

**CITY COUNCIL MEETING AGENDA**

**REMOTE**

**April 12, 2021**

**7:30PM**

**City Council Meeting**

**Zoom Details**

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/86493680558>

Or One tap mobile :

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Dial(for higher quality, dial a number based on your current location):

US: +1 312 626 6799 Webinar ID: 864 9368 0558

- 1. CALL TO ORDER**
- 2. LATE FILE ITEMS**
- 3. PUBLIC COMMENT**
- 4. MAYOR'S 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.

**5. APPROVAL OF MINUTES**

- March 29, 2021 (Approve)

**6. COMMUNICATIONS**

- COMM318\_04\_12\_2021 Ltr from Mackin re: IFS Zoning Issue (R&F)
- COMM319\_04\_12\_2021 Memo to Council from Councillor Zeid re: CIP (B&F)

**7. TRANSFERS**

- TRAN090\_04\_12\_2021 Water Retained Earnings \$155K to Watershed Land Acquisition \$155K with supporting documents (B&F)
- TRAN091\_04\_12\_2021 HWY Streetlights \$2,646 to Essex North Shore Tech School \$2,646 (B&F)
- TRAN092\_04\_12\_2021 Overlay Surplus Account \$99,010 to ASR Revaluation \$99,010 (B&F)
- TRAN093\_04\_12\_2021 GEN EVENT COORDINATOR \$4K to AUD MISC SUPPLIES \$500 and to GEN SUPPLIES-OFFICE \$3,500 (B&F)
- TRAN094\_04\_12\_2021 RRFA-Paid Parking Fund \$5,550 to PKG Part Time Enforcement Officer \$4,500 and to PKG Clothing allowance \$1,050 (B&F)

**8. APPOINTMENTS**

- APPT239\_04\_12\_2021 Kevin Hunt 14 Tenth St. Veterans Agt. 4/1/2022
- APPT240\_04\_12\_2021 William G. Creelman 129 Merrimac St. Water/Sewer Comm. 4/30/2023

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA:

**END OF CONSENT AGENDA  
REGULAR AGENDA**

**9. MAYOR'S UPDATE**

**10. PRESENTATION ON RESIDENTIAL ELECTRICAL AGGREGATION, Michael Strauss, Ph.D,**

**11. COMMUNICATIONS - None**

**12. SECOND READING APPOINTMENTS**

- APPT236\_03\_29\_2021 Michael Nary 20 Riverview Dr. Sp.Police Ofc.
  
- APPT237\_03\_29\_2021 Rich Traister 325 Merrimac St. Disabilities Comm. 3/31/2024
  
- APPT238\_03\_29\_2021 Walter Lesynski 364 Merrimac St. Harbor Comm. 4/1/2024

**13. ORDERS**

- ORDR243\_04\_12\_2021 FONT Gift Acceptance with supporting letter

**14. ORDINANCES**

- ODNC072\_03\_29\_2021 Parks COVID extend 1<sup>st</sup> Reading (continued from March 29, 2021)  
Motion to approve by Councillor Zeid, seconded by Councillor Devlin pending.
- ODNC074\_04\_12\_2021 Council Salaries with Supporting Memo
- ODNC068\_01\_27\_2021 Late File Zoning Amend Sec VI-C re: # of residential structures per lot (As Amended)  
(Continued from March 29, 2021)  
Motion to amend to \$40 per square foot by Councillor McCauley, seconded by Councillor Lane pending.

**15. COMMITTEE ITEMS**

**Ad Hoc Committee on Economic Development**

*In Committee:*

- COMM262\_08\_31\_2020 Gasbarro Ltr re: Awareness

**Ad Hoc Committee on Market Landing Park and COTW**

*In Committee:*

- COMM261\_08\_31\_2020 Proposed Timeline, Waterfront
- ORDR227\_12\_14\_2020 Appropriate NRA funds for RFP award

## **Budget & Finance**

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

- COMM311\_03\_08\_2021 Cllr Tontar letter re: KP Law Legal Opinion on Council Salaries
- COMM314\_03\_29\_2021 FY2022-FY2026 Capital Improvement Program Submission (COTW)

## **Education**

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

- COMM240\_04\_27\_2020 Memo re: SOI Submission Info
- COMM273\_10\_13\_2020 Ltr of Non-Support from Mayor on Acts of 1987
- COMM293\_02\_08\_2021 Ltr. From Jane Snow

## **General Government**

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

## **License & Permits**

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

- ODNC047\_01\_27\_2020 General Ordinance - Short Term Rental Units Rules
- ODNC067\_01\_27\_2021 License to Occupy Outdoor Property Ch. 12-1
- COMM229\_02\_24\_2020 Ltr re: Implementation of Short-Term Rental Ordinance
- APPL022\_03\_08\_2021 Banter Barber & Clothier-Pool Table App.
- APPL024\_03\_29\_2021 Plum Island Classic Cars

## **Neighborhoods & City Services**

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

- COMM234\_03\_30\_2020 Ltr from Newburyport Livable Streets March 11, 2020
- COMM285\_01\_27\_2021 Memorandum from Councillor Christine Wallace
- COMM299\_02\_08\_2021 LATE FILE Phillips Dr. Neighborhood Committee Ltr.

## **Planning & Development**

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

- COMM215\_01\_13\_2020 Ltr re: Colby Farm Open Space Beautification
- ODNC046\_01\_27\_2020 Zoning Amendment - Short Term Rental Units Definition
- COMM231\_03\_09\_2020 Ltr re: Short-Term Rental Ordinance
- ORDR196\_07\_13\_2020 Open Space and Recreation Plan 2020 (COTW)
- ODNC073\_03\_29\_2021 Late File Zoning Amendment Storage Warehousing

## **Public Safety**

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

- COMM216\_01\_13\_2020 Ltr re: Ban the Use of Glyphosate
- APPT165\_04\_13\_2020 Dr. Robin Blair 18 Market St. Board of Health 4/30/2023
- COMM243\_05\_11\_2020 Ltr from Jane Rascal re: NMMCD
- ORDR200\_07\_30\_2020 List of Crosswalks Amended
- COMM282\_01\_27\_2021 Ltr from Jim McCarthy re: Sign Proposal
- COMM283\_01\_27\_2021 Ltr from Jim McCarthy-speed limit
- APPL023\_03\_08\_2021 LATE FILE Event App The Moving Wall

## **Public Utilities**

### *In Committee:*

- COMM290\_02\_08\_2021 Falmouth Broadband Feasibility Study (full text in Clerk's office)
- COMM295\_02\_08\_2021 Best Best & Krieger Small Cells Order Annual Meeting
- COMM296\_02\_08\_2021 Natoa FCC Small Wireless Facilities Rules Compliance Guide
- COMM292\_02\_08\_2021 Memo - Electricity Aggregation Program

## **Rules**

### *In Committee:*

- COMM220\_01\_27\_2020 Proposed City Council Rule 9F
- ORDR170\_02\_24\_2020 Amendment Council Rules 2020 (COTW)
- ORDR171\_02\_24\_2020 Amendment to Rule 17B (COTW)
- ORDR239\_02\_8\_2021 Council Rule 7 and 10B

## **16. GOOD OF THE ORDER**

## **17. ADJOURNMENT**

**CONSENT AGENDA**

## CITY COUNCIL MEETING MINUTES

### REMOTE

March 29, 2021

7:30PM

City Council Meeting

Zoom Details

Please click the link below to join the webinar:

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Remembering Janet Sheehan, census and poll worker.

1. **CALL TO ORDER** The City Council President, Jared J. Eigerman called the meeting to order at 7:30 pm and asked the City Clerk, Richard B. Jones to call the roll. The following Councillors answered present, Connell, Shand, Tontar, Vogel, Wallace, Zeid, Devlin, Khan, Lane, McCauley, and Eigerman. 11 present, using Zoom as a platform.
2. **LATE FILE ITEMS** ODNC073\_03\_29\_2021 Late File Zoning Amendment Storage Warehousing Motion to waive the rules and accept the Late File by Councillor Zeid, seconded by Councillor McCauley. Roll call vote. 11 yes, motion passes.
3. **PUBLIC COMMENT**  
James Knapp, 24 Cutting Drive  
Leila Wright, 55 Reservation Terrace  
Luke Shipman, 217 Northern Boulevard
4. **MAYOR'S 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.

#### 5. APPROVAL OF MINUTES

- February 25, 2021 (Approve)
- March 8, 2021 (Approve)

#### 6. COMMUNICATIONS

- COMM314\_03\_29\_2021 FY2022-FY2026 Capital Improvement Program Submission (B&F)  
Councillor Zeid requested refer in addition to COTW.
- COMM315\_03\_29\_2021 FY22 Budget Process (R&F)
- COMM317\_03\_29\_2021 Listing of Outdoor Occupancy Applications (R&F)
- APPL024\_03\_29\_2021 Plum Island Classic Cars (L&P)

#### 7. TRANSFERS

## 8. APPOINTMENTS

- APPT236\_03\_29\_2021 Michael Nary 20 Riverview Dr. Sp.Police Ofc.
- APPT237\_03\_29\_2021 Rich Traister 325 Merrimac St. Disabilities Comm. 3/31/2024
- APPT238\_03\_29\_2021 Walter Lesynski 364 Merrimac St. Harbor Comm. 4/1/2024

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA:

### **Budget and Finance**

- COMM310\_03\_08\_2021 Annual City Audit, Melanson, FY 2020 Fin Statements
- COMM312\_03\_08\_2021 MVPC FY 2022 Assessment
- TRAN088\_03\_08\_2021 WATER Ret/Sick Leave Acc.\$25,533.66 to Comp. Absences Fd \$25,533.66
- TRAN089\_03\_08\_2021 HWY Streetlights \$12,000 to PARK Maint-Trees \$12,000

### **License & Permits**

- APPL021\_02\_22\_2021 Newburyport Sunoco 2<sup>nd</sup> Hand MV License

### **Planning and Development**

- ODNC068\_01\_27\_2021 Late File Zoning Amend Sec VI-C re: the # of residential structures per lot (As Amended)
- ODNC069\_02\_22\_2021 Chapter 6.5 Barrier Beach Development definitions

### **Public Utilities**

- APPT235\_03\_08\_2021 Late File Owen Smith 175 Storey Ave Water/Sewer 03/31/2023

Motion to approve the Consent Agenda as amended by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

## **END OF CONSENT AGENDA REGULAR AGENDA**

## 9. MAYOR'S UPDATE

Motion to receive and file by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

## 10. PRESENTATION BY MAYOR ON CAPITAL IMPROVEMENT PROGRAM

## 11. COMMUNICATIONS

- COMM311\_03\_08\_2021 Cllr Tontar letter re: KP Law Legal Opinion on Council Salaries (Continued to March 29, 2021) Motion to Approve COMM311 and make it public by Councillor Tontar, Seconded by Councillor Khan, Roll Call 11 Yes. Motion passes. Motion to refer to Budget & Finance by Councillor Tontar, seconded by Councillor Vogel. Roll call vote. 7 yes, 4 no (SZ, JD, JM, JE). Motion passes.
- COMM316\_03\_29\_2021 Memo on Charter Change Procedure by Clerk

Motion to refer to General Government by Councillor Tontar, seconded by Councillor Khan. Motion withdrawn by Councillors Tontar and Khan. Motion to receive and file by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.

## 12. SECOND READING APPOINTMENTS

### 13. ORDERS

- ORDR216\_10\_13\_2020 Supplemental Budget Charter Sec. 2-4 42K  
(continued from March 8, 2021) Pending motion to receive and file by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.
- ORDR242\_03\_29\_2021 EP Outdoor Property License Emergency Preamble  
Motion to approve by Councillor Tontar, seconded by Councillor Connell. Roll call vote. 11 yes. Motion passes.
- ORDR242\_03\_29\_2021 Outdoor Property License  
Motion to approve by Councillor Connell, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.

### 14. ORDINANCES

- ODNC070\_02\_22\_2021 Amend to Home Rule Charter 2<sup>nd</sup> Reading  
Motion to receive and file by Councillor Tontar, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.
- ODNC072\_03\_29\_2021 Parks COVID extend 1<sup>st</sup> Reading  
Motion to approve 1<sup>st</sup> Reading by Councillor Zeid, seconded by Councillor Devlin. Motion to move to a date certain, April 12, 2021, by Councillor Zeid, seconded by Councillor Devlin. Roll call vote. 11 yes. Motion passes.
- ODNC073\_03\_29\_2021 Late File Zoning Amendment Storage Warehousing  
Motion to refer to Planning & Development by Councillor Shand, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

### 15. COMMITTEE ITEMS

#### **Ad Hoc Committee on Economic Development**

##### *In Committee:*

- COMM262\_08\_31\_2020 Gasbarro Ltr re: Awareness

#### **Ad Hoc Committee on Market Landing Park and COTW**

##### *In Committee:*

- COMM261\_08\_31\_2020 Proposed Timeline, Waterfront
- ORDR227\_12\_14\_2020 Appropriate NRA funds for RFP award

#### **Budget & Finance**

##### *In Committee:*

- COMM310 03 08 2021 Annual City Audit, Melanson, FY 2020 Fin Statements  
Motion to receive and file by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.
- COMM312 03 08 2021 MVPC FY 2022 Assessment
- Motion to receive and file by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.



- **TRAN088 03 08 2021 WATER Ret/Sick Leave Acc.\$25,533.66 to Comp. Absences Fd \$25,533.66**  
Motion to approve by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11yes. Motion passes.
- **TRAN089 03 08 2021 HWY Streetlights \$12,000 to PARK Maint-Trees \$12,000**  
Motion to approve by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11yes. Motion passes.

## Education

### *In Committee:*

- COMM240\_04\_27\_2020 Memo re: SOI Submission Info
- COMM273\_10\_13\_2020 Ltr of Non-Support from Mayor on Acts of 1987
- COMM293\_02\_08\_2021 Ltr. From Jane Snow

## General Government

### *In Committee:*

## License & Permits

### *In Committee:*

- ODNC047\_01\_27\_2020 General Ordinance - Short Term Rental Units Rules
- ODNC067\_01\_27\_2021 License to Occupy Outdoor Property Ch. 12-1
- **APPL021 02 22 2021 Newburyport Sunoco 2<sup>nd</sup> Hand MV License**
- Motion to approve by Councillor Devlin, seconded by Councillor Khan. Roll call vote. 11yes. Motion passes.
- COMM229\_02\_24\_2020 Ltr re: Implementation of Short-Term Rental Ordinance
- APPL022\_03\_08\_2021 Banter Barber & Clothier-Pool Table App.

