

COMMITTEE ITEMS

August 13, 2018
Committee on Budget & Finance

- **TRAN023_07_16_18** – Paid Parking Fund \$30K to Vehicle/Equip Purchase \$30K
- **ORDR050_07_16_18** – CPC FY2019 Recommended Appropriations
- **ORDR038_05_29_18** – Mello Contract.



City of Newburyport

FY 2019

BUDGET TRANSFER REQUEST

Department: Parking
Submitted by: Richard B. Jones, Parking Clerk **Date Submitted:** 7/16/2018

Transfer From:

Account Name	<u>Paid Parking Fund</u>	YTD Bal:	<u>\$ 1,101,388.95</u>
Account Number:	<u>2739-59600</u>	Category:	<u>\$ -</u>
Amount:	<u>\$30,000.00</u>	Trans I/O:	<u>\$ -</u>
Why are Funds Available:	<u>This fund is a receipts reserved for appropriation account. Funding sources include parking fees, violations and parking permits.</u>		

Transfer From:

Account Name	<u>Vehicle/Equip Purchase</u>	YTD Bal:	<u>\$ -</u>
Account Number:	<u>New Account</u>	Category:	<u>\$ -</u>
Amount:	<u>\$30,000.00</u>	Trans I/O:	<u>\$ -</u>
Why are Funds Available:	<u>To purchase a 2018 Chevy Volt parking enforcement vehicle, which will be outfitted with mobile license plate recognition (LPR) equipment.</u>		

Donna D. Holaday, Mayor
 Ethan R. Manning, Auditor
 City Council Approval: (Stamp)

Donna D. Holaday
Ethan R. Manning

Date: 7/10/18
 Date: 7/10/18



CITY OF NEWBURYPORT

MASSACHUSETTS
CITY CLERK'S OFFICE
NEWBURYPORT CITY HALL
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
TEL: 978-465-4407 • FAX: 978-462-7936

RICHARD B. JONES
CITY CLERK

July 12, 2018

President and Members of the City Council
Newburyport City Council
60 Pleasant Street
Newburyport, MA 01950

RE: Transfer 023

Dear President and Members of the City Council,

The transfer of monies is needed to purchase a Chevy Volt EV vehicle which will be used to enforce under the new parking system changes. As you know, we have changed the kiosks from 'pay and display' to 'license-plate-based' and we will enforce through handhelds and license plate readers. The equipment that will be used to enforce needs to be on a 'hybrid' or 'EV' vehicle similar to the Chevy Volt.

Thank you,


Richard

Richard B. Jones
City Clerk
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

978.465.4407

**NEWBURYPORT COMMUNITY PRESERVATION COMMITTEE
RECOMMENDATIONS FOR FY19 APPROPRIATIONS**

The Newburyport Community Preservation Committee recommends that the City Council appropriate **\$1,214,445** from Community Preservation Fund Revenues for the projects and bond payments, in the amounts, in the categories, and subject to the conditions hereinafter described.

The following CONDITIONS are common to recommended projects #1 through #15:

- A. Each recipient of funds is required to submit to the CPC a written report on the status of the project by each October 15, January 15, April 15 and July 15 following appropriation and until final completion of the project.
- B. If a project is not completed within twelve (12) months of appropriation, the grantee must submit a written request to the CPC for an extension of the grant. Otherwise, funds may be subject to rescision and returned to Community Preservation Fund Reserves (applicable to appropriations, not to reservations).
- C. Full funding is conditioned upon the receipt of state matching funds, estimated to be 11.5% of local revenue, expected in November 2018.

Attached are:

- 1. One page summary spreadsheet of all CPC recommendations.
- 2. Recommendations for appropriation numbers 1-20, with summaries for each.
- 3. Criteria for project evaluation adopted and published by the CPC.

Estimated Community Preservation Fund Revenues available for appropriation or reservation in FY 2019 total \$1,492,491.93. This figure includes estimated receipts of the local CPA surcharge through fiscal year end 2018, accumulated interest, the anticipated 11.5% state matching funds expected to be received in November 2018, current uncommitted and unreserved funds, and the returned funds from completed and closed-out projects.

Applications for all projects are available for review in the Office of Planning & Development.

Respectfully submitted by:

Community Preservation Committee Members

Michael Dissette, Chair	Jane Healey, Vice Chair
Paul Healy	Mark Rosen
Daniel Koen	Steven Sawyer
Don Little	Sarah White

*ACOTW
DOF / CT/PC*

*roll call
10/17/18
1 PhJ BU*

**PROJECT NO. 1
NEWBURYPORT AFFORDABLE HOUSING TRUST**

The CPC recommends the appropriation of \$150,000 from the FY 2019 Estimated Revenues to the Newburyport Affordable Housing Trust (NAHT) to be placed in its Affordable Housing Trust Fund (the "Fund") so the NAHT may continue its efforts to support, preserve, and develop affordable housing for low and moderate income households with the following condition:

- Funds appropriated from the Community Preservation Fund shall be used only for community housing purposes consistent with, and meeting the requirements of the Community Preservation Act, M.G.L. c.44B.

The CPA category for this project is Community Housing.

Project Summary: The NAHT has been entrusted by the community to watch over the Fund and judiciously allocate funding to projects and initiatives that promote affordable housing in the City, educate the community on the benefits of having a diverse housing stock, and advocate for both public and private housing development projects that include affordable units. A portion of this funding, \$100,000, will allow the NAHT to earmark funding so that the Trust may financially contribute to the redevelopment of the Brown School in order to encourage more affordable units and deeper affordability in this project. The remaining \$50,000 of the funding will be used to establish a new grant program administered by the Trust. This program will be for non-profit entities who own and/or manage affordable residential units who need funding for costs associated with turnover of these units when old tenants move out and new ones move in. Grants are anticipated to be relatively small, approximately \$5,000 awards. The Trust will create an application, establish eligibility criteria, market the program, and evaluate applicants on a rolling basis.

**PROJECT NO. 2
KELLEHER GARDENS COMMUNITY BUILDING GENERATOR**

The CPC recommends the appropriation of \$13,000 from the FY 2019 Estimated Revenues to the Newburyport Housing Authority to purchase and install a generator for the Kelleher Gardens Community Building.

The CPA category for this appropriation is Community Housing.

Project Summary: The Housing Authority is in the process of renovating the existing community center building and is seeking funding for the purchase and installation of a generator that will fully power the structure in the event of a power outage. The Formula Funding as awarded by the State may not be used for generators; housing authorities cannot use capital funds for generators. There are few, if any, alternative funding sources besides the CPA for this purchase. The generator, once installed, will benefit the residents at Kelleher Gardens – the only Housing Authority property that does not have an emergency generator – but will also be an additional resource for the entire community in the event of a citywide electrical emergency.

**PROJECT NO. 3
YWCA WOMEN'S RESIDENCE**

The CPC recommends the appropriation of \$20,000 from the FY 2019 Estimated Revenues to the YWCA Greater Newburyport to refurbish the second floor bathroom and replace communal furniture at the women's residence at 13 Market Square.

The CPA category for this appropriation is Community Housing.

