

**CITY COUNCIL MEETING AGENDA - VERSION 1**

**February 25, 2013**

**7:30 PM**

- 1. OPENING PRAYER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. CALL TO ORDER**
- 4. LATE FILE ITEMS**
- 5. PUBLIC COMMENT**

**CONSENT AGENDA**

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

**6. APPROVAL OF MINUTES**

February 11, 2013

(Approve)

**7. COMMUNICATIONS**

- |  |                     |
|--|---------------------|
| 1. Retirement Board Fiscal Year 2014 Appropriations          | (Budget & Finance)  |
| 2. Outdoor Seating Renewal Purple Onion                      | (License & Permits) |
| 3. Central Congregational Church Chocolate Tour May 11, 2013 | (Public Safety)     |

**END OF CONSENT AGENDA**

**REGULAR AGENDA**

**8. APPOINTMENTS - Second Reading**

- |                      |                |                       |                   |
|----------------------|----------------|-----------------------|-------------------|
| 1. Josiah B. Morrill | 27 Fair Street | <b>Appointment</b>    |                   |
|                      |                | Waterfront Trust      | December 31, 2013 |
|                      |                | <b>Re-Appointment</b> |                   |
| 2. Michael Frey      | 7 Broad St. #2 | Open Space Committee  |                   |

**9. ORDERS**

1. Tabled - Order Establishing HR and Finance Department  
New opinion - Kopelman and Paige, PC regarding effective date of order
2. Resolution Cultural District
3. Superintendent Search Committee

**10. ORDINANCES**

1. 2<sup>nd</sup> Reading Amend Ch. 13 Article IV Div 6 Sec. 13-175 2 hr zone Water St
2. 2<sup>nd</sup> Reading Amend Ch. 13 Article IV Div 6 Sec. 13-176 1 hr zone Pleasant St
3. 2<sup>nd</sup> Reading Amend Ch. 13 Article IV Div 6 Sec. 13-176.1 Thirty minute zone Pleasant St

**11. COMMITTEE ITEMS**

**Budget & Finance**

1. Mid-Year Report

**In Committee:**

- |  |             |
|--|-------------|
| 2. DPS-Sewer I/I Reduction Prog. \$100,000 to CIP-Plum Island Alarm Syst \$100,000 | *09/10/2012 |
| 3. Free Cash \$132,393.78 to Fund Union Contracts \$132,393.78                     | *01/14/2013 |

**General Government**

**In Committee:**

- |   |             |
|---|-------------|
| 1. Campaign Finance Reports – Municipal Forms website posting | *05/14/2012 |
| 2. Ordinance Review Committee Ordinances to be revised        | *1/14/2013  |

## **Joint Education**

### ***In Committee:***

1. Letter regarding World War II Memorial Stadium \*10/23/2012
2. NHS Baseball Alumni Assoc. re loss of baseball field \*11/26/2012

## **License & Permits**

### ***In Committee:***

1. Yankee Homecoming 2013 \*02/11/2013
2. Port Taxi - Taxi Company License Renewal \*02/11/2013

## **Neighborhoods & City Services**

### ***In Committee:***

1. Amend Ord. 3-27 Animals, dogs, Licensing of dogs and kennels \*06/25/2012

## **Planning & Development**

### ***In Committee:***

1. Communication regarding Zoning Changes on Storey Avenue \*05/29/2012
2. Order Cushing Park land transfer to Mayor for Municipal Parking \*06/25/2012
3. ORD Ch. 16 Sec.5 Local Historic District \*09/24/2012
4. ORD Ch. 5 Article X Building Demolition \*09/24/2012
5. Request for Discontinuance of Westerly Side of Harnch's Way \*11/13/2012
6. Revising Demolition Delay \*11/26/2012
7. Downtown Historic District/Demolition Control District \*11/26/2012

## **Public Safety**

### ***In Committee:***

1. Amend Ord. 10-9 Miscellaneous offenses – use or consumption of marijuana \*11/28/2011
2. Amend Ord. 13-180 Parking Resident Harris St. \*01/30/2012
3. Community Giving Tree of Boxford donation box \*04/30/2012
4. Order Yankee Homecoming Parade \*06/25/2012
5. Parking, Russell Terrace, No Parking, 50 feet from Storey Ave \*08/27/2012
6. ORD Ch. 2 Sec.358 Fingerprint Criminal History Checks \*09/24/2012
7. 3<sup>rd</sup> Annual Jackie Poor Mem. Walk for Ovarian Cancer Sept. 29, 2013 \*02/11/2013
8. Nate Bibaud 5K race to recover June 30, 2013 \*02/11/2013

## **Public Utilities**

### ***In Committee:***

1. Green Initiatives Fd \$117,861.47 to Green Initiatives \$117,861.47 \*02/11/2013

## **Rules Committee**

## **12. GOOD OF THE ORDER**

## **13. ADJOURNMENT**

## **CONSENT AGENDA**

**CITY COUNCIL MEETING MINUTES - VERSION 1**

**February 11, 2013**

**7:30 PM**

Council President O'Brien called the meeting to order at 7:35 pm. A moment of silence was held for Jerald P. Sarno and Barbara J. Chaisson. This was followed by the Pledge of Allegiance. He then instructed the City Clerk to call the roll. The following Councillors answered present: Cameron, Connell, Cronin, Derrivan, Earls, Heartquist, Herzog, Hutcheson, Jones, Sullivan and O'Brien. 11 present.

1. **LATE FILES** – Notification of Snow Budget deficit, and two updated documents J. Morrill appointment and 2<sup>nd</sup> page of the memo for the Green Initiatives transfer.

Motion to waive the rules and allow the late file and amendments by Councillor Connell, seconded by Councillor Jones. So voted.

