

[DRAFT SECTION XXX OF THE NEWBURYPORT ZONING ORDINANCE]

XXX WATERFRONT MASTER PLAN OVERLAY DISTRICT (WMPOD)

XXX- A - Purpose.

A Waterfront Master Plan Overlay District (WMPOD) is established due to the unique land use, historic, cultural and architectural resources of the properties located along the central waterfront to facilitate implementation of the recommendations of the 2001 Master Plan and 2003 Waterfront Strategic Plan, as amended and supplemented from time to time, by:

- a. Encouraging a building pattern, scale, setbacks, height, density, and design conforming to that now found in the downtown district;
- b. Promoting a lively mixed-use waterfront district that will serve Newburyport's citizens and visitors with public space and intimately scaled streets and pedestrian ways with views to the water from Merrimac Street;
- c. Promoting the architectural, economic, and cultural heritage of the waterfront; and
- d. Promoting creative, efficient, and appropriate solutions for the development of complex sites, and facilitate the development of a mix of complementary land uses, including both residential and nonresidential development, that will address City and regional interests in additional employment, housing, and tax revenue.

XXX- B - Establishment.

The WMPOD is hereby established as an overlay district as shown on the city's zoning map. Within the WMPOD, the provisions of the underlying Waterfront Mixed Use Zoning District (WMU) and of the Waterfront West Overlay District (WWOD) shall remain in full force and effect except where a WMPOD Master Development Plan is approved, whereby the provisions of the WMPOD shall supersede those of the WMU, WWOD, and any other zoning district.

XXX- C - Master Development Plan.

The project developed pursuant to this Section XXX must have a Master Development Plan adopted by a two-thirds vote of the City Council in accordance with the procedures for adoption or change of zoning ordinances or by-laws set forth in M.G.L. Chapter 40A, Section 5. As used in this Section XXX, the term "WMPOD project" refers to the project that is depicted on an approved Master Development Plan, including the Master Development Plan entitled, "_____", prepared by _____, dated _____. To the extent a proponent desires to develop land in the WMPOD under a separate Master Development Plan, such separate Master Development plan must receive City Council approval under this Section XXX. The term "WMPOD project area" refers to the geographic area for a project delineated on a Master Development Plan, and the term "proponent" refers to the proponent or developer of a proposed WMPOD project or any phase or portion thereof.

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A. *General Submission Requirements:* The package of Master Development Plan materials submitted for approval by the City Council shall include the following information, which shall be on file with the City Clerk and available for review by the public:

1. The area of land proposed to be developed under this Section XXX.
2. A plan of existing conditions showing the topography and features, including wetlands and water bodies, if any, of the land to be developed.
3. The location and width of the existing and proposed roads and ways (including private ways and driveways) that will serve the land to be developed.
4. Bicycle and pedestrian pathways, including the expected circulation routes through the site and connections to nearby roadways.
5. An illustration of the anticipated breakdown of residential and nonresidential development.
6. The location of permissible building areas; maximum building height for buildings; anticipated parking spaces to be provided for the development (subject to adjustment based upon shared parking, use changes and tenancy requirements); and aggregate maximum developable gross floor area and unit count, as applicable, for each use category for the entire WMPOD project.
7. Illustrated descriptions of amenities and design features, such as streetscape improvements, landscaping, and signage, to be included as part of the proposed development.
8. Phasing plan showing the conceptual phasing of the WMPOD project (“Phasing Plan”).
9. Elevations showing the general architecture of the proposed structures, with detailed plans conforming to Section XV-E(b)(5) for any phase of the WMPOD project to be submitted thereafter in accordance with Sections XXX- I(B) and XXX- I(G).
10. Accompanying preliminary technical reports and studies, consisting of a (i) stormwater and drainage report, (ii) traffic study, and (iii) utilities and infrastructure report, with detailed reports and studies for any phase of the WMPOD project to be submitted thereafter in accordance with Sections XXX-I(B) and XXX- I(G).

XXX- D - Uses.

The land and buildings shown on an approved Master Development Plan may be used as of right for any use listed below and, to the extent not listed below, any use permitted in the WMU district, as set forth in the table of allowed uses. Multiple uses may be contained within a single building or structure or on a single lot, provided that each such use is permitted by this Section XXX- D.

A. *Principal Uses Permitted By Right:* The following principal uses shall be permitted by right:

Residential Uses

- * Use #101. One-family (including attached or detached townhouses).
- * Use #102. Two-family.
- * Use #103. Multifamily.
- * Use #104. Multifamily over 20 units.
- * Use #105. Hotel/inn (including with in-room kitchenettes).
- * Use #108. Congregate elderly housing.

Institutional/Government/Medical Uses

- * Use #211. Public parking.
- * Use #212. Library/museum.
- * Use #213. Private education.
- * Use #214. Private education residence.
- * Use #215. Medical office building.
- * Use #216. Community center.