Project Summary: The YWCA acquired this structure in 1890 and since then has provided affordable housing for women. Today, it continues to provide affordable housing for twelve (12) women and may be the country's longest.

continually operated affordable housing program. The YWCA is committed to keeping the rents affordable to the women who reside at 13 Market Street; however, the low rents do not provide any additional reserves to cover the cost of major capital repairs or improvements. The CPA funding will be used in support of this housing for plumbing, new fixtures, new flooring, repair and painting of the walls, and replacement of furniture in the common areas that is worn and no longer comfortable due to its heavy use and age.

**PROJECT NO. 4
SLATE ROOF REPLACEMENT AT THE CUSTOM HOUSE MARITIME MUSEUM**

The CPC recommends the appropriation of \$101,914 from the FY 2019 Estimated Revenues to the Newburyport Maritime Society, Inc., to replace the failing slate roof at the Custom House Maritime Museum. This structure is protected by a Preservation Restriction.

The CPA category for this appropriation is Historic Preservation.

Project Summary: The existing slate roof is failing and thus endangering the artifacts located within the structure itself creating an emergency situation. The Museum has contracted with The Heritage Company of East Waterboro, Maine, who performed restoration work on the building in 2013 and 2018. This project includes removal and disposal of existing slate and membranes (except for recently installed slate and flashing around the observation deck), installation of new slate and copper flashing, and installation of snow guards on both sides of the building to protect pedestrians from falling ice and snow.

**PROJECT NO. 5
NHS EXTERIOR WOODWORK RESTORATION PROJECT – PHASE III**

The CPC recommends the appropriation of \$59,040 from the FY 2019 Estimated Revenues to the Newburyport Public Schools for the continuation of the NHS exterior woodwork restoration project with the following condition:

- The applicant shall finalize the execution of a Preservation Restriction on the exterior façade of the structure.

The CPA category is Historic Preservation.

Project Summary: This application is a continuation of Phase III of this project and will focus on the rehabilitation of the cupola. Age and exposure to weather have caused a variety of issues with the exterior woodwork, necessitating a well-planned historic restoration guided by *The Secretary of the Interior's Standard for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. The applicant is nearing completion of the required Preservation Restriction, which will protect the exterior appearance of the structure in perpetuity.

**PROJECT NO. 6
CUSHING HOUSE LAUNDRY YARD/COURTYARD – PHASE I**

The CPC recommends the appropriation of \$19,617 from the FY 2019 Estimated Revenues to the Historical Society of Old Newbury to restore and rehabilitate the cobble courtyard and laundry yard at the Cushing House. This property is protected by a Preservation Restriction.

The CPA category for this project is Historic Preservation.

Project Summary: The Historical Society of Old Newbury is undertaking a significant project, guided by a comprehensive preservation plan funded through Massachusetts Historical Commission's Preservation Projects Fund, to restore the Cushing House courtyard and laundry yard. Currently, much of the courtyard is unsafe for public access due to change in grade, uneven cobbles that have been subject to two centuries of freeze and thaw, and heavy moss which obscures many of the cobbles in one area of the yard. The cistern has sunken, and although

covered by rough stones and bricks, it is a tripping hazard. Phase I includes the following scope of work: The existing lawn in front of the shed will be removed and prepared for renovation; the cobbles around the perimeter of the laundry yard and in the storage area at the end of the building adjacent to Fruit Street will be removed, cleaned, and salvaged; the brick in the walks will be removed and salvaged; the entire area will be graded and drainage issues addressed; and the recycled historic granite will be re-installed at the storage area and ramp to the alley.

**PROJECT NO. 7
OPEN SPACE RESERVE FUND**

The CPC recommends the reservation of \$200,000 from the FY 2019 Estimated Revenues to the Community Preservation Open Space Reserve Fund. Use of reserve funds are subject to future CPC recommendation and City Council appropriation for specific projects.

The CPA category for this reservation is Open Space.

Project Summary: This recommendation is in response to an application from the City's Open Space Committee indicating there are potential opportunities for open space acquisitions and/or conservation restrictions of land. The Open Space Committee requested a reserve of \$150,000; however, given the amount of available funding in this grant cycle and the reduced amounts recommended in past cycles, the CPC voted to increase this request by \$50,000 for a total recommended amount of \$200,000 for the reserve account. As open space acquisitions arise, supplemental information will be submitted to both the CPC and the City Council as individual projects enter the public phase and are presented for project specific funding from the reserve.

**PROJECT NO. 8
MASTER PLAN FOR LOWER ATKINSON COMMON**

The CPC recommends the appropriation of \$25,000 from the FY 2019 Estimated Revenues to the Newburyport Parks Department to create a Master Plan for the Lower Atkinson Park that focuses on improving safety in the parking area along Merrimac Street.

The CPA category for this reservation is Recreation.

Project Summary: The Parks Department has long planned to renovate all non-field space at the Lower Atkinson Common along Merrimac Street, long used by the Pioneer League for all of its games and the High School for girls' softball. The Department will hire a consultant to create a Master Plan for this area that will reconfigure the parking area to improve safety and lay out a larger project to renovate the non-field areas of the park including the playground, basketball area, and clubhouse. This area experiences a high number of speeding vehicles along that stretch of road creating a hazard for pedestrians and other drivers and the goal of this Master Plan will be the development of a 'road map' that the City may follow and implement the identified improvements over the coming years.

**PROJECT NO. 9
SPECIMEN TREES FOR BARTLET MALL**

The CPC recommends the appropriation of \$11,760 from the FY 2019 Estimated Revenues to the Newburyport Parks Department purchase 10 Liberty Elm trees to replace 10 existing trees that are hazardous, damaged, or invasive at the Bartlet Mall.

The CPA category for this reservation is Historic Preservation.

Project Summary: The Parks Department is working on a larger restoration project at the Mall that includes the restoration of an Allée of Elms along the Greenleaf and Auburn Street sides of the park in accordance with an 1890 planting plan by renowned landscape architect Charles Eliot. The Parks Department has purchased a number of Liberty Elms, which are being grown for future planting at the Mall. These trees will have a two-inch trunk caliper at time of planting. CPC funding for this proposal is to purchase ten (10) larger trees with a four-inch trunk caliper that can help compensate for the 10 tree removals by offering a more immediately noticeable height and canopy.

**PROJECT NO. 10
GATEWAY TREES – PHASE 2B**

The CPC recommends the appropriation of \$35,800 from the FY 2019 Estimated Revenues to the Newburyport Tree Commission to beautify and preserve the historic character of High Street with twenty (20) new trees.

The CPA category for this appropriation is Historic Preservation.

Project Summary: The Newburyport Tree Commission, working with the Friends of Newburyport Trees (FoNT), has initiated a project called GATEWAY, to improve and beautify the principal access roads into Newburyport by planting site specific street tree species, carefully vetted by Tree Commission arborists, in the public right-of-way. This funding will be used for site preparation, planting of the trees, watering for two seasons, and annual mulching and pruning where needed.

**PROJECT NO. 11
OPEN SPACE AND RECREATION PLAN UPDATE**

The CPC recommends the appropriation of \$30,000 from the FY 2019 Estimated Revenues to the City of Newburyport Office of Planning & Development to complete an update of the City's soon-to-expire Open Space and Recreation Plan.

The CPA category for this appropriation is Open Space.

Project Summary: The City's existing Open Space and Recreation Plan approval expires in 2019. While certain portions of the plan update can be completed with staff and volunteer resources, limited staff time as well as the complexity and uncertainty involved with coordinating volunteer work, would likely impact the timeframe for the update. The CPC funding will enable the City to complete the required plan, as well as the required public participation process, in advance of the 2019 season for state grants associated with both open space and recreation.

