Lapsing Fund and expenditures from the Non-Lapsing Fund

With this transmittal, we consider our work complete.

Thank you for entrusting the responsibility for seeking three-way agreement.

Attached  
Non-Lapsing Joint Agreement 20210927.docx

# Town of Newtown

## Non-Lapsing Education Fund

A Policy Agreement between:

### Board of Education, Board of Finance & Legislative Council

#### **Section 1. Preamble**

In 2010, the General Assembly passed a law, Connecticut General Statutes 10-248a, establishing a mechanism through which unexpended funds from the prior fiscal year from the budgeted appropriation for education could be transferred to a fund for expenditure in future years. The intent was to avoid “spend it or lose it” transactions and reward school administration for budget management. Such a fund is called “non-lapsing” The Board of Finance (BoF) of the Town of Newtown established such a non-lapsing education fund (the “Non-Lapsing Fund”) on May 12, 2014.

The statute was amended in 2019. This change increased the-maximum deposit amount to two percent and gave a board of education the authority to spend from their non-lapsing account without review/approval from any other town body. (Attachment A)

The Board of Education (BOE) changed their policy and procedures to reflect the revised statute. During preliminary discussions the Board of Finance raised concerns regarding the proposed Board of Education drafts.

Since 2014 the Board of Education has submitted Non-Lapsing deposit and expenditure transactions to the Board of Finance, which the Board of Finance approved. Due to the COVID-19 Pandemic in 2020, the Board of Education maintained an unusually high surplus at the end of the fiscal year 2019-2020. At their September 14, 2020 meeting the Board of Finance did not approve a request for a \$1.3 million deposit of Board of Education appropriations surplus into the Non-Lapsing Fund. There was significant public criticism of this Board of Finance action. The Legislative Council then discussed the Non-Lapsing Fund and the Town’s attorney issued an opinion that it should be Legislative Council that approves Board of Education requests for Non-Lapsing transactions.

The purpose of this policy is to work within the spirit of cooperation and the law to establish a three way agreement between the Board of Education, Board of Finance and Legislative Council to define roles, responsibilities and process for Non-Lapsing Fund deposits and expenditures.

#### **Section 2. Deposits into Non-Lapsing**

The Board of Education may, subject to the approval of the Legislative Council considering recommendation from the Board of Finance, deposit into the Non-Lapsing Fund all or a portion of any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the Town, provided that the amount deposited into the Non-Lapsing Fund shall not exceed the amount set forth in Section 10-248a of the Connecticut General Statutes.

- A. The Board of Education shall send notice to the Legislative Council of their desire to present their request to a joint meeting of the Board of Finance and the Legislative Council to be held no later than the first week of September.
- B. The Legislative Council considering recommendation from the Board of Finance may authorize deposits into the Non-Lapsing Fund in each fiscal year.
- C. The total amount in the Non-Lapsing Fund may accumulate without limitation over time if not expended.



# Town of Newtown

## **Section 3. Use of Funds**

- A. The Board of Education shall, subject to the approval of the Legislative Council considering recommendation from the Board of Finance, authorize expenditures from the Non-Lapsing Fund for any expenses that the Board of Education determines are necessary to support students or that are in the best interests of the Newtown Public Schools.
- B. If the Board of Education requests an expenditure from this account to be used to help pay for an approved Capital Improvement Plan (CIP) project, then such request is approved when the Legislative Council approves the CIP.
- C. As part of the communication in Section 2. A. above, the Board of Education will provide a written summary of the Non-Lapsing Fund's balance and expenditures for the prior fiscal year

## **Section 4. Educational Purposes**

The Non-Lapsing Fund balance comes from an appropriation that was approved by the voters of the Town for educational purposes and the Board of Education shall use the Non-Lapsing Fund for educational purposes.

Approved by Board of Education: \_\_\_\_\_.

Adopted by Board of Finance:

Approved by Legislative Council: \_\_\_\_\_

# Town of Newtown

## Attachment A - The Statute - 10-248a

2011 Statute

**Sec. 10-248a. Unexpended education funds account.** For the fiscal year ending June 30, 2011, and each fiscal year thereafter, notwithstanding any provision of the general statutes or any special act, municipal charter, home rule ordinance or other ordinance, the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations for the school district for each town may deposit into a non-lapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town, provided such amount does not exceed one per cent of the total budgeted appropriation for education for such prior fiscal year.

2020 Statute

**Sec. 10-248a Unexpended education funds account.** For the fiscal year ending June 30, 2020, and each fiscal year thereafter, notwithstanding any provision of the general statutes or any special act, municipal charter, home rule ordinance or other ordinance, the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations for the school district for each town may deposit into a nonlapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town, provided

- (1) such deposited amount does not exceed two per cent of the total budgeted appropriation for education for such prior fiscal year,
- (2) each expenditure from such account shall be made only for educational purposes, and
- (3) each such expenditure shall be authorized by the local board of education for such town.

Excerpt of Comments from Board of Education's Attorney

The following is excerpt from the June 23, 2020 Board of Education CIP/Facilities/Finance Committee meeting where Matthew Ritter, Shipman & Goodwin the school district's attorney discussed the revised statute. Mr. Ritter was Speaker of the Connecticut House of Representatives for the session where the statute was passed

"Best advice I can give you regarding 10-248a, is that it is meant to be a mutually cooperative relationship. The statute involves board of education powers and town powers. If one side thinks they can do whatever they want it's going to mess up the whole concept. It really does rely on cooperation between the two sides.

Money gets deposited into the account. Expenditures get approved by the board of education for educational purposes. The language in 10-248a has some notwithstanding language regarding general statutes and local charters. It talks about how money gets deposited, expenditures from the account are approved by the board of education for educational purposes.

Question: Does this mean the local board of education can use the funds for items, including capital expenses, without going through the appropriation process set forth in the town charter as long as it is for educational purposes? The answer is Yes.

The statute overrides a town charter. Best way to look at it is this. When the money is in the account, unless you have a policy to the contrary, which is a negotiation, the fall back is 10-222. The local board's discretion on how to spend that money as long as it's for educational purposes. Could be capital, could be non-capital.

# Town of Newtown

So, your reaction might be, well that's great the board of education has complete control. No. Here is the problem. If you spend money on projects the board of finance or the town council hate, they will not agree to put money into the account in the future. That goes back to my initial comment: you've got to get along to make this work. The answer is unless there is a policy that talks about how you spend money from that fund, all the statute requires is that board of education approve the project that it goes for educational purposes."