Business Uses

- * Use #402. Specialty shopping center (including if part of mixed use (#405)).
- * Use #403. Retail trade.
- * Use #404. Retail services.
- * Use #405. Mixed use.
- * Use #406. Health/recreation.
- * Use #407. Entertainment/clubs.
- * Use #408. Nursery school/day care.
- * Use #413. Private parking.
- * Use #413B. Parking structure.
- * Use #414. Retail service kiosk/automated teller machine.
- * Use #417A. Home occupation.
- * Use #420. Theatre assembly.
- * Use #421. Meeting space.
- * Use #422. Neighborhood bakeries/delis.

Food Service Uses

- * Use #501. Restaurant.
- * Use #502. Fast food/carry out (carry-out of prepared food only).
- * Use #503. Outdoor café.

Industrial/Infrastructure Uses

- * Use #603. Crafts manufacturing.
- * Use #612. Corporate headquarters.
- * Use #615. Construction trailer.

Marine Uses

- * Use #701. Boat sales/service/storage/rental.
- * Use #702. Marine transport.
- * Use #703. Marine equipment sales.
- * Use #704. Marine repair services.
- * Use #706. Shipbuilding/repair.
- * Use #707. Canvas and canvas products.
- * Use #709. Marine retail.
- * Use #710. Commercial fishing.
- * Use #711. Indoor rack boat storage.
- * Use #712. Marina and related.

B. Prohibited Uses: Any use(s) not expressly allowed either under Section XXX- D(A) or within the underlying WMU district shall be prohibited unless the Building Commissioner, in consultation with the Director of Planning and Development, determines that such use is substantially similar in both its characteristics and its impact on abutting properties to a use permitted by this Section XXX- D, in which case such use shall be permitted by right within the WMPOD project area.

C. Accessory Uses: Any use that is incidental to, or customarily used in connection with, any principal use permitted within the WMPOD project area shall be permitted as an accessory use. Without limiting the foregoing, the following accessory uses shall be permitted by right:

- * Outdoor display, sales, and seating
- * Automated Teller Machines (ATMs)
- * Employee housing
- * Storage

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* Uses supporting business or office uses, including, without limitation, health and fitness centers, restaurants/cafeterias, dry cleaner drop-off service, and small-scale retail stores

*Uses supporting Hotel/Inn uses, including, without limitation, restaurants/cafeterias, dining rooms, bars and other places serving food or beverages; patio bars and other outdoor food services areas; theaters, halls, conference rooms, clubs, auditoriums and other places of amusement, assembly or meeting function purposes; health and fitness centers; small-scale retail stores and personal service shops (including dry cleaner drop-off service, florist kiosks, newsstands, hairstyling salons and barber shops); convenience stores; commercial or public parking lots and parking garages; and similar establishments and services of the same general character as the above

* Accessory off-street parking whether or not in a covered garage

* Utilities and infrastructure improvements, whether subterranean or aboveground, including, without limitation, lighting, pipes, conduits, manholes, fuel storage, and other appurtenances necessary for the provision or transmission of gas, electricity, telephone, water/sewer service, and other utilities.

D. Accessory Use Not Located on the Same Lot as Principal Use. An accessory use may be located on a different lot from its associated principal use within the WMPOD project area provided that the accessory use remains reasonably proximate to the principal use. For purposes of this Section XXX- D(D), accessory parking spaces shall be deemed to be reasonably proximate to the principal use if such spaces are provided in accordance with Section XXX-F(B) of this Zoning Ordinance. The location of an accessory use on a different lot than the principal use, other than any accessory parking spaces provided as described above, shall require the Planning Board's determination, at an administrative meeting, that such accessory use is generally compatible with the surrounding development area and that such accessory use is reasonably proximate to the principal use as determined by the Planning Board.

E. Residential Use Requirements. All residential components of a WMPOD project shall comply with the below provisions. For purposes of this Section XXX- D(E), neither a (i) Hotel/Inn nor a (ii) Congregate Elderly Housing facility, or Nursing Home shall be considered a residential component, with the exception of any facilities specifically named in clause (ii) above that are independent dwelling units because they have independent kitchens and bathrooms or contain multiple independent dwelling units within one structure.

a. Design. All residential components within the WMPOD project area shall be consistently integrated with the overall development through the use of sidewalks, crosswalks, and other pedestrian connections, and shall be of an architectural scale and character that both enhances and complements the overall development.