**PROJECT NO. 12
RESTORATION OF SWAN FOUNTAIN AT BARTLET MALL**

The CPC recommends the appropriation of \$10,000 from the FY 2019 Estimated Revenues to the City of Newburyport Parks Department to restore the Bartlet Mall fountain, which has fallen into disrepair and appears to be shifting on its foundation.

The CPA category for this appropriation is Historic Preservation.

Project Summary: The Swan Fountain serves as a centerpiece for the Bartlet Mall Park and Frog Pond which makes up the City's most visually prominent park at a gateway to the downtown. Home to Essex County Superior

Courthouse, the Courthouse and Park are listed in the National Historic Register. The Parks Department will use CPA funding to return the fountain to full functionality in a three-phase project: (1) Hire a consultant to carry out an assessment to understand the scope of the project and offer solutions with costs for the City to consider; (2) Prepare design construction documents for contractors to bid and carry out the repairs; and (3) Project construction. This project, like the specimen tree project, number 9 above, is a piece of the larger initiative to restore the Bartlet Mall.

**PROJECT NO. 13
CLIPPER CITY RAIL TRAIL EDIBLE AVENUE**

The CPC recommends the appropriation of \$7,600 from the FY 2019 Estimated Revenues to the Friends of Newburyport Trees to landscape an 8,600 square foot area along the Clipper City Rail Trail between High and Parker Streets, with native trees, shrubs, and plants, all of which have edible berries, leaves, or roots.

The CPA category for this appropriation is Recreation.

Project Summary: With the support of the Parks Commission, the Friends of Newburyport Trees, will plant native trees, shrubs, and plants, all of which have edible berries, leaves, or roots, install educational signage (similar to those installed at the Joppa sea wall) that will include descriptions and locations of plants, and create a brochure with additional information that will be available as part of the installation. All of the plants chosen for this project will be native to the local area and, in fact, many species were growing in this location prior to rail trail construction but were removed to make way for the trail.

**PROJECT NO. 14
LITTLE RIVER NATURE TRAIL KIOSKS**

The CPC recommends the appropriation of \$8,500 from the FY 2019 Estimated Revenues to the Parker River Clean Water Association to construct and install two informational kiosks along the Little River nature trail system to provide a single resource that visitors can consult before entering this crucial habitat area.

The CPA category for this appropriation is Recreation.

Project Summary: CPA funding will be used to construct two kiosks, one to be placed on public land adjacent or on the end of Colby Farm Road at the Marlene Schroeder Nature Trail Head and the second to be placed behind the CVS/Gas Station Complex on Storey Avenue at the Randal J. Millen Nature Trail Head. The Association will coordinate with the City for installation of the kiosk on public land and will work with organization volunteers on the installation of the second kiosk, which will be on private land that has a dedicated access easement to the Essex County Greenbelt Conservation Area that lies behind the commercial complex.

**PROJECT NO. 15
FULLER FIELD TRACK RENOVATION – PHASE 2**

The CPC recommends the appropriation of \$125,000 from the FY 2019 Estimated Revenues to the City of Newburyport Parks Department to be put toward the continued renovation of the track and field facility at the Bradley Fuller Athletic Field on Low Street.

The CPA category for this appropriation is Recreation.

Project Summary: Phase 1 of this project saw construction of a new, collegiate level track and multipurpose sports field at the existing track facility on Low Street. Phase 2 got underway with the installation of a new fence that allows gating off the facility in order to charge admissions for events. Continuation of the project includes 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. Future phases include improving the parking and drop off area, installing new concrete walkways and lighting, and installing a synthetic turf infield.

**PROJECT NO. 16
CITY HALL BOND DEBT PAYMENT**

The CPC recommends the appropriation of \$153,920 from the FY 2019 Estimated Revenues to the City of Newburyport for the twelfth annual payment of interest and principal on the City Hall Restoration Bond.

The CPA category is Historic Preservation.

Project Summary: In December 2005, the City Council authorized issuance of a \$1,950,000 bond against future CPA revenue for the City Hall Restoration Project. Work on City Hall is now complete, though debt payments will continue through 2019. The CPC is advised that it is necessary to appropriate the debt service payments annually.

**PROJECT NO. 17
OPEN SPACE ACQUISITIONS BOND DEBT PAYMENT**

The CPC recommends the appropriation of \$95,680 from the FY 2019 Estimated Revenues to the City of Newburyport for the twelfth annual payment of interest and principal on the Open Space Acquisitions Bond.

The CPA category is Open Space.

Project Summary: In December 2005, the City Council authorized bonding up to \$1,775,000 against future CPA revenue for open space acquisitions, including the Cooper North Pasture and the former Guilford properties. Under this authorization, the City Treasurer conservatively borrowed \$1,275,000 to fund the acquisition costs. Debt payments on the bond will continue through 2019. The CPC is advised that it is necessary to appropriate the debt service payments annually.

**PROJECT NO. 18
NEWBURYPORT HIGH SCHOOL WORLD WAR MEMORIAL STADIUM MULTI-PURPOSE FIELD PROJECT BOND DEBT
PAYMENT**

The CPC recommends the appropriation of \$123,080 from the FY 2019 Estimated Revenues to the City of Newburyport for the third annual payment of interest and principal on the World War Memorial Stadium Multi-Purpose Field Project Bond.

The CPA category is Recreation.

Project Summary: In April 2014, the City Council authorized bonding up to \$1,500,000 against future CPA revenue for the renovation and improvement of the Newburyport High School's World War Memorial Stadium athletic field. Debt payments on the bond will continue through 2030. The CPC is advised that it is necessary to appropriate the debt service payments annually.

**PROJECT NO. 19
CHERRY HILL PARCEL B SOCCER FIELD IMPROVEMENT PROJECT BOND DEBT PAYMENT**

ORDR050_07_16_18

The CPC recommends the appropriation of \$12,540 from the FY 2019 Estimated Revenues to the City of Newburyport for the third annual payment of interest and principal on the Cherry Hill Parcel B Soccer Field Improvement Project Bond.

The CPA category is Recreation.

Project Summary: In April 2014, the City Council authorized the bonding of up to \$134,000 against future CPA revenue for the redesign and construction of the Cherry Hill Parcel B athletic field. Debt payments on the bond will continue through 2030. The CPC is advised that it is necessary to appropriate the debt service payments annually.

**PROJECT NO. 20
ADMINISTRATIVE COSTS**

The CPC recommends the appropriation of \$12,000 from the FY 2019 Estimated Revenues to fund the Community Preservation Committee's anticipated administrative costs. These costs include a stipend for the CPC administration liaison position in the Office of Planning & Community Development, annual membership dues in the statewide community preservation coalition, and other recurring expenses including note taking at meetings, legal advertising, and city solicitor review of legal documents when necessary. Excess funds remaining in this account at the end of the fiscal year revert to the general Community Preservation Fund.

The CPA category for this appropriation is Administration.