## Neighborhoods & City Services

### *In Committee:*

- COMM234\_03\_30\_2020 Ltr from Newburyport Livable Streets March 11, 2020
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- COMM215\_01\_13\_2020 Ltr re: Colby Farm Open Space Beautification
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- COMM231\_03\_09\_2020 Ltr re: Short-Term Rental Ordinance
- ORDR196\_07\_13\_2020 Open Space and Recreation Plan 2020 (COTW)
- **ODNC068 01 27 2021 Late File Zoning Amend Sec VI-C re: # of residential structures per lot**  
(As Amended) Motion to Waive the Rules by Councillor Vogel, seconded by Councillor Khan, Roll Call vote. 11 Yes. Motion to approve as amended by Councillor Shand, seconded by Councillor Khan. Motion to amend to strike (2)a.iv.(c) by Councillor Zeid, seconded by Councillor McCauley. Roll call vote. 6 No, 5 Yes (CT, SZ, JD, JM, JE). Motion fails. Motion to amend (2)a.iv.(e)(n.b. Should be (d) not (e)) by adding the following: Further, the Planning Board shall require, in all Special Permits granted under this section, that no further subdivision of the lot be permitted by Councillor Zeid, seconded by Councillor Tontar. Council President Eigerman steps down, Councillor Tontar President Pro Tempore. Roll Call vote. 11 Yes, Motion passes. Motion to amend (2)a.iv.(f)(n.b. Should be (e) not (f)) to \$100 per square foot by Councillor McCauley, seconded by Councillor Lane. Motion withdrawn by Councillors McCauley and Lane. Motion to amend (2)a.iv.(f) to \$40 per square foot by Councillor McCauley, seconded by Councillor Lane. Motion to continue to a date certain, April 12, 2021, by Councillor Eigerman, seconded by Councillor Khan. Roll call vote. 9 yes, 2 no (BV, JD). Motion passes.
- **ODNC069 02 22 2021 Chapter 6.5 Barrier Beach Development definitions**  
Motion to receive and file by Councillor Shand, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

## Public Safety

### *In Committee:*

- COMM216\_01\_13\_2020 Ltr re: Ban the Use of Glyphosate
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- COMM296\_02\_08\_2021 Natoa FCC Small Wireless Facilities Rules Compliance Guide
- COMM292\_02\_08\_2021 Memo - Electricity Aggregation Program
- APPT235 03 08 2021 Late File Owen Smith 175 Storey Ave Water/Sewer 03/31/2023

Motion to approve by Councillor Tontar, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

## Rules

### *In Committee:*

- COMM220\_01\_27\_2020 Proposed City Council Rule 9F
- ORDR170\_02\_24\_2020 Amendment Council Rules 2020 (COTW)
- ORDR171\_02\_24\_2020 Amendment to Rule 17B (COTW)
- ORDR239\_02\_8\_2021 Council Rule 7 and 10B

## 16. GOOD OF THE ORDER

Councillor Zeid - Special Meeting June 22, 2021 to vote on the budget.

Councillor Khan – Ordinance Review Wednesday at 6:30pm

Councillor Eigerman – Hybrid City Council Meeting coming.

## 17. ADJOURNMENT

Motion to adjourn at 9:50pm by Councillor Tontar, seconded by Councillor Khan. Roll call vote. 11 yes.

Motion passes.

# COMMUNICATIONS

13 Prospect Street  
Newburyport, MA

April 5, 2021

Newburyport City Council  
City of Newburyport

Dear President Eigerman and City Council Members,

Re: IFS 93 State Street Expansion Denial

For 14 months Institution For Savings President Michael Jones and Attorney Lisa Meade have continually and incorrectly made statements that only eight neighbors were opposed to the bank's massive expansion plan. According to public records, more than 60 abutters, non-abutters and residents have spoken or written letters in opposition to the bank. There are over 200 supporters on social media that oppose the bank's plan.

The Planning Board and the Historic Commission gave IFS over a year to deliver a meaningful plan. The bank would offer only minimal cosmetic changes that would not significantly reduce the size of their expansion. The negative impact on its surrounding historic neighborhood was not their concern. There has been no consequential size reduction to the proposal that is 250% larger than the 1870's building.

In the end, after considerable hours, due diligence and analysis, the Historic Commission said no, the Planning Board said no. It was a difficult decision by both boards considering the bank's strong influence in the city. The pushback all these volunteer committee members are receiving is staggering.

We implore the City Council members to support the decisions made by both boards and respect the process.

Sincerely,

Peter & Maureen Mackin

# Memo

To: Newburyport City Council  
From: Sharif Zeid  
Date: April 6<sup>th</sup>, 2021  
Re: FY22 Capital Improvement Plan

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Councillors,

I did an analysis on the Capital Improvement Plan and wanted to discuss it with you during an upcoming committee meeting. This analysis is based on the Mayor's Capital Improvement Proposal, without any changes to the proposed amounts or sequencing. I am appreciative for the analysis prepared by Finance Director Ethan Manning and presented in the Mayor's plan.

To ensure the public had access to this same document, I submit this as a communication for referral to Budget and Finance.

Thank you,  
Sharif

## Capital within the operating budget - Debt

New Debt & Service	2022		2023		2024		2025		2026	
	Debt	Service	Debt	Service	Debt	Service	Debt	Service	Debt	Service
	\$0	\$0	\$16,941,444	\$656,283	\$10,756,379	\$416,684	\$1,588,608	\$61,540	\$1,075,834	\$41,676

5 yr new debt **\$30,362,265**

### Project Listing from 2022-26 CIP proposed from operating budget supported debt

Project	CIP #	Page	Amount
Fire Station 2	FD003	21	\$ 6,000,000
Center Waterfront Bulkhead	PL001	40	\$ 3,000,000
Parks Field Office	PK016	58	\$ 1,000,000
NYS Facility	YS002	76	\$ 5,000,000
Roadway Improvements	HW002	78	\$ 7,500,000
Sidewalk Replacement	HW003	79	\$ 2,500,000
Downtown Utility Upgrades (design)	HW004	80	\$ 500,000
Phillips Drive	HW005	81	\$ 4,200,000
Nock Moirn Gym/Aud Roof	SC016	124	\$ 662,265
<b>Total:</b>			<b>\$ 30,362,265</b>

### Core Questions:

- 1) Can the operating budget support the new debt service? (income statement)
- 2) Does new debt service coming from the operating budget impact creation of free cash
- 3) Is the level of debt acceptable? (balance sheet)
- 4) Do the projects and amounts listed make sense?
- 5) Are the projects sequenced as desired?

**Capital within the operating budget - Pay As You Go (free cash + budget)**

	2022	2023	2024	2025	2026
Free Cash	\$1,618,572	\$1,061,300	\$1,037,000	\$453,000	\$578,000
Budget	\$754,470	\$651,089	\$681,089	\$669,089	\$471,422

5 yr "pay as you go" **\$7,975,030**

Project Listing from 2022-26 CIP proposed for pay-as-you-go				Free Cash Cont'd			
Project	CIP #	Page	Amount	Project	CIP #	Page	Amount
Free Cash				Enclosed Landscaping Trailer	PK032	70	\$ 12,000
IT Hardware	IT001	18	\$ 210,000	HVAC System Replacement	LI003	73	\$ 54,000
Replace/Update Radio Equipment	FD002	20	\$ 165,000	Carpet Replacement	LI004	74	\$ 25,000
SCBA Replacement	FD005	23	\$ 80,000	Roadway Paving Improvement	HW002	78	\$ 1,000,000
Hose Replacements	FD006	24	\$ 60,000	Plummer Spring Bridge Replacement	HW006	82	\$ 600,000
Fire Data Control Systems	FD007	25	\$ 100,000	DPS Salt Shed Replacement/Upgrades	HW011	86	\$ 250,000
Surveillance Camera Integration	PD001	26	\$ 185,000	Two (2) Sander Inserts for Dump Trucks	HW012	87	\$ 47,960
Dispatch Center Renovation	PD002	27	\$ 475,000	Pick-Up Truck with Plow	SC007	115	\$ 43,800
Carpet Replacement	PD003	28	\$ 40,000	Snow Thrower Attachment for Plow	SC008	116	\$ 17,500
Facility Weatherproofing	PD004	29	\$ 30,000	NHS/Nock Control System Upgrades	SC009	117	\$ 150,000
Six (6) Radar Units	PD005	30	\$ 25,000	NHS School Auditorium Plaster Repairs	SC013	121	\$ 50,000
Dive Team Equipment	PD006	31	\$ 41,600	<b>Budget</b>	<b>CIP #</b>	<b>Page</b>	<b>Amount</b>
Thirty Four (34) Taser Replacements	PD007	32	\$ 108,000	Cruiser/Vehicle Replacements	PD009	34	\$ 325,000
Records Room	PD008	33	\$ 20,000	Twenty Five (25) Body Worn Cameras	PD011	35	\$ 105,688
Electric Cruiser Pilot Program	PDD10	35	\$ 60,000	Alarm Panel Replacement	LI001	71	\$ 13,750
Twenty Five (25) Body Worn Cameras	PD011	36	\$ 3,412	Purchase of Trackless Vehicle	HW001	77	\$ 225,000
Building Records Reorganization	BD001	45	\$ 22,500	Sidewalk Replacement/New Constructi	HW003	79	\$ 1,750,000
Complete Streets Transportation Projects	PL005	44	\$ 150,000	Purchase of Two 6 Wheel Dump Truck	HW007	83	\$ 230,000
Infield Groomer	PK001	46	\$ 15,000	Purchase of Loader	HW008	84	\$ 216,000
Cushing Park Lot Resurfacing	PK002	47	\$ 200,000	NHS-Engineering Services	SC002	110	\$ 40,000
Mini Excavator Purchase	PK006	50	\$ 65,000	NHS-Exterior Painting	SC004	112	\$ 120,000
Mower Attachment Purchase	PK007	51	\$ 24,500	Toro Groundsmaster 3500-D	SC005	113	\$ 35,720
Worksite Utility Vehicle	PK010	53	\$ 30,000	NHS-Furniture Replacement	SC010	118	\$ 48,000
Lower Atkinson Common Improvement (Desi	PK014	56	\$ 300,000	Nock Molin-Walkway/Sidewalk Repairs	SC011	119	\$ 18,000
Purchase of Two (2) Pickup Trucks	PK031	69	\$ 87,600	NHS-Carpet Replacement	SC012	120	\$ 50,000
				Nock Molin-Furniture Replacement	SC015	123	\$ 50,000

**TRANSFERS**





# CITY OF NEWBURYPORT FY 2021

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

## TRANSFER/APPROPRIATION REQUEST

**Department:** Department of Public Services

**Submitted by:** Anthony J. Furnari, Director

**Date Submitted:** 4/12/2021

**Transfer From:**

Account Name:	Water Retained Earnings	Balance:	\$ 1,398,128.00
Account Number:	60-35920	Category:	\$ -
Amount:	\$155,000.00	Trans I/O:	\$ -

**Why Funds Are Available:**

The Massachusetts Department of Revenue certified Retained Earnings for the Water Enterprise Fund for FY2021 at \$1,398,128. These funds are available for any legal expenditure with the approval of the Mayor and a majority vote of the City Council.

**Transfer To:**

Account Name:	Watershed Land Acquisition	Balance:	\$ -
Account Number:	New	Category:	\$ -
Amount:	\$155,000.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

To purchase property within the watershed for the City of Newburyport's public water supply. Please see attached memo.

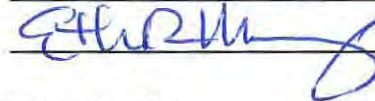
Donna D. Holaday, Mayor:

  
\_\_\_\_\_

Date:

4/6/21

Ethan R. Manning, Auditor:

  
\_\_\_\_\_

Date:

4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



CITY OF NEWBURYPORT  
60 PLEASANT STREET • P.O. BOX 550  
NEWBURYPORT, MA 01950  
(978) 465-4400 • (978) 465-4452 (FAX)

DONNA D. HOLADAY  
MAYOR

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MEMORANDUM

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TO: NEWBURYPORT CITY COUNCIL  
FROM: TOM CUSICK, WATER TREATMENT SUPERINTENDENT, & GEORDIE VINING, SENIOR PROJECT MANAGER  
CC: DONNA HOLADAY, MATT COOGAN, ANDY PORT, ETHAN MANNING, TONY FURNARI  
SUBJECT: 117 INDIAN HILL STREET WATERSHED PROTECTION PROJECT  
DATE: 4/6/2021

We are writing to request the City Council's approval of the \$155,000 purchase of a high priority 6.1-acre watershed property (117 Indian Hill Street) that is critical to the protection of the City's public water supply.

The subject property contains a portion of the outlet stream that is the only connection between the City's Indian Hill Reservoir, which contains the majority of Newburyport's drinking water supply, to the Artichoke Reservoir and ultimately the treatment plant. The City has sought to purchase this priority property for two decades, and the City's partnership with Essex County Greenbelt Association has been crucial to securing this current opportunity.

The 6.1-acre woodland property is entirely within MassDEP's Surface Water Supply Protection Zones A and B. The property is directly adjacent to protected land owned by Greenbelt, which is adjacent to watershed land owned by the City of Newburyport around the Indian Hill Reservoir. If left unprotected, this watershed property is clearly threatened by development. Five years ago, the landowner developed plans and successfully secured an Order of Conditions to build an access roadway, including a stream crossing, and a house and septic system near the outlet stream and reservoir. In addition to the potential for impacts from a potential failing septic system in the future, development would significantly alter the property with impermeable surfaces providing a vector for potential household hazardous waste, motor oil, gasoline, road salt, lawn chemicals, etc., which would threaten the City's ability to maintain a clean, reliable public water supply.

In addition, the City's consultant Tighe & Bond has identified this property as a key part of a potential water pipeline route if the City chooses in the future to develop a raw water main pipeline that would carry water directly from the Indian Hill Reservoir to the Water Treatment Plant Intake Pump Station at the Lower Artichoke Reservoir.

Essex County Greenbelt Association has the property under agreement, and, based on the current landowner's needs, is pre-acquiring the property for the City in mid-April. Greenbelt is also contributing all of the due diligence materials for the acquisition, including a recent appraisal, environmental site assessment, and title review, and will handle the closing for the City and recording of the property. The City will provide a conservation restriction to Greenbelt and will retain rights to potentially build a public water main transmission line in the future if desired.

The Newburyport Water and Sewer Commission reviewed and approved this watershed land acquisition project in March 2021. The \$155,000 purchase price is under the recently appraised value of \$165,000. Funding for the \$155,000 acquisition will come from the Water Enterprise Fund Retained Earnings, which has ample funding for this purpose (\$1.4 million).

Attached materials include: a draft Purchase & Sale Agreement between the City and Greenbelt including the draft conservation restriction, which has been sent to the City Solicitor for review; Survey Plan; Map of the Newburyport Drinking Water Supply Protection District; Appraisal; Photographs; and Environmental Site Assessment cover letter and summary. The Finance Department is providing the transfer form.

Thank you for your consideration and support of this important public project.

**PURCHASE AND SALE AGREEMENT**

This PURCHASE AND SALE AGREEMENT (the “Agreement”) is entered into as of \_\_\_\_\_, 2021 (the “Effective Date”), by and between ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts nonprofit corporation (together with its successors and assigns, “Seller”) and the CITY OF NEWBURYPORT, a municipal corporation within Essex County in the Commonwealth of Massachusetts, acting by and through its Water & Sewer Commissioners (“Buyer”).