- b. Affordable Housing. Commencing upon the completion of construction of thirty (30) dwelling units within the WMPOD project area (the “Initial Residential Units”), all of the following requirements for affordable housing must be satisfied:
- i. Subject to the provisions of Section XXX-D(E)(b)(ii) below, at least thirteen percent (13%) of all dwelling units constructed after completion of construction of the Initial Residential Units shall be deed-restricted for low or moderate income households as defined under M.G.L.A. 40B, § 20 and 760 CMR 56 (except that such units shall not be required to be subsidized and may be built and operated by a private entity) for so long as the portion of the project is used as dwelling units. All such affordable units must, in the determination of the Planning Board, be designed for inclusion in the affordable housing stock of the City. Notwithstanding the foregoing, in no event shall this Section XXX-D(E)(b)(i) obligate a proponent to create more affordable housing units than the minimum required hereunder.
 - ii. To the extent that any phase of a WMPOD project is required to provide deed restricted affordable units under Section XXX-D(E)(b)(i), said units may be provided either within the WMPOD project area or at an off-site location within the City of Newburyport.
 - iii. In lieu of constructing affordable dwelling units in accordance with Sections XXX-D(E)(b)(i)-(ii), a WMPOD project may also satisfy the affordable housing requirements of Section XXX-D(E)(b) through one or more of the following Affordable Housing Support Contributions: (i) making a monetary contribution to the City for the creation of new affordable housing; (ii) acquiring and donating property for use as affordable housing; (iii) constructing, or facilitating the construction of, municipal infrastructure which may support affordable housing; and/or (iv) financial expenditures, accommodations, or other benefits made or given to the City in support of the construction of parking, infrastructure, and similar improvements, or in furtherance of any other municipal purpose, as set forth in a written agreement between the City and the proponent. A WMPOD project shall be credited one (1) affordable dwelling unit required by Section XXX-D(E)(b)(i) for every One Hundred Thousand Dollars (\$100,000) in Affordable Housing Support Contributions made pursuant to this Section XXX-D(E)(b)(iii). Monetary contributions made pursuant to clause (i) above shall be deposited in the City’s affordable housing trust fund and shall be used exclusively for purposes of constructing affordable housing, and infrastructure related thereto, for low or moderate income households in the City of Newburyport.

F. Protection of Existing Uses. The requirements of this Section XXX shall not apply to any existing building(s) within the WMPOD project area unless such building(s) are redeveloped, expanded, or changed in use as part of the WMPOD project, and such existing buildings and the existing use(s) thereof shall be treated as nonconforming uses and structures in accordance with Section IX (Nonconforming Uses, Structures and Lots) of this Zoning Ordinance.

XXX- E - Dimensional Standards and Requirements.

The alternative dimensional and other requirements set forth in this Section XXX-E shall be used for a WMPOD project rather than the requirements provided elsewhere in this Zoning Ordinance.

Table of Dimensional Requirements

<u>Maximum Building Height</u>	[55] feet ¹
<u>Minimum Open Space</u>	[25%] of the WMPOD project area, excluding public streets. ²
<u>Minimum Street Frontage</u>	15 feet
<u>Minimum Front Yard Setback</u>	0 feet
<u>Minimum Side Yard Setback</u>	0 feet
<u>Minimum Rear Yard Setback</u>	0 feet

[TO BE FINALIZED BASED ON FINAL PLAN]

A. Two or More Buildings on One Lot. Notwithstanding the provisions of Section VI-C or any other provision of this Zoning Ordinance, more than one (1) building or structure, including those intended solely for use as residential dwellings, shall be permitted on any lot.

¹ For purposes of this Section XXX-E, building elements and architectural features extending above the mean roof elevation (whether sloped, vertical or horizontal), which lend architectural character to the building or which accommodate necessary features not used for human occupancy (including, without limitation, belfries, cupolas, domes, monuments, spires, chimneys, masts, flagpoles, water tanks, bulkheads, elevators, air conditioning equipment, skylights, ventilators, and other roof structures and penthouses), are excluded from the calculation of building height. In addition, notwithstanding anything to the contrary in Section II-B.10 or elsewhere in this Zoning Ordinance, building height (i) for any building that fronts onto Merrimac Street may be measured from the average grade along Merrimac Street, rather than from the average grade around the perimeter of such building and (ii) for any building within FEMA jurisdiction, shall exclude any portion of such building required to account for mandatory FEMA separations.

² For purposes of this Section XXX-E, any open space areas used in satisfaction of the Minimum Open Space required hereunder may include any open space areas being used to satisfy the requirements of Massachusetts General Law Chapter 91 waterways licensing program.

- B. Subdivision.* The owner of any lot shown on an approved Master Development Plan shall be entitled to lawfully divide such lot, including without limitation by virtue of plans endorsed by the Planning Board pursuant to M.G.L. Chapter 41, section 81P, without modifying the approved Master Development Plan and without the need for other approvals under this Zoning Ordinance, provided that any such lot must have minimum frontage of fifteen (15) feet at the street line. To the extent consistent with the Subdivision Control Law, M.G.L. Chapter 41, section 81K, et seq., lots within an approved WMPOD project may be separated by a public or private way.
- C. Dimensional Requirements Calculated Across Entire WMPOD Project Area.* All dimensional requirements applicable to a WMPOD project shall be calculated across the entire WMPOD project area, irrespective of individual lot lines within the WMPOD development. Consistent with typical site configurations for larger, complex mixed-use developments, individual buildings within the WMPOD project area may be located immediately adjacent to individual lot line boundaries. Without limiting the foregoing, there shall be no minimum corner clearance, lot area, lot width, setback requirements, minimum non-wetland area, maximum building coverage, maximum impervious surface, minimum spacing between two or more buildings or structures on one lot, or lot coverage requirements for a project developed under this Section XXX-E, provided that a minimum setback and corner clearance may be required by the Planning Board to preserve acceptable sightlines for traffic and pedestrian safety.

XXX- F - Parking and Loading.

The alternative parking requirements set forth in this Section XXX-F shall be used for a WMPOD project rather than the requirements applicable to the underlying district as provided under applicable Planning Board regulations and/or elsewhere in this Zoning Ordinance, including, without limitation, Section VII.