COMMUNITY PRESERVATION COMMITTEE – EVALUATION CRITERIA

The Newburyport Community Preservation Committee gives preference to proposals which address as many of the following general criteria as possible:

1. Eligible for Community Preservation Act (CPA) funding according to the requirements described in the CPA legislation (Chapter 44B of Mass. General Laws).
2. Consistent with the Master Plan, Open Space and Recreation Plan, Land Use and other planning documents that have received public scrutiny and input.
3. Preserve and enhance the essential character of the city.
4. Protect resources that would otherwise be threatened.
5. Serve more than one CPA purpose or demonstrate why serving multiple needs is not feasible.
6. Demonstrate practicality and feasibility, and that the project can be implemented within budget and on schedule.
7. Produce an advantageous cost/benefit value.
8. Leverage additional public and/or private funds (eg. qualify the project for additional grants from other sources) or receive partial funding from other sources and/or voluntary contributions of goods or services.
9. Preserve or improve utility of currently owned city assets.
10. Receive endorsement by other municipal boards or departments and broad-based support from community members.

CATEGORY SPECIFIC CRITERIA

The Community Preservation Act funds three key community interests: open space, historic preservation, and affordable housing. Public recreation projects may also be funded.

1. **Open Space** proposals which address as many of the following specific criteria as possible will receive preference for funding:
 - Permanently protect important wildlife habitat, particularly areas that include:
 - locally significant biodiversity;
 - variety of habitats with a diversity of geologic features and types of vegetation;
 - Endangered habitat or species of plant or animal.
 - Preserve active agricultural use.
 - Provide opportunities for passive recreation and environmental education.
 - Protect or enhance wildlife corridors, promote connectivity of habitat or prevent fragmentation of habitats.
 - Provide connections with existing trails, protected open space or potential trail linkages.
 - Preserve scenic views.
 - Border a scenic road.
 - Protect drinking water quantity and quality.
 - Provide flood control/storage.
 - Preserve and protect important surface water bodies, including streams, wetlands, vernal pools or riparian zones.
 - Buffer for protected open space, or historic resources.

2. **Historic Preservation** proposals which address as many of the following criteria as possible will receive preference for funding:
 - Protect, preserve, enhance, restore and/or rehabilitate historic, cultural, architectural or archaeological resources of significance, especially those that are threatened.
 - Protect, preserve, enhance, restore and/or rehabilitate city-owned properties, features or resources of historical significance.
 - Protect, preserve, enhance, restore and/or rehabilitate the historical function of a property or site.
 - Demonstrates a public benefit.
 - Ability to provide permanent protection for the historic resource.

3. **Affordable Housing** proposals which address as many of the following criteria as possible will receive preference for funding:
 - Contribute to the goal of 10% affordability as defined by chapter 40B of Mass. General Laws.
 - Promote a socioeconomic environment that encourages a diversity of income.
 - Provide housing that is harmonious in design and scale with the surrounding community.
 - Intermingle affordable and market rate housing at levels that exceed state requirements for percentage of affordable units pursuant to chapter 40B.
 - Ensure long-term affordability.
 - Address the needs of range of qualified household, including very low, low and low-to moderate income families and individuals.
 - Provide affordable rental and affordable ownership opportunities.
 - Promote use of existing buildings or construction on previously-developed or city-owned sites.
 - Convert market rate to affordable units.

4. **Recreation** proposals which address as many of the following criteria as possible will receive preference for funding:
 - Support multiple recreation uses.
 - Serve a significant number of residents.
 - Expand the range of recreational opportunities available to city residents of all ages.
 - Jointly benefit Conservation Commission and Parks Commission initiatives by promoting recreation, such as hiking, biking, and cross-country skiing.
 - Maximize the utility of land already owned by city (e.g. school property).
 - Promote the creative use of railway and other corridors to create safe and healthful non-motorized transportation opportunities.

BT

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 29, 2018

THAT, The CITY COUNCIL of the City of Newburyport hereby approves the contract by and between the City of Newburyport and G. Mello Disposal Corp. of 95 Tenney Street, Georgetown, MA for a five-year collection and hauling agreement commencing on July 1, 2018 and terminating on June 30, 2023.

Said contract is attached hereto and incorporated herewith and marked 'Exhibit A'.

5

Councillor Barry N. Connell

CITY OF NEWBURYPORT

Contract Agreement
with
G. Mello Disposal Corp.
95 Tenney St.
Georgetown, MA 01833

July 1, 2018 through June 30, 2023
Five-year Collection and Hauling

(full text available in the Clerk's Office)

ATTACHMENT A

Municipality Liquidated Damages

- | | |
|---|-----------------------------|
| 1. Failure to immediately pick up material spilled by Contractor during collection. | \$250.00 per occurrence |
| 2. Failure to promptly pick up waste spilled during haul in Municipality or out-side Municipality boundaries if the Municipality receives a complaint of such spill | \$500.00 per occurrence |
| 3. Willful mishandling of waste barrels/receptacles or recycling containers. | \$100.00 per occurrence |
| 4. Failure to place waste barrels/receptacles in an upright position at approximately the same location upon emptying or failure to place recycling containers upside-down at approximately the same location upon emptying. | Verbal/Warning |
| 5. Placement of barrels, recycling bins, or lids such that they obstruct road, driveways or mailboxes. | \$50.00 per occurrence |
| 5. Following notice of complaint by municipality, failure to collect waste from an occurrence specific location on the same day as the regular collection Route or by 9:00 am. Of the following day if so authorized by the Municipality. | \$150.00 per occurrence |
| 7. Failure to collect appropriate materials properly set out from two (2) or more residents on the same day of the regular Collection Route, or by 9:00 am. Of the following day if so authorized by the Municipality. | \$100.00 per occurrence |
| 8. Failure to pick up from any single address more than one time in a given month or three time in a six month period when the driver or Contractor is at fault, requested specifically by the Municipality. | \$100.00 per missed pick up |
| 9. Continued violation of traffic laws, ordinance, regulation or policy during collection and haul, after written notice to correct from the Municipality. | \$500.00 per occurrence |
| 10. Beginning any single collection route prior to 7:00 am. Or finishing after 5:00 pm. Without the prior consent of the Municipality | \$500.00 per day |
| 11. Use of unmarked on uninspected collection vehicles. | \$500.00 per occurrence |
| 12. Failure to clean vehicle or conveyances as provided for in this Contract. | \$250.00 per occurrence |
| 13. Failure to repair or neglect barrels, carts and bins damaged by Contractor at its sole cost and expense within seventy two (72) hours of receiving notice from the City of Newburyport. | \$200.00 per occurrence |

14. Collecting solid waste from bags/barrels that do not comply with municipal policies, rules, regulation, ordinances, law etc.	\$500.00 per occurrence
15. Disposing of as trash, those recyclable materials appropriately set out for recycling, unless dictated by Municipality and MassDEP.	\$1,000 per occurrence \$5,000 per truckload
16. Failure to report a G. Mello truck accident within 24 hours.	\$100.00 per occurrence
17. Failure to maintain direct phone links between the municipality and the lead trash and recycling drivers, as well as their supervisor. Also failure to maintain direct phone or radio contact between all vehicles.	\$250.00 per occurrence
18. Failure or neglect to furnish a schedule or revise schedule of collection and disposal.	\$1,000 per occurrence
19. Delivering any waste other than described in this Contract to disposal sites that will be billed to the City.	\$5,000 per ton
20. Failure to submit weight slips for materials not collected through this Contract, if not rectified in 10 days	\$50.00 per missing slip
21. Submitting weight slips for materials not collected through this Contract, if not rectified in 10 days	\$5,000 per occurrence
22. Failure to correct billing error within one week after notification by Municipality.	\$100.00 per occurrence
23. Failure to maintain 1-800 or local phone service for service recipient.	\$250.00 per 4 hours out of service
24. Use of collection vehicle dedicated to the Municipality for the collection and/or haul of waster other than provided for under the provision of this Contract	\$5,000 per occurrence
25. Failure to report & cleanup a truck leakage.	\$100 per occurrence
26. Failure to leave non-compliance/non collection notices for Trash that is over the limit	\$50 per occurrence
27. Failure to leave non-compliance/non collection notices for Trash comingled with recycling or for unacceptable recycling.	\$50 per occurrence
28. Failure to have a small truck available to get down tight streets and to be available within twenty four (24) hours.	\$250 per occurrence
29. Failure to pay Educational and Culture Funding (See Section 3-M and See Section 3-Q)	Deducted from Payment

ALL DAMAGES REFERRED TO ABOVE MAY BE DEDUCTED BY THE MUNICIPALITY FROM ANY PAYMENT THEN OR THEREAFTER DUE TO THE CONTRACTOR.