**RECITALS**

A. The addresses, telephone numbers and facsimile numbers of the parties are as follows. Email addresses are provided for informational purposes only.

**SELLER:**

Essex County Greenbelt Association, Inc.  
82 Eastern Avenue  
Essex, MA 01929  
Attn: Vanessa Johnson-Hall  
Tel: (978) 768-7241 x 16  
Fax: (978) 768-3286  
Email: [vkjohnson@ecga.org](mailto:vkjohnson@ecga.org)

With a copy to:

Lauren L. Butler, Esq.  
258 Harvard Street #281  
Brookline, MA 02446  
Tel: (617) 654-8282  
Fax: (617) 730-8449 *(faxes must include telephone number above on fax cover sheet in order to constitute valid notice)*  
Email: [lauren@laurenbutlerlaw.com](mailto:lauren@laurenbutlerlaw.com)

**BUYER:**

City of Newburyport  
Attn: \_\_\_\_\_  
60 Pleasant Street  
Newburyport, MA 01950  
Tel: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

\_\_\_\_\_, Esq.  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_  
Email: \_\_\_\_\_

B. Seller has the right to acquire fee simple title to that certain 6.1+/- acre parcel of land located at 117 Indian Hill Street, West Newbury, Essex County, Massachusetts, and shown as Lot 2 on that certain plan entitled “West Newbury, Massachusetts, Subdivision of Land Prepared For: Flying W Realty Trust, Sandra Roulrier, Trustee, 111 Indian Hill Street,” prepared by Reid Land Surveyors, dated March 26, 2014, and recorded in the Southern Essex District Registry of Deeds in Plan Book 444 as Plan 20 (a copy of which is attached hereto as **Exhibit A** and incorporated herein), which parcel is commonly identified as Assessor Parcel 0180-0000-0019C in the Town of West Newbury property records (collectively, together with any and all improvements, fixtures, timber, water and/or minerals located thereon and any and all rights appurtenant thereto, including, but not

limited to, timber rights, water rights, grazing rights, access rights and mineral rights, and rights in or to abutting roadways, the "Subject Property") from John J. O'Connor ("Current Owner") pursuant to a purchase and sale agreement dated as of February 25, 2021 (as it may be amended from time to time, the "Acquisition Contract").

C. Seller wishes to sell the Subject Property to Buyer and Buyer wishes to purchase the Subject Property from Seller subject to the terms of this Agreement.

D. Immediately following its acquisition of the Subject Property, Buyer shall convey to Seller a permanent conservation restriction on, over and across the Subject Property (in its final form, the "CR"), which conservation restriction shall be substantially similar to the draft document attached hereto as **Exhibit B** and incorporated herein, and Seller agrees to accept the CR, subject to the terms of this Agreement.

E. Seller represents to Buyer that it is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands in Essex County, Massachusetts. Seller represents to Buyer that it is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Seller is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

## AGREEMENT

1. **Purchase and Sale.** In consideration of the covenants made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell the Subject Property to Buyer and to accept the CR from Buyer, and Buyer agrees to buy the Subject Property from Seller and convey the CR to Seller, all on the terms and conditions set forth in this Agreement.

2. **Purchase Terms.** The purchase price for the Subject Property shall be One Hundred Fifty-Five Thousand Dollars (\$155,000.00) (the "Purchase Price"). The Purchase Price shall be delivered to Escrow Agent (as defined in Section 5 herein) for the Closing (as defined in Section 5 herein) by a wire transfer of immediately available funds at least three (3) business days prior to the Closing Date (as defined in Section 5 herein), subject to credits, prorations and adjustments provided elsewhere in this Agreement. The CR is being conveyed by Buyer to Seller in accordance with the terms of that certain vote dated \_\_\_\_\_, and no consideration is being paid by Seller for the CR.

3. **Due Diligence Investigations; As-Is, Where-Is Condition.**

(a) **Property-Related Materials; Access:** At no expense to Buyer, Seller has provided Buyer with the following materials relating to the Subject Property: (i) a title commitment issued by Fidelity National Title Insurance Company with an effective date of February 8, 2021 (the "Title Commitment") and copies of all instruments of record referenced therein, (ii) a Phase I environmental assessment report, and (iii) an appraisal

prepared by an independent appraiser licensed by the Commonwealth of Massachusetts. Additionally, upon Buyer's request, Seller shall arrange for Buyer, its employees and/or agents to tour the Subject Property prior to Closing to confirm that the Property is being delivered in accordance with the terms of Section 12 herein, provided that Seller shall accompany Buyer on all entries upon the Subject Property.

(b) As-Is, Where-Is Condition. Unless this Agreement has been earlier terminated in accordance with the terms of Section 11 herein, at Closing, Buyer hereby agrees to purchase and accept the Subject Property in AS-IS, WHERE-IS condition as of the date hereof, reasonable wear and tear excepted. Accordingly, Buyer hereby waives any and all claims it might otherwise have against Seller, now or in the future, relating to the title to, condition of, siting and/or boundaries of, and/or value of the Subject Property, provided, however, that this sentence shall not serve to negate, modify, or amend any warranties of title and/or covenants made by Seller in the Deed (as defined in Section 4 herein).

4. Title. The Subject Property shall be conveyed to Buyer subject only to (i) applicable laws and regulations of any governmental authority in effect on the date hereof, (ii) the nondelinquent lien of real property taxes, water and sewer charges and municipal betterments, if any, (iii) those matters of record set forth in the Title Commitment, and (iv) those matters which would have been disclosed by a current survey of the Subject Property (collectively, the "Permitted Encumbrances"). At Closing, Seller's right, title and interest in and to the Subject Property shall be conveyed by a good and sufficient Massachusetts quitclaim deed running to Buyer from Seller and conveying good and clear record title to the Subject Property (the "Deed"). The CR shall be granted to Seller by Buyer subject only to the Permitted Encumbrances and the CR shall be recorded in the Essex Southern District Registry of Deeds immediately following the Deed.

5. Closing. The delivery and exchange of the Deed, Purchase Price, CR and other closing documents and the full settlement of the obligations of the parties hereto (collectively, the "Closing") shall occur on July 30, 2021, or at such other time or place mutually agreeable to the parties.

The transaction contemplated hereunder shall be closed by a representative of Fidelity National Title Insurance Company or Chicago Title Insurance Company (as applicable, "Escrow Agent") in accordance with the general provisions of the usual form of escrow agreement then in use by Escrow Agent (with such special provisions inserted in said escrow agreement as may be required to conform with the terms and conditions of this Agreement) and/or pursuant to closing instructions provided by the parties, with the cost of the escrow being borne by Seller. No later than 5:00 p.m. Eastern Time on the third (3<sup>rd</sup>) business day prior to the Closing Date, (a) Seller shall deposit with Escrow Agent the Seller Deliveries (as defined in Section 6 herein), and (b) Buyer shall deposit with Escrow Agent the Buyer Deliveries (as defined in Section 6 herein). At the Closing, Escrow Agent shall disburse all monies in strict accordance with the closing statement, record the Deed, the CR and any other required documents or plans, and deliver to the appropriate parties all other closing documents. It is agreed that Escrow Agent shall have no liability to Seller or Buyer for the performance of its services herein, except in the event of Escrow Agent's gross negligence and/or willful misconduct.

6. **Closing Deliveries.** All closing documents shall be originals executed by an authorized representative of Seller or Buyer, as applicable, and if such closing document is intended to be recorded, each signature will be properly acknowledged.

(a) **Seller's Deliveries.** Seller shall execute and/or deliver to Escrow Agent the following items no later than 5:00 p.m. Eastern Time on the third (3<sup>rd</sup>) business day prior to the Closing Date (collectively, "**Seller's Deliveries**"): (i) counterparts to a settlement statement by and among Seller, Buyer and Escrow Agent (the "**Settlement Statement**"), (ii) the Deed, (iii) an owner's affidavit attesting to the absence of parties in possession and mechanics' liens, (iv) a Foreign Investment and Real Property Tax Act (FIRPTA) affidavit, (v) the fully executed CR, and (vi) such other instruments and documents as Buyer may reasonably request, including, without limitation, documents for the purpose of confirming the proper and lawful execution and delivery of closing documents, the conveyance of the Subject Property to Buyer and the acceptance of the CR by Seller, all in accordance with this Agreement and applicable provisions of Massachusetts law.

(b) **Buyer's Deliveries.** Buyer shall execute and/or deliver to Seller or Escrow Agent the following items no later than 5:00 p.m. Eastern Time on the third (3<sup>rd</sup>) business day prior to the Closing Date (collectively, "**Buyer's Deliveries**"): (i) a counterpart to the Settlement Statement, (ii) the Purchase Price, and (iii) such other instruments and documents as Seller may reasonably request, including, without limitation, documents for the purpose of confirming the proper and lawful execution and delivery of closing documents and the conveyance of the CR to Seller, all in accordance with this Agreement and applicable provisions of Massachusetts law, provided, however, that Buyer shall not be required to indemnify Seller for any matters arising from the transaction contemplated herein.

7. **Closing Expenses and Prorations.** Seller shall pay all statutorily required transfer taxes, if any, and all costs associated with the recording of the Deed, the CR and any other instruments. Taxes for the then-current fiscal year shall be apportioned as follows: if taxes are outstanding as of the Closing Date, taxes will be apportioned as of the Closing Date in accordance with G.L. c. 59, §72A; if, however, taxes have been paid through and past the Closing Date, such payments shall not be refunded, it being acknowledged that Buyer has no funds to refund Seller for such taxes paid and Buyer, being tax exempt, has no obligation to pay taxes upon acquisition of the Subject Property. Each party shall be responsible for its own legal expenses and the cost of its own title policies, if any.

8. **Seller's Representations and Warranties.** Seller makes the following representations and warranties:

(a) Seller is not a "foreign person" pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

(b) Neither Seller nor any key personnel of Seller have engaged in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other anti-money laundering regulations or conventions, including without limitation the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United

States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the "Patriot Act"), or any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or (ii) in contravention of Executive Order No. 13224 issued by the President of the United States on September 24, 2001 (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Executive Order 13224") or (iii) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, OFAC, Financial Action Task Force, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time.

(c) Neither Seller nor any key personnel of Seller is or will be a person or entity (i) that is listed in the Annex to or is otherwise subject to the provisions of Executive Order 13224, (ii) whose name appears on OFAC's most current list of "Specially Designated Nationals and Blocked Persons," (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>), (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in Executive Order 13224, or (iv) who has been associated with or is otherwise affiliated with any entity or person listed above.

(d) Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement) and to convey the Subject Property and accept the CR at Closing.

(e) Neither the execution and delivery of the Agreement nor Seller's performance of its obligations hereunder will constitute a breach or default under any agreement to which Seller is bound.

Each of the above representations is material and is relied upon by Buyer. Except insofar as Seller has advised Buyer in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall survive Closing. If, before Closing, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information.

9. **Seller's Covenants.** Seller covenants and agrees as follows:



(a) To the extent allowed pursuant to the terms of the Acquisition Contract and/or during Seller's period of ownership of the Subject Property, Seller shall not consent to, make and/or extend any lease, contract, option or agreement affecting the Subject Property which would grant any third parties any rights to the Subject Property other than a Permitted Encumbrance, except with the written consent of Buyer; and

(b) To the extent allowed pursuant to the terms of the Acquisition Contract and/or during Seller's period of ownership of the Subject Property, Seller shall not consent to, cause and/or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Subject Property other than a Permitted Encumbrance, except with the written consent of Buyer.

10. **Buyer's Covenants.** To facilitate the execution of the CR by the Commonwealth of Massachusetts, Buyer covenants and agrees to deliver its original executed and acknowledged counterpart to the CR to Seller no later than the twenty-first (21<sup>st</sup>) calendar day after the CR has been approved by the Commonwealth of Massachusetts for local signature.

11. **Remedies Upon Failure of Performance.**

(a) In the event that Seller fails to perform any of Seller's obligations under this Agreement, Buyer shall have as its sole remedies the right to (i) waive such failure or breach and proceed to Closing with no reduction in the Purchase Price, (ii) terminate this Agreement upon written notice to Seller, in which case the parties shall have no further obligations hereunder, or (iii) specific performance. Notwithstanding the foregoing, however, Buyer acknowledges and agrees that Seller's performance hereunder is expressly conditioned upon Seller's acquisition of the Subject Property pursuant to the Acquisition Contract, and if Seller fails to acquire the Subject Property under the Acquisition Contract for any reason whatsoever prior to Closing, Seller may terminate this Agreement upon written notice to Buyer, in which case the parties shall have no further obligations hereunder; provided, however, that Seller shall exercise good faith and due diligence with respect to the Acquisition Contract (which good faith and due diligence shall not include any instigation of and/or participation in litigation).

(b) In the event that Buyer fails to perform any of its obligations under this Agreement, Seller shall have as its sole remedies, the right to (i) waive such failure or breach and proceed to Closing or (ii) terminate this Agreement upon written notice to Buyer, in which case the parties shall have no further obligations hereunder.

12. **Delivery of the Subject Property.**

(a) At Closing, Seller shall deliver to Buyer full possession of the Subject Property free and clear of the rights and claims of all other parties, other than as set forth in the Permitted Encumbrances. Seller also shall deliver to Buyer any and all keys, lock combinations and/or alarm codes that control access to the Subject Property or any portion thereof.

(b) At Closing, the Subject Property is to be then in substantially the same condition as it was on the Effective Date, reasonable wear and tear excepted, except that the Subject Property shall be free and clear of any and all personal property (whether owned and/or leased by Current Owner or owned and/or leased by any tenant or occupant), trash and/or debris.

13. **No Assignment of Buyer's Interest.** Buyer may not assign its interest in this Agreement without the written consent of Seller.

14. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties personally, by facsimile, commercial express courier service or by first class United States mail, postage prepaid, addressed to the parties at the addresses set forth in Recital A. All notices given personally or by facsimile shall be deemed given when received. All notices given by mail or by commercial express courier service shall be deemed given when deposited in the mail, first class postage prepaid, or with such courier, addressed to the party to be notified. The parties may, by notice as provided above, designate a different address to which notice shall be given.

15. **Time of the Essence.** Time is of the essence in this Agreement.

16. **Next Business Day.** In the event that any date for performance or notice hereunder falls on a Saturday, Sunday, a date on which a state of emergency has been declared in the Commonwealth of Massachusetts, a state, federal or bank holiday, or, with respect to the Closing Date, a date on which the applicable registry of deeds is closed for any reason, the deadline for such performance or notice shall be automatically extended to the next business day.

17. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose actions the claim is asserted will, to the extent permitted by law, indemnify and hold the other party harmless from and against said claim. The provisions of this Section 17 shall survive the Closing and any earlier termination of this Agreement.

18. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.

19. **Binding on Successors.** This Agreement shall be binding not only upon the parties, but also upon their respective assigns and/or successors in interest.

20. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom

such supplement, modification, waiver or amendment is sought to be enforced. No delay, forbearance or neglect in the enforcement of any of the conditions of this Agreement or any rights or remedies hereunder shall constitute or be construed as a waiver thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

21. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument. Legible facsimile copies, electronically scanned copies and photocopies of documents signed by either party are deemed to be equivalent to originals.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be executed under seal by its duly authorized signatory(ies) on the date first written above.

**SELLER:**

ESSEX COUNTY GREENBELT  
ASSOCIATION, INC., a Massachusetts  
nonprofit corporation

**BUYER:**

CITY OF NEWBURYPORT, a municipal  
corporation within Essex County,  
Commonwealth of Massachusetts, acting through  
its Water & Sewer Commissioners

By: \_\_\_\_\_

Katherine Bowditch  
President

\_\_\_\_\_  
John Tomasz

\_\_\_\_\_  
Roger Jones

\_\_\_\_\_  
Sandy Friede

**EXHIBIT A**

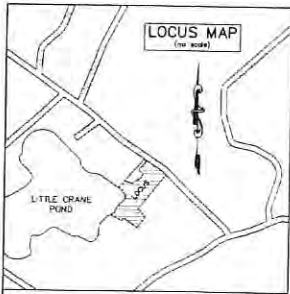
Plan of Subject Property

(see attached)

**EXHIBIT B**

Form of CR

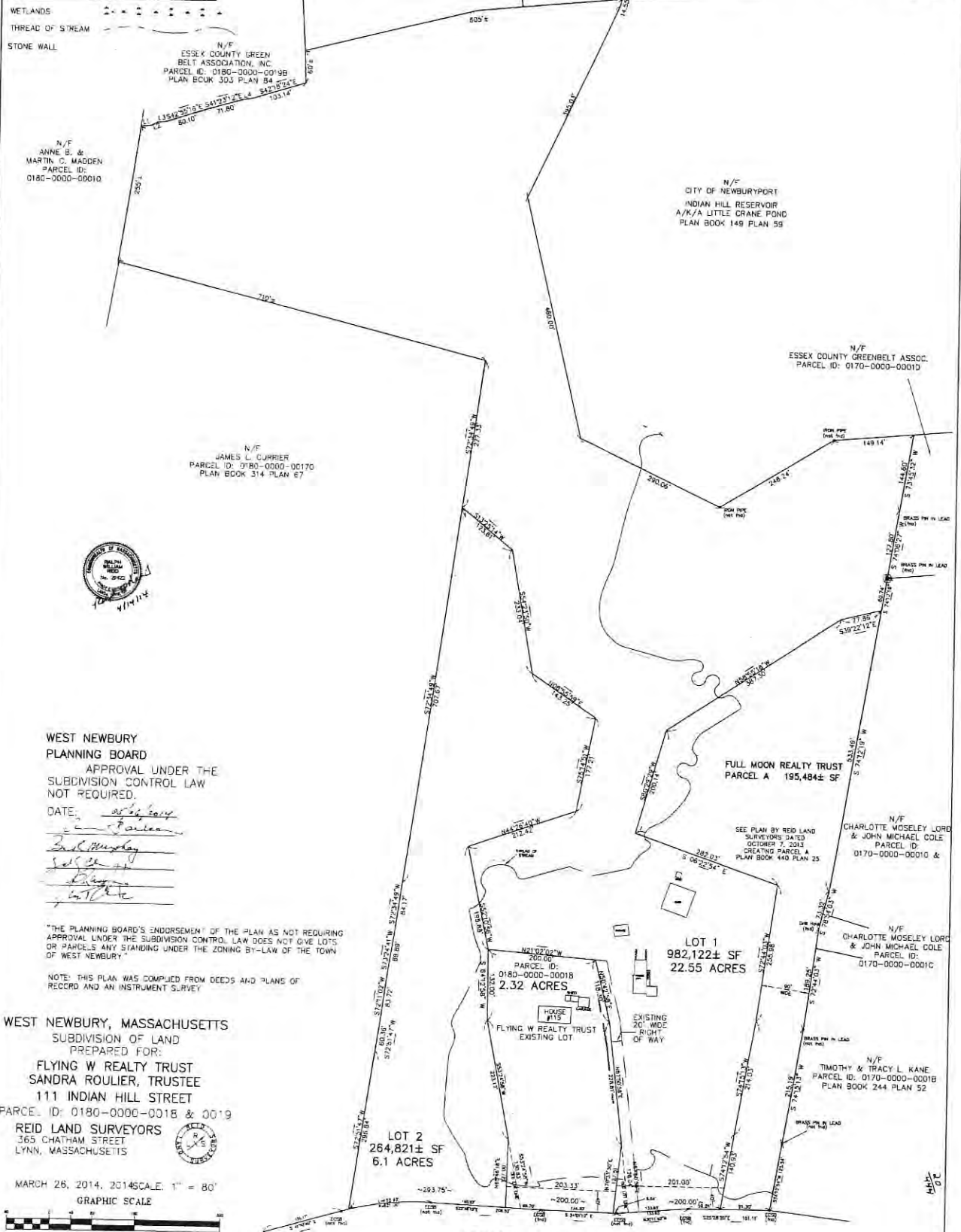
(see attached)



20  
444

LINE LENGTH	BEARING
L1 19.41'	S33°00'27"E
L2 14.70'	S50°26'24"E
L3 12.95'	S28°24'18"E
L4 16.73'	S33°59'33"E

PLAN BOOK 444 PLAN 20  
 ESSEX COUNTY GREENBELT ASSOCIATION  
 A/K/A LITTLE CRANE POND  
 RECORDED JULY 21 2014  
 WPL  
 Register of Deeds  
 I CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.



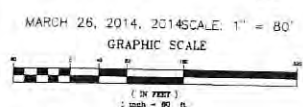
WEST NEWBURY  
 PLANNING BOARD  
 APPROVAL UNDER THE  
 SUBDIVISION CONTROL LAW  
 NOT REQUIRED.

DATE: 7/21/14  
[Signature]  
[Signature]  
[Signature]  
[Signature]

"THE PLANNING BOARD'S ENDORSEMENT OF THE PLAN AS NOT REQUIRING APPROVAL UNDER THE SUBDIVISION CONTROL LAW DOES NOT GIVE LOTS OR PARCELS ANY STANDING UNDER THE ZONING BY-LAW OF THE TOWN OF WEST NEWBURY."

NOTE: THIS PLAN WAS COMPILED FROM DEEDS AND PLANS OF RECORD AND AN INSTRUMENT SURVEY

WEST NEWBURY, MASSACHUSETTS  
 SUBDIVISION OF LAND  
 PREPARED FOR:  
 FLYING W REALTY TRUST  
 SANDRA ROULIER, TRUSTEE  
 111 INDIAN HILL STREET  
 PARCEL ID: 0180-0000-0018 & 0019  
 REID LAND SURVEYORS  
 365 CHATHAM STREET  
 LYNN, MASSACHUSETTS



INDIAN HILL STREET  
 1927 ESSEX COUNTY LAYOUT

Address of Premises: 117 Indian Hill Street, West Newbury

**GRANTOR:** City of Newburyport  
**GRANTEE:** Essex County Greenbelt Association, Inc.  
**FOR GRANTOR'S TITLE SEE:** Essex County Registry of Deeds at Book [enter book], Page [enter page].

### CONSERVATION RESTRICTION

The CITY OF NEWBURYPORT, a Massachusetts municipal corporation having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950 ("City"), acting by and through its Board of Water and Sewer Commissioners ("BOWSC") under G.L. c. 40, section 41, for their successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts non-profit corporation having an address of 82 Eastern Avenue, Essex, Massachusetts 01929, its permitted successors and assigns ("Grantee"), for no consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in West Newbury, Massachusetts containing 6.1 acres and shown as "Lot 2" on the plan recorded at Plan Book 444 Plan 20 at the Southern Essex District Registry of Deeds ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

#### I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values ("conservation values").

#### The conservation values include the following:

- A. **Open Space Protection.** The Premises contributes to the protection of the scenic and natural character of West Newbury and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts already-conserved land, including watershed land owned by the Grantor, and the Indian Hill Reservation owned by the Grantee.



- B. Water Supply Protection.** The Premises is mapped by the Massachusetts Dept. of Environmental Protection as Zone A and C watershed areas of the Indian Hill Reservoir, which supplies drinking water for the City of Newburyport and the Town of West Newbury; the protection of the Premises is critical to maintaining the public drinking water supply.
- C. Wetlands and Waterways.** A stream and wetlands on the Premises provide valuable habitat for a diverse array of species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws). Wetlands on the Premises are mapped as being within the top 50% of areas with the highest ecological integrity in the Commonwealth by the UMass Conservation Assessment and Prioritization System (CAPS).
- D. Climate Change Resilience.** The Premises scored Above Average and Far Above Average Resilience by The Nature Conservancy's Resilient Land Mapping Tool, which scores reflect areas of land where high microclimate diversity and low levels of human modification provide species with the conditions they will need to persist and adapt to a changing climate.
- E. Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy.** The protected Premises furthers government policy and goals to protect and preserve open space, habitat, natural resources, passive recreational opportunities and scenic values, as enumerated by (1) the Grantor's 2017 Master Plan adopted by the Newburyport City Council and Planning Board, including specifically the four goals listed in Chapter 8 of such Master Plan, (2) the 2020 Newburyport Open Space and Recreation Plan, including specifically Goal 1 to protect lands of public conservation and recreational interest to provide essential wildlife habitat and drinking water protection.
- F. Baseline Documentation Report.** These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

- A. Prohibited Acts and Uses.** Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

  - 1. Constructing, placing or allowing to remain any temporary or permanent building, structure, facility, or improvement, including but not limited to tennis courts, landing strips, mobile homes, swimming pools, asphalt or concrete pavement, signs, fences, billboards or other advertising displays, antennae, utility poles, towers, solar panels, solar arrays, conduits, lines

or other temporary or permanent structures, facilities, or improvements on, above or under the Premises;

2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
3. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying native trees, grasses or other vegetation;
5. Planting, broadcasting, placement, disposal, transfer, destruction, composting, dumping, or otherwise preventable introduction of "invasive" plant species or any other nuisance or disease carrying species, as defined in *A Guide to Invasive Plants in Massachusetts* (Somers P. et al. 2006) or as amended or contained in a similar professionally acceptable publication available in the future;
6. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
7. Use, parking or storage of vehicles including cars, trucks, motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
8. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
9. The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation as defined in Section 2031(c) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder or any successor statute or regulation;
10. The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
11. Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

**B. Reserved Rights and Exceptions to Prohibited Acts and Uses.** The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

1. Vegetation Management. The selective minimal removal, pruning and cutting of vegetation to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises.

2. Invasive Species Management. The removal of non-native or invasive species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
3. Composting. The stockpiling and / or composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream.
4. Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species of flora or fauna, including selective planting of native trees, shrubs and plant species.
5. Passive Recreational Activities. Any and all recreational activities that do not materially alter the surface of the Premises or require any other development of the land (other than as permitted under Section II(B) herein), do not degrade environmental quality and do not involve the use of motors or motorized vehicles (other than power-driven mobility devices whose accommodation may be required in accordance with the Americans with Disabilities Act and similar legislation), such as, but not limited to, walking, jogging, hiking, snowshoeing, cross-country skiing, and hunting (collectively, "Passive Recreational Activities").
6. Trails. Maintaining and constructing Passive Outdoor Recreation (as defined herein) trails as follows:
  - a. *New Trails*. With prior approval of the Grantee, constructing new trails, provided that any construction minimizes impact to water resources.
  - b. *Trail Features*. With prior approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
7. Signage: Installing, maintaining, and replacing a minimal number of signs with respect to hunting, trespass, trail access, identity and address of occupants, sale of the Premises, the location of boundary lines, the Grantee's interest in the Premises and the protected conservation values, permitted and prohibited uses, and other regulations with respect to public use; interpretive, informational or other similar signs designed to enhance public use.
8. Forestry and Cutting. Conducting sound silvicultural uses of the Premises solely for the purposes of habitat or drinking water supply management, including the right to commercially (as such term may be defined from time to time in Section 1 of Chapter 61 of the Massachusetts General Laws, or successor law) sell forest products that result from said management activities (hereinafter, "Forestry Activities"), provided that any such Forestry Activities are carried out pursuant to a Forest Stewardship Plan. All Forestry Activities shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester. Before any Forestry Activities occur on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (hereinafter, "DCR") or appropriate successor agency, and to any other required state agencies for their approval. The Forestry Plan shall:

- a. be prepared by a forester licensed through DCR and shall follow the “Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans” (as such guidelines may be amended by DCR or its successor agency) and such statutes, regulations and directions in effect at the time of the approval of said Forest Stewardship Plan; and
  - b. include provisions designed to comply with the recommended activities and guidelines and required best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Forestry Bureau (hereinafter the “Forestry BMPs”); and
  - c. include a certification that the Forest Stewardship Plan complies with the terms of this Conservation Restriction; and
  - d. be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional Forestry Activities are desired.
9. Drinking Water Supply Pipeline. With prior notice to Grantee, constructing an above- or below-ground drinking water supply pipeline to bring water from the Indian Hill Reservoir to the Artichoke Reservoir, provided the construction of the pipeline seeks to minimally impact the Conservation Values of the Premises, and that Grantor restores the Premises in accordance with Paragraph 11 below.
10. Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
11. Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and native vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and native vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
12. Other Activities. Such other activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights or, as applicable, are included in an approved Forest Stewardship Plan, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.
- C. Best Management Practices.** Prior to exercising any right reserved by Grantor under Section II, Paragraph B that may result in more than *de minimis* surface alterations, the Grantor shall consult, if available, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency such as the Dept. of Conservation and Recreation (DCR) or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

- D. Permits, Regulations, Laws.** The exercise of any right reserved by Grantor under Section II, Paragraph B shall be in compliance with then-current building, zoning, planning, and conservation regulations, bylaws, or ordinances applicable to the Premises, the Wetlands Protection Act (MGL Chapter 131, Section 40), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth of Massachusetts takes any position whether such permit should be issued.
1. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.
  2. Grantee agrees to use reasonable diligence to respond to Grantor's request within 60 days of delivery. Grantee's failure to respond within the sixty (60) calendar day period shall be deemed a denial of the request (hereinafter, a "Deemed Denial"). A Deemed Denial is not final or binding on Grantee, and Grantor may submit the same or a similar request for approval.

### III. LEGAL RIGHTS AND REMEDIES OF THE GRANTEE

- A. Legal and Injunctive Relief.** The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.
- B. Reimbursement of Costs of Enforcement.** Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.
- C. Boundary Disputes.** In the event of a dispute over the boundaries of the Conservation Restriction, Grantee shall have the right to require Grantor, at its sole expense, to commission a survey and / or have the boundaries of the Premises permanently marked.
- D. Non-Waiver.** Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to

enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

- E. Disclaimer of Liability.** By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.
- F. Acts Beyond the Grantor's Control.** Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.
- G. Actions to Prevent or Remedy Violations.** The Grantee shall have the right to take appropriate actions to prevent, abate, or remedy violations of this Conservation Restriction, including violations by non-parties.

