

**CITY COUNCIL MEETING AGENDA - VERSION 1**  
**CITY COUNCIL CHAMBERS**  
**AUGUST 19, 2019**

**7:30PM**

**(Sound Check)**

- 1. MOMENT OF SILENCE**
- 2. PLEDGE OF ALLEGIANCE**
- 3. CALL TO ORDER**
- 4. LATE FILE ITEMS**
- 5. PUBLIC COMMENT**
- 6. 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.

**7. APPROVAL OF MINUTES**

- July 15, 2019

(Approve)

**8. TRANSFERS**

- NONE

**9. COMMUNICATIONS**

- COMM174\_08\_19\_19 Block Party - Otis Place - 9/21/2019
- COMM175\_08\_19\_19 Walk for the Poor - 9/28/2019

(PS)

(PS)

**10. APPOINTMENTS**

- APPT116\_08\_19\_19 Barry J. McBride 5 Pine St, Salisbury Asst. Wiring Inspector 5/1/2020

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

**Budget & Finance**

- ORDR128\_06\_24\_19 CPC Amendment to FY18 Projects
- ORDR132\_07\_15\_19 CPC FY2020 Recommended Appropriations (COTW)
- APPT114\_07\_15\_19 Julie Languirand 13 Cushing St, Salisbury Treasurer/Collector 8/1/2022

**Public Safety**

- COMM144\_04\_29\_19 Newburyport Fall Harvest Festival - 10/13-14 2019
- COMM145\_04\_29\_19 Witches' Night Out - 10/18/19
- COMM146\_04\_29\_19 Downtown Trick or Treat - 10/25/19
- COMM147\_04\_29\_19 Invitation Nights - 12/6, 12/13, 12/20 2019
- COMM150\_04\_29\_19 5th Annual Harborside Half Marathon & 5K - 11/10/19
- COMM162\_06\_24\_19 Jeanne Geiger Walk Against Domestic Violence - 10/6/2019

- COMM164a\_07\_15\_19 Coast to the Cure Bike Ride - 9/14/2019
- ORDR133\_07\_15\_19 Restricted Parking - M Street

**END OF CONSENT AGENDA  
REGULAR AGENDA**

**11. MAYOR'S UPDATE**

**12. COMMUNICATIONS**

- COMM176\_08\_19\_19 Memo re: Brown School Zoning
- COMM177\_08\_19\_19 Memo and Nexamp Contracts re: Solar Alternative On-Bill Credits

**13. APPOINTMENTS**

**Second Reading - NONE**

**14. ORDERS**

- ORDR134\_08\_19\_19 Employee Parking - Garage
- ORDR135\_08\_19\_19 Election Equipment
- ORDR136\_08\_19\_19 Fuller Track Phase II Loan Order
- ORDR137\_08\_19\_19 Parking Fees

**15. ORDINANCES**

- ODNC030\_03\_25\_19 Zoning - Amend Article XXVII Downtown Overlay District (**2<sup>nd</sup> Reading**)  
**(TABLED)**
- ODNC028\_11\_26\_18 Parks & Recreation Fees (**2<sup>nd</sup> Reading**)
- ODNC036\_06\_10\_19 Recording of Planning Board and ZBA Meetings (**2<sup>nd</sup> Reading**)
- ODNC039\_08\_19\_19 Amendment to Salary of Elected Officials
- ODNC040\_08\_19\_19 Zoning Ordinance re: Kennel/Animal Boarding Use

**16. COMMITTEE ITEMS**

NOTE: UNDERLINED COMMITTEE ITEMS WILL BE CONSIDERED AT THIS MEETING

**Budget & Finance**

*In Committee:*

- COMM112\_02\_11\_19 Memo re: Fire-Based EMS Cost/Benefit Analysis
- COMM120\_03\_11\_19 Central Congregational Grant Award Letter
- ORDR119\_06\_10\_19 Bond Order - Streets and Sidewalks \$10M
- ORDR128\_06\_24\_19 CPC Amendment to FY18 Projects
- ORDR132\_07\_15\_19 CPC FY2020 Recommended Appropriations (COTW)
- APPT114\_07\_15\_19 Julie Languirand 13 Cushing St. Salisbury Treasurer/Collector 8/1/2022

**Education**

*In Committee:*

- 

**General Government**

*In Committee:*

- ORDR130\_06\_24\_19 City Clerk Contract 2019-2022 (**COTW**)
- ODNC037\_06\_24\_19 Ordinance regarding City Solicitor Appointment and Duties

## License & Permits

### *In Committee:*

- COMM029\_04\_30\_18 Outdoor Seating – West Row Café
- COMM104\_01\_14\_19 Seacoast Taxi - Application by Richard Hewlett for 2019

## Neighborhoods and City Services

### *In Committee:*

- ORDR048\_06\_13\_16 Sidewalk Order
- COMM111\_10\_10\_17 Petition for Road Repairs and Repaving – Squires Glen

## Planning & Development

### *In Committee:*

- ODNC008\_02\_12\_18 Disposition of G. W. Brown School
- ORDR086\_01\_28\_19 CPC FY2019 Amended Recommendation for Affordable Housing Trust Funds
- ODNC029\_01\_28\_19 Zoning Map Amendment – Storey Ave South
- ODNC032\_05\_13\_19 Zoning – Amend Ag-Con District
- ODNC033\_05\_13\_19 Zoning – Amendment to Former George W. Brown School Parcels
- **APPT111\_06\_24\_19 David B. Vine 47 Marlboro St Conservation Comm 5/31/2022**
  - COMM164\_06\_24\_19 LATE FILE Ltr to Ward 2 Councillor from Eric Goodness
  - ODNC038\_07\_15\_19 Zoning Amendment - Waterfront West Overlay District (COTW)
- APPT115\_07\_15\_19 Mark Moore 67 Curzon Mill Rd ZBA 8/1/2024

## Public Safety

### *In Committee:*

- ODNC009\_03\_12\_18 Floating Homes, Houseboats, and Related Marinas
- COMM087\_09\_24\_18 Ltr re: Coffin Street
- COMM116\_02\_25\_19 Toward Zero Waste Newburyport Initiative (*full text available*) (COTW)
- ORDR094\_04\_08\_19 Traffic Changes - Green, Pleasant, and Titcomb Streets
- **COMM144\_04\_29\_19 Newburyport Fall Harvest Festival - 10/13-14 2019**
- **COMM145\_04\_29\_19 Witches' Night Out - 10/18/19**
- **COMM146\_04\_29\_19 Downtown Trick or Treat - 10/25/19**
- **COMM147\_04\_29\_19 Invitation Nights - 12/6, 12/13, 12/20 2019**
- **COMM150\_04\_29\_19 5th Annual Harborside Half Marathon & 5K - 11/10/19**
- ODNC035\_05\_28\_19 Amendment to Health and Sanitation (COTW)
- COMM160\_06\_10\_19 Defibrillators on Plum Island
- **COMM162\_06\_24\_19 Jeanne Geiger Walk Against Domestic Violence - 10/6/2019**
- **COMM164a\_07\_15\_19 Coast to the Cure Bike Ride - 9/14/2019**
- **ORDR133\_07\_15\_19 Restricted Parking - M Street**

## Public Utilities

### *In Committee:*

- COMM122\_11\_27\_17 Mobilite Application/Small Cell Utility Petition (re-file)
- ODNC022\_05\_29\_18 Addition to Chapter 5, Article 6 - Small Cell Sites

## Rules Committee

### *In Committee:*

- ORDR057\_08\_27\_18 Amendment to Council Rule 12A

17. **EXECUTIVE SESSION** to discuss litigation with respect to the 193 High Street Zoning Appeal

**18. EXECUTIVE SESSION** to discuss contract negotiations with personnel - ORDR130\_06\_24\_19 City Clerk Contract 2019-2022

**19. GOOD OF THE ORDER**

**20. ADJOURNMENT**

**CONSENT AGENDA**

**CITY COUNCIL MEETING MINUTES**  
**CITY COUNCIL CHAMBERS**  
**JULY 15, 2019**

**7:30PM**

The City Council President, Barry Connell, called the meeting to order at 7:30pm, followed by the Pledge of Allegiance. The City Council President then instructed the City Clerk to call the roll. The following Councillors answered present: Shand, Tontar, Vogel, Zeid, Earls, Eigerman, Khan, OBrien, Connell. 9 present, 2 absent (Devlin, Giunta).

**(Sound Check)**

**1. MOMENT OF SILENCE**

**2. PLEDGE OF ALLEGIANCE**

**3. CALL TO ORDER**

**4. LATE FILE ITEMS - COMM173\_07\_15\_19**

Motion to waive the rules, to allow late files, by Councillor Zeid, seconded by Councillor OBrien. So voted.

**5. PUBLIC COMMENT**

1. Charles Carroll	25 Hill St	41C½
2. Walt Thompson	100 State St	Pesticide Ban
3. Judy Tymon	39 Lime St	Waterfront West
4. JoAnn Kincaid	23 Pleasant St	41C½
5. Frances Munroe	7 Christopher St	41C½
6. Linda Lambert	58 Merrimac St	Waterfront West
7. Chris Czernik	32 Water St #7	41C½
8. Jeannette Isabella	100 Water St	41C½, Pesticide Ban
9. Mary Carrier	4 Rawson Hill Rd	41C½
10. Jane Snow	9 Coffin St	41C½
11. Michele Norton	309B High St	Slow Bike Race
12. Victoria Carr	1 Hill St	41C½
13. Yvonne McQuilkin	39 Purchase St	41C½
14. Clete Kijek	12 Walnut St	Block Party
15. Dan Eyink	36R Spofford St	Pesticide Ban

**6. MAYOR'S COMMENT**

The Mayor gave an update pursuant to her written communication.

**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.

**7. APPROVAL OF MINUTES**

- June 24, 2019

(Approve)

**8. TRANSFERS**

- NONE

**9. COMMUNICATIONS**

- COMM164a\_07\_15\_19 Coast to the Cure Bike Ride - 9/14/2019 (PS)
- COMM165\_07\_15\_19 Memo re: Apptmnt of Members to Charter Review Spec Comm (R&F)

- COMM166\_07\_15\_19 Ltr re: Blood Drive to Benefit Ellie Bauer (PS)  
Removed from agenda at request of petitioner.
- COMM172\_07\_15\_19 Whittier Vo Tech 2019-2020 Gross Budget (R&F)

## 10. APPOINTMENTS

### Re-Appointment, to be referred to Budget & Finance

- APPT114\_07\_15\_19 Julie Languirand 13 Cushing St, Salisbury Treasurer/Collector 8/1/2022

### Re-Appointment, to be referred to Planning & Development

- APPT115\_07\_15\_19 Mark Moore 67 Curzon Mill Rd ZBA 8/1/2024

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

### Budget & Finance

- ORDR007\_01\_29\_18 41C Amendment
- ORDR091\_03\_11\_19 41C-1/2 Ballot Question (COTW)
- ORDR092\_03\_11\_19 41C-1/2 Adjustments (COTW)
- ODNC034\_05\_13\_19 Amendment to Salary of Elected Officials

### Neighborhoods and City Services

- ODNC028\_11\_26\_18 Parks & Recreation Fees

### Public Utilities

- Pole Hearing - Malcolm Hoyt Drive

## END OF CONSENT AGENDA REGULAR AGENDA

Motion to approve Consent Agenda as amended by Councillor Zeid, seconded by Councillor Khan. So voted.

## 11. MAYOR'S UPDATE

Motion to receive and file by Councillor Tontar, seconded by Councillor Zeid. So voted.

## 12. TRANSFERS

- TRAN063EP\_07\_15\_19 Emergency Preamble for Health Ins \$20K to Fire OT \$20K  
Motion to approve by Councillor Tontar, seconded by Councillor Zeid. So voted.
- TRAN063\_07\_15\_19 Health Insurance \$20K to Fire Overtime \$20K  
Motion to approve by Councillor Tontar, seconded by Councillor Zeid. So voted.
- TRAN064EP\_07\_15\_19 Emergency Preamble for Pd Prk Fund \$15,174.10  
to Prk PT Enforcement Officers \$15,174.10  
Motion to approve by Councillor Tontar, seconded by Councillor Khan. So voted.
- TRAN064\_07\_15\_19 Pd Prk Fund \$15,174.10 to Prk PT Enforcement Officers \$15,174.10  
Motion to approve by Councillor Tontar, seconded by Councillor Khan. So voted.

## 13. COMMUNICATIONS

- COMM167EP\_07\_15\_19 Emergency Preamble for Misselwood Concours D'Elegance Show - 7/20/19  
Motion to approve by Councillor Zeid, seconded by Councillor Tontar. Withdrawn. Motion to receive and file COMM167EP\_07\_15\_19 and COMM167\_07\_15\_19 collectively by Councillor Zeid, seconded by Councillor Vogel. So voted.
- COMM167\_07\_15\_19 Misselwood Concours D'Elegance Show - 7/20/19

- COMM168EP\_07\_15\_19 Emergency Preamble for Slow Bike Race - 7/31/19  
Motion to approve by Councillor Tontar, seconded by Councillor Zeid. So voted.
- COMM168\_07\_15\_19 Slow Bike Race - 7/31/19  
Motion to approve, subject to insurance, by Councillor Tontar, seconded by Councillor Zeid. So voted.
- COMM169EP\_07\_15\_19 Emergency Preamble for Block Party - Jackson Street - 8/3/19  
Motion to approve by Councillor Tontar, seconded by Councillor Zeid. So voted.
- COMM169\_07\_15\_19 Block Party - Jackson Street - 8/3/19  
Motion to approve by Councillor Tontar, seconded by Councillor Zeid. So voted.
- COMM170EP\_07\_15\_19 Emergency Preamble for Block Party - 54th Street - 8/10/19  
Motion to approve by Councillor Zeid, seconded by Councillor Tontar. So voted.
- COMM170\_07\_15\_19 Block Party - 54th Street - 8/10/19  
Motion to approve by Councillor Zeid, seconded by Councillor Tontar. So voted.
- COMM171EP\_07\_15\_19 Emergency Preamble for Block Party - Congress Street - 8/3/19  
Councillor OBrien added as co-sponsor. Motion to approve by Councillor Tontar, seconded by Councillor Zeid. So voted.
- COMM171\_07\_15\_19 Block Party - Congress Street - 8/3/19  
Motion to approve by Councillor Zeid, seconded by Councillor OBrien. So voted.
- COMM173\_07\_15\_19 LATE FILE Block Party - Walnut Street - 8/22/2019  
Motion for an oral emergency preamble by Councillor Tontar, seconded by Councillor Zeid. So voted (1 no – Zeid). Motion to approve by Councillor Tontar, seconded by Councillor Vogel. So voted (2 no – Zeid, OBrien).

#### 14. APPOINTMENTS

##### Second Reading

- |                    |                 |                |                  |           |
|--------------------|-----------------|----------------|------------------|-----------|
| • APPT105_06_24_19 | Chris Czernik   | 32 Water St #7 | Council on Aging | 5/31/2024 |
| • APPT106_06_24_19 | Andrew Soracco  | 33 Middle St   | Tree Commission  | 7/1/2022  |
| • APPT112_06_24_19 | Patricia Peknik | 4 Dove St      | Historic Comm    | 7/31/2021 |
- Motion to approve second reading appointments by Councillor Tontar, seconded by Councillor Zeid. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.

##### Re-Appointments

- |                    |                  |               |                   |          |
|--------------------|------------------|---------------|-------------------|----------|
| • APPT107_06_24_19 | Jennifer Groskin | 11 Myrtle Ave | Human Rights Comm | 7/1/2022 |
| • APPT110_06_24_19 | Sheila J. Trieff | 11 Shandel Dr | Human Rights Comm | 7/1/2022 |
- Motion to approve second reading appointments by Councillor Zeid, seconded by Councillor OBrien. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.

#### 15. ORDERS

- ORDR109\_05\_13\_19 Acceptance of Chapter 32, Section 12(2)(d) *Confirmatory*  
Motion to approve by Councillor Zeid, seconded by Councillor Khan. So voted.
- ORDR132\_07\_15\_19 CPC FY2020 Recommended Appropriations  
Motion to refer to Budget & Finance and Committee of the Whole by Councillor Tontar, seconded by Councillor Khan. So voted.
- ORDR133\_07\_15\_19 Restricted Parking - M Street  
Motion to refer to Public Safety by Councillor Zeid, seconded by Councillor Tontar. So voted.

#### 16. ORDINANCES

- ODNC030\_03\_25\_19 Zoning - Amend Article XXVII Downtown Overlay District (**2<sup>nd</sup> Reading**)  
Motion to approve second reading by Councillor Eigerman, seconded by Councillor Tontar. Roll call vote, 7 yes, 2 no (Zeid, OBrien), 2 absent (Devlin, Giunta). Motion failed. Motion to reconsider by



Councillor Zeid, seconded by Councillor OBrien. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed. Motion to table by Councillor Zeid, seconded by Councillor Tontar. So voted.

- **ODNC031\_03\_25\_19 Regulation of the Use of Pesticides (2<sup>nd</sup> Reading)**  
Motion to approve second reading by Councillor Earls, seconded by Councillor Tontar. Roll call vote, 7 yes, 2 no (Zeid, OBrien), 2 absent (Devlin, Giunta). Motion passed.
- **ODNC038\_07\_15\_19 Zoning Amendment - Waterfront West Overlay District**  
Councillor Vogel recused. Motion to refer to Planning & Development and Committee of the Whole by Councillor Zeid, seconded by Councillor OBrien. So voted.

## 17. COMMITTEE ITEMS

NOTE: UNDERLINED COMMITTEE ITEMS WILL BE CONSIDERED AT THIS MEETING

### Budget & Finance

#### *In Committee:*

- **ORDR091\_03\_11\_19 41C-1/2 Ballot Question (COTW)**  
Motion to approve by Councillor Tontar, seconded by Councillor Vogel. Roll call vote, 4 yes (Tontar, Vogel, Earls, Connell), 5 no, 2 absent (Devlin, Giunta). Motion failed.
- **ORDR007\_01\_29\_18 41C Amendment**  
Motion to approve by Councillor Tontar, seconded by Councillor Zeid. Motion to amend to 2020 by Councillor Tontar, seconded by Councillor Zeid. So voted. Motion to approve as amended by Councillor Tontar, seconded by Councillor Zeid. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.
- **COMM112\_02\_11\_19 Memo re: Fire-Based EMS Cost/Benefit Analysis**
- **ORDR092\_03\_11\_19 41C-1/2 Adjustments (COTW)**  
Motion to receive and file by Councillor Khan, seconded by Councillor Tontar. So voted.
- **COMM120\_03\_11\_19 Central Congregational Grant Award Letter**
- **ODNC034\_05\_13\_19 Amendment to Salary of Elected Officials**  
Motion to approve by Councillor Tontar, seconded by Councillor Khan. Motion for friendly amendment, delete “with the inauguration of the Mayor”, by Councillor Zeid, seconded by Councillor Tontar. So voted. Motion to approve as amended by Councillor Tontar, seconded by Councillor Khan. Roll call vote, 7 yes, 2 no (OBrien, Connell), 2 absent (Devlin, Giunta). Motion had seven votes but failed, per Newburyport Charter Article 3, Sec. 3-1(c) and Article 4, Sec. 4-4 requiring two-thirds vote.
- **ORDR119\_06\_10\_19 Bond Order - Streets and Sidewalks \$10M**
- **ORDR128\_06\_24\_19 CPC Amendment to FY18 Projects**

### Education

#### *In Committee:*

- 

### General Government

#### *In Committee:*

- **COMM139\_04\_08\_19 Communication from Kopelman & Paige re: Closed Legal Matters**  
Councillor Eigerman asked that Council be further updated with any outstanding insurance cases. Motion to receive and file by Councillor Vogel, seconded by Councillor Zeid. So voted.
- **ODNC036\_06\_10\_19 Recording of Planning Board and ZBA Meetings**  
Motion to approve first reading (comm vote 2-0) by Councillor Vogel, seconded by Councillor Zeid. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.
- **ORDR131\_06\_24\_19 Resolution re: Cultural District**  
Motion to approve by Councillor Vogel, seconded by Councillor Tontar. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.
- **ORDR130\_06\_24\_19 City Clerk Contract 2019-2022 (COTW)**

Motion to approve (comm vote 2-0) by Councillor Vogel, seconded by Councillor Tontar. Withdrawn.  
Motion to refer to Committee of the Whole in executive session by Councillor Zeid, seconded by Councillor Vogel. So voted.