ATTACHMENT B
*** Municipality Specifications**
City of Newburyport

	<u>Newburyport</u>
Definition of Eligible Residences	1 to 6 family Households growth no more than 5%, per year,
# of Eligible Residential Units	8,300
# of Businesses served	250 – CBD contractor to provide one 35 gal cart to each business
FY 18 contract cost	\$744,876
Population	18,001
Roadway Lanes	144
Sq Miles (Area)	10.58
Solid Waste Tonnage (CY17)	5,350
SS Recycling Tonnage(CY17)	2,502
Recycling Contamination	< 10%
Frequency of Service - Trash	Weekly – 5 days
Frequency of Service – Recycling	EOW, 5 days
Frequency of Service – CBD (Central Business District)	Friday pickup for Trash and Recycling
Trash Limit – currently, subject to change	3 35 gallon containers or 5 bags up to 96 gallons
Collection type – trash,	currently manual, subject to change
Collection type – recycling, currently	Automated single stream
Carts Needed (not new)	Trash-No, Recycling-Yes
Bulky waste	One per HH per week limit. Sticker required, curbside, Muni sells – keeps \$
Yard Waste Collection	5 Saturday collections –Municipality Compost Site or designated drop off
Christmas Tree collection	Weekly pickup in January, Municipality to designate drop off
E-Waste	NA
White Goods,	Contractor services roll-off, Resident drop off
Scrap Metal	Contractor picks up monthly at no charge
Stickers	Contractor provides Bulk Waste, and Sorry stickers
Enforcement	Contractor and muni
Education funding	\$10,000.00 annually
Cultural funding	\$4,000.00 annually
Customer Service	Contractor
Trash Disposal	Facility within 25 miles
Observed Holidays	CBD collection is not delayed unless holiday falls on Friday
	New Year's Day
	Memorial Day
	Fourth of July
	Labor Day
	Thanksgiving Day
	Christmas Day

*Subject to Change

Container Locations - TRASH Collection

*Size and Frequency

Newburyport
DPW 1 x month One 10 yd. trash dumpster One 30 yd. C & D dumpster
High School One 10 yd. dumpster 1 x week
Middle School One dumpster 1 x week
Bresnahan Elementary One 10 yd. dumpster 1 x week
Senior / Community One 8 yd. dumpster 1 x week
Waste Water Plant One 6 yd. dumpster 1 x week
Fire Station 1 One 4 yd. dumpster 1 x week
Fire Station 2 One 2 yd. dumpster 1 x week
Recreation Center One 2 yd. dumpster
City Hall / Police One 6 yd. dumpster As needed
Library 3 Trash barrels 1 x week
Riversedge Condos Two 10 yd. 1 x week
Kelleher Park Two 10 yd. dumpsters 1 x week
Beacon Condos – one 8 yd. 1 x week
Sullivan Building 1 x week Two 2 yd. dumpsters
Horton Terrace One 8 yd. dumpster
Courtyard Condos 1 x week Two 2 yd. compactor
East Row 1 x week One 10 yd. dumpster
Public Space Containers Collection
City Sponsored Events: Contractor to provide containers and collection at no additional fee, if required by Health Dept.

*Subject to Change

Municipal Locations - RECYCLING Collection

*Size and Frequency

<u>Newburyport</u>
DPW One 10 yd. recycling dumpster One 15 yd. metal 3 carts recycling carts 1 x week
High School One 10 yd. recycling dumpster 1 x week
Middle School One 10 yd. dumpster 1 x week
Bresnahan Elementary One 10 yd. dumpster 1 x week
Water Plant No Container
Waste Water Plant No Container
Fire Station 1 Two carts 1 x week
Fire Station 2 Two carts 1 x week
Recreation Center Two carts 1 x week
City Hall / Police Three carts 1 x week
Library Five carts 1 x week One cardboard dumpster 2 x per year for book sale
Senior / Community Center One 10 yd. dumpster 1 x week
Public space containers Fifteen 1 x week
Plum Island Point 4 recycling carts 1 x week
Sullivan Building ten carts 1 x week
Horton Yard One 8 yd. dumpster 1 x week
Courtyard Condos Fifteen carts 1 x week
East Row One 8 yd. dumpster 1 x week
Riversedge Eight recycling carts 1 x week
City Sponsored Events: Contractor to provide containers and collection at no additional fee, if required by Health Dept.
Recycling Ctr. Five 8 yd. - 1 x week & one 30 yd. metal - 1 x month

***Subject to Change**

Attachment C
City of Newburyport
List of Streets



Attachment D
Contract Agreement

**AGREEMENT By and Between the
CITY of NEWBURYPORT
and
G. Mello Corp.**

**SOLID WASTE COLLECTION AND TRANSPORTATION
RECYCLABLES COLLECTION, TRANSPORTATION AND PROCESSING
LEAF AND YARD WASTE, BULK ITEMS, WHITE GOODS
COLLECTION, TRANSPORTATION AND PROCESSING
Fiscal Year 2018 through Fiscal Year 2023**

This agreement is made and entered into this day, _____, 2018 by and between the CITY OF NEWBURYPORT, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the "City", by and through its Mayor, Donna Holaday, and _____, the "Contractor". A corporation duly organized and existing under the laws of the Commonwealth of Massachusetts or as a D/B/A duly registered at:

ARTICLE I. DEFINITION. "THIS CONTRACT" as used herein shall mean that these Articles of Agreement and "the bid documents," which include without limitation, the instructions to bidders, the CONTRACTOR'S bid, proposal or estimate, the scope of work, terms and conditions, requirements, the applicable addenda, any final documents representing negotiated terms. In the event there is a conflict among any of the contract documents, the interpretation most favorable to the CITY shall govern. .

ARTICLE II. DURATION. The CONTRACTOR shall commence the performance of THIS CONTRACT **July 1, 2018** and end on or before, **June 30, 2023**. At the City's discretion, it may opt to renew this contract two (2) times at five (5) years each time, upon mutual agreement with the CONTRACTOR.

ARTICLE III. TERMS. The CONTRACTOR agrees to furnish and deliver services, supplies and/or equipment to Newburyport, MA (Delivery Point), in accordance with the bid documents of November 8, 2017.

ARTICLE IV. PAYMENT. The CITY agrees to pay to the CONTRACTOR the sum set forth in the CONTRACTOR'S bid or proposal.