2. **PUBLIC COMMENT**

1. Tammy Jennings PO Box 493 Newburyport Yankee Homecoming 2013

**CONSENT AGENDA**

3. **APPROVAL OF MINUTES**

January 28, 2013

(Approve)

4. **TRANSFERS**

1. Fire Dept. Maint. Of Rescue Equip \$1,750 to Assist. To Firefighter Grants \$1,750 (Approve)
2. Green Initiatives Fd \$117,861.47 to Green Initiatives \$117,861.47 (Public Utilities)

5. **COMMUNICATIONS**

1. Yankee Homecoming 2013 (License & Permits)
2. 3<sup>rd</sup> Annual Jackie Poor Mem. Walk for Ovarian Cancer Sept. 29, 2013 (Public Safety)
3. Nate Bibaud 5K race to recover June 30, 2013 (Public Safety)
4. Letter regarding dangerous intersection at Shaw's Market Plaza (Receive & File)
5. Girl Scout Troop #75192 Girl Scout Cookie sales in Market Square (Approve)
6. Port Taxi - Taxi Company License Renewal (License & Permits)

6. **APPOINTMENTS - First Reading**

- |                      |                   | <b>Appointment</b>    |                   |
|----------------------|-------------------|-----------------------|-------------------|
| 1. Josiah B. Morrill | 27 Fair Street    | Waterfront Trust      | December 31, 2013 |
|                      |                   | <b>Re-Appointment</b> |                   |
| 2. Michael Frey      | 7 Broad St. #2    | Open Space Committee  |                   |
| 3. Patricia Lawrence | 16 Washington St. | Board of Health       | February 1, 2016  |

**END OF CONSENT AGENDA**

Motion to approve the Consent Agenda as amended by Councillor Derrivan, seconded by Councillor Jones. 11 yes. So voted.

**REGULAR AGENDA**

7. **MAYOR'S STATE OF THE CITY ADDRESS**

Mayor Holiday was escorted into the Chamber by Councillor Herzog and Councillor Earls.

8. **COMMUNICATIONS**

7. **Late file** - Notification of Snow Budget Deficit FY2013

Motion to receive and file by Councillor Connell, seconded by Councillor Jones. So voted.

8. **APPOINTMENTS - Second Reading**

- |                   |                 | <b>Appointment</b>    |                 |
|-------------------|-----------------|-----------------------|-----------------|
| 4. Sarah M. White | 349 High Street | Historical Commission | January 1, 2016 |

## Re-Appointment

5. Paul Dahn 343 High Street

Harbor Commission

January 31, 2016

6. Joseph J. Donnelly 8 Bowlen Ave.

Library Board of Directors

January 1, 2020

Motion to approve collectively by Councillor Jones, seconded by Councillor Derrivan. Roll call vote, 11 yes.

## 9. ORDERS

1. Tabled - Order Establishing HR and Finance Department

Motion to remove from the table by Councillor Jones, seconded by Councillor Derrivan. Motion to table by Councillor Cronin, seconded by Councillor Derrivan. So voted.

## 10. COMMITTEE ITEMS

### Budget & Finance

1. Mid-Year Report

#### *In Committee:*

2. DPS-Sewer I/I Reduction Prog. \$100,000 to CIP-Plum Island Alarm Syst \$100,000 \*09/10/2012
3. Free Cash \$132,393.78 to Fund Union Contracts \$132, 393.78 \*01/14/2013

### Public Safety

#### *In Committee:*

1. Amer. Diabetes Assoc. Annual Tour de Cure Cycling event May 19, 2013 \*12/10/2012

Motion to remove from committee by Councillor Cronin, seconded by Councillor Derrivan. Motion to approve by Councillor Cronin, seconded by Councillor Derrivan. So voted.

2. Amend Ch. 13 Article IV Div 6 Sec. 13-175 2 hr zone Water St \*1/14/2013

Motion to remove from committee by Councillor Cronin, seconded by Councillor Derrivan. Motion to approve 1<sup>st</sup> reading and order published by Councillor Cronin, seconded by Councillor Derrivan. So voted.

3. Amend Ch. 13 Article IV Div 6 Sec. 13-176 1 hr zone Pleasant St \*1/14/2013

Motion to remove from committee by Councillor Cronin, seconded by Councillor Derrivan. Motion to approve 1<sup>st</sup> reading and order published by Councillor Cronin, seconded by Councillor Derrivan. So voted.

4. Amend Ch. 13 Article IV Div 6 Sec. 13-176.1 Thirty minutes \*1/14/2013

Motion to remove from committee by Councillor Cronin, seconded by Councillor Derrivan. Motion to approve 1<sup>st</sup> reading and order published by Councillor Cronin, seconded by Councillor Derrivan. So voted.

## 11. GOOD OF THE ORDER

Councillor Sullivan praised the DPS for doing a very good job, and WNBP for all of the coverage.

Councillor Cameron also praised the citizens for doing a great job as well.

Council President O'Brien also praised the private contractors for their work with snow removal.

## 12. ADJOURNMENT

Motion to adjourn at 8:45pm pm by Councillor Cameron, seconded by Councillor Derrivan. So voted.

## COMMUNICATIONS

February 25, 2013

RECEIVED

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

DOMENIC J. F. RUSSO, *Chairman*JOSEPH E. CONNARTON, *Executive Director*

Auditor SUZANNE M. BUMP | ALAN MACDONALD | JAMES M. MACHADO | DONALD R. MARQUIS | ROBERT B. MCCARTHY | GREGORY R. MENNA

2013 FEB - 6 A 10:37

## MEMORANDUM

TO: Newburyport Retirement Board  
FROM: *Joseph E. Connarton*  
Joseph E. Connarton, Executive Director  
RE: Appropriation for Fiscal Year 2014  
DATE: February 4, 2013

Required Fiscal Year 2014 Appropriation: **\$4,064,210**

This Commission is hereby furnishing you with the amount to be appropriated for your retirement system for Fiscal Year 2014 which commences July 1, 2013.