#### IV. ACCESS BY THE GRANTEE

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines. The Grantee shall have the right to erect and from time to time replace, at appropriate locations near the boundaries of the Premises, suitable signs identifying the Grantee as the holder of this Conservation Restriction.

#### V. EXTINGUISHMENT

- A. Termination only by Judicial Proceeding and Grantee's Right to Recover Proportional Value.** If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Commonwealth of Massachusetts Secretary of the Executive Office of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, which extinguishment or release must be accomplished by judicial proceedings in a court of competent jurisdiction, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.
- B. Proceeds.** Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the

unrestricted Premises at that time and represents all land development rights associated with the Premises, except as such rights may have been specifically retained pursuant to this Conservation Restriction. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

- C. **Grantor/Grantee Cooperation Regarding Public Action.** Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph B above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than a fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## VI. DURATION & ASSIGNABILITY

- A. **Running of the Burden.** The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable in perpetuity against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises, by the Grantee, its successors and assigns acting by and through its duly designated officers, directors, employees or agents as holders of this Restriction.
- B. **Execution of Instruments.** The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. **Assignability; Running of the Benefit.** The benefits of this Conservation Restriction shall run to the Grantee, shall be deemed to be in gross and shall not be assignable by the Grantee, except the Grantee and its successors and assigns shall have the right to assign all or a portion of its right, title and interest hereunder to a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code provided that such assignee shall also be an eligible grantee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, that such assignee is not an owner of the fee in the Premises, and provided further that, as a condition of such assignment, the assignee is required to hold this Conservation Restriction and enforce its terms for conservation purposes and ensure that the purposes of this Conservation Restriction continue to be carried out. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## VII. SUBSEQUENT TRANSFERS

- A. **Reference to Conservation Restriction in Future Deeds and Required Notification of Transfers.** The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which divests any interest in all or a portion of the Premises, including any leasehold interest or option, and to notify the Grantee in writing not less than thirty (30) days prior to the execution of such transfer. Failure to do any of the above

shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

- B. Termination of Rights and Obligations.** The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

### **VIII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

### **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title to, any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

### **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Southern Essex District Registry of Deeds.

### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Southern Essex District Registry of Deeds.

### **XII. NOTICES**



Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: City of Newburyport  
City Hall  
60 Pleasant Street  
Newburyport, MA 01950  
Attn: Board of Water and Sewer Commissioners

To Grantee: Essex County Greenbelt Association, Inc.  
ATTN: Director of Stewardship  
82 Eastern Ave.  
Essex, MA 01929  
Phone: 978-768-7241

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

### **XIII. GENERAL PROVISIONS**

- A. Controlling Law.** The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability.** If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- D. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

### **XIV. AFFIRMATIVE COVENANTS OF THE GRANTOR**

- A. Payment of Taxes.** The Grantor shall pay before delinquency all taxes, assessments, betterments, liens, fees and charges levied on or assessed against the Premises by any federal, state, or local government authority or other competent authority or entity (collectively "taxes"), and shall furnish the Grantee with satisfactory evidence of payment upon request.
- B. Subordination of Mortgage.** The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises

- C. **Adverse Possession.** The Grantor represents and warrants that to the best of his knowledge no person has occupied or used the Premises without the Grantor's permission or has openly claimed ownership of the Premises as against the Grantor or the Grantor's predecessors in title or has conducted continuous activities or uses on the Premises (such as, but not limited to, logging, camping or similar uses). The Grantor agrees that if any such activity is observed now or in the future, the Grantor shall immediately notify the Grantee and shall cooperate with the Grantee to notify such persons of their wrongful entry onto the Premises.

#### XIV. MISCELLANEOUS

- A. **Pre-existing Public Rights.** Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. **Homestead.** The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.
- E. **Representations of the Grantee.** The Grantee represents that it is a not for profit corporation, that it has a perpetual existence, that it is organized and operated for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and for other charitable, scientific and educational purposes, that it has both the necessary funds and commitment to hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms, that it is a "Qualified Organization" as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and that it is an eligible donee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, as amended.
- F. **Prior Encumbrances.** This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.
- G. **Signature Pages and Exhibits.** Attached hereto and incorporated herein by reference are the following:

Grantor [*If Grantor is a Trust – attach Trustee's Certificate*]

Grantee Acceptance

Approval by City Council

[*Enter any other applicable signatures or certifications*]

Approval of the Secretary of Energy and Environmental Affairs.

Exhibit A: Legal Description of Premises

Exhibit B: Sketch Plan of Premises

[*Applies to CPA purchases*]Exhibit C: Town or City Vote

[*Enter additional Exhibits, Addendums, Appendices, Management Agreements, votes, grant agreements, exclusions, etc...*]

WITNESS our hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2021,

We, the undersigned, being a majority of the Board of Water and Sewer Commissioners of the City of Newburyport, Massachusetts ("Board"), hereby certify that at a public meeting duly held on \_\_\_\_\_, 2021, the Board voted to grant the foregoing Conservation Restriction to Essex County Greenbelt Association, Inc. pursuant to G.L. c. 40, section 41, and G.L. c. 184, section 32, and do hereby grant the foregoing Conservation Restriction.

CITY OF NEWBURYPORT,  
By its Board of Water and Sewer Commissioners

\_\_\_\_\_  
John Tomasz, Chair

\_\_\_\_\_  
Roger Jones, Commissioner

\_\_\_\_\_  
Sandy Friede, Commissioner

COMMONWEALTH OF MASSACHUSETTS  
Essex County, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared John Tomasz, Roger Jones and Sandy Friede, as the members of the City of Newburyport Board of Water and Sewer Commissioners, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by federal or state governmental agency,  oath or affirmation of credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purposes, as the City of Newburyport Board of Water and Sewer Commissioners.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**APPROVAL BY THE MAYOR OF THE CITY OF NEWBURYPORT**

I, the undersigned Mayor of the City of Newburyport ("City"), hereby approve the grant of the foregoing Conservation Restriction from the City's Board of Water and Sewer Commissioners to Essex County Greenbelt Association, Inc. in the public interest pursuant to G.L. c. 184, section 32.

CITY OF NEWBURYPORT

\_\_\_\_\_  
Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS  
Essex County, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared Donna D. Holaday, as the Mayor of the City of Newburyport, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by federal or state governmental agency,  oath or affirmation of credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as the Mayor of the City of Newburyport.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**ACCEPTANCE OF GRANT**

This Conservation Restriction from the City of Newburyport, acting by and through its Board of Water and Sewer Commissioners, was accepted by Essex County Greenbelt Association, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ESSEX COUNTY GREENBELT ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: Katherine Bowditch  
Title: President  
Hereunto duly authorized

By: \_\_\_\_\_  
Name: Kent Wosepka  
Title: Treasurer  
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Essex County, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared Katherine Bowditch, as President of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by federal or state governmental agency,  oath or affirmation of credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

\_\_\_\_\_  
Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Essex County, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared Kent Wosepka, as Treasurer of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by federal or state governmental agency,  oath or affirmation of credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

\_\_\_\_\_  
Notary Public  
My commission expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the City of Newburyport, acting by and through its Board of Water and Sewer Commissioners to Essex County Greenbelt Association, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Kathleen A. Theoharides  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT A**

Legal Description of Premises

**EXHIBIT B**

Reduced Copy of Plan of Premises

For official full size plan see Southern Essex District Registry of Deeds Plan Book 444 Plan 20.



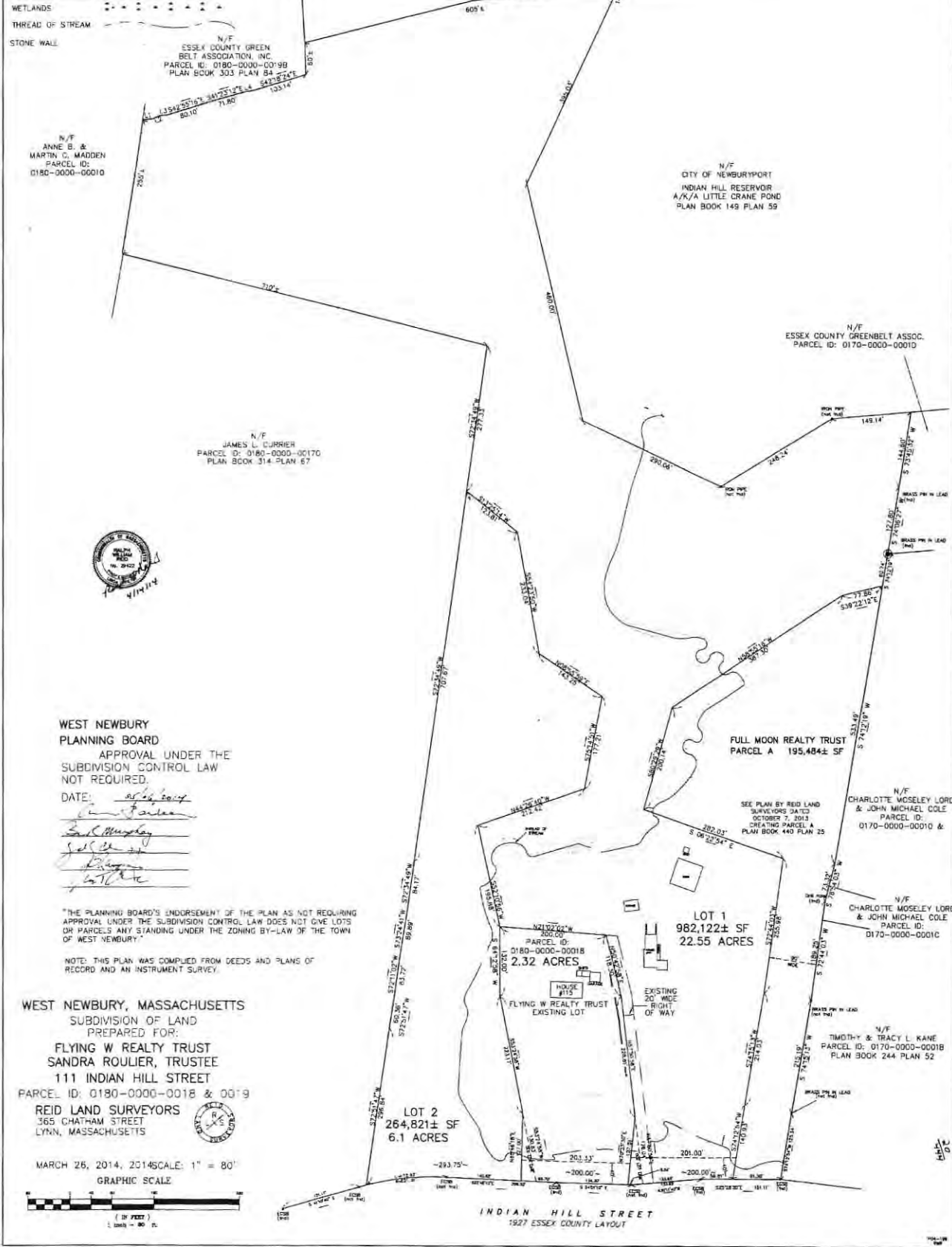


20  
444

LINE	LENGTH	BEARING
L1	19.47'	S33°00'02"E
L2	14.20'	S66°24'24"E
L3	13.35'	S28°24'10"E
L4	16.73'	S33°52'33"E

**PLAN BOOK 444 PLAN 20**  
 ESSEX COUNTY GREENBELT ASSOC. PARCEL ID: 0170-0000-0001D  
 Revised July 31, 2014  
 WSA  
 Albert [Signature]  
 Registrar of Deeds

I CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS. [Signature]





**CITY OF NEWBURYPORT  
FY 2021  
TRANSFER/APPROPRIATION REQUEST**

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

2021 APR -6 PM 3:03

**Department:** Mayor's Office

**Submitted by:** Donna D. Holaday, Mayor

**Date Submitted:** 4/12/2021

**Transfer From:**

Account Name:	HWY STREET LIGHTS	Balance:	\$ 105,919.92
Account Number:	01421002-52103	Category:	\$ 353,536.70
Amount:	\$2,646.00	Trans I/O:	\$ -

**Why Funds Are Available:**

A surplus is anticipated at year-end due to net metering credit billing adjustments that have reduced streetlight electricity costs for FY2021.

**Transfer To:**

Account Name:	ESSEX NORTH SHORE TECH SCHOOL	Balance:	\$ -
Account Number:	01398002-53202	Category:	\$ -
Amount:	\$2,646.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

A supplemental budget was done to account for higher than anticipated enrollment, however the final tuition costs came in \$2,646 higher. The amount can vary based on transportation costs and any additional services that are needed.

Donna D. Holaday, Mayor:

*Donna D. Holaday*

Date:

4/6/21

Ethan R. Manning, Auditor:

*Ethan R. Manning*

Date:

4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



# CITY OF NEWBURYPORT FY 2021

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

## TRANSFER/APPROPRIATION REQUEST

**Department:** Assessor's Office

**Submitted by:** Jill Brennan, City Assessor

**Date Submitted:** 4/12/2021

**Transfer From:**

Account Name:	Overlay Surplus Account	Balance:	\$ -
Account Number:	01-35200	Category:	\$ -
Amount:	\$99,010.00	Trans I/O:	\$ -

**Why Funds Are Available:**

Overlay funds that have been reserved for real estate and personal property tax abatements which are no longer required are declared surplus by the City Assessor. Overlay surplus may then be appropriated by the legislative body for any lawful purpose.

**Transfer To:**

Account Name:	ASR Revaluation	Balance:	\$ -
Account Number:	01141002-53002	Category:	\$ -
Amount:	\$99,010.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

Please see attached memo.

Donna D. Holaday, Mayor:

  
\_\_\_\_\_

Date: 4/6/21

Ethan R. Manning, Auditor:

  
\_\_\_\_\_

Date: 4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



# City of Newburyport

## OFFICE OF THE ASSESSOR

City Hall  
60 Pleasant Street  
Newburyport, MA 01950  
978-465-4403

To: President and Members of the Newburyport City Council

From: Jill Brennan, City Assessor

Date: April 6, 2021

Subject: Revaluation Transfer from Overlay Surplus

---

Every five years, the Bureau of Local Assessment (BLA) conducts a thorough review of the City's revaluation program and assessments; this so-called "certification" process consists of, but is not limited to, a data quality review, a statistical ratio studies review, and a valuation review to ensure that proper appraisal methodology was utilized while uniformly and equitably applied to all property.

In order to meet the certification requirements, municipalities typically contract with an outside appraisal company. The City issued an RFP and would like to start the revaluation program in the next several weeks during FY21. Any funds not spent in FY21 will be encumbered for FY22 when the project is set to be completed.

The amount requested is contractual and broken down as follows:

Person Property	\$24,810
Real Estate	\$65,000
Cyclical inspections	\$ 9,200
<b>Total Project Cost</b>	<b>\$99,010</b>

This project is typically funded from overlay surplus, given that it occurs only once every five years. Overlay surplus are funds that were previously reserved for real estate and personal property tax abatements which are no longer required are declared surplus by the City Assessor (see attached). Overlay surplus may then be appropriated by the legislative body for any lawful purpose.