- A. Parking Schedule.* Expected parking requirements for the WMPOD project shall be provided on a phase-by-phase basis within the WMPOD project area and shall be as set forth on a schedule included with the Master Development Plan (the “Parking Schedule”), rather than by reference to Section VII of this Zoning Ordinance. The number of parking spaces within a WMPOD project or any portion thereof shall be approved by the Planning Board as part of a Conformance Determination, as defined in Section XXX-I(A)(a), or as part of a Project Development Review (PDR) Approval, as defined in Section XXX-I(A)(b), as applicable, and the actual aggregate number of spaces approved by the Planning Board may vary from the Parking Schedule. The number of spaces contained within the WMPOD project may change from time to time, based upon changes in use and tenant requirements, provided that the minimum parking requirements set forth on the Master Development Plan are satisfied.
- B. Location.* Parking may be provided through any combination of at-grade, on-street, and/or structured parking facilities (including mechanized/automated parking), both stand-alone and part of other buildings, either (i) within the WMPOD Project area or

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- (ii) outside the WMPOD Project area within one or more municipal or private parking lots or facilities anywhere in the City of Newburyport. Parking spaces on public or private streets within or adjoining the WMPOD project area may be utilized in determining satisfaction of the requirements set forth in the parking schedule. Parking for cars and bicycles shall be as accepted by the Planning Board as part of a Conformance Determination, as defined in Section XXX-I(A)(a), or as part of a PDR Approval, as defined in Section XXX-I(A)(b), as applicable. Sidewalks or multipurpose pedestrian ways and facilities shall connect each parking lot or facility to buildings, public spaces, adjacent properties or other destination points within the development, as determined in the Planning Board's reasonable discretion.
- C. *Shared Parking.* If accepted by the Planning Board as part of a Conformance Determination, as defined in Section XXX-I(A)(a), or as part of a PDR Approval, as defined in Section XXX-I(A)(b), as applicable, shared off-street parking arrangements, which may include structured parking, shall be permitted and may be located on contiguous lots or on separate lots whether within or outside of the WMPOD Project area.
- D. *Design.* There shall be no minimum parking setback requirements. The number of entrances and exits shall be the minimum necessary for safe and efficient traffic circulation, as demonstrated by the traffic study submitted pursuant to Section XXX-C above. Unless otherwise approved by the Planning Board as part of a Conformance Determination, as defined in Section XXX-I(A)(a), or as part of a Minor Modification, as defined in Section XXX-I(J), as applicable, each parking space shall be no less than eight feet (8') in width and eighteen feet (18') in length, exclusive of access drives.
- E. *Landscaping.* Parking lot landscaping, both internal and perimeter, for a WMPOD project shall be substantially as shown on the approved Master Development Plan (or its accompanying plans) and as accepted by the Planning Board as part of a Conformance Determination, as defined in Section XXX-I(A)(a), or as part of a PDR Approval, as defined in Section XXX-I(A)(b), as applicable.
- F. *Loading.* Adequate loading plans shall be provided for all businesses and other applicable uses containing more than ten thousand (10,000) square feet of net floor area. When exclusive loading areas are provided, such areas shall be designed so as to have unobstructed access and shall be configured so that no trucks or other vehicles are parked on a public street while loading or unloading, or while waiting to load or unload.

XXX- G - Signage.

The alternative sign requirements set forth in this Section XXX-G shall be used for a WMPOD project rather than the signage requirements applicable to the underlying district as provided elsewhere in this Zoning Ordinance.

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- A. *Signs Allowed By Right.* Any combination of wall signs and window signs shall be permitted by right within the WMPOD project area such that the aggregate of all such signs associated with each individual building shall not exceed ____ square feet of signage for each ____ linear foot of the façade on which such signs are installed. Wall and window signs may include, without limitation, wall graphics (whether painted or vinyl) that serve as architecture, and panels, vinyl and/or TV displays within windows of stores. Wall signs may project from the building façade so long as at least ____ feet of clearance is provided above the pedestrian grade and such projection does not exceed ____ feet from the building façade.
- B. *Comprehensive Signage.* In recognition of the interrelated nature of signage systems in mixed-use projects, and the importance of clear, adequate, and effective signage to the safe and efficient operation of such projects, the Planning Board may approve a comprehensive signage program for all or any portion of or building within the WMPOD project. In the case of signs submitted for approval concurrently with the Master Development Plan, the Planning Board's review shall occur in connection with a Conformance Determination for such plan pursuant to Section XXX-I(A)(a). In the case of signs submitted for approval after adoption of a Master Development Plan, the Planning Board's review shall occur through PDR Approval pursuant to Section XXX-I(A)(b). The Planning Board shall approve a comprehensive signage program if it determines that the proposed signs adequately address the needs of the WMPOD project and are generally consistent with the design standards contained in Section XXX-G(C).
- C. *Design Standards.* All signs proposed for the WMPOD project, whether or not included in a comprehensive signage program, shall be manufactured using industry standard materials that are consistent with a high quality project, excluding high gloss plastic. Structurally necessary brackets, posts or other supports may be visible if compatible with the appearance of the sign they support. Indirect illumination of a sign by properly shielded light fixtures, or by edge-lighting, or by halo lighting, or internal illumination of only the lettering, wording or insignia portions of a sign, shall be permitted.