Attached please find summary information based on the present funding schedule for your system and the portion of the Fiscal Year 2014 appropriation to be paid by each of the governmental units within your system.

If you have any questions, please contact PERAC's Actuary, Jim Lamenzo, at (617) 666-4446 Extension 921.

JEC/jrl  
Attachments

cc: Office of the Mayor  
City Council  
c/o City Clerk

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# Newburyport Retirement Board

## Projected Appropriations

Fiscal Year 2014 - July 1, 2013 to June 30, 2014

Aggregate amount of appropriation: **\$4,064,210**

| Fiscal Year | Estimated Cost of Benefits | Funding Schedule (Excluding ERI) | ERI       | Total Appropriation | Pension Fund Allocation | Pension Reserve Fund Allocation | Transfer From PRF to PF |
|-------------|----------------------------|----------------------------------|-----------|---------------------|-------------------------|---------------------------------|-------------------------|
| FY 2014     | \$4,548,785                | \$3,807,680                      | \$256,530 | \$4,064,210         | \$4,064,210             | \$0                             | \$484,575               |
| FY 2015     | \$4,757,390                | \$3,937,053                      | \$256,530 | \$4,193,583         | \$4,193,583             | \$0                             | \$563,807               |
| FY 2016     | \$4,975,407                | \$4,071,315                      | \$256,530 | \$4,327,845         | \$4,327,845             | \$0                             | \$647,562               |
| FY 2017     | \$5,203,258                | \$4,210,668                      | \$256,530 | \$4,467,198         | \$4,467,198             | \$0                             | \$736,060               |
| FY 2018     | \$5,441,387                | \$4,355,322                      | \$256,530 | \$4,611,852         | \$4,611,852             | \$0                             | \$829,535               |

The Total Appropriation column shown above is in accordance with your current funding schedule and the scheduled payment date(s) in that schedule. Whenever payments are made after the scheduled date(s), the total appropriation should be revised to reflect interest at the rate assumed in the most recent actuarial valuation. Payments should be made before the end of the fiscal year.

For illustration, we have shown the amount to be transferred from the Pension Reserve Fund to the Pension Fund to meet the estimated Cost of Benefits for each year. If there are sufficient assets in the Pension Fund to meet the Cost of Benefits, this transfer is optional.



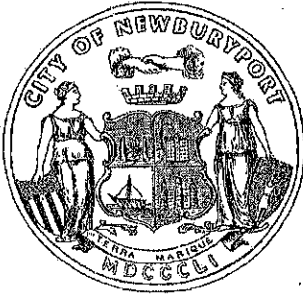
**Newburyport Retirement Board**  
Appropriation by Governmental Unit

Fiscal Year 2014 - July 1, 2013 to June 30, 2014

Aggregate amount of appropriation: **\$4,064,210**

| UNIT   | Percent of Aggregate Amount | Funding Schedule (excluding ERI) | ERI                  | Total Appropriation     |
|--|-----------------------------|----------------------------------|----------------------|-------------------------|
| City of Newburyport<br>Newburyport Housing Authority | 97.60%<br>2.40%             | \$3,716,296<br>\$91,384          | \$248,999<br>\$7,531 | \$3,965,295<br>\$98,915 |
| <b>UNIT TOTAL</b>                                    | <b>100%</b>                 | <b>\$3,807,680</b>               | <b>\$256,530</b>     | <b>\$4,064,210</b>      |

The Total Appropriation column shown above is in accordance with your current funding schedule and the scheduled payment date(s) in that schedule. Whenever payments are made after the scheduled date(s), the total appropriation should be revised to reflect interest at the rate assumed in the most recent actuarial valuation. Payments should be made before the end of the fiscal year.



City of Newburyport

RECEIVED NEW FILING  
CITY CLERK'S OFFICE RENEW ☒  
NEWBURYPORT, MA

2013 FEB 14 A 8:58

Application

Food Establishment Outdoor Seating on Public Property

Date: Feb 7th

Name of Business Owner: Nickolaos Poulouklos

Name of Property Owner: Newburyport operating Holdings

Business Name: Purple Onion

Business Address: 44 Inn St Business Telephone: \_\_\_\_\_

Number of Tables Requested: 7 Dimensions: 28x26 Material: metal

Number of Chairs Requested: 28 Dimensions: 15x20 Material: metal

☒ Applicant requests approval of outdoor seating for the sole purpose of food consumption.

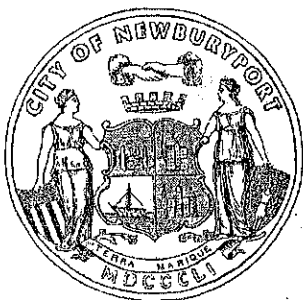
☐ Applicant requests approval of outdoor seating for food and alcohol consumption.

### Application Requirements

Please submit the following documents with the completed application to:

City Clerk's Office  
Newburyport City Hall  
PO Box 550  
60 Pleasant Street  
Newburyport, MA 01950

- 1) Applicants must provide evidence of liability insurance to the City Clerk with minimum coverage in the amount of one million dollars, naming the City of Newburyport as co-insured. This insurance coverage must be in force for the duration of the approved period.
- 2) 8 1/2 x 11 sketch of outdoor seating detailing:
  - a) measurements of tables and chairs
  - b) total width of sidewalk and c) distance between proposed seating and sidewalk



## Application

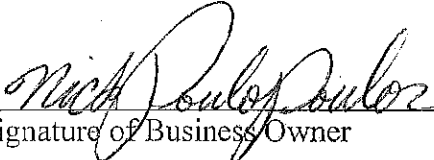
### Food Establishment Outdoor Seating on Public Property (continued)

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- 3) Obstacles such as streetlights, signs, trees, benches, and garbage barrels.
- 4) Applicants seeking approval of outdoor seating for food and alcohol consumption must also submit:
  - a) Written and dated approval of the Newburyport License Commission for the outdoor service of alcohol, including the information and sketch used for the basis of the License Commission approval.
  - b) 8 ½ x 11 sketch of outdoor seating cited above must also include a depiction and information on the placement, dimensions, and materials used to create a demarcated area for the service of alcohol.