Thank you for your consideration.



# CITY OF NEWBURYPORT

OFFICE OF THE  
ASSESSOR

JILL BRENNAN  
CITY ASSESSOR

NEWBURYPORT CITY HALL

60 PLEASANT STREET

NEWBURYPORT, MA 01950

TEL: 978-465-4403

FAX: 978-462-8495

WWW.CITYOFNEWBURYPORT.COM

**To:** Ethan Manning, Finance Director  
**From:** Jill Brennan, City Assessor  
**Date:** April 1, 2021  
**Re:** Transfer from Overlay

---

I hereby authorize the release of \$99,010 from Overlay Account to Overlay Surplus Account.



# CITY OF NEWBURYPORT FY 2021

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

## TRANSFER/APPROPRIATION REQUEST APR 12 2021 3:03 PM

**Department:** Mayor's Office

**Submitted by:** Donna D. Holaday, Mayor

**Date Submitted:** 4/12/2021

**Transfer From:**

Account Name:	GEN EVENTS COORDINATOR	Balance:	\$ 5,000.00
Account Number:	01129001-51162	Category:	\$ 8,597.50
Amount:	\$4,000.00	Trans I/O:	\$ -

**Why Funds Are Available:**

A surplus is anticipated at year-end due to the temporary suspension of room/event rentals in municipal buildings. We anticipate this position being re-staffed in FY2022.

**Transfer To:**

Account Name:	AUD MISC SUPPLIES	Balance:	\$ -
Account Number:	01135004-55800	Category:	\$ -
Amount:	\$500.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

This line item is used to fund supplies for the City Auditor's Office, such as check stock, printer toner, 1099 forms, other miscellaneous tax forms, etc. This account was reduced by \$500 by the City Council; we are requesting to restore that amount to pay expenses through year-end.

**Transfer To:**

Account Name:	GEN SUPPLIES-OFFICE	Balance:	\$ -
Account Number:	01129004-54200	Category:	\$ -
Amount:	\$3,500.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

This line item is used to fund office supplies shared by all City Hall departments. The largest expense that comes out of this line item is paper, which is purchased in bulk. This account was previously funded at \$7,000, however for FY21 was reduced by \$4,500 by the City Council. Funds are needed to pay to cover expenses through year-end.

Donna D. Holaday, Mayor:

\_\_\_\_\_

Date:

\_\_\_\_\_

Ethan R. Manning, Auditor:

\_\_\_\_\_

Date:

\_\_\_\_\_

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



# CITY OF NEWBURYPORT FY 2021

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA  
APR -6 PM 3:03

## TRANSFER/APPROPRIATION REQUEST

**Department:** Mayor's Office

**Submitted by:** Donna D. Holaday, Mayor

**Date Submitted:** 4/12/2021

**Transfer From:**

Account Name:	RRFA - Paid Parking Fund	Balance:	\$ 993,790.59
Account Number:	2739-59610	Category:	\$ -
Amount:	\$5,550.00	Trans I/O:	\$ -

**Why Funds Are Available:**

This fund is a receipts reserved for appropriation account. Funding sources include parking meter collections, violations and permits generated from the Downtown Paid Parking Program.

**Transfer To:**

Account Name:	PKG PART-TIME ENFORCEMENT OFF	Balance:	\$ 75,922.25
Account Number:	01293001-51166	Category:	\$ 99,721.02
Amount:	\$4,500.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

Additional funding is needed for the newly settled collective bargaining agreement between the City of Newburyport and Teamster's Parking Enforcement Officers Local #170 retroactive to July 1, 2020. See attached memo and tentative agreement.

**Transfer To:**

Account Name:	PKG CLOTHING ALLOWANCE	Balance:	\$ 205.53
Account Number:	01293001-51405	Category:	\$ 99,721.02
Amount:	\$1,050.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

Additional funding is needed for the newly settled collective bargaining agreement between the City of Newburyport and Teamster's Parking Enforcement Officers Local #170 retroactive to July 1, 2020. See attached memo and tentative agreement.

Donna D. Holaday, Mayor:



Date:

4/6/21

Ethan R. Manning, Auditor:



Date:

4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



CITY OF NEWBURYPORT  
OFFICE OF THE MAYOR  
DONNA D. HOLADAY

60 PLEASANT STREET • P.O. BOX 550  
NEWBURYPORT, MA 01950  
(978) 465-4413 • (978) 465-4402 (FAX)  
WWW.CITYOFNEWBURYPORT.COM

To: President and Members of the City Council  
From: Donna D. Holaday, Mayor  
Date: April 6, 2021  
Subject: Teamsters Union Local 170 Parking Enforcement Officers FY21 – FY23

---

The Administration has agreed to terms for a new, three-year collective bargaining agreement with the Teamster Union Local 170 Parking Enforcement Officers Subgroup of Professional/ Administrative/ Technical Collective Bargaining Unit. The contract would go into effect retroactively from July 1, 2020 through June 30, 2023, subject to appropriation of funding for the first year of the contract by the City Council. The Local 170 voted to ratify the terms of this agreement on March 24, 2021.

Included with this memo is a transfer request that appropriates funding for the first year of the contract by the City Council. Also included with this memo is the tentative agreement that outlines the terms and changes in the new agreement. A copy of the previous contract which expired on June 30, 2020 is available on the Human Resources website of the City Website: <https://www.cityofnewburyport.com/human-resources/pages/union-contractsexpired>. The Administration worked diligently and collaboratively with the Local 170 to agree to terms for a new contract.

My staff, including Chief of Staff Matt Coogan and Finance Director Ethan Manning, are available if you require any additional information regarding information on the appropriation request or terms of the new contract.

Thank you for your consideration.



CITY OF NEWBURYPORT  
PARKING ENFORCEMENT OFFICERS  
TENTATIVE AGREEMENTS

March 24, 2021

**Article XII Wages**

<b>Year</b>	<b>Starting Rate</b>	<b>1 Year Service</b>
FY 2021	\$15.90	\$17.65
FY 2022	\$16.32	\$18.07
FY 2023	\$16.74	\$18.49

Employees who have been members of the bargaining unit for at least one full year shall receive a \$1.75/ hour rate increase.

Employees shall receive premium pay for working extended seasonal hours between 5-8pm of an additional \$2.75 an hour.

**Article VIII - Hours of Work**

**Section 1: Holiday Pay**

If an employee works a holiday listed in this agreement, that employee will be paid time and one half (1 1/2) of their hourly rate for all hours worked on that holiday.

**Article XIV Miscellaneous**

**Section 1. Clothing Allowance**

Increase annual clothing allowance to \$350 from \$200.

**New Section 4 - Call-in Pay**

In the case that the parking enforcement officer is called in for unscheduled maintenance of a parking kiosk, such union member will be paid a 2-hour minimum of hourly pay for getting called in.

Any hours worked after the first two hours shall be paid at the employee's regular rate.

This section memorializes existing practice.

CITY OF NEWBURYPORT  
PARKING ENFORCEMENT OFFICERS  
TENTATIVE AGREEMENTS

**New Section 5 - Credit Union**

The City agrees to deduct certain amounts each week from the wages of those employees who shall have given the City written authorization to make such deductions. The amounts so deducted shall be remitted to the New England Teamsters Federal Credit Union or personal bank of the employee once each week. The town shall not make deductions and shall not be responsible for remittance to the New England Teamsters Federal Credit Union or personal bank for any deductions for those weeks in which the employee's earnings shall be less than the amount authorizes for deduction.

**New Section 6 - Personal Protective Equipment (PPE)**

As a result of the COVID-19 pandemic, The City of Newburyport agrees to provide, at no cost to all bargaining unit employees, all personal protective equipment (PPE), personal sanitizing agents, and any other materials to safeguard the health and well-being of the bargaining unit members, as directed by or set forth in safety guidelines by the Center for Disease Control (CDC), the Massachusetts Department of Public Health (DPH) and/or any other state or federal regulating agency.

In the case of future public health crisis that would affect the operations of the parking program and the working conditions of parking control employees, the City of Newburyport agrees to work with the union to provide any necessary accommodations to safeguard the health and wellbeing of the bargaining unit's members.

**Article XXII Duration:**

Change to read:

This Agreement shall become effective on July 1, 2020 and expires on June 30, 2023.

 3/24/21  
James Marks, Business Agent

Teamster Local 170

 3/24/21  
Matthew Coogan, Chief of Staff

City of Newburyport

**APPOINTMENTS  
FIRST READING**



CITY OF NEWBURYPORT  
OFFICE OF THE MAYOR  
DONNA D. HOLADAY, MAYOR

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

2021 APR -5 PM 3:42

60 PLEASANT STREET - P.O. Box 550  
NEWBURYPORT, MA 01950  
978-465-4413 PHONE  
978-465-4402 FAX

To: President and Members  
of the City Council

From: Donna D. Holaday, Mayor

Date: April 2, 2021

Subject: Re-Appointment

---

I hereby re-appoint, subject to your approval, the following named individual as Veterans Agent for Newburyport. This term will expire on April 1, 2022.

Kevin Hunt  
14 Tenth Street  
Newburyport, MA 01950

**KEVIN D. HUNT**

14 Tenth Street  
Newbury, MA 01951  
978 465-1433 (H)

email: [veterans@cityofnewburyport.com](mailto:veterans@cityofnewburyport.com)

---

- 2007- Present**      **Veteran Services Officer, Newburyport, MA**
- 1999 to 2007**      **SYNERGENT. Data Processing sales – Service Bureau**
- 1994 – 1999**      **EDS - Developed ATM networks with New England financial institutions. Consistently exceeded \$1M annual quota. Presentations to senior management, and knowledge of data communications and financial processing.**
- 1990 - 1994**      **DIEBOLD CORPORATION, Canton, Ohio**  
**Developed and sold custom service offerings to New England financial institutions. Average sale \$75,000 over a six month cycle. Account responsibility for \$4.8M annual revenue. Leading sales producer.**
- 1987 - 1990**      **TECHNICAL SERVICES SUPPORT, INC., Ossining, NY**  
**Northeast Regional Sales Manager responsible for \$3M in existing revenue base, and new business development. Certified as Novelle Network Reseller. Regional offices closed in 1990 to consolidate cost.**
- 1981 - 1987**      **AUTOMATED DATA PROCESSING (ADP), Clifton, NJ**  
**Regional sales manager for ATM network development. Launched first Home Banking offering. Consistent over quota performance.**
- 1969- 1981**      **XEROX CORPORATION, Rochester, NY**  
**Territory sales through to national account responsibility. Consistent over-quota performance.**
- 1965 - 1969**      **UNITED STATES NAVY**  
**Commissioned Officer - Vietnam and OCS Instructor**

**EDUCATION:**      **1963: University of Notre Dame, *BA in Communications***  
**1964 Fordham Law School**



CITY OF NEWBURYPORT

OFFICE OF THE MAYOR  
DONNA D. HOLADAY, MAYOR

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

60 PLEASANT STREET - P.O. Box 550  
NEWBURYPORT, MA 01950  
978-465-4413 PHONE  
978-465-4402 FAX

2021 APR -6 PM 12:44

To: President and Members of the City Council  
From: Donna D. Holaday, Mayor  
Date: April 6, 2021  
Subject: Appointment

-----  
I hereby appoint, subject to your approval, the following named individual as a member of the Water/Sewer Commission. This term will expire April 30, 2023.

William G. Creelman  
129 Merrimac Street, Unit 5  
Newburyport, MA 01950

129 Merrimac Street, Unit 5

Newburyport, MA 01950

April 6, 2021

Mayor Donna D. Holaday

Newburyport City Hall

60 Pleasant Street

Newburyport, MA 01950

RE: Board of Water and Sewer Commission

Dear Madam Mayor:

Enclosed please find my resume for your consideration for a position on the Board of the Water and Sewer Commission. I have been a resident of Newburyport for the past year, am retired and interested in becoming involved in the community and city government.

My professional background is in engineering and construction. In addition, I have served on many town boards when I lived in Concord, MA.

I would welcome the opportunity to explore the possibility of serving on the Board.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "William G. Creelman".

William G. Creelman

(781) 389 0908

[creelmanw@gmail.com](mailto:creelmanw@gmail.com)

William Creelman  
129 Merrimac Street #5  
Newburyport, MA 01950  
[crelmanw@gmail.com](mailto:crelmanw@gmail.com)

Objective: To obtain an owner's project management position utilizing my extensive construction experience both as a Construction Manager and an Owner's agent to add value to the employer.

Builder's Licenses: Boston (ABC), Cambridge and Arlington (All Classes)

Industry Organizations: Member of the Associated General Contractors of MA

Affiliations: Wentworth Institute of Technology

Current Member University Advisors

Corporator

Past Chairman, National Council

Past Chairman, Industrial Advisory Board Building Construction

Member of Two Capital Campaigns

Past Member of the WAA (Wentworth Alumni Association)

Established two Scholarship Funds

Town of Concord MA:

Member, Harvey Wheeler Community Center Building Construction

Member, Concord Elementary School Building Committee

Member, Concord Carlisle High School Building Committee (Ph 1, 2)

Member, Concord Free Public Library & Fowler Branch Library Building Committee

Member, Site Study Comm. to relocate Concord Municipal Light Plant & Public Works

Served 3 years on Concord Board of Appeals, Chairman for one year

Additional:

Past Contractor Member, Designer Selection Board, State of MA Chairman – 1 yr.

Director, Silpro Masonry Products, Ayer MA

Retired Captain – Massachusetts Army National Guard

Past Instructor, BAC

Board Member of Heading Home

Served on Property, Finance & Executive Committees for Heading Home

Board Member North Bennett Street School – Building & Finance Committees

Education:

Wentworth Institute of Technology

Associate Degree, Applied Technology – Building Construction Technology 1964

Northeastern University – Structural Engineering



## **Professional Experience:**

### **ASPEN Group - June 2017 – November 2019**

Served as Clerk of the Works at the Boston Homes, Dorchester, MA, a 27-unit building for severely handicapped residents.

3200 Washington, Boston MA, a 76-unit apartment complex completed with 11 affordable units.

### **BOND - January 2014 – May 2015**

Hired as a consultant to assist with estimating, purchasing subs, & project management related assignments on an \$80M dormitory project at Boston University.

### **North Bennett Street School – April 2012 – December 2013**

Hired as Owner's Representative/Clerk of the Works.

Participated in the selection of Construction Manager, Architect and various consultants on the project.

Oversaw design and construction of an 80,000 sf facility at 150 North Street, Boston MA.

The Project had a compressed 10 month schedule and a value of \$17M.

### **Creelman Construction Consulting – January 2009 – 2012**

Formed my own construction consulting business working for owners, architects, & contractors assisting them with numerous construction issues.

### **AJ Martini Corporation – September 1995 – January 2009**

Vice President/Director of Purchasing.

Negotiated and awarded approximately \$80M subcontracts each year.