ARTICLE V. TERMINATION. The following shall constitute events of default under THIS CONTRACT requiring immediate termination: a) any material misrepresentation made by the CONTRACTOR, b) any failure by the CONTRACTOR to perform any of its obligations under THIS CONTRACT including, without limitation, the following:

(i) failure to commence performance of THIS CONTRACT at the time specified in THIS CONTRACT due to a reason or circumstance within the CONTRACTOR'S reasonable control, (ii) failure to commence performance of THIS CONTRACT with sufficient personnel and equipment or with sufficient material to ensure the completion of THIS CONTRACT within the specified time due to a reason or circumstance within the CONTRACTOR'S reasonable control, (iii) failure to commence performance of THIS CONTRACT in a manner reasonably satisfactory to the CITY, (iv) failure to promptly re-perform with reasonable time the services that were rejected by the CITY as erroneous or unsatisfactory, (v) discontinuance of the services for reasons not beyond the CONTRACTOR'S reasonable control, (vi) failure to comply with a material term of THIS CONTRACT, including without limitation, the provision of insurance and nondiscrimination, and (vii) any other acts specifically stated in THIS CONTRACT as constituting a basis for termination of THIS CONTRACT.

ARTICLE VI. DAMAGES. From any sums due to the CONTRACTOR for services, supplies or equipment delivered, the CITY may keep for its own the whole or any part of the amount for expenses, losses and liquidated damages as directed by the Purchasing Agent,

~~incurred by the CITY as a consequence of purchasing materials, supplies or equipment as a result of any event of default, failure, omission or mistake of the CONTRACTOR in furnishing or delivering services, supplies or equipment as provided in THIS AGREEMENT. Furthermore, the contractor shall provide a certificate of insurance showing insurance coverage for the type of risks associated with the work.~~

ARTICLE VIII. FUNDING, GOVERNING LAWS AND ORDINANCES. THIS CONTRACT is made subject to: the availability of funds, all the laws of the Commonwealth of Massachusetts and the ordinances of the CITY, and if any such clause thereof does not conform to such laws or ordinances, such clause shall be void (the remainder of THIS CONTRACT shall not be affected) and such law or ordinance shall be operative in lieu thereof. **Further, this CONTRACT shall terminate if funds are not appropriated or otherwise made available to support continuation of performance hereunder at any time during the Term and any extension of this Agreement pursuant to the terms of G.L. Chapter 30B, section 12 and Chapter 44, section 31.**

ARTICLE IX: PERFORMANCE BOND. Not Required.

ARTICLE X. EQUAL OPPORTUNITY. The CONTRACTOR in the performance of all work, after award and prior to completion of the contract, work the Contractor will not discriminate on the grounds of race, color, sex, age, religious creed, disability, national origin or ancestry, sexual orientation, marital status, family status, military status, or source of income in the employment practices or in the selection or retention of subcontractors, and in the procurement of materials and rental equipment. The CITY may cancel, terminate, or suspend the contract in whole or in part for any violation of this Article.

ARTICLE XI. ASSIGNABILITY. The CONTRACTOR shall not assign, sell, subcontract, or transfer any interest in THIS CONTRACT without prior written consent of the CITY.

ARTICLE XII: INSURANCE AND INDEMNIFICATION. The Contractor shall indemnify and save harmless the City and all of its officers, agents and employees from any suits, causes of action, claims, judgements or other liability that may arise as a result of Contractor's action or failure to act.

A Certificate of Insurance shall be filed with the City in accordance with the Insurance Requirements set forth in the General Conditions and shall be subject to approval of the City.

ARTICLE XIII: ENTIRE AGREEMENT

This AGREEMENT may only be changed by a written amendment executed by the authorized representatives of both parties listed on the signature page of this AGREEMENT, or their lawful successors in office or title.

IN WITNESS WHEREOF, the parties have hereunto set their hand effective as of the date of the last signatory written here.

THE OWNER

City of Newburyport

Board of Health, Approval

Donna Holaday, Mayor

Chair

Date Signed: _____

City Council Order#: _____

Date Order Approved: _____

Date Signed: _____

Certified as to Availability of Funding Pursuant to M.G.L. Ch. 44 §31
City of Newburyport

CFO

Date Signed: _____

THE CONTRACTOR:

Signature

Contract Value: \$ **898,750.00**
U.S. Dollars

FY19

Print Name

Contract Value: \$ **925,712.50**
U.S. Dollars

FY20

Title

Contract Value: \$ **953,483.87**
U.S. Dollars

FY21

Company Name

Contract Value: \$ **982,088.38**
U.S. Dollars

FY22

Street Address

Contract Value: \$ **1,011,551.00**
U.S. Dollars

FY23

City, State, Zip Code

Contract Duration: July 1, 2018 through June 30, 2023
Dates

Telephone Number: _____

Fax Number: _____

Date Signed: _____

Dated _____, 2018.

Signature _____

By _____

Title _____

State of _____)

) SS

County of _____)

_____ (Name) being duly sworn, deposes and says that he/she is the

_____ (Title) of _____ (Name of Company) and that

the answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this ____ day of _____, 2018.

Notary Public

My Commission expires (notary stamp):

SIGNATURE PAGE

- END -

August 13, 2018
Committee on Neighborhood & City Services

- ODNC020_05_14_18 Amendment to Chapter 11, Parks & Recreation

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Introduced May 14, 2018
As amended at Cmte. on Neighborhood & City Service, August 6, 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:

***Rename "CHAPTER 11 – PARKS AND RECREATION" as "CHAPTER 11 – PARKS AND
PLAYGROUNDS"***

***Delete Section 11-1. – Names of parks and squares; establishing and changing names." in its
entirety and replace it with the following text:***

Sec. 11-1. – Names of city's public parks and playgrounds; Definitions

All of the city's public parks and playgrounds shall retain the names by which they are listed in section 11-2 of this chapter 11, unless the City Council, by a two-thirds supermajority vote of the City Council, votes to adopt an ordinance to change such name in section 11-2.

For the purposes of this chapter 11, the term "significant capital improvement" means any physical change with a fair market cost in excess of fifteen thousand dollars (\$15,000), including a project or endeavor conducted in phases, for which the fair market cost must be considered in the aggregate.

***Delete Section 11-2 – "Drug free parks and playgrounds; designation" in its entirety and replace it
with the following text:***

Sec. 11-2. – City's public parks and playgrounds.

The following real property, identified by name, and listed by assessor's map and lot numbers, or other reference, constitute the city's public parks and playgrounds under the meaning of chapter 45 and section 32J of chapter 94C of the Massachusetts General Laws, and the city's code of ordinances.