XXX- H - Design and Performance Standards.

The following design and performance standards shall apply to WMPOD projects. These standards shall be reflected in the Master Development Plan submittals. Except as otherwise noted in this Section XXX-H, the standards and requirements set forth in this Section XXX-H shall override any other standards and requirements imposed elsewhere in this Zoning Ordinance.

A. *Building Design.*

- a. General. Structures shall be designed to create a visually pleasing, unifying and compatible image for the development as a whole. Any combination of architectural design elements may be employed to meet this standard, including building color, texture, materials, scale, height, setbacks, roof and

cornice lines, signs, lighting, and elements such as door and window size and location, and door and window detailing, including glazing.

- b. Exterior Materials. Exterior walls for the project shall use a combination of architectural masonry and cementitious materials, including but not limited to brick, glass, stone, stucco, exterior insulation and finishing system (EIFS), high quality siding and shingles (including wood siding and Hardie-plank cement clapboards, but excluding vinyl siding), precast concrete architectural panels, stainless steel, painted metal, and split face block. Stainless steel shall be used solely as an accent feature, unless otherwise approved by the Planning Board as part of a Conformance Determination, as defined in Section XXX-I(A)(a), or as part of a PDR Approval, as defined in Section XXX-I(A)(b), as applicable.
- c. Primary Façade Treatments. To avoid long unbroken expanses of wall, the architecture shall incorporate, as appropriate, design features providing horizontal and vertical relief including projections, building jogs, elements of transparency or windows, architectural detailing, and changes in surface materials. The design of public entrance ways shall incorporate architectural features and elements to emphasize the primary entrance locations and interrupt long stretches of building façade. The primary façades of parking structures shall be designed to a standard of architectural finish consistent with other buildings within the project. All exterior walls shall be designed and finished with materials that maintain a consistent architectural character with adjoining buildings, but not necessarily using the same material.
- d. Outdoor Seating, Sales and Displays. For outdoor seating, sales, and display areas for retail use, restaurants, and other uses sufficient clearance shall be maintained for safe and efficient public access along sidewalks, access drives, and roadways. Such areas shall be appropriately separated from streets and sidewalks by means of low fencing, bollards, code-compliant grade change, plantings, or other similar measures. Outdoor sales and display areas shall be maintained in a neat and orderly condition at all times.
- e. Relationships among Structures and Components. Buildings and parking structures shall be designed with common elements that both create a sense of unity and express a relationship to the interior. These elements may include the horizontal spacing of bays, columns, and windows, and the vertical alignment and spacing of floors. Structures shall relate harmoniously to the surrounding streetscape and to the scale and architecture of other buildings.
- f. Detailing. Architectural detailing and surface textures and colors of adjoining components of the WMPOD project, such as residential structures, and parking structures, should be related and contribute to an overall sense of cohesion within the project. While a variety of design treatments is encouraged to avoid monotony, individual components shall be designed to avoid overly strong contrasts.

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- g. Rooftops. Rooftop mechanical features, heating and air conditioning units, vents, stacks, and mechanical penthouses may be screened. The Planning Board may condition its approval of a Master Development Plan on the incorporation of such screening elements.
- B. *Visual Mitigation and Screening of Infrastructural Elements*. Exposed storage areas, exposed machinery or electric installations, common service areas, truck loading areas, utility structures, trash/recycling areas and other elements of the project infrastructure shall be subject to reasonable visual mitigation requirements, including, but not limited to, screen plantings or buffer strips, combinations of visually impermeable fencing and plantings, or other screening methods necessary to assure an attractive visual environment.
- C. *Utilities*. All principal buildings within the proposed development shall be connected to the public water supply. Sewage collection shall be by the public sewage collection system. Access easements to any utility connections shall be granted to the City, as required, to assure maintenance and emergency repair.
- D. *Land Uses and Common Areas*. Exterior, publicly-accessible common areas shall be included within the development to encourage pedestrian activity and to visually separate buildings or groups of buildings. When reasonably feasible, independently sited common areas shall be connected to other nearby open space and common areas by use of pathways and other similar pedestrian connections.
- E. *Street Design*. Streets, interior drives and related infrastructure within the proposed development shall be designed in accordance with applicable engineering standards, and shall be designed with sufficient capacity to accommodate anticipated trip generation and turning movements, to provide for adequate access by public safety vehicles and maintenance equipment, and to safely maintain and encourage pedestrian and bicycle circulation.
- F. *Circulation, Traffic Impact & Public Street Access*. Traffic planning shall consider the surrounding system of public streets adjoining the WMPOD project, the existing and future vehicular trip volume, the number and location of proposed access points to public streets, and existing traffic controls and management measures. The impact of volume increases on adjacent residential districts and business areas generated by the WMPOD project shall be mitigated to the satisfaction of the Planning Board using traffic engineering and traffic calming techniques recognizing that cost sharing among the proposed project, the City and other surrounding developments (existing and proposed) may be appropriate. To aid the Planning Board in its review of the foregoing performance standards, the applicant shall pay all costs for the Planning Board to engage a properly licensed traffic engineer to peer review the traffic study and deliver a peer review report to the Planning Board with any comments or questions for the Board's consideration. The Planning Board shall engage such traffic engineer no later than seven (7) calendar days after its having opened the required public hearing on the adoption of this Section XXX; the overall cost of the traffic

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engineer's peer review proposal shall be approved by the applicant, which approval shall not be unreasonably withheld.