#### **RELEASE AND INDEMNITY AGREEMENT TO ENCUMBER A PUBLIC WAY**

I, the undersigned Applicant or Duly Authorized Agent, hereby agree to RELEASE, DISCHARGE, and HOLD HARMLESS, the City of Newburyport, a municipal corporation of the Commonwealth of Massachusetts, and its officers, employees, agents, and servants from all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation associated with the undersigned's use of the public way as described herein.

  
\_\_\_\_\_  
Signature of Business Owner

Purple Onion

Inn Street

Foundation Area

Playground Area

### Purple Onion Seating Plan - 2013

Key



Table and chairs



Tree



CENTRAL CONGREGATIONAL CHURCH  
AN OPEN AND AFFIRMING CHURCH OF THE UNITED CHURCH OF CHRIST  
14 Titcomb Street P.O. Box 372 Newburyport, Massachusetts 01950  
978-465-0533

The Reverend Christopher Ney, Pastor

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

2013 FEB 19 P 3:37

February 19, 2013

City Clerk  
City of Newburyport  
60 Pleasant Street • PO Box 550  
Newburyport, MA 01950

To Whom It May Concern:

Central Congregational Church would like to obtain a permit from the City of Newburyport to sponsor and run the "10<sup>th</sup> Annual Chocolate Tour of Newburyport" on May 11, 2013.

Would you be so kind as to put our request on your February agenda?

The American Red Cross has held this event for several years, but has decided not to hold it this year due to conflicting commitments. They have graciously allowed Central Church to hold the Chocolate Tour this year (see attached letter). Someone from Central Church will attend the City Council meeting to address any questions regarding our request.

Thank you for your consideration.

Sincerely

Diane Hawkins-Clark  
Outreach Committee

**Kevin Clark**

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**From:** Doeringer, Frederica <Frederica.Doeringer@redcross.org>  
**Sent:** Tuesday, February 19, 2013 12:22 PM  
**To:** Diane Hawkins-Clarke (clarkkj@comcast.net)  
**Cc:** O'Hare, Kimberly  
**Subject:** Chocolate Tour of Newburyport

Hello Diane,

I am delighted that you and your church are stepping up to take on the *Chocolate Tour of Newburyport*. As you know, the Red Cross has decided not to sponsor the tour. It is a great event. I wish you success with the tour this year. I will ask Kim O'Hare about the Chocolate Tour notebook. She will get in touch with you about its whereabouts. Please let me know if we can provide any further information or assistance to you.

All the Best,  
Freddi

**Frederica Doeringer**  
**Executive Director**

**American Red Cross**  
of Eastern Massachusetts  
Northeast Chapter  
85 Lowell St.  
Peabody, MA 01960

978.922.2224  
978-548-4124(desk)

Frederica.Doeringer@redcross.org  
[@RedCrossNEMA](#) (twitter)



**Support Disaster Relief - Our 11th Annual Heroes Breakfast is being held on Thursday, 3/21/13 at the DoubleTree by Hilton Boston North Shore in Danvers. To nominate a hero, become a sponsor, or buy tickets, [click here](#) for more information.**



**END OF CONSENT AGENDA**

**BEGINNING OF REGULAR AGENDA**

**APPOINTMENTS  
SECOND READING**



**MAYOR'S APPOINTMENTS**  
**February 25, 2013**  
**SECOND READING**

**Appointment**

1. Josiah B. Morrill    27 Fair Street    Waterfront Trust    December 31, 2013

**Re-Appointment**

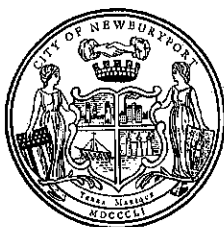
2. Michael Frey    7 Broad St. #2    Open Space Committee

**In City Council February 25, 2013**

Motion to approve the Consent Agenda as amended by Councillor Derrivan, seconded by Councillor Jones. 11 yes. So voted.

## ORDERS

# CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

MAY 29, 2012

**THAT**, in accordance with revisions to the Newburyport City Charter, the first administrative code that the Mayor is required to file an administrative code requiring the establishment of two new City department, a Finance Department to oversee the functions of the Auditor, Treasurer/Collector, Assessor, and purchasing, and a Human Resources department to develop and implement City personnel policies.

**FURTHER**, that the Mayor and City Council appoint a Finance Director and Human Resources Director to oversee the operations of each of these two departments.

**THEREFORE**, the following administrative codes are filed as follows:

## CODE OF ORDINANCES

### ARTICLE V. DEPARTMENTS

#### DIVISION VI. DEPARTMENT OF FINANCE

##### **Sec. 2-316, Established.**

There shall be established a Department of Finance consisting of the offices of the City Auditor, City Treasurer / Collector, Assessor, and Purchasing. The Department of Finance shall be under the direction of the Finance Director.

##### **Sec. 2-317, Appointment of Director.**

Within sixty (60) days from the effective date of this act, the Mayor shall appoint a Director of the Department of Finance. Said appointment shall be for a term of three (3) years and is subject to City Council confirmation. The Finance Director may also serve as City Auditor or Treasurer/Collector, but not both. The positions of City Auditor and Treasurer/Collector currently exist and the City Charter does not require the hiring of additional personnel. The hiring of the Director of the Department of Finance shall be based on merit and fitness demonstrated by education, training, performance, or some other evidence of competence and suitability.