- ODNC037\_06\_24\_19 Ordinance regarding City Solicitor Appointment and Duties

## License & Permits

### *In Committee:*

- COMM029\_04\_30\_18 Outdoor Seating – West Row Café
- COMM104\_01\_14\_19 Seacoast Taxi - Application by Richard Hewlett for 2019

## Neighborhoods and City Services

### *In Committee:*

- ORDR048\_06\_13\_16 Sidewalk Order
- COMM111\_10\_10\_17 Petition for Road Repairs and Repaving – Squires Glen
- **ODNC028 11 26 18 Parks & Recreation Fees**

Motion to approve by Councillor Zeid, seconded by Councillor Tontar. So voted. Motion to amend, add “athletic” before “fields” in Mid to Large Parks section, by Councillor Tontar, seconded by Councillor Eigerman. So voted. Motion to approve as amended by Councillor Zeid, seconded by Councillor Tontar. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.

## Planning & Development

### *In Committee:*

- ODNC008\_02\_12\_18 Disposition of G. W. Brown School
- ORDR086\_01\_28\_19 CPC FY2019 Amended Recommendation for Affordable Housing Trust Funds
- ODNC029\_01\_28\_19 Zoning Map Amendment – Storey Ave South
- ODNC032\_05\_13\_19 Zoning – Amend Ag-Con District
- ODNC033\_05\_13\_19 Zoning – Amendment to Former George W. Brown School Parcels
- APPT111\_06\_24\_19 David B. Vine 47 Marlboro St Conservation Comm 5/31/2022
- **APPT113 06 24 19 Elizabeth M. DeLisle 50 Woodland St Planning Board 8/31/2021**

Motion to remove from Planning & Development by Councillor Eigerman, seconded by Councillor Tontar. So voted. Motion to approve by Councillor Eigerman, seconded by Councillor Tontar. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.

- COMM164\_06\_24\_19 LATE FILE Ltr to Ward 2 Councillor from Eric Goodness

## Public Safety

### *In Committee:*

- ODNC009\_03\_12\_18 Floating Homes, Houseboats, and Related Marinas
- COMM087\_09\_24\_18 Ltr re: Coffin Street
- COMM116\_02\_25\_19 Toward Zero Waste Newburyport Initiative (*full text available*) (COTW)
- ORDR094\_04\_08\_19 Traffic Changes - Green, Pleasant, and Titcomb Streets
- **COMM143 04 29 19 Cruisin' the 50s Car Show - 8/15/19**

Motion to approve (comm vote 2-0), conditional on insurance, by Councillor OBrien, seconded by Councillor Vogel. So voted.

- COMM144\_04\_29\_19 Newburyport Fall Harvest Festival - 10/13-14 2019
- COMM145\_04\_29\_19 Witches' Night Out - 10/18/19
- COMM146\_04\_29\_19 Downtown Trick or Treat - 10/25/19
- COMM147\_04\_29\_19 Invitation Nights - 12/6, 12/13, 12/20 2019
- COMM150\_04\_29\_19 5th Annual Harborside Half Marathon & 5K - 11/10/19
- **COMM156 05 28 19 Traffic Concern Ferry Road**

Motion to receive and file by Councillor OBrien, seconded by Councillor Zeid. So voted.

- ODNC035\_05\_28\_19 Amendment to Health and Sanitation (COTW)
- COMM160\_06\_10\_19 Defibrillators on Plum Island
- **ORDR115\_06\_10\_19 Additions to 2-Hour Parking Zones - Ferry Road**  
Motion to approve by Councillor OBrien, seconded by Councillor Tontar. So voted (1 present – Zeid).
- **ORDR116\_06\_10\_19 Additions to 2-Hour Parking Zones - Summer Street**  
Motion to approve ORDR116\_06\_10\_19 and ORDR117\_06\_10\_19 collectively (comm vote 2-0) by Councillor OBrien, seconded by Councillor Shand. So voted (1 present – Zeid).
- **ORDR117\_06\_10\_19 Two Hour Parking Section 175 - Upper Summer St**
- **ORDR126\_06\_24\_19 One Hour Parking Restriction – Merrimac St**  
Motion to approve (comm vote 2-0) by Councillor OBrien, seconded by Councillor Eigerman. Motion to amend, change from one hour to two hours, by Councillor Eigerman, seconded by Councillor Shand. So voted.
- **COMM161\_06\_24\_19 Block Party - Lafayette Street - 8/17/2019**  
Motion to approve (comm vote 2-0) by Councillor OBrien, seconded by Councillor Zeid. So voted.
- **COMM163\_06\_24\_19 High Street Mile – 8/4/2019**  
Motion to approve by Councillor OBrien, seconded by Councillor Zeid. So voted.
- **ORDR118\_06\_10\_19 Resident Parking 13-180 Zone Changes**  
Motion to approve by Councillor Eigerman, seconded by Councillor OBrien. Motion to amend, add Summer Street and Ferry Road by Councillor Eigerman, seconded by Councillor OBrien. So voted. Motion to approve as amended by Councillor Eigerman, seconded by Councillor OBrien. So voted.
- COMM162\_06\_24\_19 Jeanne Geiger Walk Against Domestic Violence - 10/6/2019

## Public Utilities

### *In Committee:*

- COMM122\_11\_27\_17 Mobilitie Application/Small Cell Utility Petition (re-file)
- ODNC022\_05\_29\_18 Addition to Chapter 5, Article 6 - Small Cell Sites
- **Pole Hearing - Malcolm Hoyt Drive**  
Motion to approve by Councillor Zeid, seconded by Councillor Tontar. So voted.

## Rules Committee

### *In Committee:*

- ORDR057\_08\_27\_18 Amendment to Council Rule 12A

## 18. GOOD OF THE ORDER

Councillor Zeid reminded residents to renew their parking permits. Council President Connell commended the Department of Public Services for their work on the High Street paving project.

## 19. EXECUTIVE SESSION to discuss litigation with respect to the 193 High Street Zoning Appeal

Motion to go in to Executive Session, for the purpose of discussing litigation with respect to the 193 High Street Zoning Appeal by Councillor Eigerman, seconded by Councillor Vogel. Roll call vote 7 yes, 1 no (OBrien), 3 absent (Devlin, Earls, Giunta). Motion passed. Councillor Connell stated that the City Council would not return to Open Session. 10:15pm.

## 20. ADJOURNMENT

Motion to adjourn by Councillor Zeid, seconded by Councillor Tontar. So voted. 10:25pm.

# COMMUNICATIONS



CITY CLERK'S OFFICE  
NEWBURYPORT, MA  
2019 JUL 25 AM 11:48

CITY OF NEWBURYPORT  
60 PLEASANT STREET  
NEWBURYPORT, MA 01950

### BLOCK PARTY APPLICATION

Please fill out the application below and obtain the approving signatures for the street closure. Mail or drop off the completed signed application at: City Clerk's Office, City Hall, 60 Pleasant Street, Newburyport, MA 01950 **at least eight (8) business days prior** to a City Council meeting. The requested Block Party needs approval by the City Council. For any questions, please contact The City Clerk's Office at (978) 465-4407.

DATE OF REQUEST: July 16 2019  
~~Sept.~~

#### CONTACT INFORMATION

FIRST AND LAST NAMES: Paula Renda

MAILING ADDRESS: 16 OTIS PL Newburyport

PHONE NUMBER: 603-702-0283

E-MAIL ADDRESS: paularenda24@comcast.net

#### BLOCK PARTY INFORMATION

BLOCK PARTY DATE: Sept. 21, 2019

DESIRED STREET CLOSING LOCATION: From 15 Otis to end of Otis  
Please indicate cross streets when requesting the closing of street sections against High

STREET TO BE BARRICADED: same as above

DESIRED STREET CLOSING TIME: 8AM to 10PM  
Block Parties should run no later than 10:00 p.m.

7/15

**REGULATIONS**

By signing, I agree that I am a legal adult 18 years of age or older and understand this permit does not release me of any liability for damages that may result from the conducting of this Block Party. Further, I agree to comply with all requirements listed below:

I understand that applications for block party permits may take up to four (4) weeks to process.

Block parties will be conducted only on low-volume residential streets, dead-end streets, or cul-de-sacs. No thoroughfares or collector streets may be used.

It is hereby agreed that, by signing and presenting this application, signer(s) represents to the City of Newburyport that the following statements are true and correct, and agrees to and will abide by the following:

1. All residents living on the street or block for which the party is planned request the block party, or have been contacted and do not object to the Block Party.
2. To be responsible for placement, maintenance and removal of barricades.
3. A block party permit does not allow the sale of alcohol or the consumption of alcohol on public property (in city streets, sidewalks, parks, etc.) alcohol is allowed only on private property. All state and city alcohol laws still apply during Block Parties.
4. Amplified music shall be permitted with permission of the City Council.
5. To leave **AT LEAST A TWELVE (12) FOOT AISLE** in the street to permit passage of emergency vehicles or vehicles of residents. Failure to maintain a ten (10) foot aisle during the entire period of the party will necessitate denial of requests for subsequent block parties. **Public safety personnel will monitor the party for strict adherence to this rule.**
6. To maintain adult supervision at all times during the party.
7. Applicant(s) shall be responsible for the pick-up of trash and garbage within two (2) hours of the end of the party.
8. Streets may not be barricaded later than 10:00 P.M.
9. No residents of the area designated shall be prohibited from attending the party.
10. No such activity may be conducted within five hundred (500) feet of any school, church, hospital, nursing home or similar operation unless endorsed by the management of such institution.
11. Only approved readily removable Barricades will be permitted such as orange cones and sawhorses with a sign. No vehicles will be permitted to be used as a Barricade.
12. Block parties are permitted 10 A.M. – 10 P.M.

Applicant signature: Paula A. Bender Date: July 11, 2019

**APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE**

CITY MARSHALL

4 Green Street

FIRE CHIEF

Greenleaf Street

DEPUTY DIRECTOR

1 Perry Way

CITY CLERK

60 Pleasant Street

[Signature]

Dep SHB 7/11/19

[Signature]

[Signature]

City use only:

Approved \_\_\_\_\_ Denied \_\_\_\_\_ Date \_\_\_\_\_

**NEWBURYPORT SPECIAL EVENT APPLICATION**

Tel. (978) 835-1109 Fax.

(For Parades, Road Races and Walkathons Only - Please complete page 3 of this application)

**NAME OF EVENT:** Saint Vincent de Paul Walk for the Poor

Date: 9/28/2019 Time: from 9:00A to 12:00 pm  
 Rain Date: 9/29/2019 Time: from 12:30 to 3:30 pm

2. Location: Immaculate Conception Church

3. Description of Property: Parking lot to Market Square to Airport Public  Private   
& Back to Parking lot

4. Name of Organizer: Saint Vincent de Paul City Sponsored Event: Yes  No   
 Contact Person: MaryAnn Lauder  
 Address: 42 Green St Telephone: (978) 835-1109  
 E-Mail: MARYANNA LAUDER@VERIZON.NET Cell Phone:  
 Day of Event Contact & Phone: MaryAnn Lauder (978) 835-1109

5. Number of Attendees Expected: Approx. 100

6. MA Tax Number: 27-4114921

7. Is the Event Being Advertised? Yes Where? Church and Local Newspaper

8. What Age Group is the Event Targeted to? All

9. Have You Notified Neighborhood Groups or Abutters? Yes  No  Who? \_\_\_\_\_

**ACTIVITIES:** (Please check where applicable.) Subject to Licenses & Permits from Relevant City Departments

N/A

A. Vending: Food \_\_\_\_\_ Beverages \_\_\_\_\_ Alcohol \_\_\_\_\_ Goods \_\_\_\_\_ Total # of Vendors \_\_\_\_\_

B. Entertainment: (Subject to City's Noise Ordinance.) Live Music \_\_\_\_\_ DJ \_\_\_\_\_ Radio/CD \_\_\_\_\_  
 Performers \_\_\_\_\_ Dancing \_\_\_\_\_ Amplified Sound \_\_\_\_\_ Stage \_\_\_\_\_

C. Games /Rides: Adult Rides \_\_\_\_\_ Kiddie Rides \_\_\_\_\_ Games \_\_\_\_\_ Raffle \_\_\_\_\_  
 Other \_\_\_\_\_ Total # \_\_\_\_\_  
 Name of Carnival Operator: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

D. Organizer is responsible for clean-up during and after event. All trash must be collected and removed from event location immediately at the end of the event unless prior written agreement had been made with the Department of Public Services (DPS).

Will you be conducting the clean-up for this event? Yes  No

**If yes:**

- a) How many trash receptacles will you be providing? 3
- b) How many recycling receptacles will you be providing? 3
- c) Will you be contracting for disposal of : **Trash** Yes \_\_\_ No  **Recycling** Yes \_\_\_ No 
  - i. If yes, size of dumpster(s): **Trash** \_\_\_\_\_ **Recycling** \_\_\_\_\_
  - ii. Name of disposal company: **Trash** \_\_\_\_\_ **Recycling** \_\_\_\_\_
  - iii. If no, will you remove trash & recycling with organizers' cars or trucks? Yes  No \_\_\_
  - iv. If no, where will the trash & recycling be disposed ? \_\_\_\_\_

**If no:**

- a) # of trash container(s) to be provided by DPS \_\_\_\_\_
- b) # of recycling container(s) to be provided by Recycling Office \_\_\_\_\_
- c) \$45.00/hr/DPS employee charge must be paid by the organizer to DPS in advance of the event (Fee for Special Events). The hours required for the event will be determined by DPS.

All fees must be paid prior to the event. Check or money order is payable to the City of Newburyport.

E. Portable Toilets: (Each cluster of portable toilets must include at least one ADA accessible toilet)

# \_\_\_\_\_ Standard      # \_\_\_\_\_ ADA accessible

*NOT NEEDED*

Name of company providing the portable toilets: \_\_\_\_\_



**FOR PARADE, ROAD RACE AND WALKATHON EVENTS ONLY**

PARADE \_\_\_\_\_

ROAD RACE \_\_\_\_\_

WALKATHON  \_\_\_\_\_

1. Name of the Group or Person Sponsoring the Road Race, Parade, Walkathon:

Saint Vincent de Paul Society Immaculate Conception  
PARISH CHAPTER

2. Name, Address & Daytime Phone Number of Organizer:

Mary Ann Lawler  
42 GREEN ST. Newburyport, MA 01950  
(978) 835-1109

3. Name, Address & 24/7 Telephone Number of Person Responsible for Clean Up

Mary Ann Lawler  
42 GREEN ST.  
(978) 835-1109

4. Date of Event: 9/28/2019 Expected Number of Participants: Approx 100

5. Start Time: 9:30 AM Expected End Time: 12:00 PM

6. Road Race, Parade or Walkathon Route: (List street names & **attach map of route**):

GREEN ST. to Market Square to Green St. to Oakland  
St. to High St to GREEN ST.

7. Locations of Water Stops (if any): Market Square and Boardman & High St.

8. Will Detours for Motor Vehicles Be Required? No If so, where? \_\_\_\_\_

9. Formation Location & Time for Participants: 9:00 AM  
IMMACULATE CONCEPTION CHURCH (PARKING LOT)

10. Dismissal Location & Time for Participants: 12:00 NOON  
IMMACULATE CONCEPTION CHURCH (PARKING LOT)

11. Additional Parade Information: N/A

- Number of Floats: N/A
- Locations of Viewing Stations: N/A
- Are Weapons Being Carried: Yes \_\_\_\_\_ No
- Are Marshalls Being Assigned to Keep Parade Moving: Yes \_\_\_\_\_ No

**APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE OR ANY USE OF A PUBLIC WAY.**

CITY MARSHAL [Signature] 4 Green St. FIRE CHIEF [Signature] 0 Greenleaf St.

DEPUTY DIRECTOR [Signature] 16A Perry Way CITY CLERK [Signature] 60 Pleasant St.

## DEPARTMENT APPROVAL (for Committee Member use only):

It will be necessary for you to obtain permits or certificates from the following Departments: Please note that costs for some City support services during an event are an estimate only. Some Departments may forward an invoice for services rendered at the completion of the event, and others may require advance payment.

<i>Approval Required</i>	Date: _____	Signature _____
___	1. Special Events:	_____
___	2. Police:	_____
	Is Police Detail Required:	_____ # of Details Assigned: _____
___	3. Traffic, Parking & Transportation:	_____
___	4. ISD/Health:	_____
___	5. Recycling:	_____
___	6. ISD/Building:	_____
___	7. Electrical:	_____
___	8. Fire:	_____
	Is Fire Detail Required:	_____ # of Details Assigned: _____
___	9. Public Works: <i>Fee for Special Events: \$45/hr/DPS employee for trash handling/staging etc. may apply</i>	
	Yes: \$ _____ due on _____	No Fee for Special Events applies
	Other requirements/instructions per DPS _____	_____
___	10. Recreation Department:	_____
___	11. License Commission	_____

**The departments listed above have their own application process.**  
**Applicants are responsible for applying for and obtaining all required**  
**permits & certificates from the various individual departments**

Archdiocese

a list of all streets notified shall be provided to the city clerk to be date stamped and appended to the application record. Press releases and other media type notifications are encouraged.

(6) *Insurance.* All events shall have an insurance policy or rider in effect for the event naming the "City of Newburyport" as an additional insured. The policy shall be no less than two million dollars (\$2,000,000.00).

(7) *Event termination.* If in the judgment of the city marshal, fire chief or department of public services (DPS) director or designees thereof determine that an event is unsafe due to existing conditions, that event may be stopped, terminated or suspended. In the case of a multidiscipline event such as a triathlon, the harbormaster or his/her designee may likewise stop, terminate or suspend the swimming portion for cause.

(8) *Event and traffic security.* The city marshal, fire chief, DPS director or in the case of a triathlon, the harbormaster can require special duty personnel to assist in the organizing and coordinating the safety and security of the event. All special duty assignments will be paid by the event organizers.

(9) *Clean-up.* The event organizers shall be responsible for post event trash collection, removal of signage, directional arrows, advertisements or other promotional material associated with the event.

(10) *Parking.* The event organizers shall be responsible for including parking instructions in materials disseminated to event participants. If the event is happening within one-half mile of municipal parking, then participants shall be asked to park at such parking facilities.

(11) *Notification of previous event organizers.* To the extent reasonably possible, the city clerk shall notify all event organizers from events held from 2014—2016, inclusive, by a one-time phone, email, or letter of the new application timeline and other requirements.

(12) *Simplification.* Departments are encouraged to unify their respective applications into a singular application, managed and distributed by the city clerk's office.

(13) *Americans with Disabilities Act.* Event organizers are reminded of the importance of and expectation of adherence to the Americans with Disabilities Act of 1990 (42 U.S.C § 12101) and subsequent applicable amendments.

(e) *Enforcement.*

(1) *Regulations.* Consistent with this section, the city shall promulgate regulations to enforce and otherwise implement the provisions of this section upon passage by the city council. Any event previously approved by city council shall be deemed permitted.