- G. *Public Safety.* The proposed development shall be designed and located so as not to endanger their occupants or the public. The design shall include adequate water supply distribution and storage for fire protection. Vehicular circulation shall consider the access needs of emergency and public safety vehicles.
- H. *Stormwater Management.* Stormwater management systems serving the proposed development shall be designed in conformance with DEP Stormwater Standards, as amended from time to time, to efficiently collect runoff from all impervious surfaces, roofs, and canopies in a manner that avoids adverse drainage impact on any neighboring property. A plan for controls that are appropriate and specific to the site and the project, and which includes both pre-construction and post-development measures, shall be employed to mitigate erosion and sedimentation impacts. Where space, topography, soils, and the character of the proposed development make it practical, low impact designs (LID) that capture and recharge runoff to the groundwater shall be used as an alternative to closed systems.
- I. *Mixed Uses and Activities.* A WMPOD project must contain a mix of uses. Proponents are strongly encouraged to include a beneficial mix of commercial and non-commercial uses. Compatibility between uses shall take into account peak hours of use and parking for individual components. Buildings or structures intended solely for one use shall be permitted, so long as the Master Development Plan contains an adequate mix of uses.

XXX- I – Administration.

A. *Project Review*

- a. Conformance Determination. The WMPOD project depicted on the Master Development Plan entitled, “_____,” prepared by _____, dated _____ shall, prior to adoption of this Section XXX, undergo a Conformance Determination review simultaneously with the Planning Board's review and recommendation of this Section XXX for purposes of City Council approval. To the extent a proponent desires to develop other land in the WMPOD under a separate Master Development Plan, such proponent shall undergo a Conformance Determination simultaneously with the Planning Board's review and recommendation of such separate Master Development Plan for purposes of City Council approval. In the event that the Planning Board requires additional information or materials prior to approving a WMPOD project, and the proponent is not able to deliver such materials sufficiently in advance of the City Council hearing, then the WMPOD project shall undergo Conformance Determination following the receipt of such materials by the Planning Board. The Planning Board shall issue the Conformance Determination if it finds that the final plans and materials (i) materially conform to the approved Master Development Plan materials, and

(ii) are otherwise compliant with the standards and requirements set forth in this Section XXX. The Conformance Determination shall be conclusive evidence of such findings. No building permit shall be issued with respect to a WMPOD project prior to the issuance of a Conformance Determination for such WMPOD project. The Planning Board's review and consideration of an application for Conformance Determination shall be in accordance with the Rules and Regulations.

b. Project Development Review. Following approval of a Master Development Plan for a WMPOD project by the City Council, the proponent shall undergo Project Development Review (PDR) for any Material Modification of the approved WMPOD project, as defined in Section XXX-I(L), prior to issuance of a building permit for such Material Modification. The Planning Board shall issue a PDR Approval for such Material Modification of a WMPOD project if it finds that the following criteria have been met with respect to the project or the phase thereof for which a building permit is being sought:

- i. Impact. (i) Any previously developed portion of the WMPOD project has not resulted in material adverse impacts that have caused a condition that does not comply with applicable regulatory requirements or, in the opinion of the Planning Board, is substantially detrimental to the public health or safety or the environment; (ii) the project or applicable phase thereof does not pose new material adverse impacts or materially exacerbate existing adverse impacts to any adjacent property or the proximate neighborhood that have not already been addressed through a prior PDR Approval; and (iii) the project component for which PDR Approval is sought results in net fiscal benefits to the City and the proponent has adequately mitigated any adverse fiscal impacts.
- ii. Design. The project or applicable phase thereof complies with the standards and requirements set forth in this Section XXX, including but not limited to the performance and design standards set forth in Section XXX-H.

The findings required under paragraphs (i) and (ii) above may be satisfied through the Planning Board's imposition of mitigation measures and other requirements pursuant to Section XXX-I(A)(e) that, if satisfied, will cause the project or applicable phase thereof to conform to these criteria.

A PDR Approval shall be conclusive evidence of the Planning Board's findings under this section.

c. Submittal Requirements. An application for PDR Approval shall be filed with the City Clerk, and copies shall be submitted to the Planning Board in the manner and quantity specified in the Rules and Regulations adopted pursuant to Section XXX-I(E) of this Zoning Ordinance (the "Rules and Regulations").