##### **Sec. 2-318, Duties of Director.**

The Director of the Department of Finance shall oversee the efficient administration of the offices of the City Auditor, Treasurer /Collector, Assessor, and Purchasing Agent. In addition, the Director shall successfully carry-out and be responsible for day-to-day functions within the City Auditor's Office or the City Treasurer/Collector's Office, in accordance with the existing provisions contained in the City Charter and Personnel ordinance.

The Director of the Department of Finance shall supervise employees of the Department in accordance with the City's personnel ordinances and any applicable collective bargaining agreements.

The Director shall keep full and complete records of Finance Department activities and render to the Mayor, as often as may be required by said Mayor but at least quarterly, a full report of all operations under his/her control during the period reported upon, and annually shall render to the Mayor and City Council a report of all the operations under his/her control, including but not limited to: a full financial report of all accounts, funds and grants, a work plan with related finance plan for the subsequent fiscal year, and a report on the accomplishments and progress made under the work plan from the preceding fiscal year. Said Director, from time to time, as required by the Mayor, shall make a synopsis of such reports for publication. The Director shall have access to all City books, records and documents necessary for the proper performance of the assigned duties and responsibilities.

The Director shall perform such other duties consistent with the office as may be required by the ordinances of the City, by the Mayor, or by a majority vote of the City Council.

## **ARTICLE V. DEPARTMENTS**

### **DIVISION VII. DEPARTMENT OF HUMAN RESOURCES**

#### **Sec. 2-319, Established.**

There shall be established a Department of Human Resources. Said department shall develop and implement City personnel policies and carry-out personnel functions relative to the administration of health insurance, other employee benefits, new hires, employee terminations, and managing and maintaining personnel data for all City employees and retirees as required.

#### **Sec. 2-320, Appointment of Human Resources Director.**

Within sixty (60) days from the effective date of this act, the Mayor shall appoint a Human Resources Director. Said appointment shall be for a term of three (3) years and subject to City Council confirmation. The position of Human Resources Director currently exists and the City Charter does not require the hiring of additional personnel. The hiring of the Human Resources Director shall be based on merit and fitness demonstrated by education, training, performance, or some other evidence of competence and suitability.

#### **Sec. 2-321, Duties of Director.**

The Human Resources Director shall oversee the efficient administration of City personnel and benefit management functions in accordance with the City Personnel Ordinance, and local, state, and federal laws and regulations. In addition, the Human Resources Director shall keep full and complete records of all personnel related activities and actions and render to the Mayor, as often as may be required by the Mayor, but at least quarterly, a full report of all operations under his/her control during the period reported upon, and annually shall render to the Mayor and City Council a report of all the operations under his/her control, including but not limited to: a report on the accomplishments and progress made under a work plan from the preceding fiscal year. Said Director, from time to time, as required by the Mayor, shall make a synopsis of such reports for publication. The Director shall have access to all City books, records and documents necessary for the proper performance of the assigned duties and responsibilities.

The Director shall perform such other duties consistent with the office as may be required by the ordinances of the City, by the Mayor, or by a majority vote of the City Council.

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Councillor Edward C. Cameron  
Budget & Finance Chairperson

**In City Council May 29, 2012**

Motion to refer to General Government by Councillor Cameron, seconded by Councillor Jones. So voted.

**In City Council July 23, 2012**

Motion to remove from committee by Councillor Cronin, seconded by Councillor Cameron. Motion to approve by Councillor Cronin, seconded by Councillor Connell. Roll call vote, 8 yes, 1 no (Sullivan), 2 absent (Derrivan, Ives). (Vote reconsidered by Councillor Cronin).

**In City Council August 13, 2012**

(Reconsidered) Motion to approve by Councillor Jones, seconded by Councillor Herzog. Withdrawn. Motion to table by Councillor Cronin, seconded by Councillor Earls. Roll call vote, 7 yes, 3 absent (Connell, Derrivan, Sullivan). 1 present (Herzog).

**In City Council August 27, 2012**

Motion to remove from the table by Councillor Jones, seconded by Councillor Derrivan. So voted. Motion to table by Councillor Cronin, seconded by Councillor Jones. 10 yes, 1 absent (Cameron), so voted.

**In City Council Sept. 10, 2012**

Motion to remove from the table by Councillor Jones, seconded by Councillor Cronin. So voted. Motion to table by Councillor Jones, seconded by Councillor Earls. 10 yes, 1 absent (Ives). So voted.

**In City Council Sept. 24, 2012**

Motion to remove from the table by Councillor Jones, seconded by Councillor Connell. So voted. Motion to table by Councillor Jones, seconded by Councillor Cronin. 11 yes, so voted.

**In City Council October 9, 2012**

Motion to remove from the table by Councillor Jones, seconded by Councillor Derrivan. So voted. Motion to table by Councillor Cronin, seconded by Councillor Derrivan. 9 yes, 2 absent (Ives, Sullivan). So voted.

**In City Council October 23, 2012**

Motion to remove from the table by Councillor Cronin, seconded by Councillor Derrivan. So voted. Motion to table by Councillor Cronin, seconded by Councillor Derrivan. 10 yes, 1 absent (Herzog). So voted.

**In City Council November 13, 2012**

Motion to remove from the table by Councillor Jones, seconded by Councillor Derrivan. So voted. Motion to table by Councillor Jones, seconded by Councillor Derrivan. 10 yes, 1 absent (Earls). So voted.

**In City Council November 26, 2012**

Motion to remove from the table by Councillor Jones, seconded by Councillor Earls. So voted. Motion to table by Councillor Jones, seconded by Councillor Earls. 11 yes. So voted.