(2) *Warning.* In the circumstance that this section is violated, the enforcement may consist of a warning. Any warnings issued for violation(s) will be reported to the city clerk and city council and may be used as a factor in future application approvals and denials.

(3) *Noncriminal disposition.* If the city determines that a violation has occurred in which a noncriminal violation is issued, the named event organizer shall be penalized by a non-criminal disposition as provided in Massachusetts General Law as adopted by the City of Newburyport as a general ordinance in section 1-17 of chapter 1 of the Code or Ordinances of the City of Newburyport in the amounts set herein in subsection (e)(4) below.

(4) *Violation.* The non-criminal violation shall be one hundred dollars (\$100.00) for the first offense and two hundred fifty dollars (\$250.00) for second and subsequent offenses. Any non-criminal citations issued for violation(s) will be reported to the city clerk and city council and shall be used as a factor in future application approvals and denials.

(5) *Failure to notify.* If the event fails to notify residents and provide documentation to the city clerk, pursuant to subsection (d)(5) above, shall render that organization ineligible to receive an event permit for a period of twelve (12) months unless special leave is granted by two-thirds supervote of the city council.

**I fully understand and agree to all the terms set forth in this application. The information that I have provided is truthful and accurate. I accept all responsibility related to this event.**

Signed: \_\_\_\_\_

*Maya M. Louder*

Date: \_\_\_\_\_

*7/22/2019*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
07/10/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Roman Catholic Archdiocese of Boston 66 Brooks Drive Braintree, MA 02184		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 617-746-5742      FAX (A/C, No): 617-779-4572 E-MAIL ADDRESS: ormadmin@rcab.org	
		<b>INSURER(S) AFFORDING COVERAGE</b> NAIC #	
		<b>INSURER A:</b> Fides Insurance Group	
		<b>INSURER B:</b> National Catholic Risk Retention Group	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
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THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		Fides 19-002 \$250,000.00	07/01/19	07/01/20	EACH OCCURRENCE	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		RRG 10358-22 \$750,000.00			DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					MED EXP (Any one person)	\$
	<b>AUTOMOBILE LIABILITY</b>					PERSONAL & ADV INJURY	\$
	<input type="checkbox"/> ANY AUTO					GENERAL AGGREGATE	\$ 2,000,000
	<input type="checkbox"/> OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS				PRODUCTS - COMP/OP AGG	\$
	<input type="checkbox"/> HIRED AUTOS ONLY	<input type="checkbox"/> NON-OWNED AUTOS ONLY					\$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR		FM 10358-22	07/01/19	07/01/20	COMBINED SINGLE LIMIT (Ea accident)	\$
	<input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					BODILY INJURY (Per person)	\$
	DED      RETENTION \$					BODILY INJURY (Per accident)	\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>					PROPERTY DAMAGE (Per accident)	\$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					\$
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				PER STATUTE	
						OTH-ER	
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Re: 09/28/2019 SVdP Walk for Poor - Evidence of General Liability Insurance.  
 Certificate Holder is an additional Insured where required by written contract.

<b>CERTIFICATE HOLDER</b> City of Newburyport, MA City Hall Newburyport, MA 01950	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 





**Applicant Information**

Name of organization Saint Vincent de Paul Society  
 Contact name Mary Ann LAUDER  
 Address 42 CORFED ST  
 City NEWBURYPORT  
 State MA Zip 01950  
 Phone (CONTACT) (978) 835-1109 Fax \_\_\_\_\_  
 Email MARYANLAUDER@VILLAGEONLINE.COM

**Scheduling Information**

Date of Application 7/22/2019

**We request use of:**

- |   |   |
|---|---|
| <input type="checkbox"/> Atkinson Common  | <input type="checkbox"/> Inn Street   |
| <input type="checkbox"/> Atwood Park  | <input type="checkbox"/> Jason Sawyer Playground  |
| <input type="checkbox"/> Garrison Gardens   | <input type="checkbox"/> Joppa Park   |
| <input type="checkbox"/> Bartlet Mall   | <input type="checkbox"/> March's Hill   |
| <input type="checkbox"/> Brown Square   | <input checked="" type="checkbox"/> Market Square/Bullnose  |
| <input type="checkbox"/> Cashman Park   | <input type="checkbox"/> Moseley Woods Pavilion   |
| <input type="checkbox"/> Basketball <input type="checkbox"/> Tennis <input type="checkbox"/> Ball field <input type="checkbox"/> Soccer | <input type="checkbox"/> Moulton Square   |
| <input type="checkbox"/> Cherry Hill Athletic Fields  | <input type="checkbox"/> Newburyport Skate Park   |
| <input type="checkbox"/> Clipper City Rail Trail  | <input type="checkbox"/> Patrick Tracy Square   |
| <input type="checkbox"/> Cornelius Doyle Triangle   | <input type="checkbox"/> Perkins Park   |
| <input type="checkbox"/> Cushing Park   | <input type="checkbox"/> Basketball <input type="checkbox"/> Tennis <input type="checkbox"/> Ball field |
|   | <input type="checkbox"/> Woodman Park   |
|   | <input type="checkbox"/> Other _____  |

Dates/days requested 7/20/19 Rain Date 9/29/19

Time slot requested 7:00 AM - 12:00 NOON INFO TENT AND WATER

Activity WALK FOR THE PICA Number of attendees Approx 100

Authorized Applicant Signature Mary Ann Laudier

**FOR INTERNAL USE ONLY**

Approval is contingent upon approval from the following authorities:

- Health Department
- Fire Department
- Police Department
- Licensing Commission
- City Council
- Harbormaster

ADDITIONAL COMMENTS:

TRASH MUST BE REMOVED BY ORGANIZER

**ALL APPLICATIONS MUST INCLUDE A CURRENT CERTIFICATE OF INSURANCE NAMING THE CITY AS INSURED IN THE AMOUNT OF TWO MILLION DOLLARS.**

Submit completed form to  
 Newburyport Parks Dept  
 60 Pleasant Street  
 Newburyport, MA 01950  
 parks@cityofnewburyport.com  
 978-465-4462

See page 2 for Rules and Regulations and contacts for use of other parks and recreational facilities

For Parks Commission Use
Date reviewed <u>7/23/19</u>
Approved <input checked="" type="checkbox"/>
Rejected <input type="checkbox"/>
Comments _____
_____
Donation received _____

**APPOINTMENTS  
FIRST READING**



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

RECEIVED  
CITY OF NEWBURYPORT, MA  
TUE JUL 23 PM 3:16

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: July 23, 2019

Subject: Re-Appointment

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I hereby re-appoint, subject to your approval, the following  
named individual as Assistant Wiring Inspector. This term  
will expire on May 1, 2020.

Barry J. McBride  
5 Pine Street  
Salisbury, MA 01952



## Licensee Detail

---

License Number: 37144

Licensing Entity: Board of State Examiners of Electricians

License Type: Journeyman Electrician

Type Class: E

License Issue Date: 07/08/1994

License Expiration Date: 07/31/2022 Status: Current

Current Discipline:

Prior Discipline:

Name: BARRY J MCBRIDE

Business Name:

DBA Name:

### ▶ Public Documents

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

# COMMUNICATIONS

**MEMO**  
**August 13, 2019**

**TO: MEMBERS OF THE NEWBURYPORT CITY COUNCIL**  
**FROM: SHARIF ZEID, WARD 1 CITY COUNCILLOR**  
**SUBJECT: BROWN SCHOOL ZONING**

**Honorable Members of the Newburyport City Council,**

I am writing to you today with regards to Ordinance #33 (Dated May 13, 2019), which proposes to create a zoning overlay district for the Brown School. **As sponsor and with due respect to the members and Chair of the Committee on Planning Development, I want to let you know that it is my intention for this Ordinance to be brought to the Council floor for discussion and a vote on September 30<sup>th</sup>, 2019.**

The Brown School has been the subject of much debate over many years. Here is a timeline to remind you of those efforts:

2013	<ul style="list-style-type: none"> <li>The City Council and Mayor adopt an Order protecting the area that holds the playground, basketball court, and so-called amphitheater as a public park and playground under state law</li> </ul>
2014	<ul style="list-style-type: none"> <li>School closes its doors to its last class, after 90 years</li> <li>After public meetings, Office of Planning and Development issues RFQ in summer 2014 for feasibility study of Youth Services at ground level with housing/artist studios above</li> <li>Winter Street Architects submits Feasibility Study in fall 2014 at a cost of ~\$40,000</li> </ul>
2014-2015	<ul style="list-style-type: none"> <li>School Committee's Brown School Educational Reuse Subcommittee studies and reports on possible non-classroom uses of the property.</li> </ul>
2016	<ul style="list-style-type: none"> <li>School Committee votes in March 2016 to decommission the Brown School and surrender custody and control, while expressly including, by reference, the City Council's 2013 order protecting the playground</li> </ul>
2017	<ul style="list-style-type: none"> <li>After further public meetings, an RFP is issued (without a proper disposition by the City Council) for redevelopment of the site</li> <li>Over six months spent by selection committee including the Mayor, Planning staff, Youth Services Director, and Ward 1 and 2 City Councillors, resulting in the unanimous selection in October 2017 of Stone Ridge Partners for further negotiations, over Diamond Sinacori and YWCA of Greater Newburyport</li> <li>At the end 2017, Mayor unilaterally withdraws selection and scraps the RFP</li> </ul>
2018	<ul style="list-style-type: none"> <li>Ward 2 Councillor Jared Eigerman proposes Order #8, seeking to dispose/surplus the Brown School under certain conditions</li> <li>After public hearings, including testimony by Youth Services and the Affordable Housing Trust, Committee on Planning &amp; Development votes in March 2018 to hold the order pending analysis of six scenarios by City staff</li> </ul>

The work has continued into the current year with meetings being held as recently a week ago from the date of this memo to discuss this endeavor and the current proposal:

<p><b>Present (2019)</b></p>
<ul style="list-style-type: none"> <li>City Council funds a ~\$65k feasibility study to purchase National Guard property leased for Emergency Services at which to relocate Newburyport Youth Services from the Brown School</li> <li>Pursuant to the study above, wetlands have apparently been discovered on the site, though no update has been provided to the Council</li> <li>Office of the Mayor issues a preliminary budget of \$4.5 million for Youth Services relocation, funded in part by sale of Brown School property for \$3.0 million</li> <li>City Council passes an order assuming custody and control of Brown School property, given its release by School Committee</li> </ul>

- Ordinance #33 – Brown School Overlay District introduced in May of 2019
  - Council’s Committee on Planning and Development met on June 6<sup>th</sup> to discuss the proposal
  - A joint hearing with the Planning Board/Committee on Planning & Dev took place on July 17<sup>th</sup>
  - Council’s Committee on Planning and Development met on August 6<sup>th</sup> to discuss the proposal and take further public testimony regarding amendments by the sponsor
  - Additional meetings may be held at the discretion of the Committee and its Chair

I have left out of this timeline the multitude of public meetings held at the Brown School over the past five and one-half years to engage with stakeholders.

The residents of the South End, all other city residents, affordable housing advocates, and Newburyport Youth Services advocates all deserve answers. I hope this memo will serve to eliminate any surprises when this matter comes to the floor.

Respectfully Submitted,



Sharif I. Zeid  
Ward 1 City Councillor



CITY OF NEWBURYPORT  
 OFFICE OF THE MAYOR  
 DONNA D. HOLADAY  
 60 PLEASANT STREET • P.O. BOX 550  
 NEWBURYPORT, MA 01950  
 (978) 465-4400 • (978) 465-4452 (FAX)  
 WWW.CITYOFNEWBURYPORT.COM

## Memorandum

To: Sharif Zeid, Chairman Public Utilities  
 City Council  
 From: Mayor Donna D. Holaday  
 Molly Ettenborough  
 Energy Advisory Committee  
 Date: August 12, 2019  
 Re: Solar Alternative On-Bill Credits

The City of Newburyport has received another Solar Alternative On-Bill Credits (AOBC) opportunity from Nexamp as provided for under the new Solar Massachusetts Renewable Target (SMART) program in Massachusetts.

The SMART takes a page from the previous solar incentive programs in the state and provides a fixed discount on electric utility bills, regardless of the energy market, much like the City's agreement with the solar farm in Salisbury and the three agreements we just signed in June.

As you will recall, the city just signed three contracts with Nexamp, for this same arrangement after an RFP process. The credits for those three will be credited and applied to the schools accounts. Total savings to the City of Newburyport for those contracts is estimated to be \$41,000 the first year and total savings close to a \$1 million over a 20 year contractual commitment. The AOBC discounts will be a fixed 15% off the National Grid supply portion of the accounts bill.

Nexamp has just approached Newburyport again for two more contracts with the same terms and contract, a 15 % discount and annual approximate cumulative credit of \$15,000. They have approached us for the following reasons:

- Recent completion of process and short window to act on the availability of these solar blocks, as the state only allots so much solar at a time.
- Municipalities, especially those with a Triple-A bond rating, provide developers and investors' confidence in credit worthiness.
- Contract readiness.

Attached is a copy of the proposed Nexamp contracts. These contracts will provide an annual savings of approximately \$15,000 and we propose that these credits be made available to the Newburyport Schools as the previous Nexamp credits were.

The Nexamp proposal for AOBC through SMART would again increase the city's municipal electric load commitment to renewable energy to approximately 55-60%. We urge the City Council to support the City's renewable energy initiatives and authorize the Mayor to sign the Nexamp contract.

## CREDIT PURCHASE AND SALE AGREEMENT

This Credit Purchase and Sale Agreement (“*Agreement*”) is entered into as of \_\_\_\_\_, 2019 (the “*Effective Date*”) by and between **Sutton Solar 2, LLC**, a Delaware limited liability company (“*Seller*”), and the City of Newburyport, a Massachusetts municipal corporation (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

**WHEREAS**, Seller finances, develops, owns, operates and maintains solar (PV) electric generation facilities; and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, Credits associated with Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, during the Term, subject to the terms set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, warranties, covenants and conditions herein, and the Exhibits attached hereto, Seller and Buyer agree as follows.

### ARTICLES I DEFINITIONS

When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, or if such terms are defined elsewhere in this Agreement, the meanings given where such terms are defined. Words not defined herein shall be given their common and ordinary meanings.

### ARTICLE II TERM

2.1 Term. The Agreement term (the “*Term*”) shall begin on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date (the “*Termination Date*”) or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. In addition to any other rights of termination set forth in this Agreement, this Agreement may be terminated before the Termination Date (the “*Early Termination Date*”):

(a) by Seller, upon thirty (30) days’ notice to Buyer, if Seller, in its sole discretion, determines that (i) prior to the Construction Commencement Date, it will not construct the Facility or (ii) after the Construction Commencement Date it will abandon the Facility as a result of an event of Force Majeure;

(b) by Seller, in accordance with section 4.1 (regarding conditions precedent);

(c) by either Party, in accordance with Section 4.2 (regarding regulatory change);

(d) pursuant to Section 10.3 (regarding financing); or

(e) by Buyer if Seller fails to achieve Commercial Operations by [12/31/2020] (the “Commercial Operations Deadline”); provided that the Commercial Operations Deadline shall be extended day-for-day to account for any delays caused, through no fault of Seller’s, by the Utility in the construction of upgrades to its distribution grid to accommodate the Facility; provided further that if construction on the Facility has commenced (as defined in the next sentence) but the Facility has not achieved Commercial Operations by the Commercial Operations Deadline, and Seller is diligently installing the Facility, the Commercial Operations Deadline shall be extended by an additional ninety (90) days. For the purpose of this provision, the word “construction on the Facility” shall mean that all or substantially all racking systems and solar panels have been delivered to the property on which the Facility is to be installed, and Seller has commenced actual installation of the Facility’s racking system and solar panels on such property. Seller shall promptly and reasonably demonstrate to Buyer in writing that the conditions set forth in this provision have been satisfied.

Upon early termination of this Agreement in accordance with this Section 2.2, the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

### **ARTICLE III TITLE; COMMERCIAL OPERATION DATE**

#### **3.1 Title.**

(a) Under no circumstances shall the Buyer have or retain title to the Facility, Energy, Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility. If Buyer is deemed to be the owner or provider of any of the above, subject to and to the extent permitted by Applicable Law, Buyer shall assign them to Seller and, if Buyer receives any payments for them, it shall pay them to Seller. This Section 3.1(a) shall survive the termination of this Agreement.

(b) As between Seller and Buyer, title to, and risk of loss of, the Credits purchased by Buyer hereunder will pass from Seller to Buyer upon allocation of the Credits to Buyer’s Utility Account(s). If Buyer is purchasing less than 100 percent of the Credits, title to and risk of loss of the Credits not purchased by Buyer shall at all times remain with Seller.

**3.2 Notice of Commercial Operations Date.** Within 14 days of receipt of notification from the Utility that the Facility may commence operations, Seller shall provide Buyer with a copy of such notification, and the date of such notification, unless a different date for commencement of operations is set forth in that notification by the Utility, shall constitute the Commercial

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Operations Date.

#### **ARTICLE IV CONDITIONS PRECEDENT; REGULATORY CHANGE**

- 4.1 Conditions Precedent. Seller's obligations under this agreement are subject to the Facility's connection to the Utility pursuant to any laws, regulations or tariffs qualifying the Facility to generate Credits. Buyer agrees that it will, in good faith, execute any reasonably requested documentation required by any Governmental Authority, including a "SMART Participant Customer Disclosure Form". If the Facility does not so qualify, or if the Facility loses its qualification through no fault of the Seller, then Seller may, but shall not be obligated to, terminate this Agreement by delivering notice to the Buyer. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the date of Buyer's receipt of such notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment, liabilities or other obligations arising under this Agreement prior to the delivery of the notice, and Section 11.1 (Disputes) shall continue to apply to disputes that arose before such termination.
- 4.2 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon a Governmental Authority order, decision, or regulation implementation, or upon the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the Utility binding on a Party that (i) materially restricts Seller's ability to deliver Credits to Buyer or to fulfill its other obligations under this Agreement, (ii) materially restricts Buyer's ability to receive Credits, or (iii) disallows the Facility's qualification under laws, regulations or tariffs qualifying the Facility to generate Credits, as appropriate, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent reasonably possible, and shall use commercially reasonable efforts to conform such amendment to restore the economic benefits to each Party. If the Parties, negotiating in good faith, cannot agree concerning conforming to such actions, then either Party may terminate this Agreement.

#### **ARTICLE V PURCHASE AND SALE OF CREDITS; GOVERNMENTAL CHARGES**

- 5.1 Sale and Purchase of Credits. Beginning on the Commercial Operations Date and continuing throughout the Term, Seller agrees to sell to Buyer, and Buyer agrees to accept from Seller and to pay the Price to Seller for, the Quantity. The Price is stated on Exhibit A, attached hereto and incorporated herein. Notwithstanding anything to the contrary in this Agreement, Buyer shall not be required to pay for any Credits before those Credits have been allocated to Buyer by the Utility and are reflected on invoices received by Buyer from the Utility.
- 5.2 Delivery. Seller shall direct the Utility to deliver the Credits to Buyer under the SMART Program.
- (a) To deliver the Credits to Buyer, Seller shall direct the Utility to allocate the Credits purchased by Buyer under this Agreement to Buyer's Utility Account(s) (in

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accordance with the process established by the Tariff). Buyer may change the Utility Accounts to which Credits are allocated subject to any requirements of the Utility regarding the timing and manner of making such changes, and Seller shall cooperate with Buyer regarding any such changes, including, but not limited to, by filing any documentation with the Utility to implement such change so long as (i) Buyer provides written notice to Seller and (ii) the new address is serviced by the same Utility that provided service to the old address. The change in address will be effective upon the Utility allowing Seller to make such change, which under the tariff existing as of the date of this Agreement is generally within six (6) months. Seller will not be liable for any Credits lost through no fault of Seller's as a result of such change of address.