Name	Map #	Lot #
Patrick Tracy Square	001	022
Market Square Bullnose	004	Not numbered
Inn Street Playground	004	002
Inn Street Mall	004	030 (portion)
Market Landing Park; Mayor Peter J. Mathews Memorial Boardwalk	011	001-B
Atwood Park (including Garrison Gardens)	019	030
Brown School Playground	021	003
	021	026 (portion)
Joppa Park	026	(Unnumbered)
Perkins Park	031	030
March's Hill	033	006
	033	007 (portion)
	034	020 (portion)
Bartlet Mall (including Frog Pond)	035	160
Washington Park (Eppa Way, Pond Street, High Street)	035	Not numbered
Bradley Fuller Park	037	001
Newburyport Skate Park	038	001 (portion)
Brown Square	047	004
Cushing Park (including Ayer's Playground)	051	042
Cashman Park	052	068
	052	083
Atkinson Common (includes so-called Lower Atkinson Common)	069	028
Cornelius Doyle Triangle	070	086
Moulton Square	071	023
Moseley Woods	072	014
Jason Sawyer Playground	077	125-A
Woodman Park	094	004
	100	001
Cherry Hill Athletic Fields	107	001-A
Clipper City Rail Trail - Phase 1	All locations depicted on a plan in __ sheets entitled "_____" dated _____, as revised on _____, on file with the City Clerk	
Clipper City Rail Trail - Phase 2	All locations depicted on a plan in 17 sheets entitled "Newburyport/Newbury Clipper City Rail Trail - Phase 2, Preliminary Right of Way Property Plans," dated June 8, 2015, as revised on June 22, 2015, on file with the City Clerk	

Delete Section 11-3 – “Parking limited.” in its entirety and replace it with the following text:

Sec. 11-3. – Limited parking at certain public parks and playgrounds.

(a) No person shall park any vehicle or trailer in the area known as Cushing Park for a period in excess of twenty-four (24) hours, except upon declaration of a snow emergency, or as authorized by an individual license or permit issued by the Parks Commission. In the case of a declared snow emergency, vehicles may remain for the duration of the snow emergency and for twenty-four (24) hours after the declaration of the end of the snow emergency.

(b) No person shall park any vehicle or trailer in the playground area of the Bartlet Mall, located at the corner of Auburn Street and High Street, except upon declaration of a snow emergency. In the case of such declared snow emergency, vehicles, but excepting trailers, may remain for the duration of the snow emergency and for no more than twenty-four (24) hours after the declaration of the end of the snow emergency.

(c) No person shall park any vehicle or trailer in any portion of Bartlet Mall other than the playground area, even upon declaration of a snow emergency, with the sole exception of the presiding justice of the superior court and, in addition, no more than two (2) of his or her designee, who may park in proximity to the superior courthouse.

Add Section 11-4 – “Board of Parks Commissioners,” to read as follows:

Sec. 11-4. – Board of Parks Commissioners.

(a) A board of parks commissioners for the city is hereby established but with powers more limited than those set forth under chapter 45 of the Massachusetts General Laws (hereinafter referred to as the Parks Commission), and, instead, as enumerated herein.

(b) The Parks Commission shall consist of five persons, who shall hold office for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, from the first Monday in May next following such appointment, or until their successors are qualified; and thereafter the Mayor shall annually, before the first Monday in May, with like approval appoint one such commissioner for a term of five years from said first Monday in May. Such commissioners shall serve without compensation. A vacancy in the Parks Commission shall be filled in like manner for the residue of the unexpired term. Any commissioner may be removed by a vote of two thirds of all the members of the City Council.

(c) Subject to appropriation, the Parks Commission may lay out and improve public parks, make rules for their use and government, appoint all necessary engineers, surveyors, clerks and other officers, including a police force to act in such parks, and define their powers and duties and fix their compensation. At parks and playgrounds under its jurisdiction, the Parks Commission shall have the authority given to the Mayor, City Council, and Tree Warden respectively by section 7 of chapter 84, and by chapter 87 of the Massachusetts General Laws. Subject to specific appropriation or order by the City Council, the Parks Commission shall also have the power to conduct park programs and recreation activities at places other than at a public park or playground under its jurisdiction, such as maintenance of athletic fields under the jurisdiction of the School Committee.

(d) The Parks Commission shall make reports of its doings, and detailed statements of all receipts, expenditures, and liabilities for the preceding fiscal year of the city, to the City Council annually, within thirty (30) days after the end of the city's fiscal year.

(e) The Parks Commission shall meet a minimum of every month.

Add Section 11-5 – “Rules and regulations,,” to read as follows:

Sec. 11-5. – Rules and regulations for all Public Parks and Playgrounds.

(a) All other city ordinances applying to public areas also apply to the public parks and playgrounds listed in section 11-2, including but not limited to the following:

(1) Dogs shall be leashed and animal waste cleaned up and disposed of pursuant to chapter 3 of the code of ordinances; provided, however, that pursuant to such chapter 3 dogs are permitted off leash certain locations, as set forth therein. Both the city marshal and the health director, and their designees, including, without limitation, the animal control officer, are expressly authorized to enforce these rules by issuing citations for civil infractions pursuant to section 21D of chapter 40 of the Massachusetts General Laws.

(2) No littering is permitted.

(3) No vandalism, damage or defacement or other acts of willful destruction of public property is permitted.

(4) Loud noise, music, and other sounds are prohibited from 10:00 p.m. to 7:00 a.m. pursuant to chapter 8 of the code of ordinances.

(5) No snowmobiles, motorcycles, motorbikes or other motorized vehicles, with the exception of wheelchairs, are permitted outside of designated driveways or parking lots, unless specifically authorized by City Council vote.

(6) No smoking pursuant to chapter 8 of the code of ordinances.

(7) For other activities regulated by city ordinances, additional authorization may be required from the city officer or department designated under this code of ordinances.

(8) No activities are permitted that would potentially endanger members of the public.

(b) No activities are permitted that would interfere with the use and enjoyment of the city's public parks and playgrounds, without prior written authorization from the Parks Commission.

(c) No commercial activities, including, without limitation, soliciting, are permitted without prior written authorization from the Parks Commission.

(d) No commercial activities of any nature are permitted on any portion of the Bartlet Mall unless for specific, nonprofit events that benefit the Newburyport community, unless it is approved in advance by a majority vote of the City Council.

(5) A fully completed and executed application for an activity at the same time and place has been received, and authorization has been or will be granted to such prior applicant authorizing uses or activities that do not reasonably permit multiple occupancy of the particular public park or playground, or part thereof;

(6) The use or activity intended by the applicant would conflict with a program or activity previously planned by the parks department, or by another city department or city official, for the same time and place; or

(7) The proposed use or activity is prohibited by or inconsistent with any rules and regulations of this chapter 11, or with the classifications and uses of the relevant public park or playground.

Add Section 11-6 – “Parks Commission—Promulgation of rules,” to read as follows:

Sec. 11-6. – Parks Commission—Promulgation of rules.

(a) Provided they are not in conflict with the rules and regulations provided in this chapter 11, the Parks Commission may, as it deems appropriate, promulgate such additional, reasonable rules and regulations for the use of the city’s public parks and playgrounds under its oversight, rather than under that of the Newburyport Waterfront Trust. Such additional rules and regulations may include, but are not limited to, hours of use, conduct of persons, and the manner of use of particular facilities or areas within any public parks or playgrounds.

(b) Such additional rules and regulations, or any repeal or amendment thereof, shall become effective only after they have been published in each of not less than two (2) weeks in a newspaper of local circulation, posted for a period of two (2) weeks in one (1) or more prominent places in the public park or playground to which they are proposed to pertain, without the need for further action by the City Council, and submitted to the City Clerk as a communication to the City Council to be received and filed

Delete Article II. – “ATKINSON COMMON AND MOSELEY WOODS AND BARTLET MALL.” in its entirety and replace it with the following text:

ARTICLE II. – MARKET LANDING PARK, ATKINSON COMMON, AND BARTLET MALL

Sec. 11-26. – Promulgation of rules for Market Landing Park

(a) Provided they are not in conflict with the rules and regulations provided in this chapter 11, the Newburyport Waterfront Trust may, as it deems appropriate, promulgate such additional, reasonable rules and regulations for the use of those city’s public parks and playgrounds under their oversight. Such additional rules and regulations may include, but are not limited to, hours of use, conduct of persons, and the manner of use of particular facilities or areas within any public parks or playgrounds.