- d. Review Procedure. The Planning Board's review and consideration of an application for PDR Approval shall be in accordance with the Rules and Regulations.
 - e. Supplemental Development Standards and Mitigation. In issuing a PDR Approval, the Planning Board may include, as part of its written report, mitigation measures, supplemental development standards, requirements, safeguards, limitations, and specifications that address specific components of the approved development, such as lighting, signage, and landscaping. The Planning Board may include requirements for post-approval monitoring of certain development impacts, as well as performance guarantees, self-reporting commitments, and other measures to ensure compliance with the approved plans and submittals.
 - f. Waivers. In connection with a PDR Approval, the Planning Board, in its discretion, may waive the requirements of this Section XXX if it determines that (i) the waiver will substantially improve the WMPOD project; (ii) the project or applicable phase thereof satisfies the performance and design standards set forth in this Section XXX; and (iii) the granting of a waiver will not nullify or substantially derogate from the intent or purpose of this Section XXX. A waiver shall not be granted if it would cause the WMPOD project to become inconsistent with the approved Master Development Plan submittals pursuant to Section XXX-C of this Zoning Ordinance.
 - g. Denial. In the event that the Planning Board denies a Conformance Determination, PDR Approval, or waiver, the proponent shall either (i) withdraw the development proposal; (ii) modify its plans to make them consistent with the Planning Board's findings and submit the modified plans to the Planning Board for reconsideration of the Conformance Determination, PDR Approval, or waiver, as applicable; (iii) seek approval of a modification of the Master Development Plan by the Planning Board pursuant to Section XXX-I(J) or Section XXX-I(K); or (iv) seek, at its option, either (a) a Special Permit for modification of the Master Development Plan pursuant to Section XXX-I(M) of this Zoning Ordinance or (b) approval of a revised Master Development Plan by a majority vote of the City Council. Additionally, where a Conformance Determination is denied, the proponent may, at its option, submit additional materials and undergo full Project Development Review in accordance with Section XXX-I(A)(b).
- B. *Phased Development.* An approved WMPOD project may be constructed in one or more phases in accordance with the Phasing Plan approved by the Planning Board. Changes to the Phasing Plan may be approved by the Office of Planning and Development upon an administrative determination that the proposed change is consistent with this Section XXX, including with the design and performance standards contained in Section XXX- H. Upon such a determination, a building permit for the affected phase(s) may issue in accordance with Section XXX-I(G). If

the Office of Planning and Development determines that a proposed change to the Phasing Plan constitutes a Minor Modification or Material Modification of the approved Master Development Plan, then the proposed change shall require approval in accordance with Section XXX-I(J) or Section XXX-I(K), as applicable, and a building permit may thereafter issue for the affected phase(s). Upon the granting of administrative approval or such other approval as may be required by Sections XXX-I(J)-(K), the affected phase(s) shall be deemed to be in compliance with the requirements of this Zoning Ordinance at the time such finding is made, notwithstanding the status of any other phase of the development and/or any noncompliance of such other phase with the requirements of this Section XXX.

- C. *Application of Requirements to Individual Lots.* The requirements of Section XXX of this Zoning Ordinance shall not be applied to the individual lots or ownership units within an approved WMPOD project, but shall be applied as if the entire plan area were a single conforming lot, whether or not the same is in single or multiple ownership. Any violation of this Zoning Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within an approved WMPOD project shall not constitute a violation by any other owner or occupant; provided, however, that the foregoing shall not be deemed to affect the Planning Board's right to impose conditions on Material Modifications to an approved WMPOD Project to address adverse project impacts related to any previous phase.
- D. *Relationship to Underlying Districts and Regulations.* The WMPOD is established as an overlay district superimposed over, rather than replacing, the applicable underlying zoning district(s). Except as otherwise noted in this Section XXX, the provisions and requirements of other applicable overlay districts and any rules and regulations or design standards of the Planning Board, shall not apply to any project developed pursuant to this Section XXX. Special permit and similar approvals/criteria otherwise required under this Zoning Ordinance shall not be required for a WMPOD project, including, without limitation, any such approvals/criteria required pursuant to Section XIII (Floodplain Overlay District); Section XV (Site Plan Review); Section XIX (Water Resources Protection District); and/or Section XXIV (Waterfront West Overlay District—Special Permit).

Upon approval of a Master Development Plan, the use regulations of the underlying zoning district(s) shall not apply to the area within the Master Development Plan, but all other regulations of the underlying zoning district(s) shall apply except to the extent that they are inconsistent with, supplemented by, or modified by the provisions of this Section XXX. In the event of any conflict or inconsistency between the other provisions of this Zoning Ordinance and this Section XXX, the provisions of this Section XXX shall prevail.

Development of any or all lots within an approved Master Development Plan may be pursued under other applicable underlying zoning and overlay districts, subject to receipt of approvals, if any, required under such other regulations only if the Planning

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Board, in its discretion, votes to release the lot or lots from the Master Development Plan pursuant to the procedures set forth in the Rules and Regulations.