- (b) Buyer understands that the Credits delivered to Buyer in any particular month will be reflected on Buyer's Utility Statement as a monetary credit amount and not as an electricity quantity; and that such Credits will be reflected on the Utility Statement according to the Utility's billing cycle, which may be up to approximately two (2) months after the Facility generates the Energy associated with the Credits, provided that Buyer shall not be invoiced by Seller for any Credits unless and until those Credits are received by Buyer from the Utility and reflected on Buyer's invoices received from the Utility.
- (c) Each Party acknowledges that each of them is relying on the Facility receiving and maintaining qualification as a Community Shared Solar Tariff Generation Unit under the Massachusetts SMART Program. Buyer and Seller each agrees that it shall not take any action that would cause the Facility not to be qualified as a Community Shared Solar Tariff Generation Unit, and shall reasonably cooperate with each other to assure the Facility's continued qualification.
- (d) Seller will promptly take reasonable efforts to correct any Utility Credit-allocation error and Buyer agrees to reasonably cooperate in a timely manner as needed.
- (e) Seller shall elect the Utility's fixed supply option for 6 month period to determine value of Credits.

### 5.3 Governmental Charges.

- (a) Seller is responsible for any Governmental Charges attributable to the sale of Credits hereunder, whether imposed before, upon or after the allocation and delivery of Credits to Buyer.
- (b) The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions to minimize Governmental Charges. If any Credits sales are exempted from or not subject to one or more Governmental Charges, the relevant Party shall, promptly upon the other Party's written request, provide the other Party with all necessary, available documentation to evidence the exemption or

exclusion.

## ARTICLE VI PAYMENT

### 6.1 Payment.

- (a) Beginning with the first Billing Period that Seller delivers Energy to the Utility, Seller shall provide an invoice to Buyer (the “*Invoice*”) for the amount due for Credits received by Buyer from the Utility based on the Price multiplied by the Quantity.
- (b) Buyer shall remit payment of the full undisputed amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to Seller) to the account designated by Seller within thirty (30) days following Buyer’s receipt of each Invoice. If Buyer does not pay the undisputed amount of an Invoice within thirty (30) days of receiving the Invoice, the amount due on the Invoice shall bear interest from the date on which the payment was due, through and including the date Seller receives the payment. The annual Interest accrual rate is the Interest Rate.
- (c) Before the Commercial Operations Date, Buyer shall, with Seller’s cooperation, take all reasonable actions necessary to cause the Utility to allow Seller to electronically access, for the Term, the Utility Statement(s) and account information solely for purposes of fulfilling Seller’s obligations under this Agreement.
- (d) The Parties shall resolve Invoice disputes according to Section 6.3 (Invoice Disputes).

### 6.2 Records and Audits.

- (a) Seller shall maintain accurate operating records in order to properly administer this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit the other Party to verify the accuracy of billing statements, invoices, charges, computations and payments for the transaction. During these periods each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party’s records regarding the transactions during the other Party’s normal business hours.

### 6.3 Invoice Disputes; Invoice Discrepancies.

- (a) If a Party, in good faith, disputes an Invoice, including disputes under Section 6.3(b), the disputing Party shall promptly notify the other Party of the basis for the dispute and shall pay the undisputed portion of the Invoice no later than the due date. Any required payment shall be made within seven (7) Business Days of resolving the

dispute. Any overpayments shall either be returned by the receiving Party promptly following the request or be deducted from subsequent payments with interest accrued at the Interest Rate, at the option of the overpaying Party. The Parties may only dispute amounts owed or paid within twelve (12) calendar months from the Invoice date, unless the basis of the dispute was not reasonably ascertainable from the face of the Invoice, in which event the period for disputes shall be extended to a total of twenty-four (24) months from the date of such Invoice(s). If the Parties are unable to resolve an Invoice dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).

- (b) If the Parties determines that the value of Credits reflected on an Invoice is different than the value of Credits allocated to Buyer's Utility Account(s), and that the discrepancy is due to an issue related to the Meter, Seller shall use commercially reasonable efforts to resolve the issue with the Utility. If the discrepancy is due to an accounting or administrative error by the Utility, Seller, with the cooperation of Buyer as the Utility Account holder, shall resolve the discrepancy with the Utility.

## **ARTICLE VII REPRESENTATIONS, WARRANTIES, COVENANTS, INDEMNIFICATION**

7.1 Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of the state in which the Party is organized and is authorized to conduct business in the Commonwealth of Massachusetts.
- (b) The Party has full legal capacity to enter into and perform this Agreement.
- (c) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- (d) It shall endeavor in good faith to perform its obligations under this Agreement in compliance with Applicable Law.

7.2 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are intended to be a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is understood to be a "forward merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not deemed a "utility" as such term is used in Section 366 of the United States Bankruptcy Code.

7.3 Upon written request from Seller on or prior to the Effective Date and thereafter (not to exceed once every year), Buyer shall provide to Seller a copy of the most recent years

financial statements for Buyer, provided that Buyer shall be in compliance with any such request if Buyer provides to Seller such financial statements as are prepared by Buyer in the ordinary course of its business.

7.4 Seller Production Guarantee. Beginning on the first day of the fourth Contract Year and determined on each annual anniversary of the Commercial Operations Date for the remainder of the Term, if the aggregate number of Credits delivered to Buyer hereunder for the prior three Contract Years (such three-year aggregate, the “Three-Year Credit Total”) does not equal or exceed the aggregate of the Minimum Credit Requirement over such three-year period (the “Three-Year Credit Requirement”), on its next invoice issued to Buyer, Seller shall credit Buyer an amount equal to: (a) the positive difference, if any, between (i) the average price paid by Buyer to the Utility for electric power over such three-year period, as reasonably determined by Seller and (ii) the Price, multiplied by (b) the difference between the Three-Year Credit Requirement and the Three-Year Credit Total.

7.5 Indemnification. Seller shall indemnify and save harmless the Buyer from and against any and all claims, damages, liabilities, losses, charges, costs and expenses (including reasonable attorneys’ fees) arising out of any breach of this Agreement by Seller.

## **ARTICLE VIII TERMINATION; DEFAULT**

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after receiving written notice (including the invoice to which such payment relates) that such payment is past due unless the specific amount of the payment not made is being disputed.
- (b) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party promptly commences efforts, and proceeds with due diligence during such thirty (30) day period, to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party’s time to do so shall be extended by the time reasonably necessary to cure the same not to exceed a total additional period of sixty (60) days.
- (c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.
- (d) The Party:

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- i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
- iii. (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. The other Party shall not be required to perform any obligations that are in consideration of the obligations of the non-performing Party that are not being carried out by reason of *Force Majeure*, provided that Buyer shall not be excused from making payments for Credits delivered and reflected on Buyer's Utility Accounts.

### 8.3 Termination for Default.

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1 and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.
- (b) If this Agreement is terminated due to an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, Credits generated after that termination date, provided that Buyer shall remain responsible to pay for any Credits received from the Utility prior to the termination date, except to the extent any amount due from Buyer for Credits may be offset by

Buyer with any damages suffered by Buyer in connection with any such termination.

**ARTICLE IX  
REMEDIES; LIMITATION OF LIABILITY; WAIVER**

9.1 Remedies.

- (a) Subject to the limitations set forth in this Agreement, upon a termination by Seller due to an Event of Default by Buyer occurring after the Commercial Operations Date, Seller may sell Credits produced by the Facility to persons other than Buyer, and recover from Buyer (in addition to amounts due Seller for any Credits received from the Utility prior to the termination) any anticipated loss in revenues resulting from sales for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) Price as of the date of the termination and (ii) the market price for Credits as of the date of termination (as reasonably determined by Seller), multiplied by the average of the annual Quantity delivered by Seller in all Contract Years preceding the year of termination of the Agreement, provided that such amount to be paid by Buyer shall not exceed \$15,000.
- (b) Subject to the limitations set forth in this Agreement, upon a termination by Buyer due to an Event of Default by Seller occurring after the Commercial Operations Date, Buyer may recover from Seller any loss in savings for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) the average price of electricity delivered by the Utility to Buyer's Utility Accounts as of the date of termination of the Agreement and (ii) the Price, multiplied by the average of the annual Quantity purchased by Buyer in all Contract Years preceding the year of termination of the Agreement.
- (c) Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party shall take reasonable efforts to mitigate damages it may incur as a result of the other Party's non-performance under this Agreement in accordance with the laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, Buyer shall under no circumstances be liable on account of any Event of Default for any alleged loss of Tax Attributes or Environmental Attributes.

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR

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## EQUITY.

### 9.3 Waivers.

- (a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer unless the waiver is in writing and signed by the Party against whom it is to be enforced or such Party's agent. A Party's consent or approval to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. A Party's failure to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any Party's right or remedy specified herein or any other right or remedy a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other except as otherwise required by law or limited in this Agreement.
- (b) Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

## ARTICLE X ASSIGNMENT

- 10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that without consent of Buyer, Seller (i) may assign its rights and obligations hereunder to an Affiliate of Seller and (ii) may sell or collaterally assign this Agreement in accordance with Section 10.2. For purposes of this Section 10.1, a transfer includes any sale of all or substantially all of the assets of Seller (other than to an Affiliate of Seller) or Buyer or any merger of Seller or Buyer with another person, whether or not Seller or Buyer is the surviving entity from such merger, or any change in control of Seller or Buyer whereby there is a change of the person(s) or entity(ies) with the authority to direct the day-to-day management of Seller or Buyer. Upon any assignment, sale, transfer, or conveyance by Seller other than a collateral assignment under Section 10.2, or upon any such change in control of Seller, Seller shall be deemed to have represented and warranted to Buyer that the assignee, purchaser, or transferee has the ability (including financial) to fulfill or cause the fulfillment of all obligations of Seller under this Agreement.



## 10.2 Collateral Assignment; Financing Provisions:

- (a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:
- (i) Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.
  - (ii) Rights of Lender. Notwithstanding any contrary term of this Agreement:
    - (A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility, subject to the terms of this Agreement;
    - (B) Opportunity to Cure Default. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder, or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests or has otherwise assumed Seller's obligations under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;
    - (C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement but shall not to excuse any Seller Event of Default before, as a result of, or after such exercise of remedies;

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(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender a copy of Buyer's notice to Seller of an Event of Default, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Lender within such period and the Lender promptly commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Lender a Third-Party Beneficiary. Buyer agrees and acknowledges that Lender is a third-party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees to execute any reasonable consents to assignment or acknowledgements as may be reasonably requested by Seller and/or Lender in connection with such financing or sale of the Facility. Seller shall pay Buyer's reasonable, documented attorneys' fees incurred in reviewing and negotiating any such consent or acknowledgment.

10.3 Obligation to Modify Agreement. If a Lender or the Seller requires this Agreement to be modified to finance, develop or operate the Facility, and the modification does not (i) materially restrict Seller's ability to deliver Credits to Buyer, (ii) materially restrict Buyer's ability to receive Credits, (iii) diminish the Credit value to Buyer, or (iv) disallow the Facility's qualification under the SMART Program, the Parties shall negotiate in good faith in an effort to amend this Agreement in a timely fashion. If the Parties, negotiating in good faith, cannot agree on the amendments, Seller may terminate this Agreement, or, if Seller determines in good faith that the Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Seller may terminate the Agreement. The terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination.

**ARTICLE XI  
DISPUTE RESOLUTION**

- 11.1 Dispute Resolution. The Parties agree to use their respective reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement.
- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the chief executive of Seller, and the chief executive of Buyer, who shall use their respective reasonable efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a written notice that identifies with reasonable particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.
- (b) Mediation. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute hereby agree to submit the dispute to non-binding mediation if the monetary value of the dispute exceeds \$25,000, and may, if they mutually agree, submit any other disputes of lesser amount to non-binding mediation. For disputes whose monetary value exceed \$25,000, the following process shall apply: Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator either Party may request the American Arbitration Association (the “AAA”) to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed one 6-hour business day and shall occur within sixty (60) days of the appointment of the mediator, unless such time periods are modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by all Parties involved in the dispute.
- (c) Injunctive Relief. Notwithstanding the foregoing, or anything to the contrary in this Agreement, either Party may at any time, and without having to engage in any dispute resolution or mediation, seek injunctive relief to prevent perceived irreparable harm.

**ARTICLE XII  
MISCELLANEOUS**

- 12.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where

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expressly provided for otherwise), shall be deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller:                   Sutton Solar 2, LLC  
  ATTN: Charles Nutter  
  101 Summer Street, 2<sup>nd</sup> Floor  
  Boston, MA 02110  
  Email: [AM@nexamp.com](mailto:AM@nexamp.com)

With a copy to: Nexamp, Inc.  
  ATTN: General Counsel  
  101 Summer Street  
  Boston, MA 02110  
  Email: [legal@nexamp.com](mailto:legal@nexamp.com)

If to Buyer:                    ATTN: Mayor  
  City of Newburyport  
  60 Pleasant Street  
  Newburyport, MA 01950

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

## 12.2 INTENTIONALLY OMITTED.

12.3 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect except as otherwise provided by law. If a material provision is determined to be unenforceable and the Party which would have been materially benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith in an effort to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, either Party may terminate the Agreement upon sixty (60) days written notice.

12.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law, and any litigation arising hereunder shall be brought solely in the Massachusetts state courts located in Suffolk County, MA, with each Party hereby waiving any objections on account of venue or forum.

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- 12.5 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 12.6 Press Releases. The Parties shall reasonably cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits. Any good faith failure of a Party to comply with this provision shall not constitute an Event of Default.
- 12.7 No Joint Venture. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.
- 12.8 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 12.10 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such reasonable documents and assurances requested by the other Party. Each Party shall reasonably cooperate with the other to effect or confirm transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10. Seller shall pay Buyer's reasonable attorneys' fees incurred in reviewing and negotiating any such documents and assurances.
- 12.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.
- 12.12 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This Section 12.12 shall not limit the right of a Lender pursuant to Section 10.2.
- 12.13 Additional Terms Regarding Buyer. Notwithstanding anything to the contrary in this Agreement:
- (a) Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement that will materially increase Buyer's risks or obligations under the Agreement, or result in the waiver of any of Buyer's rights, defenses, or

remedies under the Agreement or at law or in equity, or require Buyer to give or cause its legal counsel to give a legal opinion or require Buyer to make a statement of fact of which Buyer has no actual knowledge.

- (b) To the extent Buyer is obligated by any provision of this Agreement to negotiate any document or instrument with, or at the request of, Seller or any Lender, or to take any actions in connection with Seller's efforts to secure financing for the Facility, Seller shall promptly reimburse Buyer for reasonable, documented attorney fees incurred by Buyer in reviewing and negotiating any such document or instrument.
- (c) Any requirement that Buyer cooperate or assist Seller shall not require Buyer to interfere with or influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Buyer.
- (d) The Agreement shall be subject to Applicable Law.
- (e) Buyer does not waive any of the rights, remedies, defenses and immunities afforded Buyer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Buyer hereby reserves.

IN WITNESS WHEREOF, the Parties executed this Credit Purchase and Sale Agreement under seal as of the Effective Date.

**BUYER**

**SELLER**

**CITY OF NEWBURYPORT**

**Sutton Solar 2, LLC**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## Glossary of Terms

**“Affiliate”** means, as to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

**“Applicable Law”** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, constructing, operating, and owning the Facility, and selling and purchasing Credits.

**“Billing Period”** shall mean as defined in the applicable Tariff pursuant to which the Facility becomes qualified to receive Credits.

**“Business Day”** means a day on which Federal Reserve member banks in Boston, MA are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Commercial Operations”** shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law to install and operate the Facility, (ii) the Facility is able to generate and supply and has begun to generate and supply electricity to the Utility’s electricity distribution system at full or substantially full capacity, (iii) Seller has completed or obtained all Facility-related equipment and rights, if any, to allow regular Facility operation, and (iv) if applicable and to the extent required, the Utility has approved the Facility’s interconnection with the electricity distribution system to allow regular Facility operation.

**“Commercial Operations Date”** means the date on which the Facility achieves Commercial Operations and has obtained the final statement of qualification from the Massachusetts Department of Energy Resources (or equivalent).

**“Construction Commencement Date”** means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

**“Contract Year”** means each year during the Term, with the first Contract Year starting on the Commercial Operations Date and ending on the first anniversary of the Commercial Operations Date.

**“Credits”** means the monetary value of the excess Energy generated by an Alternative On-Bill Credit Generation Unit, stated as of the Effective Date by the Utility according to 225 CMR 20.00, et seq. and the applicable Tariff; and excluding, for the avoidance of doubt, any Tax

Attributes or Environmental Attributes.

“*Credit Value*” shall be determined under the SMART Program at 225 CMR 20.08(1)(a)(2) and the applicable Tariff for the relevant Billing Period.

“*Energy*” means the amount of electricity the Facility generates over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“*Environmental Attribute*” means GIS Certificates, Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, benefits, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Credits.

“*Facility*” means the solar (PV) power electrical generation facility identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant equipment required to interconnect the Facility to the Utility’s electric distribution system.

“*Force Majeure*” means any cause not within the reasonable control and occurring without the fault of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; high winds, hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes (other than of Seller’s employees); lock-outs or other industrial disturbances (other than those involving Seller’s employees); acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order, provided that nothing herein is intended by the Parties to interfere with the performance by Buyer or its officials of Buyer’s regulatory functions as a Massachusetts municipality. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“*Governmental Authority*” means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“*Governmental Charges*” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Utility, or other similar entity, on or with respect to the Credits.

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**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which such interest is due.

**“Lender”** means the entity or person(s) (or any affiliate of any thereof) from time to time providing any financing or refinancing to the Seller or any affiliate thereof or otherwise for the construction of, expansion of, and/or operation and maintenance of, the Facility, and any successors, assigns, agents, or trustees thereof, including any lessor under a sale/leaseback financing structure.

**“Meter”** means the meter furnished and installed by the Utility to measure the electricity delivered by the Utility to the Facility and delivered by the Facility to the Utility.

**“Minimum Credit Requirement”** means the minimum number of Credits Seller must transfer to Buyer hereunder pursuant to Section 7.4 hereof. The Minimum Credit Requirement is set forth in Exhibit B and shall be equal to ninety percent (90%) of the expected production of the Facility (updated as of Commercial Operations to reflect the as-built Facility size, as adjusted for weather) for a Contract Year.

**“Price”** is defined on Exhibit A.

**“Purchase Percentage”** is defined on Exhibit A.

**“Quantity”** means the total quantity of Credits associated with the Energy generated by the Facility during the relevant Term or Billing Period (as determined pursuant to applicable law, regulation and Tariff), multiplied by the Purchase Percentage, as measured and evidenced by the Credits reflected on actual invoices received by Buyer from the Utility.

**“Renewable Energy Certificate”** or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Tax Attributes and the Credits.

**“SMART Program”** is the Applicable Law known as the “Solar Massachusetts Renewable Target” program. Specifically, that Applicable Law found as of the Effective Date at 225 C.M.R. §20.00, *et seq*, as it may be amended from time to time, and including all regulatory agency orders pertaining thereto.

**“Tariff”** means either the Utility tariff for interconnection for distributed generation and net metering services, or the Alternative On-bill Crediting mechanism tariff, as appropriate for the context, and each as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

**“Tax Attributes”** means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation), and excluding, for the avoidance of doubt, any Environmental Attributes and Credits.

**“Utility”** means the electric distribution company providing service to the Facility.

**“Utility Account(s)”** means the Utility accounts designated by Buyer and identified to the Utility by the Seller pursuant to applicable regulation under the SMART Program.

**“Utility Statement(s)”** means the statements from the Utility, which accompanies the Buyer’s Utility Account(s).

## EXHIBIT A

### PRICE; and PURCHASE PERCENTAGE

“*Price*” equals 85 percent (85%) of the Credit Value for that Billing Period.