**In City Council December 10, 2012**

Motion to remove from the table by Councillor Jones, seconded by Councillor Cronin. So voted. Motion to table by Councillor Cronin, seconded by Councillor Jones. 10 yes, 1 absent (Derrivan). So voted.

**In City Council January 14, 2013**

Motion to remove from the table by Councillor Jones, seconded by Councillor Connell. So voted. Motion to table by Councillor Jones, seconded by Councillor Cronin. 10 yes, 1 vacant. So voted.

**In City Council January 28, 2013**

Motion to remove from the table by Councillor Jones, seconded by Councillor Cronin. So voted. Motion to table by Councillor Jones, seconded by Councillor Cronin. 9 yes, 2 absent (Derrivan, Heartquist). So voted.

**In City Council February 11, 2013**

Motion to remove from the table by Councillor Jones, seconded by Councillor Derrivan. Motion to table by Councillor Cronin, seconded by Councillor Derrivan. So voted.



# KOPELMAN AND PAIGE, P.C.

*RE The Leader in Municipal Law*  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

101 Arch Street  
Boston, MA 02110  
T: 617.556.0007  
F: 617.654.1735  
www.k-plaw.com

February 19, 2013

2013 FEB 19 P 3:51

Lauren F. Goldberg  
lgoldberg@k-plaw.com

Hon. Donna D. Holaday  
Mayor of Newburyport  
Newburyport City Hall  
60 Pleasant Street  
Newburyport, MA 01950

Re: Charter Question

Dear Mayor Holaday:

You have requested an opinion concerning the status of an administrative order originally submitted to the City Council on May 29, 2012. The order was prepared and submitted pursuant to the provisions of Section 10-6-6 of the Charter approved by the voters at the November 2011 regular municipal election (the "new Charter"). Section 10-6-6 mandates that the Mayor, no later than September 30, 2014, submit a series of administrative orders providing for the organization of City government into operating agencies, specifically a Finance Department and a Human Resources Department. On May 29, 2012, the Council held a public hearing on the Mayor's administrative reorganization order (the "Order") and sent it to the General Government Subcommittee for further review. On July 23, 2012, the General Government Subcommittee voted 3-0 to approve the order. Later the same day, the full Council met, removed the Order from committee and approved the order by a vote of 8-1-0, with two absent. On July 24, 2012, a Councilor filed a timely request for reconsideration. No further action has since been taken by the Council. Questions have now arisen as to the status of the order, particularly, whether Section 10-6-6 is currently effective, thereby providing the Mayor with authority to submit the administrative order at issue, or will only take effect on the first business day in January 2014. If Section 10-6-6 is effective, the next issue is whether the order took effect on July 28, 2012, 60 days after submission to the Council, in accordance with Section 5-1 of the Charter.

In my opinion, the new Charter as a whole will go into effect on the first Monday in January, except as otherwise provided in Section 10-6 of the Charter; said Section 10-6 requires and authorizes certain actions prior to that date to facilitate a smooth transition to the newly established form of government. In my further opinion, while Section 10-6-6 requires the Mayor to submit an administrative reorganization order no later than September 30, 2014, it does not set the first Monday in January 2014 as the first date on which such an order may be submitted. For these reasons, as described in further detail below, Section 10-6-6 provided the Mayor with authority to submit an administrative reorganization order at any time after voter approval of the Charter in November of 2011. Where a valid Order was submitted on May 29, 2012, the plain language of the Charter provides that such order takes effect, unless the Council votes within 60 days of the date of submission to disapprove the same by majority vote. Where the Council did not disapprove the order by July 28, 2012, in my opinion, the order is now effective.

We have previously given the opinion that the new Charter is now in effect to the extent specified in Section 10-6. In our opinion, the remainder of the provisions of the new Charter, other than those provisions specified by Section 10-6, become, operative on the first Monday in January, 2014. Our opinion on this

**KOPELMAN AND PAIGE, P.C.**

Hon. Donna D. Holaday  
Mayor of Newburyport  
February 19, 2013  
Page 2

issue is based upon several factors. First, both the ballot question and summary by which the voters approved the new Charter made reference to a process to be "[e]ffective with the 2013 municipal election". Second, the Final Report prepared by the Charter Commission indicated the following, "If approved by the voters in November 2011, the new charter would go into effect after the 2013 city election...." [emphasis added]. Third, the new Charter itself indicates that it shall take effect upon its ratification, and "in accordance with the following schedule", and then lays out various actions that will take place after voter approval of the Charter but before the election of the Mayor, new Council, and three members of the School Committee. Section 10-6 addresses the date of the first election, and specifies the portion of the new Charter that will be applicable to conduct a primary, as necessary; establishes the date on which the newly elected officials will be sworn; requires the City Clerk to provide notice of the adoption of the Charter to the City's legislative delegation; requires appointment of a committee to review the City ordinances, and requires the committee to report within one year; requires the Mayor, no later than September 30, 2014 to submit an administrative order or order pursuant to Article 5-1 organizing operating agencies, in particular a Finance Department and a Human Resources Department; mandates the persons elected as Councilors at the 2013 municipal election meet to adopt rules; establishes salaries for the first Mayor and Councilors under the new Charter; and authorizes the current and future Mayor and Council to adopt rules as necessary to clarify and facilitate the transition.

Based upon applicable rules of statutory construction, the Charter must be reviewed in total and all of its parts "construed together so as to constitute a harmonious whole". Commonwealth v. Smith, 431 Mass. 417, 424 (2000); quoting Board of Education v. Assessor of Worcester, 368 Mass. 511, 513-514 (1975). Additional case law establishes that:

The general and familiar rule is that a [regulation] must be interpreted according to the intent of [the officer or agency responsible for its promulgation] ascertained from all of its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated. Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp., 418 Mass. 737, 744-745 (1994) (internal citations omitted).