- E. Rules and Regulations.* The Planning Board may adopt rules and regulations for the administration of this section, which shall be limited to defining the application and submittal requirements, fees, reimbursement for consultants, performance guarantees, and procedural requirements for any approvals required pursuant to Section XXX.
- F. Enforcement.* The Building Commissioner shall have jurisdiction to enforce compliance with the standards and requirements of a Conformance Determination for a WMPOD project and PDR Approval for any Material Modification of an approved WMPOD project, both before and after construction, and may institute legal proceedings or take such other actions as are necessary to ensure compliance.
- G. Issuance of Building Permit.* Following the Planning Board's issuance of a Conformance Determination for a WMPOD project, and such other approval as may thereafter be required by Section XXX-I(B), Section XXX-I(J), or Section XXX-I(K), the proponent shall submit evidence of such approval(s), a Phasing Plan, and accompanying reports to the Building Commissioner, along with other required building permit application materials and fees, and a building permit may thereafter be issued for the approved project, or any individual component thereof, without the need for any further approvals under this Zoning Ordinance, except where this Section XXX specifically requires further approval. Building permits may be sought and issued for individual components of an approved project, and nothing in this Section XXX shall obligate the proponent to construct all or any portion of the improvements shown on an approved Master Development Plan or Phasing Plan.
- H. Issuance of Occupancy Permit.* The inspector of buildings shall issue occupancy permits for any individual component or phase of a WMPOD Project without reference to the status of any other component or phase thereof. All construction associated with public roadways, infrastructure, utilities, and open space for any phase of a WMPOD Project shall be substantially complete prior to the issuance of any occupancy permit for a building within such phase. The issuance of an occupancy permit for an approved WMPOD project, or any portion or phase thereof, shall be conclusive evidence of said project's conformance with this Section XXX, and no further reviews or approvals shall thereafter be required under this Zoning Ordinance, except as may be required under Sections XXX-I(J) through (M).
- I. Transfer of WMPOD Approvals.* WMPOD approval of a project, or any individual portion thereof, may be freely transferred between lots and between owners, provided that the transferee complies with the provisions of this Section XXX.
- J. Minor Modifications of a Master Development Plan.* Notwithstanding anything to the contrary in this Zoning Ordinance, once a Master Development Plan has been approved by the City Council, the Planning Board may, in its discretion, approve a minor modification of such Master Development Plan by a majority vote at a public meeting. For purposes of this subsection, a plan modification is "minor" if the

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changes proposed, considered in the aggregate with all minor modifications previously approved:

- a. Are substantially consistent with the requirements and standards set forth in this Section XXX and do not have a material adverse effect on the overall design and implementation of the WMPOD project;
- b. Do not increase by more than ten percent (10%) the maximum gross floor area limitations for each category of use as noted in the approved Master Development Plan or the size of any individual permissible building area;
- c. Do not increase the land area included within the Master Development Plan by more than ten percent (10%);
- d. Do not adversely affect the storm water quality of the development; and
- e. Do not increase projected vehicle trips by more than ten percent (10%), unless it is demonstrated that such increase (i) for any intersection in the vicinity of the development that operates at LOS D or better would not result in a reduction of overall intersection level of service below LOS D and (ii) would not otherwise cause vehicular traffic to operate in an objectively unsafe manner, or cause queue lengths that block intersections, unless any such impacts are addressed with adequate traffic mitigation, as certified by the proponent's Registered Traffic Engineer and approved by the Planning Board.

Minor adjustments in the location and configuration of the buildings, parking areas, and other site features within an approved development area, shall not require further Planning Board approval, as long as such adjustments are considered *de minimis* by the Building Commissioner, do not exceed individual gross floor area requirements, and would not have the effect of changing the overall character of the applicable portion of the WMPOD project.

K. *Material Modifications of a Master Development Plan.* Following approval of a Master Development Plan for a WMPOD project by the City Council, PDR Approval from the Planning Board pursuant to Section XXX- I(A)(b) shall be required for the following within the WMPOD area:

- a. Construction of an additional building outside of the permissible building area and not previously approved;
- b. An expansion of an existing building that increases the existing gross floor area of such building by more than 20%; or
- c. The passage of five (5) or more years following the date of approval by the City Council of the Master Development Plan, if a substantial use thereof (including, without limitation, the filing of a building permit application for construction) or construction thereunder has not begun, except for good cause;

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provided that the Planning Board may extend such approval, for good cause, upon the written request of the proponent; and provided further that substantial use of any portion of the approved Master Development Plan shall permanently vest the Master Development Plan and it shall not thereafter lapse for any reason.

L. Master Development Plan Special Permit. In the event that the Planning Board determines that a proposed change to an approved Master Development Plan does not meet the requirements for approval pursuant to Section XXX-I(J) through (L), or in the event that the Planning Board exercised its discretion not to approve a proposed modification pursuant to those sections, then the proponent shall have the option of seeking either (A) an amendment of the Master Development Plan at a City Council meeting, or (B) a special permit from the Zoning Board of Appeals for modification of the Master Development Plan in accordance with the procedures set forth in Section X-H(7)-(8) of this Zoning Ordinance authorizing the final development plans to be implemented as proposed.

- 1) Amend the Official Zoning Map to include the delineation of the Waterfront Master Plan Overlay District.
- 2) Approve Master Development Plan entitled, “ _____,” prepared by _____, dated _____.

The map and other supporting materials relative to the proposed amendments are available for inspection between 8:00 a.m. and 12:00 noon, Monday through Friday at the Office of Planning and Development at 60 Pleasant Street, or during regular municipal business hours at the City Clerk’s office. Interested persons are encouraged to attend the public hearing and make their views known to the Planning Board.

Jim McCarthy, Chairman
Newburyport Planning Board