Directed construction support group and supervised the estimating department.

Managed and supervised equipment division, Dartmouth Tool.

Visit sites as required to review schedule, subcontractor issues, & manpower requirements.

Member of the Executive Committee managing overall operations for the company.

### **R.L. Jeannotte Company - May 1993 – September 1995**

Vice President/Project Manager

Completed approximately \$10M worth of construction per year and actively managed the estimating and field operations department.

### **Macomber Construction Company - July 1988 – May 1993**

Vice President

Started the Special Projects Division for the company and grew operations / revenue to approximately \$15Million with profitable operations.

### **Kennedy & Rossi - July 1987 – July 1988**

Executive Vice President

Assisted in operations of the overall management of the \$30M Firm.

### **Creelman Coull - 1984 – July 1987**

Principal

Developed and built a 52 Acre industrial park in Ayer MA. Creelman Coull was a merit based construction management firm.

**END OF CONSENT AGENDA  
BEGINNING OF REGULAR AGENDA**



# Community Choice Electricity Aggregation Plan

NBPT Energy Advisory Committee  
Presentation to NBPT City Committee

April 12, 2021

# Community Choice Aggregation (CCA)

- ▶ Allows communities to combine all residents and businesses into a single buying group for electricity
  - ▶ Opt-out program
  - ▶ Residents can move in or out at any meter reading for any reason
- ▶ Negotiate price, contract, and type of power using an aggregation consultant: Colonial Power Group (CPG)
  - ▶ Provides residents and businesses with the same benefit city has received for the last 6 years by negotiating and contracting for supply
  - ▶ Can have long term contracts, no 6-month fluctuations
  - ▶ May be able to add sustainable power over state mandates
  - ▶ No guarantee the city will always get better pricing
- ▶ Newburyport City Council passed an Aggregation ordinance in 2014
- ▶ DPU approved our Aggregation plan in 2015
- ▶ We have not started Aggregation due to:
  - ▶ Risk of pricing
  - ▶ Savings are modest: \$5-\$10/month for the typical customer
  - ▶ Overcoming inertia

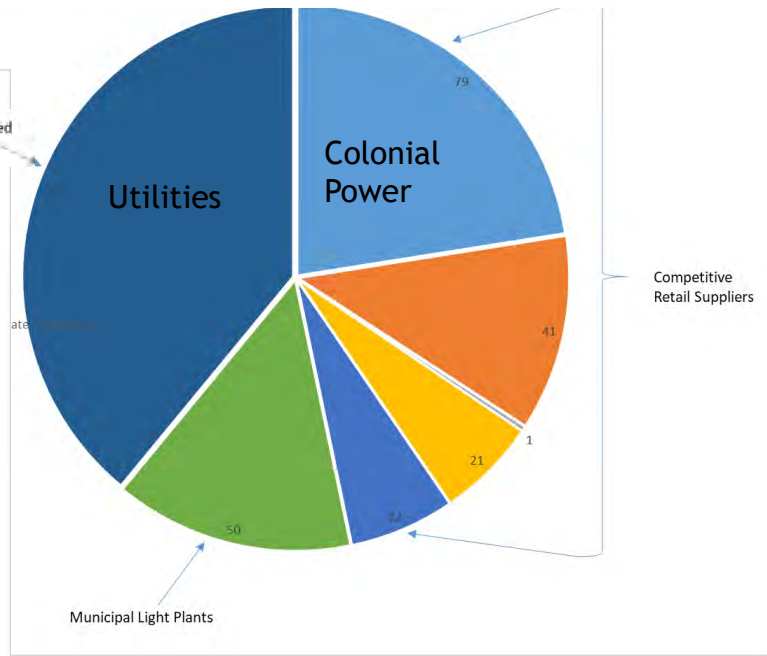
# Why Start Now?

- ▶ Aggregation gives our residents more choice and control
  - ▶ Make-up and pricing of electricity
  - ▶ City oversight
- ▶ Aggregation is becoming the norm
  - ▶ Several years of aggregation experience and data are available
  - ▶ 164 MA communities have approved aggregation programs
    - ▶ <https://www.mass.gov/info-details/municipal-aggregation#:~:text=In%20a%20municipal%20aggregation%3A,on%20behalf%20of%20participating%20customers.&text=Customers%20who%20do%20not%20opt,at%20any%20time%20after%20that.>
    - ▶ Boston recently approved
  - ▶ 151 MA communities have active aggregation programs
  - ▶ Aggregated communities in total are a bigger purchasing segment than basic service
- ▶ Options to do more in the future
  - ▶ Offer opt-in choices with higher renewable content
  - ▶ Add in Community Solar and similar options
    - ▶ Contract structures with guaranteed discounts
  - ▶ Adder for funding local conservation

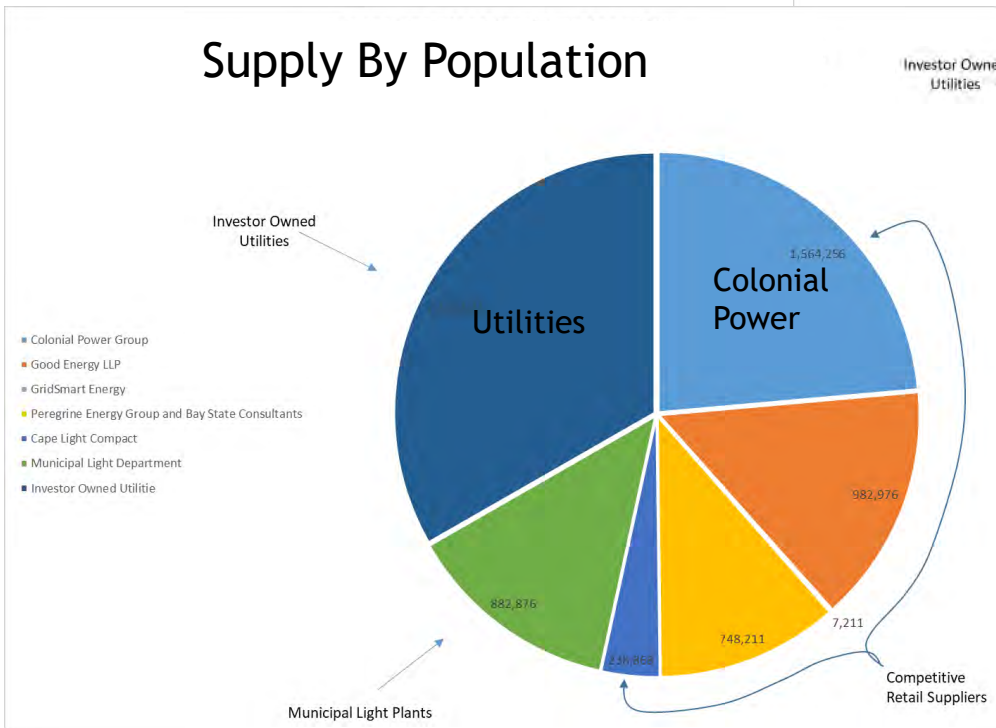
# Competitive Supply is Becoming Market Driver

Colonial Power, our aggregator is the largest player

## Supply By Municipality



## Supply By Population



# How this Would Work

- ▶ Mayor gives go-ahead for Aggregation
- ▶ Colonial Power Group (CPG) starts program education
  - ▶ Has 24/7 800 lines for residents to ask questions
- ▶ CPG negotiates power contracts:
  - ▶ Stable pricing for 1 to 3 years at a time for easier budgeting
  - ▶ Fixed price over life of contract
  - ▶ CPG will explain implications of contract terms
- ▶ Wires maintained exactly the same by Ngrid
- ▶ Ngrid is the first entity to call if loss of power
- ▶ Ngrid is the first entity to call with billing questions
- ▶ Community Choice Aggregation will
  - ▶ Give residents electricity choices without the confusion, misrepresentation, and price gouging by retail energy marketers.
  - ▶ Give the city more reasons and opportunities to educate the community on sustainability and environmental stewardship
  - ▶ Make the city more aware and responsive to residents needs

# Tentative Timeline

- ▶ Develop and implement RFP May-August 2021
- ▶ Selection of competitive supplier September 2021
- ▶ Public education ongoing from: October 2021
  - ▶ In the weeks prior to the mailing, Colonial will provide the City with a PSA to scroll on local cable, FAQ's, posting for the City's social media platforms, opt-in instructions for folks already on third-party supply and a press release
  - ▶ Colonial will look for guidance from the City in terms of what types of information sessions should be held (e.g. announcement at City Council meeting, video calls specifically devoted to Q&A on the City's Program, etc)
  - ▶ The ideal time for the information sessions would be near the end of October through to beginning of December when the program mailing reaches mailboxes
- ▶ Enrollment/Opt-out period [37 days]: mid/late-November 2021
  - ▶ The opt-out mailing will be sent in mid-November to every Basic Service account in the City. There's a 37-day opt-out period for those who don't want to be automatically switched to the City's Program
  - ▶ Residents and business may opt-out by returning the postage paid postcard included with the mailing or by calling the City's aggregation supplier or Colonial or by going online at <https://colonialpowergroup.com/newburyport/>
- ▶ Power Supply Commencement January 2022
  - ▶ Towards the end of the initial 37-day opt-out period, Colonial will provide the City with a Public Notice, for go forward use, as well as a marked sample bill so folks know what to expect



# Decision Points

- ▶ CPG gets indicative pricing for various time periods
  - ▶ Single program, no extra renewables just like municipal contract
  - ▶ Fixed price over life of contract
- ▶ Mayor starts program: signs contract
- ▶ Public Util. sub-com with EAC make recommendation
- ▶ CPG recommends when to get final pricing
- ▶ City signs contract with power supplier

# Future Options

- ▶ CPG negotiates Community Solar on behalf of the residents
  - ▶ This gets layered in as solar projects come online
    - ▶ Not enough to cover entire city's demand
    - ▶ First CS discounts goes to low-income residents
    - ▶ Adding solar guaranteed discount gives buffer on pricing
- ▶ Wind and other renewables as they becomes available
- ▶ Develop a managed energy efficiency plan
  - ▶ Low adder of \$0.001/kwh generates ~\$70,000/year
    - ▶ Residents still pay less than basic rate
    - ▶ Use for local resiliency and sustainability projects
    - ▶ EV charging stations.
  - ▶ MGL, Part I, Title XXII, Chapter 164, Section 134: Load aggregation programs

# Questions?

## NBPT Energy Advisory Committee Presenters:

- ✓ Michael Strauss - EAC Chairperson
- ✓ Molly Ettenborough - City of NBPT Recycling & Energy Manager
- ✓ Phil Smith - EAC Energy Subcommittee Chair
- ✓ Don Walters - EAC Energy Subcommittee Member

**APPOINTMENTS  
SECOND READING**

## SECOND READING APPOINTMENTS

- APPT236\_03\_29\_2021 Michael Nary 20 Riverview Dr. Sp.Police Ofc.
- APPT237\_03\_29\_2021 Rich Traister 325 Merrimac St. Disabilities Comm. 3/31/2024
- APPT238\_03\_29\_2021 Walter Lesynski 364 Merrimac St. Harbor Comm. 4/1/2024

### **In City Council March 29, 2021:**

Motion to approve the Consent Agenda as amended by Councillor Zeid, seconded by Councillor Khan.  
Roll call vote. 11 yes. Motion passes.

# ORDERS

CITY OF NEWBURYPORT



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IN CITY COUNCIL

ORDERED:

April 12, 2021

**THAT, The CITY COUNCIL of the City of Newburyport** accepts with gratitude a gift from the Friends of Newburyport Trees (FoNT) in the amount of \$9,500 for the purpose of purchasing, planting and caring for city street streets. Said funds are deposited into the Tree Commission Gifts & Donations Account and accepted in accordance with M.G.L. Chapter 44, Section 53A.

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Councillor Sharif I. Zeid

**Friends of Newburyport Trees**

**PO Box 1155**

**Newburyport, MA 01950**

April 1, 2021

City of Newburyport

Attn: Ethan Manning

60 Pleasant Street

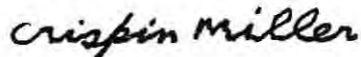
Newburyport, MA 01950

Dear Ethan,

It is with great pleasure that we at the Friends of Newburyport Trees (FoNT) donate \$9,500.00 to the Tree Commission for the purpose of purchasing, planting and caring for city street trees. This money comes from a variety of private and business donations. During these difficult times it is gratifying to have such an outpouring of public support.

Attached is the check for \$9,500.00. Please let me know if you have any questions.

Kind regards,



Crispin Miller

President, Friends of Newburyport Trees

978-771-2871

Cc: Connie Preston – Chair-Newburyport Tree Commission



# ORDINANCES

# CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

March 19th, 2020

## AN TIME-LIMITED ORDINANCE TO AMEND CHAPTER 11 OF THE MUNICIPAL CODE REGARDING PARKS AND RECREATION IN RESPONSE TO THE COVID-19 PANDEMIC

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

***Add to Chapter 11, Subsection 11-7, a New Subsection C – "COVID19 Parks Permitting" to read as follows:***

In response to the COVID-19 pandemic, the City Council, in consultation with the Parks Commission, establishes a fee of \$0/hour in certain cases defined as follows:

- A) Recurring use of the following Parks:
  - a. Cashman Park Ballfield
  - b. Perkins Park Ballfield
  - c. Cashman Park Soccer Field
  - d. Cherry Hill Soccer Field Parcel A
  - e. Cherry Hill Soccer Field Parcel B
  - f. Bradley Fuller Park Infield
  - g. Bradley Fuller Park North Field
  - h. Woodman Park Multi-Use Field
  - i. Cashman Park Tennis
  - j. Perkins Park Tennis
  - k. Bartlett Mall Basketball Courts
  - l. Cashman Park Basketball Court
  - m. G.W. Brown School Playground Basketball
  - n. Perkins Park Basketball Courts
  - o. Woodman Park Basketball Courts
  - p. Atkinson Common, Lower, Founders Field
  - q. Atkinson Common, Lower, Pepe Field
  - r. Atkinson Common, Lower, Hawkes Field
  - s. Atkinson Common Tennis
  - t. Brown Square
  - u. Atkinson Common, Upper
  - v. Atkinson Common, Lower
  - w. Atwood/Garrison Gardens
  - x. Bartlett Mall (other than athletic fields or courts)

- y. Cashman Park (other than athletic fields or courts)
- z. Moseley Woods Pavilion
- B) 5 or fewer weekdays in any given week
- C) No more than 2 hrs. on any given day
- D) No tents or structures of any kind, temporary or permanent, are permitted
- E) Requests for usage on any weekend day may not be permitted under this subsection
- F) No more than 20 participants maximum (subject to other laws and regulations promulgated by other entities)

Any permit being requested under this specific subsection shall be made to the Parks Commission or its designee, which shall render a decision on the application within 7 days, with an application that shall include the following at minimum:

- A) Identification of the individual or organization
- B) Primary contact with contact information (including physical mailing address, phone number, and the cellphone number of the primary contact)
- C) A list of specific dates and time slot(s) requested
- D) A description of the proposed use
- E) A valid insurance binder with a minimum of \$1M of coverage indicating that the City of Newburyport is an additional named insured without limitation or any other additional requirement.