In fact, implementing all of the Charter other than those provisions in Section 10-6 would be confusing and lead to inconsistent results. Persons elected under one form of government would suddenly be administering the mandates of another form of government. In contrast, the Charter itself indicates that it will take effect in accordance with the schedule set forth in Section 10-6, and such language must be given effect. Those portions of the new Charter necessary and appropriate to provide for election of a Mayor, Council, and members of the School Committee become effective immediately, as do the provisions authorizing the current Mayor and Council to take certain actions (Council appoints an ordinance review committee; Mayor authorized to submit administrative reorganization plan; current and future Mayor and Council authorized to adopt measures to facilitate transition). In my opinion, therefore, as previously indicated by Attorney Joyce Frank, the only portions of the new Charter currently in effect are those set forth in Section 10-6, in the manner specified therein.



**KOPELMAN AND PAIGE, P.C.**

Hon. Donna D. Holaday  
Mayor of Newburyport  
February 19, 2013  
Page 3

Turning then to the Order, Section 10-6-6 of the new Charter authorizes "the Mayor" to submit no later than September 30, 2014 an administrative reorganization plan containing several specific elements. Section 10-6-6 does not indicate that such reorganization plan may only be submitted following January 1, 2014. Nor does it limit its application to the Mayor elected at the 2013 regular City election. Instead, it says nothing about which Mayor is authorized to act and simply provides that an administrative reorganization plan must be submitted no later than September 30, 2014. Statutory provisions "should not be so interpreted as to cause absurd or unreasonable results when the language is susceptible of a sensible meaning." Green v. Board of Appeal of Norwood, 358 Mass. 253, 258 (1970). It is sensible, of course, to interpret Section 10-6-6 as intended to facilitate the formal establishment of new departments as another step towards implementing the new Charter, consistent with the other provisions designed to have systems in place prior to the first Monday in January, 2014 in order to facilitate a smooth transition (election procedures, ordinance review by Council-appointed committee, Mayor and Council adopted transition measures) and there is nothing to be gained by interpreting Section 10-6-6 to apply only after the first Monday in January in 2014. In fact, the Mayor elected at the 2013 City election would have authority to submit a "new" administrative reorganization order at any time if that Mayor should so choose. Moreover, "when the Legislature has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present . . . ." Commonwealth v. Galvin, 388 Mass. 326, 330 (1983). There is nothing in the Charter that prohibits the submission of an administrative reorganization plan prior to September 30, 2014.

Therefore, where a valid Order has been submitted, the remaining question turns to whether the Order has taken effect. Section 10-6-6 provides that the Order will be submitted in accordance with Section 5-1, which in this case occurred on May 29, 2012. Section 5-1 provides that once an Order is submitted, the Order will take effect unless the Council acts within 60 days to disapprove the same by majority vote. In this case, less than 60 days after the filing of the Order, the Council approved it by vote of 8-1-0, with two Councilors absent. Although a motion for reconsideration was filed on July 24, 2012, the Council could have but failed to act on the same prior to July 28, 2012. For this reason, in my opinion, the Order is now in effect.

Please let me know if you have further questions concerning this matter.

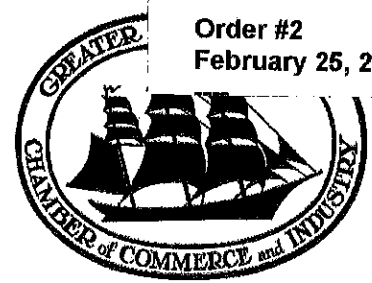
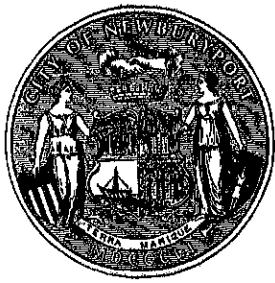
Very truly yours,

*Lauren F. Goldberg*

Lauren F. Goldberg

LFG/lem

467902v2



Order #2  
February 25, 2013

## RESOLUTION

**A RESOLUTION** by the City of Newburyport to create a State-authorized Cultural District for at least 5 years to be named:

**WHEREAS,** the City of Newburyport wishes to pursue a State-authorized Cultural District through enabling Legislation; and,

**WHEREAS,** the City of Newburyport has a mixed-use geographical area that has a concentration of cultural facilities and assets; and

**WHEREAS,** the City of Newburyport has held a public meeting and adopted a Resolution proclaiming its interest in establishing a State-designated Cultural District; and,

**WHEREAS,** the City of Newburyport has created a broad and diverse partnership of stakeholders committed to a cultural, community and economic development to provide oversight of the District; and

**WHEREAS,** the Massachusetts Cultural Council will be petitioned in accordance with its guidelines and criteria to designate said Cultural District.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Newburyport that the City:

**ARTICLE 1** Endorses the submission of this application and agrees to foster the development of a Cultural District.

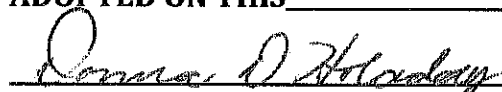
**ARTICLE 2** Endorses the State-sponsored Cultural District goals; attracting artists and cultural enterprises encouraging businesses and job development, establishing tourist destinations, preserving and reusing historic buildings, enhancing property values and fostering local cultural development.


**ARTICLE 3** Will appoint a City official to represent the City within the District partnership of said Cultural District.

**ARTICLE 4** Encourage all who own property or businesses within said Cultural District to involve Themselves and participate in the full development of the Cultural District.

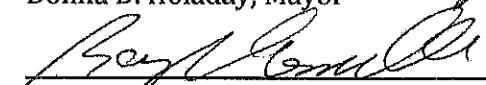
**ARTICLE 5** Direct City agencies to identify programs and services that could support and enhance the development of the Cultural District and ensure those programs and services are accessible to the Cultural District.