“*Purchase Percentage*” equals 50 percent (50%) of the Energy generated during the relevant Billing Period.

## EXHIBIT B

### FACILITY; MINIMUM CREDIT REQUIREMENT

**The Facility** is the approximately 1.0 MW (AC) solar (PV) power electrical generation facility located at 25 Oakhurst Rd, Sutton, MA 01590.

Contract Year	Minimum Credit Requirement (kWh)*
1	665,228
2	660,970
3	656,740
4	652,537
5	648,361
6	644,211
7	640,088
8	635,992
9	631,921
10	627,877
11	623,859
12	619,866
13	615,899
14	611,957
15	608,041
16	604,149
17	600,283
18	596,441
19	592,624
20	588,831

\*Note that the Minimum Credit Requirement shall be updated as of Commercial Operations to reflect the as-built Facility size

## CREDIT PURCHASE AND SALE AGREEMENT

This Credit Purchase and Sale Agreement (“*Agreement*”) is entered into as of \_\_\_\_\_, 2019 (the “*Effective Date*”) by and between **Apex Solar 1, LLC**, a Delaware limited liability company (“*Seller*”), and the City of Newburyport, a Massachusetts municipal corporation (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

**WHEREAS**, Seller finances, develops, owns, operates and maintains solar (PV) electric generation facilities; and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, Credits associated with Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, during the Term, subject to the terms set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, warranties, covenants and conditions herein, and the Exhibits attached hereto, Seller and Buyer agree as follows.

### ARTICLES I DEFINITIONS

When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, or if such terms are defined elsewhere in this Agreement, the meanings given where such terms are defined. Words not defined herein shall be given their common and ordinary meanings.

### ARTICLE II TERM

2.1 Term. The Agreement term (the “*Term*”) shall begin on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date (the “*Termination Date*”) or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. In addition to any other rights of termination set forth in this Agreement, this Agreement may be terminated before the Termination Date (the “*Early Termination Date*”):

- (a) by Seller, upon thirty (30) days’ notice to Buyer, if Seller, in its sole discretion, determines that (i) prior to the Construction Commencement Date, it will not construct the Facility or (ii) after the Construction Commencement Date it will abandon the Facility as a result of an event of Force Majeure;
- (b) by Seller, in accordance with section 4.1 (regarding conditions precedent);

(c) by either Party, in accordance with Section 4.2 (regarding regulatory change);

(d) pursuant to Section 10.3 (regarding financing); or

(e) by Buyer if Seller fails to achieve Commercial Operations by 6/31/2020 (the “Commercial Operations Deadline”); provided that the Commercial Operations Deadline shall be extended day-for-day to account for any delays caused, through no fault of Seller’s, by the Utility in the construction of upgrades to its distribution grid to accommodate the Facility; provided further that if construction on the Facility has commenced (as defined in the next sentence) but the Facility has not achieved Commercial Operations by the Commercial Operations Deadline, and Seller is diligently installing the Facility, the Commercial Operations Deadline shall be extended by an additional ninety (90) days. For the purpose of this provision, the word “construction on the Facility” shall mean that all or substantially all racking systems and solar panels have been delivered to the property on which the Facility is to be installed, and Seller has commenced actual installation of the Facility’s racking system and solar panels on such property. Seller shall promptly and reasonably demonstrate to Buyer in writing that the conditions set forth in this provision have been satisfied.

Upon early termination of this Agreement in accordance with this Section 2.2, the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

### **ARTICLE III TITLE; COMMERCIAL OPERATION DATE**

#### **3.1 Title.**

(a) Under no circumstances shall the Buyer have or retain title to the Facility, Energy, Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility. If Buyer is deemed to be the owner or provider of any of the above, subject to and to the extent permitted by Applicable Law, Buyer shall assign them to Seller and, if Buyer receives any payments for them, it shall pay them to Seller. This Section 3.1(a) shall survive the termination of this Agreement.

(b) As between Seller and Buyer, title to, and risk of loss of, the Credits purchased by Buyer hereunder will pass from Seller to Buyer upon allocation of the Credits to Buyer’s Utility Account(s). If Buyer is purchasing less than 100 percent of the Credits, title to and risk of loss of the Credits not purchased by Buyer shall at all times remain with Seller.

**3.2 Notice of Commercial Operations Date.** Within 14 days of receipt of notification from the Utility that the Facility may commence operations, Seller shall provide Buyer with a copy of such notification, and the date of such notification, unless a different date for commencement of operations is set forth in that notification by the Utility, shall constitute the Commercial

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Operations Date.

#### **ARTICLE IV CONDITIONS PRECEDENT; REGULATORY CHANGE**

- 4.1 Conditions Precedent. Seller's obligations under this agreement are subject to the Facility's connection to the Utility pursuant to any laws, regulations or tariffs qualifying the Facility to generate Credits. Buyer agrees that it will, in good faith, execute any reasonably requested documentation required by any Governmental Authority, including a "SMART Participant Customer Disclosure Form". If the Facility does not so qualify, or if the Facility loses its qualification through no fault of the Seller, then Seller may, but shall not be obligated to, terminate this Agreement by delivering notice to the Buyer. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the date of Buyer's receipt of such notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment, liabilities or other obligations arising under this Agreement prior to the delivery of the notice, and Section 11.1 (Disputes) shall continue to apply to disputes that arose before such termination.
- 4.2 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon a Governmental Authority order, decision, or regulation implementation, or upon the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the Utility binding on a Party that (i) materially restricts Seller's ability to deliver Credits to Buyer or to fulfill its other obligations under this Agreement, (ii) materially restricts Buyer's ability to receive Credits, or (iii) disallows the Facility's qualification under laws, regulations or tariffs qualifying the Facility to generate Credits, as appropriate, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent reasonably possible, and shall use commercially reasonable efforts to conform such amendment to restore the economic benefits to each Party. If the Parties, negotiating in good faith, cannot agree concerning conforming to such actions, then either Party may terminate this Agreement.

#### **ARTICLE V PURCHASE AND SALE OF CREDITS; GOVERNMENTAL CHARGES**

- 5.1 Sale and Purchase of Credits. Beginning on the Commercial Operations Date and continuing throughout the Term, Seller agrees to sell to Buyer, and Buyer agrees to accept from Seller and to pay the Price to Seller for, the Quantity. The Price is stated on Exhibit A, attached hereto and incorporated herein. Notwithstanding anything to the contrary in this Agreement, Buyer shall not be required to pay for any Credits before those Credits have been allocated to Buyer by the Utility and are reflected on invoices received by Buyer from the Utility.
- 5.2 Delivery. Seller shall direct the Utility to deliver the Credits to Buyer under the SMART Program.
- (a) To deliver the Credits to Buyer, Seller shall direct the Utility to allocate the Credits purchased by Buyer under this Agreement to Buyer's Utility Account(s) (in

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accordance with the process established by the Tariff). Buyer may change the Utility Accounts to which Credits are allocated subject to any requirements of the Utility regarding the timing and manner of making such changes, and Seller shall cooperate with Buyer regarding any such changes, including, but not limited to, by filing any documentation with the Utility to implement such change so long as (i) Buyer provides written notice to Seller and (ii) the new address is serviced by the same Utility that provided service to the old address. The change in address will be effective upon the Utility allowing Seller to make such change, which under the tariff existing as of the date of this Agreement is generally within six (6) months. Seller will not be liable for any Credits lost through no fault of Seller's as a result of such change of address.

- (b) Buyer understands that the Credits delivered to Buyer in any particular month will be reflected on Buyer's Utility Statement as a monetary credit amount and not as an electricity quantity; and that such Credits will be reflected on the Utility Statement according to the Utility's billing cycle, which may be up to approximately two (2) months after the Facility generates the Energy associated with the Credits, provided that Buyer shall not be invoiced by Seller for any Credits unless and until those Credits are received by Buyer from the Utility and reflected on Buyer's invoices received from the Utility.
- (c) Each Party acknowledges that each of them is relying on the Facility receiving and maintaining qualification as a Community Shared Solar Tariff Generation Unit under the Massachusetts SMART Program. Buyer and Seller each agrees that it shall not take any action that would cause the Facility not to be qualified as a Community Shared Solar Tariff Generation Unit, and shall reasonably cooperate with each other to assure the Facility's continued qualification.
- (d) Seller will promptly take reasonable efforts to correct any Utility Credit-allocation error and Buyer agrees to reasonably cooperate in a timely manner as needed.
- (e) Seller shall elect the Utility's fixed supply option for 6 month period to determine value of Credits.

### 5.3 Governmental Charges.

- (a) Seller is responsible for any Governmental Charges attributable to the sale of Credits hereunder, whether imposed before, upon or after the allocation and delivery of Credits to Buyer.
- (b) The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions to minimize Governmental Charges. If any Credits sales are exempted from or not subject to one or more Governmental Charges, the relevant Party shall, promptly upon the other Party's written request, provide the other Party with all necessary, available documentation to evidence the exemption or

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exclusion.

## ARTICLE VI PAYMENT

### 6.1 Payment.

- (a) Beginning with the first Billing Period that Seller delivers Energy to the Utility, Seller shall provide an invoice to Buyer (the “*Invoice*”) for the amount due for Credits received by Buyer from the Utility based on the Price multiplied by the Quantity.
- (b) Buyer shall remit payment of the full undisputed amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to Seller) to the account designated by Seller within thirty (30) days following Buyer’s receipt of each Invoice. If Buyer does not pay the undisputed amount of an Invoice within thirty (30) days of receiving the Invoice, the amount due on the Invoice shall bear interest from the date on which the payment was due, through and including the date Seller receives the payment. The annual Interest accrual rate is the Interest Rate.
- (c) Before the Commercial Operations Date, Buyer shall, with Seller’s cooperation, take all reasonable actions necessary to cause the Utility to allow Seller to electronically access, for the Term, the Utility Statement(s) and account information solely for purposes of fulfilling Seller’s obligations under this Agreement.
- (d) The Parties shall resolve Invoice disputes according to Section 6.3 (Invoice Disputes).

### 6.2 Records and Audits.

- (a) Seller shall maintain accurate operating records in order to properly administer this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit the other Party to verify the accuracy of billing statements, invoices, charges, computations and payments for the transaction. During these periods each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party’s records regarding the transactions during the other Party’s normal business hours.

### 6.3 Invoice Disputes; Invoice Discrepancies.

- (a) If a Party, in good faith, disputes an Invoice, including disputes under Section 6.3(b), the disputing Party shall promptly notify the other Party of the basis for the dispute and shall pay the undisputed portion of the Invoice no later than the due date. Any required payment shall be made within seven (7) Business Days of resolving the

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dispute. Any overpayments shall either be returned by the receiving Party promptly following the request or be deducted from subsequent payments with interest accrued at the Interest Rate, at the option of the overpaying Party. The Parties may only dispute amounts owed or paid within twelve (12) calendar months from the Invoice date, unless the basis of the dispute was not reasonably ascertainable from the face of the Invoice, in which event the period for disputes shall be extended to a total of twenty-four (24) months from the date of such Invoice(s). If the Parties are unable to resolve an Invoice dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).

- (b) If the Parties determines that the value of Credits reflected on an Invoice is different than the value of Credits allocated to Buyer's Utility Account(s), and that the discrepancy is due to an issue related to the Meter, Seller shall use commercially reasonable efforts to resolve the issue with the Utility. If the discrepancy is due to an accounting or administrative error by the Utility, Seller, with the cooperation of Buyer as the Utility Account holder, shall resolve the discrepancy with the Utility.

## **ARTICLE VII REPRESENTATIONS, WARRANTIES, COVENANTS, INDEMNIFICATION**

7.1 Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of the state in which the Party is organized and is authorized to conduct business in the Commonwealth of Massachusetts.
- (b) The Party has full legal capacity to enter into and perform this Agreement.
- (c) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- (d) It shall endeavor in good faith to perform its obligations under this Agreement in compliance with Applicable Law.

7.2 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are intended to be a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is understood to be a "forward merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not deemed a "utility" as such term is used in Section 366 of the United States Bankruptcy Code.

7.3 Upon written request from Seller on or prior to the Effective Date and thereafter (not to exceed once every year), Buyer shall provide to Seller a copy of the most recent years

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financial statements for Buyer, provided that Buyer shall be in compliance with any such request if Buyer provides to Seller such financial statements as are prepared by Buyer in the ordinary course of its business.

7.4 Seller Production Guarantee. Beginning on the first day of the fourth Contract Year and determined on each annual anniversary of the Commercial Operations Date for the remainder of the Term, if the aggregate number of Credits delivered to Buyer hereunder for the prior three Contract Years (such three-year aggregate, the “Three-Year Credit Total”) does not equal or exceed the aggregate of the Minimum Credit Requirement over such three-year period (the “Three-Year Credit Requirement”), on its next invoice issued to Buyer, Seller shall credit Buyer an amount equal to: (a) the positive difference, if any, between (i) the average price paid by Buyer to the Utility for electric power over such three-year period, as reasonably determined by Seller and (ii) the Price, multiplied by (b) the difference between the Three-Year Credit Requirement and the Three-Year Credit Total.

7.5 Indemnification. Seller shall indemnify and save harmless the Buyer from and against any and all claims, damages, liabilities, losses, charges, costs and expenses (including reasonable attorneys’ fees) arising out of any breach of this Agreement by Seller.

## **ARTICLE VIII TERMINATION; DEFAULT**

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after receiving written notice (including the invoice to which such payment relates) that such payment is past due unless the specific amount of the payment not made is being disputed.
- (b) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party promptly commences efforts, and proceeds with due diligence during such thirty (30) day period, to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party’s time to do so shall be extended by the time reasonably necessary to cure the same not to exceed a total additional period of sixty (60) days.
- (c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.
- (d) The Party:

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- i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
- iii. (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. The other Party shall not be required to perform any obligations that are in consideration of the obligations of the non-performing Party that are not being carried out by reason of *Force Majeure*, provided that Buyer shall not be excused from making payments for Credits delivered and reflected on Buyer's Utility Accounts.

### 8.3 Termination for Default.

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1 and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.
- (b) If this Agreement is terminated due to an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, Credits generated after that termination date, provided that Buyer shall remain responsible to pay for any Credits received from the Utility prior to the termination date, except to the extent any amount due from Buyer for Credits may be offset by

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Buyer with any damages suffered by Buyer in connection with any such termination.

## **ARTICLE IX REMEDIES; LIMITATION OF LIABILITY; WAIVER**

### **9.1 Remedies.**

- (a) Subject to the limitations set forth in this Agreement, upon a termination by Seller due to an Event of Default by Buyer occurring after the Commercial Operations Date, Seller may sell Credits produced by the Facility to persons other than Buyer, and recover from Buyer (in addition to amounts due Seller for any Credits received from the Utility prior to the termination) any anticipated loss in revenues resulting from sales for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) Price as of the date of the termination and (ii) the market price for Credits as of the date of termination (as reasonably determined by Seller), multiplied by the average of the annual Quantity delivered by Seller in all Contract Years preceding the year of termination of the Agreement, provided that such amount to be paid by Buyer shall not exceed \$15,000.
- (b) Subject to the limitations set forth in this Agreement, upon a termination by Buyer due to an Event of Default by Seller occurring after the Commercial Operations Date, Buyer may recover from Seller any loss in savings for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) the average price of electricity delivered by the Utility to Buyer's Utility Accounts as of the date of termination of the Agreement and (ii) the Price, multiplied by the average of the annual Quantity purchased by Buyer in all Contract Years preceding the year of termination of the Agreement.
- (c) Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party shall take reasonable efforts to mitigate damages it may incur as a result of the other Party's non-performance under this Agreement in accordance with the laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, Buyer shall under no circumstances be liable on account of any Event of Default for any alleged loss of Tax Attributes or Environmental Attributes.

**9.2 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR

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## EQUITY.

### 9.3 Waivers.

- (a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer unless the waiver is in writing and signed by the Party against whom it is to be enforced or such Party's agent. A Party's consent or approval to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. A Party's failure to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any Party's right or remedy specified herein or any other right or remedy a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other except as otherwise required by law or limited in this Agreement.
- (b) Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

## ARTICLE X ASSIGNMENT

- 10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that without consent of Buyer, Seller (i) may assign its rights and obligations hereunder to an Affiliate of Seller and (ii) may sell or collaterally assign this Agreement in accordance with Section 10.2. For purposes of this Section 10.1, a transfer includes any sale of all or substantially all of the assets of Seller (other than to an Affiliate of Seller) or Buyer or any merger of Seller or Buyer with another person, whether or not Seller or Buyer is the surviving entity from such merger, or any change in control of Seller or Buyer whereby there is a change of the person(s) or entity(ies) with the authority to direct the day-to-day management of Seller or Buyer. Upon any assignment, sale, transfer, or conveyance by Seller other than a collateral assignment under Section 10.2, or upon any such change in control of Seller, Seller shall be deemed to have represented and warranted to Buyer that the assignee, purchaser, or transferee has the ability (including financial) to fulfill or cause the fulfillment of all obligations of Seller under this Agreement.

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## 10.2 Collateral Assignment; Financing Provisions:

- (a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:
- (i) Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.
  - (ii) Rights of Lender. Notwithstanding any contrary term of this Agreement:
    - (A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility, subject to the terms of this Agreement;
    - (B) Opportunity to Cure Default. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder, or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests or has otherwise assumed Seller's obligations under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;
    - (C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement but shall not to excuse any Seller Event of Default before, as a result of, or after such exercise of remedies;

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(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender a copy of Buyer's notice to Seller of an Event of Default, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Lender within such period and the Lender promptly commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Lender a Third-Party Beneficiary. Buyer agrees and acknowledges that Lender is a third-party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees to execute any reasonable consents to assignment or acknowledgements as may be reasonably requested by Seller and/or Lender in connection with such financing or sale of the Facility. Seller shall pay Buyer's reasonable, documented attorneys' fees incurred in reviewing and negotiating any such consent or acknowledgment.

10.3 Obligation to Modify Agreement. If a Lender or the Seller requires this Agreement to be modified to finance, develop or operate the Facility, and the modification does not (i) materially restrict Seller's ability to deliver Credits to Buyer, (ii) materially restrict Buyer's ability to receive Credits, (iii) diminish the Credit value to Buyer, or (iv) disallow the Facility's qualification under the SMART Program, the Parties shall negotiate in good faith in an effort to amend this Agreement in a timely fashion. If the Parties, negotiating in good faith, cannot agree on the amendments, Seller may terminate this Agreement, or, if Seller determines in good faith that the Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Seller may terminate the Agreement. The terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination.

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**ARTICLE XI  
DISPUTE RESOLUTION**

- 11.1 Dispute Resolution. The Parties agree to use their respective reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement.
- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the chief executive of Seller, and the chief executive of Buyer, who shall use their respective reasonable efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a written notice that identifies with reasonable particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.
- (b) Mediation. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute hereby agree to submit the dispute to non-binding mediation if the monetary value of the dispute exceeds \$25,000, and may, if they mutually agree, submit any other disputes of lesser amount to non-binding mediation. For disputes whose monetary value exceed \$25,000, the following process shall apply: Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator either Party may request the American Arbitration Association (the “AAA”) to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed one 6-hour business day and shall occur within sixty (60) days of the appointment of the mediator, unless such time periods are modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by all Parties involved in the dispute.
- (c) Injunctive Relief. Notwithstanding the foregoing, or anything to the contrary in this Agreement, either Party may at any time, and without having to engage in any dispute resolution or mediation, seek injunctive relief to prevent perceived irreparable harm.