For the purposes of clarity, this subsection alters fees and permitting in specific cases for a defined period of time overriding 11-5v, 11-7 (specifically Group C) but shall not be construed to alter, eliminate, or supersede any other aspect of Chapter 11 or any rules promulgated by the Parks Commission.

Applicants are on notice that these are requests for fee-free usage of public Parks which belong to the residents of Newburyport. The Parks Commission must weigh this against any permit application and across all permit applications. In addition, the Parks Commission must also be mindful of congestion as permit applications are processed.

The Parks Commission may, at its sole discretion, approve or deny permits. Any such grant is a revocable license and, as such, may be revoked by the Parks Commission upon a supermajority vote during a public meeting.

This section and any permits approved under it shall expire on August 31, 2021 ~~April 30<sup>th</sup>, 2021~~ at 11:59 PM unless this subsection is extended by the City Council or unless any individual permit is revoked by the Parks Commission at any time.

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Sharif I. Zeid, Ward 1 City Councillor

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Joseph H. Devlin, At Large City Councillor

**In City Council March 29, 2021:**

Motion to approve 1<sup>st</sup> Reading by Councillor Zeid, seconded by Councillor Devlin. Motion to move to a date certain, April 12, 2021, by Councillor Zeid, seconded by Councillor Devlin. Roll call vote. 11 yes. Motion passes.

## CITY OF NEWBURYPORT




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 IN CITY COUNCIL

ORDERED:

April 6, 2021

**AN ORDINANCE TO AMEND THE SALARY OF ELECTED OFFICIALS**

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

**THAT** the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended by amending existing Section 2-126, of ARTICLE IV, - OFFICERS AND EMPLOYEES, to read as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

**ARTICLE IV. – OFFICERS AND EMPLOYEES****Sec. 2-126. – Salary of elected officials.**

- (a) Commencing in January 2020, and continuing thereafter, the annual salary of the mayor shall be one hundred and two thousand, seven hundred and fifty dollars (\$102,750.00), plus three thousand dollars (\$3,000.00) annual expense allowance.
- (b) ~~The annual salary of each city councilor shall be five thousand dollars (\$5,000.00) and the salary of the president of the city council shall be six thousand dollars (\$6,000.00).~~

Commencing with the inauguration of the Council in January 2022, and continuing thereafter, the annual salary of each Councilor, except the President of the City Council, shall be nine thousand dollars (\$9,000.00). Commencing with the inauguration of the Council in January 2022, and continuing thereafter, the annual salary of the Council President shall be eleven thousand dollars (\$11,000.00).

- (c) Commencing on January 1, 2020, and continuing thereafter, the annual salary of each school committee member, except the mayor and the vice-chair, shall be three thousand dollars (\$3,000.00). Commencing on January 1, 2020 the annual salary of the vice-chair shall be three thousand, six hundred dollars (\$3,600.00).

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Councillor Jared Eigerman

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Councillor Charles Tontar

TO: Newburyport City Council  
FROM: Councillor Charles Tontar  
DATE: April 12, 2021  
RE: Proposed Council Salary Increase

Below is the quantitative rationale for the amounts proposed for increases in the salaries of City Councillors and the President of the City Council. I used three methods for estimating the proposed amounts: 1. CPI calculation, 2. Comparison to other North Shore Cities, and 3. Salaries proportional to the Mayor's salary.

### **1. Consumer Price Index (CPI)**

Consumer Price Indices indicate the change in the value of the dollar over time. An increase in prices results in each dollar having less buying power. For example, if the index is 100 in the base year and 200 in the current year, the dollar can purchase half of what it could purchase in the earlier year. Thus, the CPI can be used to calculate the amount in current dollars to obtain the equivalent buying power of the amount in an earlier year.

I used four different indices: National CPI-U, National CPI-W, The Boston-Cambridge-Newton, Mass.-N.H. Core Based Statistical Area CPI-U, and The Boston-Cambridge-Newton, Mass.-N.H. Core Based Statistical Area CPI-W.

For example, the National CPI for all Urban consumers (CPI-U) was 151.5 in 1995, the last time Council salaries were changed, and 260.065 in 2020. That represents a 71.66% increase. \$8,583 in 2020 would be required to have the same buying power as \$5,000 did in 1995.

CPI-U is the broader measurement. It includes wage earners and clerical workers as well as professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the labor force. CPI-W includes just wage and clerical workers.

Since price changes are geographically specific, I also examined the indices for the Boston-Cambridge-Newton, Mass.-N.H. Core Based Statistical Area that is comprised of Essex, Middlesex, Norfolk, Plymouth, Suffolk Counties in Massachusetts; Rockingham, Strafford Counties in New Hampshire.

<b>Council Salaries</b>					
			<b>FY20/FY95</b>	<b>Current \$</b>	<b>FY21 Real :</b>
<b>National</b>					
		<b>CPI for All Urban Consumers (CPI-U)</b>	1.71660066	\$ 5,000.00	\$ 8,583.00
1995	151.5				
2020	260.065				
		<b>CPI for Urban Wage Earners and Clerical Workers (CPI-W)</b>	1.70384822	\$ 5,000.00	\$ 8,519.24
1995	148.9				
2020	253.703				
<b>(All items in Boston-Cambridge-Newton, MA-NH, all urban consumers)</b>					
		<b>CPI for All Urban Consumers (CPI-U)</b>	1.792345523	\$ 5,000.00	\$ 8,961.73
1995	158.6				
2020	284.266				
		<b>CPI for Urban Wage Earners and Clerical Workers (CPI-W)</b>	1.796130877	\$ 5,000.00	\$ 8,980.65
1995	157.4				
2020	282.711				
<b>Council President Salary</b>					
<b>National</b>					
		<b>CPI for All Urban Consumers (CPI-U)</b>	1.71660066	\$ 6,000.00	\$ 10,299.60
1995	151.5				
2020	260.065				
		<b>CPI for Urban Wage Earners and Clerical Workers (CPI-W)</b>	1.70384822	\$ 6,000.00	\$ 10,223.09
1995	148.9				
2020	253.703				
<b>(All items in Boston-Cambridge-Newton, MA-NH, all urban consumers)</b>					
		<b>CPI for All Urban Consumers (CPI-U)</b>	1.792345523	\$ 6,000.00	\$ 10,754.07
1995	158.6				
2020	284.266				

		<b>CPI for Urban Wage Earners and Clerical Workers (CPI-W)</b>	1.796130877	\$ 6,000.00	\$ 10,776.79
1995	157.4				
2020	282.711				

## 2. Comparison to Other North Shore Cities

The second data set examined the salaries of Councillors in FY 20 in the other cities in Essex County. This data was collected by Chief of Staff Matthew Coogan during our own FY20 budget discussion. I checked to see if there were any changes in FY21 but could find none.

City	Population	Budget	Median HH Income	Council	Council President
Amesbury	16,283	\$ 61,369,869	\$ 78,638	\$ 4,000	\$ 5,000
Beverly	41,816	\$ 129,856,605	\$ 73,980	\$ 11,733	\$ 12,333
Gloucester	28,789	\$ 114,000,000	\$ 65,348	\$ 11,500	\$ 11,500
Haverhill	63,639	\$ 194,480,628	\$ 65,926	\$ 13,333	\$ 18,000
Lawrence	80,162	\$ 319,008,892	\$ 39,627	\$ 15,058	\$ 17,065
Lynn	94,063	\$ 367,935,216	\$ 53,513	\$ 25,000	\$ 25,000
Methuen	50,259	\$ 163,878,479	\$ 73,492	\$ 5,000	\$ 5,000
Newburyport	18,060	\$ 83,969,620	\$ 89,887	\$ 5,000	\$ 6,000
Peabody	52,987	\$ 173,558,826	\$ 65,085	\$ 10,800	\$ 10,800
Salem	41,654	\$ 162,726,502	\$ 65,528	\$ 13,500	\$ 14,000
<b>Av w/o NBPT</b>	<b>52,184</b>	<b>\$ 203,180,644</b>	<b>\$ 64,571</b>	<b>\$ 12,214</b>	<b>\$ 13,189</b>

## 3. Salaries proportional to the Mayor's salary.

The rationale for setting Council salaries relative to that of the Mayor is that the City Council as a whole and the Mayor represent equivalent governmental entities. The chart below represents what Council salaries would have to be such that Council salaries as a whole were equal to the Mayor's salary. The assumption is that the Council President receives 20% more than individual Councillors and the sum of all Council salaries including the President's is equal to that of the Mayor.



Mayor's Salary	\$ 102,743.00		<b>% of Mayor's \$</b>
Council	\$ 9,144.13	\$ 91,441.27	89%
President	\$ 11,301.73	\$ 11,301.73	11%
		\$ 102,743.00	

## CITY OF NEWBURYPORT




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 IN CITY COUNCIL

ORDERED:

**AN ORDINANCE TO AMEND SECTION VI-C OF THE NEWBURYPORT ZONING ORDINANCE AS TO THE NUMBER OF RESIDENTIAL STRUCTURES PERMITTED ON A LOT:**

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

**THAT** Section VI-C of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

**VI-C - ~~One~~ Number of residential ~~structure~~ buildings per lot.**

- (1) Except as otherwise permitted in this Section VI-C or elsewhere in this zoning ordinance, only ~~Not more than~~ one (1) building ~~or structure intended for use as a~~ containing residential dwelling units shall be erected, placed or converted to use as such on any lot, ~~in a subdivision or elsewhere in the city without a special permit issued by the planning board pursuant to X-11.7 and X-11.8. Additionally, the following five criteria must be satisfied:~~**
- (2) In a zoning district where a two-family dwelling is allowed by right or by special permit, the planning board may grant a special permit to allow two single-family dwellings on a lot, subject to the following:**
- (1.) ~~The application shall include conceptual by-right development plans, such as a conventional subdivision, to demonstrate to the planning board that more than one residential structure per lot is a reasonable alternative to other allowed developments of the parcel involved.~~**
- (2.) ~~A clear public benefit is derived from the proposed development, including but not limited to a long-term restriction involving one or more of the following:~~**
- a. ~~Creation of affordable housing;~~**
  - b. ~~Preservation of historical structures; and/or~~**

~~c. Conservation of significant natural resources.~~

~~(3.) Unless the residential structures are located side-by-side and have the same front yard setback, then one (1) residential structure shall be subordinate to the other dwelling in appearance by meeting either of the following:~~

- ~~a. Covering at least ten (10) percent less building footprint and built no higher than the existing dwelling; or~~
- ~~b. Located entirely within the envelope of an accessory building in existence on the effective date of this ordinance.~~

~~(4.) The plan provides adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision.~~

~~(5.) The proposed residential structures shall comply with all other applicable zoning regulations.~~

a. The lot and buildings shall comply with the following development standards:

i. The proposed residential density shall comply with the lot area requirements for a two-family dwelling in the zoning district.

ii. Both residential buildings shall comply with the setback requirements for principal single family buildings.

iii. Both residential buildings shall comply with all other applicable zoning regulations.

iv. The proposed buildings shall be arranged on the lot in one of the following manners:

(a) The two residential buildings shall be located side-by-side and shall be set back no more than 10 feet further from the street than the average front yard setbacks for existing dwellings on the same block of the street on which they have frontage; or

(b) If the lot has frontage on two streets (i.e., the lot is a corner lot or a through lot), each residential building may be located fronting on a different street from the existing dwelling, provided that each building has a separate and distinct rear yard conforming to the rear yard requirement for the zoning district; or

(c) One residential building may be created by conversion of an accessory building in existence on the effective date of this ordinance, such as a garage or carriage house. In such case, the

converted building shall not be increased in height, nor expanded outward other than by dormers, porches or decks not exceeding 500 square feet in total.

- b. When the lot contains an existing building listing as “Contributing” (C) within the Newburyport Historic District, the application for a special permit shall include a proposed perpetual preservation restriction on said historic building approved by the Newburyport Historical Commission.
- c. Before granting a special permit under this section VI-C, the planning board shall find that all of the following criteria are met:
- i. The design and layout of buildings and open spaces on the site will be consistent with the established character, scale, massing and density of the surrounding neighborhood.
  - ii. The buildings and accessory off-street parking areas will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.
  - iii. Developing a second residential building on the lot will be equally or more beneficial to the neighborhood than subdividing the lot or providing two dwelling units in a two-family dwelling.
- e. In granting a special permit to allow two residential buildings on a lot, the planning board may impose building size or setback standards that are more restrictive than established by the ordinance for a two-family dwelling in the zoning district.
- f. In consideration of the increase in value represented by the granting of a special permit under this section VI-C, the applicant shall make a financial contribution to the Affordable Housing Trust Fund in an amount equal to \$10.00 per sq.ft. of the additional second residential building on the lot, said payment to be made prior to the issuance of a building permit for said second residential building.

~~AND FURTHER, THAT the definition of “Multifamily” (Use 103) in Section V-E of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions double stricken through and in bold, and additions double underlined and in bold:~~

~~A building or buildings on one lot where one structure that contains three (3) or more dwelling units and each additional structure contains two (2) or more dwelling units on the same lot, and units within the same structure have either common floor-ceiling assemblies between the dwelling units, or Common Wall Connectors as defined in section II-B, definitions.~~

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Councillor Heather L. Shand**In City Council January 27, 2021:**

Motion to accept the late file by Councillor Zeid, seconded by Councillor McCauley. So voted.  
Motion to refer to Planning & Development by Councillor Khan, seconded by Councillor Shand.  
So voted.

**In City Council March 29, 2021:**

(As Amended) Motion to Waive the Rules by Councillor Vogel, seconded by Councillor Khan, Roll Call vote. 11 Yes. Motion to approve as amended by Councillor Shand, seconded by Councillor Khan. Motion to amend to strike (2)a.iv.(c) by Councillor Zeid, seconded by Councillor McCauley. Roll call vote. 6 No, 5 Yes (CT, SZ, JD, JM, JE). Motion fails. Motion to amend (2)a.iv.(e)(n.b. Should be (d) not (e)) by adding the following: Further, the Planning Board shall require, in all Special Permits granted under this section, that no further subdivision of the lot be permitted by Councillor Zeid, seconded by Councillor Tontar. Council President Eigerman steps down, Councillor Tontar President Pro Tempore. Roll Call vote. 11 Yes, Motion passes. Motion to amend (2)a.iv.(f)(n.b. Should be (e) not (f)) to \$100 per square foot by Councillor McCauley, seconded by Councillor Lane. Motion withdrawn by Councillors McCauley and Lane. Motion to amend (2)a.iv.(f) to \$40 per square foot by Councillor McCauley, seconded by Councillor Lane. Motion to continue to a date certain, April 12, 2021, by Councillor Eigerman, seconded by Councillor Khan. Roll call vote. 9 yes, 2 no (BV, JD). Motion passes.

## COMMITTEE ITEMS