**ADOPTED ON THIS** \_\_\_\_\_ **day of** \_\_\_\_\_ **2013.**

  
Donna D. Holaday, Mayor

  
Date

  
Date

  
Councillor Barry Connell  
Newburyport City Council

# CITY OF NEWBURYPORT



\_\_\_\_\_  
IN CITY COUNCIL

**ORDERED:**

**February 20, 2013**

**THAT** the City Council of the City of Newburyport hereby designates and classifies the Superintendent Search Committee established by Mayor Donna D. Holaday on or about February 13, 2013 as a committee whose members shall be Special Municipal Employees pursuant to M.G.L. c. 268A Sec. 1 (n) et al.

Councillor Allison Heartquist

## ORDINANCES

# CITY OF NEWBURYPORT



IN CITY COUNCIL

DATE: January 14, 2013

**ORDERED:**

**AN ORDINANCE ENTITLED AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED TRAFFIC AND MOTOR VEHICLES.**

Be it ordained by the City Council of the City of Newburyport as follows:

Chapter 13: Traffic and Motor Vehicles  
Article IV: Specific Street Schedules  
Division 6: Stopping, Standing and Parking  
Sec. 13-175: Same – Two hours

No person shall park a vehicle for longer than two (2) hours between the hours of 9:00 a.m. and 6:00 p.m. of any day except Sundays and holidays in the following described streets or parts thereof:

**Add the following:**

| Street       | Extent   |
|--------------|--|
| Water Street | South side from Market Square to Center Street |

Councillor Robert J. Cronin

**In City Council January 14, 2013**

Motion to refer to Public Safety by Councillor Cronin, seconded by Councillor Jones. So voted.

**In City Council February 11, 2013**

Motion to remove from committee by Councillor Cronin, seconded by Councillor Derrivan. Motion to approve 1<sup>st</sup> reading and order published by Councillor Cronin, seconded by Councillor Derrivan. So voted.

# CITY OF NEWBURYPORT



IN CITY COUNCIL

DATE: January 14, 2013

**ORDERED:**

## **AN ORDINANCE ENTITLED AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED TRAFFIC AND MOTOR VEHICLES.**

Be it ordained by the City Council of the City of Newburyport as follows:

Chapter 13: Traffic and Motor Vehicles  
Article IV: Specific Street Schedules  
Division 6: Stopping, Standing and Parking  
Sec. 13-176.1: Same – Thirty minutes

No person shall park a vehicle for longer than thirty (30) minutes in the following described streets or parts thereof:

### **Delete the following:**

| Street          | Extent                                       |
|-----------------|--|
| Pleasant Street | South side from Hale's Court to Green Street |

### **Add the following:**

| Street          | Extent   |
|-----------------|--|
| Pleasant Street | South side from the Post Office Driveway to Green Street |

Councillor Robert J. Cronin

### **In City Council January 14, 2013**

Motion to refer to Public Safety by Councillor Cronin, seconded by Councillor Jones. So voted.

### **In City Council February 11, 2013**

Motion to remove from committee by Councillor Cronin, seconded by Councillor Derrivan. Motion to approve 1<sup>st</sup> reading and order published by Councillor Cronin, seconded by Councillor Derrivan. So voted.

# CITY OF NEWBURYPORT



IN CITY COUNCIL

DATE: January 14, 2013

**ORDERED:**

**AN ORDINANCE ENTITLED AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED TRAFFIC AND MOTOR VEHICLES.**

Be it ordained by the City Council of the City of Newburyport as follows:

Chapter 13 Traffic and Motor Vehicles  
Article IV Specific Street Schedules  
Division 6 Stopping, Standing and Parking  
Sec. 13 – 176. – Same – One hour

No person shall park a vehicle for longer than one (1) hour in the following described streets or parts thereof:

**Add the following:**

| Street          | Extent   |
|-----------------|--|
| Pleasant Street | North side from Hale's Court to the Post Office driveway |

Councillor Robert J. Cronin

**In City Council January 14, 2013**

Motion to refer to Public Safety by Councillor Cronin, seconded by Councillor Jones. So voted.

**In City Council February 11, 2013**

Motion to remove from committee by Councillor Cronin, seconded by Councillor Derrivan. Motion to approve 1<sup>st</sup> reading and order published by Councillor Cronin, seconded by Councillor Derrivan. So voted.

## COMMITTEE ITEMS



January 28, 2013

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

To Newburyport City Council

2013 JAN 31 P 2:29

Dear Councilors:

As a member of the Greater Newburyport Ovarian Cancer Awareness group I am requesting permission to have the third annual Jackie Poor Memorial Walk to raise awareness of ovarian cancer to be held in Newburyport on Sunday, September 29, 2013. September is Ovarian Cancer Awareness and Prevention Month. The walk will be on the streets of Newburyport and a short section of the Rail Trail and will be held in memory of Jackie Poor who died from ovarian cancer on October 27, 2009.

The 3 mile walk will follow the same routes as the 2011 walk and begin and end at Michael's Harborside Restaurant. Registration will begin at 10:00AM.

**Date:** Sunday September 29, 2013

**Beginning Time:** 10:30 AM (registration 10AM)

**Walk Route:**


The 3 mile walk will leave Michael's at 11AM and take the following route: Michael's to Merrimac Street to Water Street to Federal Street to Liberty Street to State Street to High Street to Broad Street. The route will cross Merrimac Street and go into Cashman Park and along the Rail Trail ending at Michael's Harborside where refreshments will be served.

**End Time (estimate):** 12:15

Please let us know if you require any additional information.

Thank you.

Yours sincerely,

  
Maryellen Lawler

Maryellen Lawler 7 Elmwood St. Amesbury Ma. 978-388-3805 [gardenblues54@gmail.com](mailto:gardenblues54@gmail.com)