**ARTICLE XII  
MISCELLANEOUS**

- 12.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where

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expressly provided for otherwise), shall be deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller: Apex Solar 1, LLC  
ATTN: Charles Nutter  
101 Summer Street, 2<sup>nd</sup> Floor  
Boston, MA 02110  
Email: [AM@nexamp.com](mailto:AM@nexamp.com)

With a copy to: Nexamp, Inc.  
ATTN: General Counsel  
101 Summer Street  
Boston, MA 02110  
Email: [legal@nexamp.com](mailto:legal@nexamp.com)

If to Buyer: ATTN: Mayor  
City of Newburyport  
60 Pleasant Street  
Newburyport, MA 01950

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

## 12.2 INTENTIONALLY OMITTED.

12.3 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect except as otherwise provided by law. If a material provision is determined to be unenforceable and the Party which would have been materially benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith in an effort to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, either Party may terminate the Agreement upon sixty (60) days written notice.

12.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law, and any litigation arising hereunder shall be brought solely in the Massachusetts state courts located in Suffolk County, MA, with each Party hereby waiving any objections on account of venue or forum.

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- 12.5 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 12.6 Press Releases. The Parties shall reasonably cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits. Any good faith failure of a Party to comply with this provision shall not constitute an Event of Default.
- 12.7 No Joint Venture. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.
- 12.8 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 12.10 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such reasonable documents and assurances requested by the other Party. Each Party shall reasonably cooperate with the other to effect or confirm transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10. Seller shall pay Buyer's reasonable attorneys' fees incurred in reviewing and negotiating any such documents and assurances.
- 12.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.
- 12.12 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This Section 12.12 shall not limit the right of a Lender pursuant to Section 10.2.
- 12.13 Additional Terms Regarding Buyer. Notwithstanding anything to the contrary in this Agreement:
- (a) Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement that will materially increase Buyer's risks or obligations under the Agreement, or result in the waiver of any of Buyer's rights, defenses, or

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remedies under the Agreement or at law or in equity, or require Buyer to give or cause its legal counsel to give a legal opinion or require Buyer to make a statement of fact of which Buyer has no actual knowledge.

- (b) To the extent Buyer is obligated by any provision of this Agreement to negotiate any document or instrument with, or at the request of, Seller or any Lender, or to take any actions in connection with Seller's efforts to secure financing for the Facility, Seller shall promptly reimburse Buyer for reasonable, documented attorney fees incurred by Buyer in reviewing and negotiating any such document or instrument.
- (c) Any requirement that Buyer cooperate or assist Seller shall not require Buyer to interfere with or influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Buyer.
- (d) The Agreement shall be subject to Applicable Law.
- (e) Buyer does not waive any of the rights, remedies, defenses and immunities afforded Buyer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Buyer hereby reserves.

IN WITNESS WHEREOF, the Parties executed this Credit Purchase and Sale Agreement under seal as of the Effective Date.

**BUYER**

**SELLER**

**CITY OF NEWBURYPORT**

**Apex Solar 1, LLC**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## Glossary of Terms

**“Affiliate”** means, as to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

**“Applicable Law”** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, constructing, operating, and owning the Facility, and selling and purchasing Credits.

**“Billing Period”** shall mean as defined in the applicable Tariff pursuant to which the Facility becomes qualified to receive Credits.

**“Business Day”** means a day on which Federal Reserve member banks in Boston, MA are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Commercial Operations”** shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law to install and operate the Facility, (ii) the Facility is able to generate and supply and has begun to generate and supply electricity to the Utility’s electricity distribution system at full or substantially full capacity, (iii) Seller has completed or obtained all Facility-related equipment and rights, if any, to allow regular Facility operation, and (iv) if applicable and to the extent required, the Utility has approved the Facility’s interconnection with the electricity distribution system to allow regular Facility operation.

**“Commercial Operations Date”** means the date on which the Facility achieves Commercial Operations and has obtained the final statement of qualification from the Massachusetts Department of Energy Resources (or equivalent).

**“Construction Commencement Date”** means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

**“Contract Year”** means each year during the Term, with the first Contract Year starting on the Commercial Operations Date and ending on the first anniversary of the Commercial Operations Date.

**“Credits”** means the monetary value of the excess Energy generated by an Alternative On-Bill Credit Generation Unit, stated as of the Effective Date by the Utility according to 225 CMR 20.00, et seq. and the applicable Tariff; and excluding, for the avoidance of doubt, any Tax

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Attributes or Environmental Attributes.

“*Credit Value*” shall be determined under the SMART Program at 225 CMR 20.08(1)(a)(2) and the applicable Tariff for the relevant Billing Period.

“*Energy*” means the amount of electricity the Facility generates over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“*Environmental Attribute*” means GIS Certificates, Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, benefits, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Credits.

“*Facility*” means the solar (PV) power electrical generation facility identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant equipment required to interconnect the Facility to the Utility’s electric distribution system.

“*Force Majeure*” means any cause not within the reasonable control and occurring without the fault of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; high winds, hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes (other than of Seller’s employees); lock-outs or other industrial disturbances (other than those involving Seller’s employees); acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order, provided that nothing herein is intended by the Parties to interfere with the performance by Buyer or its officials of Buyer’s regulatory functions as a Massachusetts municipality. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“*Governmental Authority*” means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“*Governmental Charges*” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Utility, or other similar entity, on or with respect to the Credits.

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**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which such interest is due.

**“Lender”** means the entity or person(s) (or any affiliate of any thereof) from time to time providing any financing or refinancing to the Seller or any affiliate thereof or otherwise for the construction of, expansion of, and/or operation and maintenance of, the Facility, and any successors, assigns, agents, or trustees thereof, including any lessor under a sale/leaseback financing structure.

**“Meter”** means the meter furnished and installed by the Utility to measure the electricity delivered by the Utility to the Facility and delivered by the Facility to the Utility.

**“Minimum Credit Requirement”** means the minimum number of Credits Seller must transfer to Buyer hereunder pursuant to Section 7.4 hereof. The Minimum Credit Requirement is set forth in Exhibit B and shall be equal to ninety percent (90%) of the expected production of the Facility (updated as of Commercial Operations to reflect the as-built Facility size, as adjusted for weather) for a Contract Year.

**“Price”** is defined on Exhibit A.

**“Purchase Percentage”** is defined on Exhibit A.

**“Quantity”** means the total quantity of Credits associated with the Energy generated by the Facility during the relevant Term or Billing Period (as determined pursuant to applicable law, regulation and Tariff), multiplied by the Purchase Percentage, as measured and evidenced by the Credits reflected on actual invoices received by Buyer from the Utility.

**“Renewable Energy Certificate”** or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Tax Attributes and the Credits.

**“SMART Program”** is the Applicable Law known as the “Solar Massachusetts Renewable Target” program. Specifically, that Applicable Law found as of the Effective Date at 225 C.M.R. §20.00, *et seq*, as it may be amended from time to time, and including all regulatory agency orders pertaining thereto.

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**“Tariff”** means either the Utility tariff for interconnection for distributed generation and net metering services, or the Alternative On-bill Crediting mechanism tariff, as appropriate for the context, and each as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

**“Tax Attributes”** means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation), and excluding, for the avoidance of doubt, any Environmental Attributes and Credits.

**“Utility”** means the electric distribution company providing service to the Facility.

**“Utility Account(s)”** means the Utility accounts designated by Buyer and identified to the Utility by the Seller pursuant to applicable regulation under the SMART Program.

**“Utility Statement(s)”** means the statements from the Utility, which accompanies the Buyer’s Utility Account(s).



## EXHIBIT A

### PRICE; and PURCHASE PERCENTAGE

“*Price*” equals eighty-five percent (85%) of the Credit Value for that Billing Period.

“*Purchase Percentage*” equals fifty percent (50%) of the Energy generated during the relevant Billing Period.

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## EXHIBIT B

### FACILITY; MINIMUM CREDIT REQUIREMENT

**The Facility** is the approximately 332 kW (AC) solar (PV) power electrical generation facility located at 21 Apex Drive, Marlborough, MA 01752.

Contract Year	Minimum Credit Requirement (kWh)*
1	213,885
2	212,516
3	211,156
4	209,805
5	208,462
6	207,128
7	205,802
8	204,485
9	203,176
10	201,876
11	200,584
12	199,300
13	198,025
14	196,757
15	195,498
16	194,247
17	193,004
18	191,768
19	190,541
20	189,322

\*Note that the Minimum Credit Requirement shall be updated as of Commercial Operations to reflect the as-built Facility size

CITY OF NEWBURYPORT

# ORDERS

## CITY OF NEWBURYPORT




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 IN CITY COUNCIL

Date: August 19, 2019

**ORDERED:**

THAT, pursuant to the CITY OF NEWBURYPORT Code of Ordinances Section 13-166, the CITY COUNCIL of the CITY OF NEWBURYPORT hereby amends existing subsections (a)(1), (a)(2), (e)(1), (e)(3), and (e)(4) of Section 13-180.1 to read as follows, with deletions ~~double-stricken-through~~, and additions double-underlined:

*(a) Definitions. As used in this section:*

- (1) *Paid parking ~~lots-facilities~~: ~~Central Business District Green Street Lot, State Street Lot, Tracey Prince Place Lot, Newburyport Redevelopment Authority East Lot, Newburyport Redevelopment Authority West Lot, Waterfront Trust Lot, Hales Court Lot, and Titcomb Street Garage.~~*
- (2) *All-day parking ~~lots-facilities~~: ~~Tracey Prince Place Lot, Newburyport Redevelopment Authority East Lot, Newburyport Redevelopment Authority and West Lots, Hales Court Lot, and Titcomb Street Garage.~~*

...

*(e) Use of parking permits.*

- (1) A parking permit shall not guarantee or reserve a parking space nor shall it excuse the observance of any traffic or parking regulation, including but not limited to time restrictions, other than the requirement to pay the hourly parking fee for use of paid parking ~~lots-facilities~~, with the exception of the Waterfront Trust Lot.

...

- (3) A downtown employee paid parking permit is only valid in the designated spaces in the all-day parking ~~facilities~~ ~~lots of the Tracey Place lot, Newburyport Redevelopment Authority East Lot and Newburyport Redevelopment Authority West Lot.~~
- (4) Resident parking permits are valid in all the paid parking ~~lots-facilities~~ with the sole exceptions of the Waterfront Trust Lot and the Titcomb Street Garage.

---

 Councillor Jared J. Eigerman

CITY OF NEWBURYPORT



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IN CITY COUNCIL

**ORDERED:**

August 19, 2019

Pursuant to G.L. c. 54 s. 34 the City Council of the City of Newburyport hereby authorizes the Board of Registrars by and through the City Clerk to commence using up to nine (9) ImageCast voting machines on or before the local final election to be held on November 5, 2019. The use of these voting machines includes any period of testing prior to said election. Furthermore, the use of the current AccuVote voting machines (including any hand counting) shall terminate after the scheduled Preliminary Election scheduled on September 17, 2019 provided however that in the event there is any recount following this Preliminary Election, said AccuVote machines may continue to be used until any recount is concluded.

The City Clerk is hereby instructed to send a certified notice of this order to the Elections Division of the Secretary of State within five (5) days of any vote hereon.

---

Councillor Barry N. Connell

# IMAGECAST® PRECINCT

**THE WORLD'S MOST RELIABLE  
OPTICAL SCAN TABULATOR**

*Dominion's ImageCast® Precinct is the most tried and proven tabulation equipment in the industry, backed by our dedicated service team.*



## ImageCast® Precinct Optical Scan Tabulator: Reliable & Versatile

- Over 100,000 units deployed worldwide
- Lightweight, easy to store, carry & set-up
- Optional integrated ADA compliant configuration
- Can scan ballots up to 30 inches



**STATE-OF-THE-ART TECHNOLOGY, EXPERTISE & EXPERIENCE.  
DEDICATED TO MAKING YOUR ELECTION A SUCCESS.**

## ImageCast® Precinct's Global Footprint

- Nearly 12,000 units in 52 of 58 jurisdictions in *New York State*
- 2,500 units used nationally in *Mongolia*
- Over 80,000 units deployed in the *Philippines*
- Thousands of units used in municipal and provincial elections in *Canada*



### SECURE

**STATE-OF-THE-ART SECURITY TO SATISFY THE NEEDS AND EXPECTATIONS OF VOTERS, AND FOR YOUR ADDED PEACE OF MIND**

EAC VVSG 2005 certified, featuring the highest security standards - with symmetric and asymmetric encryption - while preserving transparency through end-to-end system auditability.

Integrated ballot security features.

Encryption and security protocols are designed to meet the drafted Next Iteration requirements of the VVSG.

Extensive internal security monitoring to ensure data integrity and maintain public confidence.



### EFFICIENT

**SPECIFICALLY DESIGNED TO HELP YOUR ELECTION RUN EFFICIENTLY**

Lightweight, robust tabulator with optional accessible configuration.

AuditMark® ballot image auditing capability retains a secure digital image of every ballot cast in your election.

Meets EAC VVSG 2005 standards with superior accessibility for all voters.



### SIMPLE

**ENGINEERED SIMPLICITY**

From tropical to concrete jungles - the ImageCast® Precinct has been successful in some of the most challenging environments around the world.

Optional ballot review, second chance voting and accessible voting - all at one terminal.

6" LCD display screen.

Seamless integration with Dominion's Democracy Suite®.

**Please contact us for more information:**

LHS Associates, Inc.  
10 Manor Parkway, Unit B Salem, NH 03079  
[www.lhsassociates.com](http://www.lhsassociates.com)  
(888) LHS-VOTE





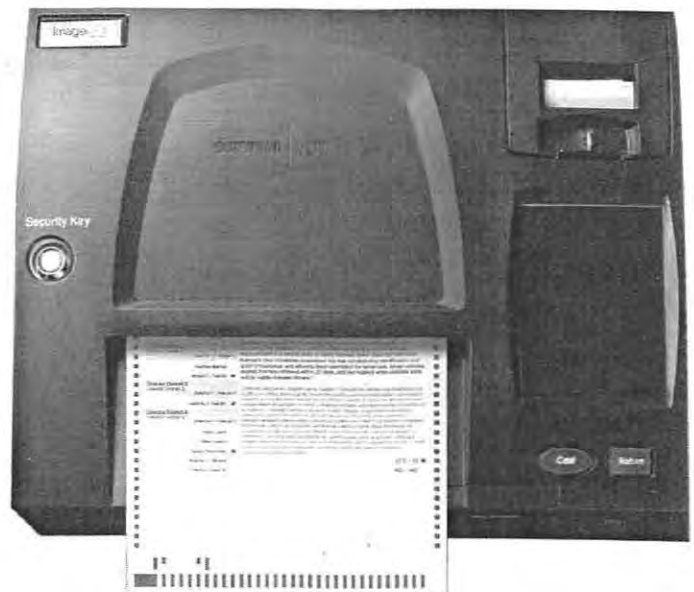
# The ImageCast Precinct (ICP)

ImageCast Precinct is a breakthrough in voting systems technology.

*A blended optical scan ballot tabulator combined  
with a direct recording ADA component.*

## SIMPLE AND POWERFUL

- Easy to set up, one on/off switch
- One security key
- Lightweight, durable design
- Easy to read LCD
- Metal ballot box with dual locking doors
- Completely verifiable voting capabilities
- Election Assistance Commission Certified



## INTEGRATED SYSTEM

- Precinct ballot scanning/tabulation
- ADA component built-in
- Dual redundant compact flash memory cards
- Single system to program
- Single system to perform pre-election testing
- Single system to setup on election day
- Three-inch thermal printer

THE IMAGECAST SYSTEM IS UNIQUE IN ITS  
SIMPLICITY AND SECURITY, WHILE LHS  
ASSOCIATES PROVIDES THE SUPPORT THAT YOU  
EXPECT WHEN YOU NEED IT MOST.



## CITY OF NEWBURYPORT



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IN CITY COUNCIL

ORDERED:

August 19, 2019

**THAT**, upon the recommendation of the Community Preservation Committee, \$694,820 is appropriated to pay costs of the continuation of Phase 2 of the Bradley Fuller Athletic Facility renovation project, including the installation of a 500 to 1,000-person grandstand, completion of electrical connections throughout the facility for the sound and timing systems, installation of a new sound system, and renovation of the interior of the existing field house to include expanded restroom facilities, and including the payment of all costs incidental and related thereto; and that to meet this appropriation, the Treasurer with the approval of the Mayor, is authorized to borrow \$694,820 under and pursuant to M.G.L. c.44B, of the General Laws (the Community Preservation Act), M.G.L. c.44 or pursuant to any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this order, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

---

Councillor Charles F. Tontar

## CITY OF NEWBURYPORT




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 IN CITY COUNCIL

## ORDERED:

Date: August 19, 2019

THAT, pursuant to the CITY OF NEWBURYPORT Code of Ordinances Section 13-180.1.(f)(1) and Section 13-166, the CITY COUNCIL of the CITY OF NEWBURYPORT hereby amends and approves the following schedule of parking fees and fines in the paid parking facilities subject to introductory and time-limited discount incentive rates for paid parking permits pursuant to regulations promulgated by the Parking Clerk as described in Section 13-180.1.(f)(2):

Resident Annual Permit -- Paid Parking Facilities, with exceptions per subd. (e)(4)	\$18.00
Senior Resident Annual Permit -- Paid Parking Facilities, with exceptions per subd. (e)(4)	\$5.00
Employee Quarterly Permit -- All-Day Parking Facilities	\$50.00
Hourly fee -- Waterfront Trust Lot, NRA West Lot, NRA East Lot, State Street Lot, and Titcomb Street Garage	\$1.00
Hourly fee -- Green Street Lot, Prince Place Lot, and Hales Court Lot	\$1.50
Resident Monthly Pass -- Titcomb Street Garage	\$60.00
Non-Resident Monthly Pass -- Titcomb Street Garage	\$80.00
Fine for Non-Display, Non-Payment, or Overtime Violation	\$25.00

AND FURTHER THAT, the above schedule of parking fees and fines shall take effect on **Monday, September 30, 2019**. Any and all necessary fee adjustments for existing paid permits shall be equitably prorated by the parking clerk.

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 Councillor Jared J. Eigerman

# ORDINANCES

TABLED

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Ordinance 30 (2018-19 session)  
introduced March 25, 2019  
as amended in committee June 6, June 19, and June 20, 2019

**AN ORDINANCE TO AMEND ARTICLE XXVII (DOWNTOWN OVERLAY DISTRICT) OF THE ZONING ORDINANCE OF THE CITY OF NEWBURYPORT**

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

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

**XXVII-C - Establishment.**

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The DOD is hereby established as an overlay zoning district consisting of all such parcels of land depicted on a map entitled "Downtown Overlay District (DOD)," prepared by the office of planning and development, and dated March 13, 2014.

...

3. *No demolition delay:* The provisions of article X of section 5 of the Newburyport Code (Building Demolition) shall not apply within the DOD except to that category of work excluded from review by the SPGA under this section, upon a written determination by the zoning administrator, under subsection XXVII-E.5, below.

...

**XXVII-D - Definitions.**

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1. *Addition, to add:* An extension or increase in total floor area, footprint, building height, or lot coverage.

2. *Alteration, to alter:* (a) Any addition, change, enlargement, expansion, maintenance **other than in-kind**, rebuilding, reconstruction **or replacement**, repair **other than in-kind**, restoration, replication, or other similar work; or (b) the moving from one portion of a lot to another, or from one lot to another, regardless of where the receiving lot is located.

3. *Character-defining exterior architectural feature:* An exterior architectural feature, whether existing historically or currently, that was understood to contribute to the significance of the relevant historic building or structure at the time of its listing on the State or National Register. The SPGA or the office of planning and development, as the case may be, shall refer to any photographs, data sheets or survey forms for such historic building or structure that have been prepared in connection with the Newburyport Historic District, whether dated earlier, contemporaneously, or later than its original listing on August 2, 1984.
4. *Construction, to construct:* The act or the fact of building, erecting, installing, or other similar activities.
5. *Demolition, to demolish:* The act, whether partial or complete, of pulling or tearing down, razing, or otherwise destroying.
6. *Demolition of a building or structure:* Demolition of greater than twenty-five (25) percent of all external walls of a building or structure, measured based upon their total surface area, regardless of the visibility of such walls from a street, way, or public body of water. The mere replacement of siding, **such as clapboards or shingles**, shall not constitute demolition of an external wall. Nor shall demolition of a building or structure include the demolition of a single external wall in order to build an addition, which shall be regulated under this section as an alteration.

**6A. Dormer: A rooftop appurtenance, as distinguished from a vertical addition, to a building or structure, built out from a sloping roof, and not extending above the ridge line of the roof from which it projects, set back from all walls of the building or structure below it, and containing one or more windows. A dormer may be either a shed dormer or a gabled (a.k.a. doghouse) dormer: a shed dormer has a roof with a single slope with its eave line parallel to the ridge line of the roof from which it projects; and a gabled dormer has a gabled, hipped, or arched roof with its ridge line perpendicular to the ridge line of the roof from which it projects.**

7. *Exterior architectural feature:* Any feature of the exterior of a building or structure that is open to view from any street, **other way open to public travel**, or the Merrimack River. Exterior architectural features may include, but are not limited to, the architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, chimneys, signs, dormers, and other appurtenant exterior fixtures.
8. *Historic building or structure:* A building or structure that: (a) is listed individually on the State and National Registers of Historic Places, as they may be amended from time to time; (b) was listed as "Contributory" to the Newburyport Historic District as of August 2, 1984; or (c) subsequent to the adoption of this section is added automatically to the list of historic buildings or structures subject to this section pursuant to subsection XXVII-F.7. In consultation with the historical commission, the office of planning and development shall compile and maintain a list of all historic buildings or structures subject to this section, [a] copy of which list shall be kept also by the city clerk, and posted on the city's website.

9. *Historic exterior architectural feature*: Any character-defining exterior architectural feature of an historic building or structure.
10. *Historic masonry*: An historic exterior architectural feature of brick or masonry material.
11. *Historical commission*: The Newburyport Historical Commission established pursuant to M.G.L.A. c. 40, § 8D.
12. *Newburyport Historic District*: The historic district known as the "Newburyport Historic District," originally listed on the State and National Registers of Historic Places on August 2, 1984, as amended.
13. *Ordinary maintenance, repair, or replacement **in kind***: Alteration that does not involve any material change in the design, construction materials, or outward appearance of the exterior architectural feature so altered, with the express exception of any maintenance and repair of historic masonry, which is regulated under subsection XXVII-H. For purposes of this definition, a change in the color of paint is expressly understood not to involve a material change in the design, construction materials, or outward appearance of the exterior architectural feature so painted.
14. *Substantial evidence*: Such evidence as a reasonable mind might accept as adequate to support a conclusion.
15. *Temporary building or structure*: (a) Any building or structure designed or intended to be, or actually, in existence for a period of no more than twelve (12) months; or (b) any temporary sign as that term is defined in subsection VIII-B.
16. *Zoning Ordinance*: The Zoning Ordinance of the City of Newburyport, Massachusetts.

#### **XXVII-E Exclusions.**

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Consistent with the city's intent for the DOD under subsection XXVII-A, a DOD-SP shall not be required for any of the following categories of work, which are hereby excluded from review by the SPGA under this section, upon a written determination by the zoning administrator:

1. Any ordinary maintenance, repair, or replacement **in kind**;
2. Any alteration or demolition of a building, structure, or exterior architectural feature that is not also an historic building, structure, or exterior architectural feature;
3. Any alteration, demolition, or replacement of windows, doors, signs, and/or awnings that is reviewed and approved by the office of planning and development under subsection XXVII-F.5(d);

4. Any new construction, alteration, or demolition of a temporary building or structure;
5. Any alteration of a one-family (use 101) or two-family (use 202) building that is (a) located within an underlying residential one (R-1), residential two (R-2), or residential three (R-3) district, or (b) at assessors map-lot 1-9 (6 Prince Place) or map-lot 1-7-A/B (2-4 Prince Place);
6. Any landscaping with plants, trees or shrubs;
7. Any work undertaken to meet requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, **such as the demolition of an historic building damaged or destroyed by fire, storm or other disaster**; and
8. Any rebuilding, reconstruction, restoration, or replication of an historic exterior architectural feature that has been damaged or destroyed by fire, storm or other disaster, provided that both of the following conditions are satisfied: (a) the result of such work is **substantially** the same in design, material and outward appearance as the damaged or destroyed historic exterior architectural feature; and (b) such work commences within two (2) years after such catastrophe, or three (3) years if extended upon good cause shown in a written request granted by vote of the SPGA.

#### **XXVII-F Procedure and criteria.**

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*Application, review and required findings:* Unless an exclusion applies pursuant to subsection XXVII-E, all new construction, alteration, or demolition within the DOD shall require the owner of the relevant property to submit an application for a DOD-SP for the SPGA to review and approve such new construction, alteration, or demolition. Said approval shall be granted by the SPGA prior to the issuance of a building or demolition permit for any such work within the DOD. The planning board shall act as the SPGA for purposes of this section, and it shall review and may approve, approve with conditions, or deny all applications hereunder in accordance with the procedures listed in subsection X-H.8. The SPGA shall approve a DOD-SP only if the SPGA first determines that the proposed new construction, alteration, or demolition as described in the application meets all the requirements of this section and, in addition, the special permit criteria of subsection X-H.7.

1. *Streamlining and harmonization:* For the purposes of streamlining and harmonizing regulatory review by the city of proposed work subject to this zoning ordinance, and notwithstanding anything in this zoning ordinance to the contrary, the planning board shall serve as the SPGA for any proposed work within the DOD that requires action by an SPGA. If proposed work is subject to



site plan review under section XV, then the SPGA shall conduct DOD-SP review in conjunction with site plan review whenever reasonably possible.

2. *Documentation required to support an application:*

- a. To support an application for a DOD-SP, the owner shall provide as part of the application to the SPGA documentation regarding:
  - i. the historic building, structure, or exterior architectural feature proposed to be demolished or altered, including, but not limited to, any data sheets or survey forms for such historic building or structure that have been prepared in connection with the Newburyport Historic District;
  - ii. historic, if any, and current photographs of the relevant elevations and exterior architectural features;
  - iii. architectural plans, elevations and/or renderings depicting the proposed new construction, demolition, or alteration; and
  - iv. photographs of the adjacent buildings or structures, or setting.
- b. The owner (applicant) shall also be responsible for submitting a copy of the above materials to the historical commission no less than ~~twenty-one~~ **(21)thirty (30)** calendar days prior to the submission of an application to the SPGA. Such submission shall be a prerequisite for the submission of an application to the SPGA under this section.
- c. The office of planning and development shall develop a standardized application form for use by the SPGA and applicants, and for the purposes of determining the completeness of all applications in accordance with this section.

3. *U.S. Secretary of the Interior's standards:*

- a. In reviewing any application under this section, and except as otherwise provided herein, the SPGA or the office of planning and development, as the case may be, shall ~~consider, but in its sole discretion need not~~ adhere to, any relevant provisions of the United States Secretary of the Interior's "Standards for the Treatment of Historic Properties With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings," as they may be amended from time to time, including all related guidelines, bulletins and other official guidance promulgated by the National Park Service (Secretary's Standards).
- b. **The Secretary's Standards offer four (4) distinct approaches to the treatment of historic properties, in order of preference — (i) preservation, (ii) rehabilitation, (iii) restoration, and, last, (iv) reconstruction or replacement — with accompanying guidelines for each. One set of standards will apply to a property undergoing**

treatment, depending upon the property's significance, existing physical condition, the extent of documentation available and interpretive goals, when applicable.

- c. The Secretary's Standards are an industry-accepted series of concepts about maintaining, repairing, and replacing historic materials, as well as designing new additions or making alterations. The related guidelines offer general design and technical recommendations to assist in applying the Standards to a specific property. Together, they provide a framework and guidance for decision-making about work or changes to a historic property.
- d. The Secretary's Standards and related guidelines shall be applied to all work involving historic properties of all types, materials, construction, sizes, and use located within the DOD, and extend to a property's landscape features, site, environment, as well as related new construction, unless an exclusion applies under Section XXVII-E.

4. *Procedure, requirements and criteria for review of proposed demolition:*

- a. *Demolition generally prohibited:* The intent of this **Section XXVII** section is to prevent the demolition of historic buildings, structures, and exterior architectural features located within the DOD unless the SPGA determines that the application meets all the requirements of this subsection XXVII-F.4 and, in addition, the special permit criteria of subsection X-H.7. Accordingly, such historic buildings, structures, and exterior architectural features shall be preserved and repaired, rather than demolished, **whenever reasonably feasible**, except as otherwise allowed under this subsection **XXVII-F.4**.
- b. *Demolition of historic buildings and structures:* The SPGA may approve demolition of an historic building or structure only if it makes written findings based upon substantial evidence in the record that such historic building or structure retains no substantial remaining market value or reasonable use, taking into account the cost of rehabilitation to meet the requirements of the State Building Code as it applies to historic buildings or structures, or of other applicable laws. Costs necessitated by any new construction, alteration, or demolition conducted in violation of this section shall not be included in the calculation of rehabilitation costs.

*Advisory reports:* **Pursuant to M.G.L. c. 44, § 53G, and t**o aid the SPGA in its review, the owner shall pay all costs for the SPGA to engage **an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant selected by the SPGA in its reasonable discretion**~~either a properly licensed architect or engineer experienced in the restoration of historic structures, or a recognized building preservation specialist, in the discretion of the SPGA, deemed necessary in opinion of the SPGA~~ to investigate and prepare a written

report upon the existing condition and feasibility of preservation of the historic building or structure proposed for demolition (Conditions Report). The SPGA shall engage such architect, engineer, or specialist no later than ~~seven (7)~~ten (10) calendar days after its having opened the required public hearing on the matter. Said Conditions Report shall include an estimate of the reasonable cost to rehabilitate the relevant building or structure to meet the requirements of the State Building Code as it applies to historic buildings or structures. **The Conditions Report required in connection with the proposed demolition of an historic building or structure shall not be waived by any City board, commission, or officer, including, without limitation by variance.**

No later than ~~thirty (30)~~twenty (20) calendar days after the ~~historical commission~~SPGA has received a complete application, the historical commission ~~may~~shall submit to the SPGA its written report (Historical Report) regarding: (x) the significance of the historic building or structure proposed for demolition; and (y) the relative importance of such historic building or structure to its setting within the DOD.

**~~Before acting on a DOD-SP application to demolish an historic building or structure, the SPGA shall consider both the Conditions Report and any Historical Report submitted by the historical commission.~~**

In addition, pursuant to M.G.L. c. 44, § 53G, the owner shall pay all costs for the SPGA to select in its reasonable discretion and engage a properly licensed real estate appraiser ~~deemed reasonably necessary in opinion of the SPGA~~ to investigate and prepare a written report upon the existing market value of the relevant historic building or structure (Appraisal Report), for the purposes of comparing this value against the cost estimate contained within the Conditions Report. **The SPGA shall engage such appraiser no later than ten (10) calendar days after its having opened the required public hearing on the matter. The Appraisal Report required in connection with the proposed demolition of an historic building or structure shall not be waived by any City board, commission, or officer, including, without limitation by variance.**

**Before acting on a DOD-SP application to demolish an historic building or structure, the SPGA shall consider both the Conditions Report and any Historical Report submitted by the historical commission, as well as the Appraisal Report.**

- c. *Demolition of historic exterior architectural features:* Historic exterior architectural features shall be retained and repaired whenever reasonably feasible. If the SPGA determines that such features cannot reasonably be retained and repaired, then they shall be replaced in kind, both in design and materials, whenever reasonably feasible.

*Advisory reports:* **Pursuant to M.G.L. c. 44, § 53G, and t**To aid the SPGA in its review, ~~and provided the SPGA makes a written finding that the~~

~~proposed demolition is of sufficient scope to justify the time and expense~~, the owner shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant selected by the SPGA in its reasonable discretion either a properly licensed architect or engineer experienced in the restoration of historic structures, or a recognized building preservation specialist, in the discretion of the SPGA, deemed necessary in opinion of the SPGA to investigate and prepare a written report upon the existing conditions and feasibility of preservation of the relevant historic exterior architectural features (Conditions Report). Said Conditions Report shall include an estimate of the reasonable cost of all work required to preserve, rehabilitate, or restore the relevant historic exterior architectural features. The SPGA shall engage such architect, engineer, or specialist no later than ten (10) calendar days after its having opened the required public hearing on the matter, unless the Conditions Report required in connection with the proposed demolition of historic exterior architectural features is waived by unanimous vote of the SPGA.

No later than ~~thirty (30)~~twenty (20) calendar days after the historical commission SPGA has received a complete application, the historical commission ~~may~~shall submit to the SPGA a written report regarding application of the relevant criteria of this section to the proposed work (Historical Report).

Before acting on a DOD-SP application, the SPGA shall consider both the Conditions Report, if any, and any Historical Report submitted by the historical commission.

- d. *Employment of outside consultants:* The portions of this subsection XXVII-F.4 (and its regulations, if any) requiring the payment of consultant fees by the owner are promulgated under the concurrent authority of M.G.L. A. c. 44, § 53G.
- e. *Replacement must be approved:* The SPGA shall not approve a DOD-SP application to demolish an historic building, structure, or exterior architectural feature without the SPGA's having earlier granted, or concurrently granting, all relief required under this zoning ordinance, if any, for the replacement building, structure, or exterior architectural features. In addition to the owner's submitting plans, specifications, and such other materials as are normally required by the SPGA to enable its review of new construction or alteration within the DOD, the owner shall also submit a timetable and such guarantees and assurances for the completion of the replacement building, structure, or exterior architectural feature as the SPGA may reasonably require.
- f. *Documentation before demolition:* When the SPGA approves or approves with conditions a DOD-SP to demolish an historic building, structure, or

exterior architectural feature, the SPGA may require documentation of the historic building, structure, or architectural feature to be demolished, including, but not limited to, photographs of elevations and details of specific exterior architectural features. If so required, such documentation shall be completed and submitted to the historical commission before demolition may commence.

- g. *Additional penalties for unauthorized demolition:* In addition to any other penalties under applicable law, without prior written approval by the SPGA, no building permit shall be issued for a period of three (3) years with respect to any premises at which an historic building, structure, or exterior architectural feature has been intentionally demolished without a DOD-SP having been first obtained in compliance with this section. Such three-year period shall commence after the date upon which such demolition has been completed or suspended, whether voluntarily or by legal compulsion. For purposes of this subsection, "premises" shall mean both (i) the lot upon which the demolished historic building, structure or architectural feature was located, and (ii) all abutting lots under common ownership or control of such lot at the time of demolition.

5. *Procedure, requirements and criteria for review of proposed new construction and alterations:*

- a. *New construction and alterations must be compatible with existing historic buildings and structures within the DOD:* New construction and alteration within the DOD shall not disrupt the essential form and integrity of (i) the subject historic building, structure or exterior architectural features, (ii) the lot where it is located, or (iii) its setting within the DOD. Moreover, new construction and alteration within the DOD shall be compatible with the size, scale, height, color (excepting paint color), material, and character of the (x) subject historic building, structure or exterior architectural feature, (y) the lot where it is located, and (z) its setting within the DOD, as the case may be.
- i. *Reversibility:* New additions and other alterations to an historic building, structure, or exterior architectural feature shall be designed so that if they were to be removed or reversed in the future, the essential form and integrity of the overall historic building or structure would be unimpaired.
- ii. *Composite materials:* The SPGA or the office of planning and development, as the case may be, shall review and may approve on a case-by-case basis proposed composite materials when used in custom design for alterations to an historic building, structure, or exterior architectural feature that were unavailable when the subject historic building, structure, or exterior architectural feature was originally constructed.
- iii. *Advisory reports:* **Pursuant to M.G.L. c. 44, § 53G, and t**o aid the SPGA in its review, ~~and provided the SPGA makes a written finding that the proposed alteration of an historic exterior architectural feature is of sufficient scope to justify the time and~~

~~expense, the owner shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant selected by the SPGA in its reasonable discretion either a properly licensed architect or engineer experienced in the restoration of historic structures, or a recognized building preservation specialist, in the discretion of the SPGA, deemed necessary in the opinion of the SPGA to investigate and prepare a written report upon the existing conditions and feasibility of preservation of the relevant historic exterior architectural feature (Conditions Report). Said Conditions Report shall include an estimate of the reasonable cost to rehabilitate the relevant historic exterior architectural feature to meet the requirements of the State Building Code as it applies to historic buildings or structures. The SPGA shall engage such architect, engineer, or specialist no later than ten (10) calendar days after its having opened the required public hearing on the matter, unless the Conditions Report required in connection with the proposed demolition of historic exterior architectural features is waived by unanimous vote of the SPGA.~~

No later than ~~thirty (30)~~**twenty (20)** calendar days after the ~~historical commission~~ **SPGA** has received a complete application, the historical commission ~~shall~~ **may** submit to the SPGA a written report regarding application of the relevant criteria of this section to the proposed new construction or alteration (Historical Report)

Before acting on a DOD-SP application, the SPGA shall consider both the Conditions Report, if any, and any Historical Report submitted by the historical commission.

The portions of this subsection XXVII-F.5 (and its regulations, if any) requiring the payment of consultant fees are promulgated under the concurrent authority of M.G.L. ~~A.~~ c. 44, § 53G.

- b. *Missing historic exterior architectural features:* When replacing or restoring an historic exterior architectural feature that is missing or has been significantly altered, such as storefronts, porches, or outbuildings, the approved design shall be based upon accurate documentation of such historic exterior architectural feature. If no such documentation is available, then the design shall be compatible in scale, proportions, material, and detail with the historic character of the building, structure or lot.
- c. *Non-historic styles permitted for new construction and additions:* The design of new construction and additions (as distinct from other alterations) within the DOD may reflect non-historic styles so long as they remain compatible with the historic character and scale of the subject historic building, structure, or exterior architectural feature, its lot, and its setting within the DOD, as the case may be. So long as new construction and

additions are so compatible, the SPGA shall not require the reproduction of historic styles, and, on the contrary, shall encourage contemporary styles of architecture to aid differentiation of old from new.

- d. *Staff-level review:* The office of planning and development may shall review and approve for consistency with this section the proposed alteration, demolition or replacement of windows, doors, signs, and/or awnings when such work is unaccompanied by any other work subject to this section over a period of three (3) consecutive years, in which case exclusion 3 shall apply under subsection XXVII-E and no DOD-SP shall be required. Notwithstanding the foregoing, aAny proposed new window or door opening in an external wall of an historic building or structure shall require a DOD-SP.
- e. *Windows:*

- i. No application for demolition, new construction, or alteration involving windows shall be complete without submission by the owner of an inventory of those windows to be affected (Window Inventory), which submission requirement shall not be waived by any City board, commission, or officer.

The Window Inventory shall indicate concisely by photographs, drawings, and/or text: (A) the locations of affected windows; (B) their exterior paint conditions; (C) their frame and sill conditions; (D) their sash conditions (rails, stiles and muntins); (E) their glazing conditions; and (F) their hardware conditions.

The SPGA or the office of planning and development, as the case may be, shall review and may approve on a case-by-case basis work involving windows by determining, first, whether some or all of such affected windows are historic exterior architectural features, as defined under this Section XXVII, and so subject to review, second, the overall condition of each affected window that is an historic exterior architectural feature as "good," "fair", and "poor." and, third and finally, determining the appropriate treatment for such each affected window that is an historic architectural feature under the Secretary's Standards, which are, in order of preference, preservation, rehabilitation, restoration, and, last, reconstruction or replacement.

A "good" window is one that is intact, structurally sound, and performing its intended purpose, such that it needs no repair and only minor or routine maintenance.

A "fair" window is one: (A) with early signs

of wear, failure or deterioration, although the window is generally sound structurally, and is performing its intended purpose; (B) with



failure of at least one part; and/or (C) where replacement of up to 30% of the area of such window or replacement of a defective part is required.

A “poor” window is one: (A) that is no longer performing its intended purpose and cannot be made to do so; (B) that is missing; (C) deterioration and damage affects more than 30% of the area of such window and adjustment and repair is not possible; and (D) that shows signs of imminent failure.

A “good” window shall be preserved, “fair” windows shall be rehabilitated or restored, and “poor” windows shall be reconstructed or replaced.

In approving appropriate treatments, the SPGA or the office of planning and development, as the case may be, shall incorporate into its decision a schedule that lists all of the parts of each window unit and notes their existing conditions by reference to the Window Inventory, or otherwise, and the precise tasks to be performed regarding each window part (Window Schedule).

- ii. Mirrored, tinted or heat-reflective glass or coatings, as well as interior applied or removable muntin bars, shall be prohibited.
- iii. ~~Otherwise, the SPGA or the office of planning and development, as the case may be, shall review and may approve on a case-by-case basis alternatives to historic window materials.~~
- iv. Parts of replacement windows, such as exterior sills, molding and/or casing, exterior frames, and exterior sash windows shall match exactly those of the historic windows whenever reasonably feasible. Otherwise, replacement shall match the historic windows in dimensions, configuration, mode of operation, and other general characteristics, but materials need not be duplicated exactly.
- v. Muntins, whether structural or applied, shall have an exterior, three-dimensional profile, and a width appropriate to the architectural style of the historic building or structure.
- vi. The SPGA, rather than the office of planning and development, shall review and may approve on a case-by-case basis all proposed new window openings in the external walls of an historic building or structure to ensure that they are consistent with historically accurate window arrangements.
- vii. Otherwise, the SPGA or the office of planning and development, as the case may be, shall review and may approve on a case-by-

case basis work involving windows, consistent with the *Guidelines*

*for Preservation and Replacement of historic Wood Windows in Newburyport, dated June 24, 2019, a copy of which is on file with the office of planning and development.*

f. *Doors:*

- i. Replacement doors shall not incorporate leaded or stained glass except when replicating the original appearance of the historic building or structure. If part of a replacement door is glazed or has a window insert, such glazing or inserts shall include true or simulated divided lights. Mirrored, tinted or heat-reflective glass or coatings, as well as interior applied or removable muntin bars, shall be prohibited.
- ii. Otherwise, the SPGA, **rather than the office of planning and development,** shall review and may approve on a case-by-case basis proposed new door openings in the external walls of an historic building or structure to ensure that they are consistent with historically accurate door arrangements.
- iii. For historic buildings and structures other than one-family and two-family buildings, when the historic entrance will no longer be used, such historic entrance shall be left in place and secured, such that the alteration is reversible and the doorway can be reopened in the future with minimal work.

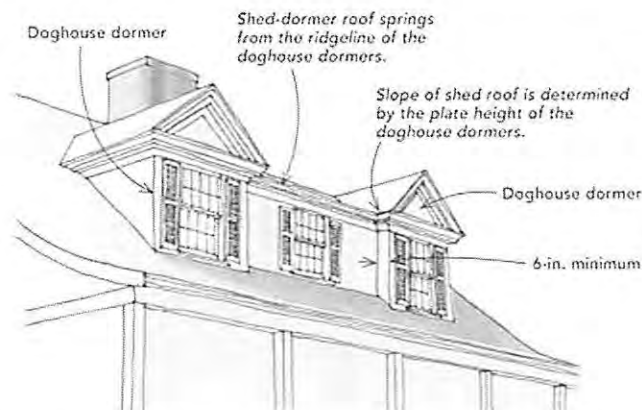
g. *Roofs, dormers and other roof features:* **Rooftop features, such as elevator or stair towers, decks or terraces, dormers, or skylights, shall not damage or obscure character-defining exterior historic features, and should be inconspicuous and minimally visible on the site and from public ways.**

- i. Roofing materials shall be compatible with the character of the DOD, and the overall geometry and proportions of the historic roof shapes and planes of an historic building or structure should be preserved.
- ii. New skylights shall be constructed to minimize their visibility from any street, way, or public body of water, shall not be made of curved plastic or in bubble form, and ~~shall~~**should** follow the plane of the roofline.
- iii. Historic chimneys, including, but not limited to, their historic dimensions and decorative brickwork patterns, shall be retained and repaired, regardless of the existence or usability of interior fireplaces. ~~New or altered dormers shall be permitted if the SPGA finds that they will relate harmoniously to the historic form, proportions, and arrangement of windows and doors of the historic building or structure, and will be constructed in appropriately matching materials.~~

- iv. All dormers shall be set back at least 1 ft., 6 in. (1'-6") from the wall below of the building or structure that is parallel to the ridge of the roof from which the dormer projects, and at least 3 ft., 6 in. (3'-6") from a wall below of the building or structure that is perpendicular to the ridge of the roof from which the dormers project.
- v. No dormer shall extend above the ridge line of the roof from which it projects.
- vi. The roof of any dormer shall not lack slope or otherwise be constructed flat. The roof pitch of a shed dormer may vary according to the pitch of the roof from which it projects, but the roof pitch of a gabled dormer shall match the pitch of the roof from which it projects, except in the case of gambrel or mansard roof.



*(Gabled dormers in the DOD that project from mansard and gambrel roofs.)*



*(Shed dormer with matching gabled dormers at either end)*

- vii. In no case shall windows be allowed in the side walls of dormers.

- viii. **Inset roof decks, created by cutting into a section of roof and inserting a decked opening, shall follow the same setback standards stipulated for dormers.**
- ix. Otherwise, the SPGA shall review and may approve on a case-by-case basis the proposed new construction and alteration of roofs, dormers and other roof features, including, without being limited to, balconies, towers, widow walks, roof decks, and cupolas, **consistent with the Design Guidelines for Roof Dormers, prepared for the City of Cambridge, Massachusetts, Board of Zoning Appeal, and dated 1996, a copy of which is on file with the office of planning and development.**
- h. *Porches and entrance porticos:* The SPGA shall review and may approve on a case-by-case basis proposed new construction and alteration of porches and entrance porticos, including the proposed enclosure or glazing of historic porches and entrance porticos.
- i. *Fences and site walls:* New fences and site walls shall be appropriate in scale, materials and architectural style to the historic buildings and structures located on the same lot, to the lot itself, and to its setting. New fences and site walls shall not substantially block significant views from any street, way, or the Merrimack River, of the primary facades of historic buildings and structures located within the DOD.
- j. *Outbuildings:* When the SPGA approves the replacement of an historic barn or other outbuilding, or of its historic exterior architectural features, the replacement outbuilding or exterior architectural features should be compatible with the historic features in design, material, dimension, sash or panel configuration, detail, and texture.
- k. *Signs and awnings:* In addition to any other regulations of commercial signs under the Newburyport Code: (i) the maximum size for first-floor projected, hanging, window, and wall signs shall be twelve (12) square feet; (ii) projected, hanging, window, and wall signs shall be prohibited on upper floors; (iii) signs may be constructed of painted wood, metal, or stone; (iv) signs constructed of particle board, plastic, or highly reflective metal shall be prohibited (provided, however, that the SPGA or the office of planning and development, as the case may be, may approve the use of carved high-density sign foam or foam board when the finished surface will have a matte [non-glossy] finish); (v) downlit signs shall use shielded bulbs to prevent light scatter; internally-lit signs are not permitted; (vi) all signs and hardware thereto attached to historic masonry shall be attached through mortar; and (vii) any adhesive used for signs affixed to historic buildings or structures shall be preservation quality. The SPGA or the office of planning and development, as the case may be, shall review and may approve on a case-by-case basis the proposed installation of new awnings. Installation of signage that does not comply with this section shall be subject to a variance from the zoning board of appeals in accordance with section X-H.6.

- l. *Access for persons with disabilities* Alterations to an historic building or structure for the purposes of providing accessibility shall provide persons with disabilities the level of physical access to such building or structure that is required under applicable law, consistent with the preservation of historic exterior architectural features of such building or structure, and with the goal of providing the highest level of access with the lowest level of impact on historic integrity.
- m. *Solar energy systems*: Consistent with state laws encouraging the installation of solar energy systems, as defined in M.G.L. ~~A.~~ c. 40A, § 1A, new construction or alteration of solar collectors shall not irreversibly change or alter any historic exterior architectural features, and collector panels and other elements of solar energy systems, such as framing, piping and insulation, shall be installed so as to minimize their visibility from any street, way, or public body of water. Otherwise, the SPGA shall review and may approve on a case-by-case basis the new construction or alteration of solar energy systems while considering the policy of the Commonwealth to encourage the use of solar energy systems and to protect solar access.
- ...

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Councillor Jared J. Eigerman

**In City Council June 24, 2019:**

Motion to remove from Planning & Development by Councillor Eigerman, seconded by Councillor Tontar. So voted. Motion to amend, add “to” on page 8, by Councillor Eigerman, seconded by Councillor Tontar. So voted. Motion to approve as amended by Councillor Eigerman, seconded by Councillor Earls. Roll call vote, 8 yes, 1 no (Zeid), 2 absent (Giunta, Khan). Motion passed.

**In City Council July 15, 2019:**

Motion to approve second reading by Councillor Eigerman, seconded by Councillor Tontar. Roll call vote, 7 yes, 2 no (Zeid, OBrien), 2 absent (Devlin, Giunta). Motion failed. Motion to reconsider by Councillor Zeid, seconded by Councillor OBrien. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed. Motion to table by Councillor Zeid, seconded by Councillor Tontar. So voted.

# CITY OF NEWBURYPORT



IN CITY COUNCIL

**ORDERED:**

November 26, 2018

## AN ORDINANCE TO AMEND CHAPTER 11 OF THE MUNICIPAL CODE REGARDING PARKS AND RECREATION

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

***Add new Section 11-7 – “Fees” to read as follows:***

### **Sec. 11-7 – Fees**

(a) *Definitions.* The following definitions shall apply to the interpretation and implementation of terms used in this section:

- (1) *Group A:* City of Newburyport departments, including Newburyport Public Schools; other non-profit and for-profit education located within the City; and Active Duty Military.
- (2) *Group B:* Recurring use by exclusively youth leagues.
- (3) *Group C:* Recurring use by organizations, including adult sports leagues.
- (4) *Group D:* Recurring use by organizations that do not charge end-users any fee to participate, including pick-up leagues.
- (5) *Group E:* Special events held by individuals or groups with up to twenty-five (25) attendees.
- (6) *Group F:* Special events held by individuals or groups with twenty-six (26) to fifty (50) attendees.
- (7) *Group G:* Special events held by individuals or groups with fifty (50) to two-hundred (200) attendees.
- (8) *Group H:* Special events held by individuals or groups with greater than two-hundred (200) attendees.

Excepting Group A, in the event that an organization or event can fit into more than one category, the most intense category (*i.e.* highest letter) shall apply.

(b) *Fees and charges.* In consultation with the Parks Commission, the City Council establishes the following fees and charges for reserved use of parks and playgrounds; parks and playgrounds not listed below are typically unavailable for reserved use:

	Group/Hourly Rate							
<b>Athletic Fields &amp; Courts</b>	<b>A</b>	<b>B*</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F**</b>	<b>G**</b>	<b>H**</b>
Cashman Park Ballfield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Ballfield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Soccer Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cherry Hill Soccer Field Parcel A	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cherry Hill Soccer Field Parcel B	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park Track	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park Infield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park North Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Woodman Park Multi-use Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bartlet Mall Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Basketball Court	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
G.W. Brown School Playground Basketball	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Woodman Park Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Moseley Woods Lawn	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Founders Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Pepe Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Hawkes Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
<b>Small Parks</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F*</b>	<b>G*</b>	<b>H*</b>
Brown Square	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cornelius Doyle Triangle	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Joppa Park	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Moulton Square	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Washington Park (Eppa Way, Pond Street, High Street)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
270 Water Street (Perkins Park)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Patrick Tracy Square (Tracy Place)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Newburyport Skate Park (Nock Schoolyard)	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
<b>Mid to Large Parks:</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F*</b>	<b>G*</b>	<b>H*</b>
Atkinson Common, Upper (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Atwood Park /Garrison Gardens	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	N/A
Bartlet Mall (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cashman Park (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Clipper City Rail Trail (any segments)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cushing Park (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Inn Street Mall	N/C	N/A	N/A	N/C	N/A	\$25.00	\$100.00	\$200.00
March's Hill	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Market Landing Park	[per Newburyport Waterfront Trust]							
Market Square Bullnose	N/C	N/A	N/A	N/C	N/A	\$25.00	\$100.00	\$200.00



Moseley Woods Pavilion	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
<p>* Up to 50% of the fee may be waived in exchange for in-kind services at the sole discretion of the Parks Commission</p> <p>** Any charitable non-profit registered as a 501c3 may apply for a fee reduction or waiver from the Parks Commission. The Parks Commission is under no obligation to offer any reduction or waiver. Any reduction or waiver is at the sole discretion of the Parks Commission.</p> <p>N/C = no charge, N/A = not applicable</p>								

- a. Pursuant to the Section 11-4(d), the Parks Commission shall include in its annual report to the City Council a list of all permitted activities, with relevant details such as the computed fee, discounts, and waivers, final charged fee, date of the event, and group for each.
- b. Subletting any permit to groups not named on the application is prohibited.
- c. All fees paid are non-refundable unless the scheduled event is cancelled within thirty (30) days of the event.
- d. For Groups B, C, and D (recurring field use), the fee to utilize the Concession Stand/Restroom at Atkinson Common, Lower, shall be fifty dollars (\$50.00) per month. Group E, F, G, and H (special events), may request use of the restrooms for a one-time fee of one-hundred dollars (\$100.00).
- e. A booth or tent shall be no more than one-hundred and twenty (120) square feet in area.
- f. While longer-term special events are generally discouraged, events lasting longer than two (2) weeks may request a fee reduction from the Parks Commission. The Parks Commission is under no obligation to offer any reduction and any reduction shall be offered at the sole discretion of the Parks Commission.

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Councillor Heather L. Shand

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Councillor Sharif I. Zeid

\_\_\_\_\_  
Councillor Jared J. Eigerman

**In City Council July 15, 2019:**

Motion to approve by Councillor Zeid, seconded by Councillor Tontar. So voted. Motion to amend, add “athletic” before “fields” in Mid to Large Parks section, by Councillor Tontar, seconded by Councillor Eigerman. So voted. Motion to approve as amended by Councillor Zeid, seconded by Councillor Tontar. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.

# CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

June 10th, 2019

## AN ORDINANCE RELATING TO THE RECORDING OF NEWBURYPORT PLANNING BOARD AND NEWBURYPORT ZONING BOARD OF APPEALS MEETINGS

**WHEREAS**, The City of Newburyport values transparency and openness of government and its proceedings

**WHEREAS**, Recording of Planning Board and Zoning Board of Appeals meetings will provide for a substantially higher level of transparency and accessibility to proceedings for residents and taxpayers. Such recordings also create official record of the proceedings and can serve to augment written minutes.

**WHEREAS**, the City of Newburyport's Code of Ordinances Section 2-63 – Member Holding Adjudicatory Hearing currently consists of language adopted from the MGL CH 39, Sec 23D related to the use of evidence such as video, audio or a transcript. Section 2-63 defines how members may vote in matters when absent from attending hearings through the opportunity to review all evidence received at the missed session. Recording meetings will help facilitate intention of Section 2-63;

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

- Chapter 2** Administration
- Article III.** Boards, Committees, Commissions
- Division 1.** Generally

That the following new section shall be inserted:

### **Section 2-65. Recording of Planning Board and Zoning Board of Appeals Meetings**

All Planning Board and Zoning Board of Appeals meetings shall be video and/or audio recorded in a manner prescribed by the City Clerk. Such recordings shall be made publicly available electronically (via the City's website or other appropriate channels) no more than 30 days following the meeting in a manner to be determined by the City Clerk. Recordings shall not be materially altered or edited prior to distribution; the prior statement shall not be construed as prohibiting the addition of screens providing basic information about the meeting, overlays indicating the date/time/meeting name, or overlays indicating who is speaking.

In the event that a duly called Executive Session is called, recording shall be paused. Recording shall be immediately resumed once Executive Session has ended unless the only action taken following Executive Session is adjournment.

All recordings shall be retained, at minimum, for three (3) years following the meeting date excepting any recording which contains subject matter that becomes the subject of a) an appeal or b) litigation. In such case of appeal or exception, the recording shall be held for 3 years following the adjudication of any such appeal or litigation.

This requirement shall become effective for all Planning Board and Zoning Board of Appeals meetings dated on or after 1/1/2020.

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Councillor Sharif I. Zeid

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Councillor Heather L. Shand

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Councillor Afroz Khan

**In City Council July 15, 2019:**

Motion to approve first reading (comm vote 2-0) by Councillor Vogel, seconded by Councillor Zeid. Roll call vote, 9 yes, 2 absent (Devlin, Giunta). Motion passed.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

August 19, 2019

**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.**

~~Commencing with the inauguration of the mayor in January 2014, and continuing thereafter, the annual salary of the mayor shall be ninety-eight thousand dollars (\$98,000.00), plus three thousand dollars (\$3,000.00) annual expense allowance.~~

A) ~~Commencing in January 2020, and continuing thereafter, the annual salary of the Mayor shall be one hundred and eighteen thousand, five hundred and five (\$118,505.00)~~ one hundred and two thousand, seven hundred and fifty dollars (\$102,750.00), plus three thousand dollars (\$3,000.00) annual expense allowance. As of January 1, 2021 and each year thereafter, said annual salary shall be adjusted by the Consumer Price Index.

B) ~~Commencing with the inauguration of the Council in January 2020, and continuing thereafter, the annual salary of each Councillor, except the President of the City Council, shall be six thousand (\$6,000.00). Commencing with the inauguration of the Council President in January 2020 the annual salary of the Council President shall be seven thousand, two hundred (\$7,200.00). As of January 1, 2021 and each year thereafter, said annual salary of the Council and the Council President shall be adjusted by the Consumer Price Index.~~

- 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 (\$3,000.00). Commencing on January 1, 2020 the annual salary of the Vice-Chair shall be three thousand, six hundred (\$3,600.00). As of January 1, 2021 and each year thereafter, said annual salary of each School Committee member and the Vice-Chair shall be adjusted by the Consumer Price Index.

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Councillor Barry N. Connell

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Councillor Charles F. Tontar

CITY OF NEWBURYPORT



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IN CITY COUNCIL

ORDERED:

AUGUST 19, 2019

**A ZONING ORDINANCE REGARDING KENNEL/ANIMAL BOARDING USE**

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

**THAT** existing Section V-D. – TABLE OF USE REGULATIONS be amended as follows, with deletions ~~double stricken through and italicized~~, and additions double-underlined and italicized:

*[The remainder of this page is left blank, intentionally.  
The Table appears in landscape orientation, on the following page.]*

V-D - Table of use regulations.

4. BUSINESS																
USE	NUM	CON	HSR-A	HSR-B	R-1	R-2	R-3	B-1	B-2	B-3	I-1	I-1B	I-2	M	WMD	WMU
<u>Kennel/Animal Boarding</u>	<u>424</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>SP Planning Board</u>	<u>NP</u>	<u>NP</u>	<u>SP Planning Board</u>	<u>SP Planning Board</u>	<u>SP Planning Board</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>

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Councillor Joseph H. Devlin