(b) Such additional rules and regulations, or any repeal or amendment thereof, shall become effective only after they have been published in each of not less than two (2) weeks in a newspaper of local circulation, and posted for a period of two (2) weeks in one (1) or more prominent places in the public

park or playground to which they are proposed to pertain, without the need for further action by the City Council.

(c) At those public parks and playgrounds under their oversight, the Newburyport Waterfront Trust shall have the authority given to the Mayor, aldermen, selectmen, road commissioners and tree warden respectively by section 7 of chapter 84, and by chapter 87.

Sec. 11-27. - Atkinson Common—Board of commissioners designated; Duties of same; To serve without pay.

Three (3) residents of the city, to be chosen as hereinafter designated, shall constitute a board of commissioners of the Atkinson Common (hereinafter the Atkinson Common Commission), to advise the Parks Commission in carrying out the provisions and limitations of the will of Mrs. Eunice Atkinson Currier, dated March 23, 1867, granting the Atkinson Common to the city for use as a common public and free to all the inhabitants of the city, and in exercising the proper care, management and supervision of the Atkinson Common as well as the adjacent land purchased from Merrill Estate by Belleville Improvement Society and given to the city. The members of the Atkinson Common Commission shall serve without pay.

Sec. 11-28. - Atkinson Common —Annual appointment to board.

Annually in the month of March, the Mayor shall appoint, subject to the approval of the City Council, from the citizens at large, one (1) member of the Atkinson Common Commission to hold office for three (3) years from the last Monday in April following

In the event that a seat on the Atkinson Common Commission has remained vacant for more than one year, any resident may petition the City Council directly for appointment to such seat. Such appointment must be approved by a majority of the City Council, pursuant to its rules. Any commissioner, however appointed, may be removed by a supermajority vote of two thirds of all the members of the City Council.

Sec. 11-29. - Atkinson Common —Financial matters; Significant Capital improvements

The money annually appropriated by the city for the operation, maintenance, and improvement of Atkinson Common, together with such sums as may be received for such purpose from other sources, including, without limitation, the Belleville Improvement Society, shall be available for expenditure only upon an affirmative vote of a majority of the Parks Commission, and only for the operation, maintenance, and improvement of Atkinson Common. Notwithstanding the foregoing, the Atkinson Common Commission shall have exclusive authority over any significant capital improvements at Atkinson Common, which shall be approved in advance by an affirmative vote of the Atkinson Common Commission.

Sec. 11-30. - Atkinson Common — Minimum quarterly meetings; Records; Annual report of board.

The Atkinson Common Commission shall meet a minimum of quarterly, and maintain records of its doings, organized by fiscal year. The Atkinson Common Commission shall make reports of its doings to the City Council annually, within thirty (30) days after the end of the city's fiscal year.

Sec. 11-31. – Moseley Woods—Acceptance of provisions of Charles W. Moseley will.

The city hereby accepts the provisions of paragraph 7 of the will of Charles W. Moseley, dated September 3, 1918, granting Moseley Woods to the city, to be held as a public park. Accordingly, the city shall annually appropriate and spend to the satisfaction of the trustees of the Charles W. Moseley Trust not less than five hundred dollars (\$500.00) for the care of Moseley Woods, and especially for the policing thereof.

Sec. 11-32. – Moseley Woods—Board of commissioners abolished.

The board of commissioners of Moseley Woods are hereby abolished and dissolved, upon the effective date of this new section 11-32.

Sec. 11-33. – Moseley Woods—Financial matters.

The money annually appropriated by the city for the operation, maintenance, and improvement of Moseley Woods, together with such sums as may be received from other sources, including, without limitation, the trustees of the Charles W. Moseley Trust, shall be available for expenditure only upon an affirmative vote of a majority of the Parks Commission, and only for the operation, maintenance, and improvement of Moseley Woods.

Sec. 11-34. - Bartlet Mall—Board of commissioners; duties; term of office.

The Mayor shall appoint three (3) residents of the city to constitute the board of commissioners of Bartlet Mall (hereinafter referred to as the Bartlet Mall Commission). The Bartlet Mall Commission shall oversee the proper care, management, and supervision of the Bartlet Mall. Each commissioner of said board shall be appointed for a term of not in excess of three (3) years, and the appointments shall be so made that the terms of not more than two (2) commissioners shall expire in any single year. All members shall serve without pay.

In the event that a seat on the Bartlet Mall Commission has remained vacant for more than one year, any resident may petition the City Council directly for appointment to such seat. Such appointment must be approved by a majority of the City Council, pursuant to its rules. Any commissioner, however appointed, may be removed by a supermajority vote of two thirds of all the members of the City Council.

Sec. 11-35. - Bartlet Mall—Annual appropriation for upkeep.

The Mayor and City Council shall annually appropriate a sum of not less than five hundred dollars (\$500.00) for the general care and policing of Bartlet Mall, including the maintenance of public ice skating on the pond.

Sec. 11-36. - Bartlet Mall—Financial matters; Significant Capital improvements.

The money annually appropriated by the city for the operation, maintenance, and improvement of Bartlet Mall, together with such sums as may be received for such purpose from other sources, including, without limitation, the City Improvement Society, shall be available for expenditure only upon an affirmative vote of a majority of the Parks Commission, and only for the operation, maintenance, and improvement of Bartlet Mall. Notwithstanding the foregoing, the Bartlet Mall Commission shall have exclusive authority over any significant capital improvements at Bartlet Mall, which shall be approved in advance by an affirmative vote of the Bartlet Mall Commission.

Sec. 11-37. - Bartlet Mall— Minimum quarterly meetings; Records; Annual report of board.

The Bartlet Mall Commission shall meet a minimum of quarterly, and maintain records of its doings, organized by fiscal year. The Bartlet Mall Commission shall make reports of its doings to the City Council annually, within thirty (30) days after the end of the city's fiscal year.

Secs. 11-38—11-50. - Reserved.

Delete Article III. – “RECREATION AREAS.” in its entirety.

Councilor Jared J. Eigerman

Councilor Sharif I. Zeid

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Introduced May 14, 2018
As amended at Cmte. on Neighborhood & City Service, August 6, 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:

***Rename "CHAPTER 11 – PARKS AND RECREATION" as "CHAPTER 11 – PARKS AND
PLAYGROUNDS"***

***Delete Section 11-1. – Names of parks and squares; establishing and changing names." in its
entirety and replace it with the following text:***

Sec. 11-1. – Names of city’s public parks and playgrounds

All of the city’s public parks and playgrounds shall retain the names by which they are listed in section 11-2 of this chapter 11, unless the City Council, by a two-thirds supermajority vote of the City Council, votes to adopt an ordinance to change such name in section 11-2.

***Delete Section 11-2 – "Drug free parks and playgrounds; designation" in its entirety and replace it
with the following text:***

Sec. 11-2. – City’s public parks and playgrounds.

The following real property, identified by name, and listed by assessor’s map and lot numbers, or other reference, constitute the city’s public parks and playgrounds under the meaning of chapter 45 and section 32J of chapter 94C of the Massachusetts General Laws, and the city’s code of ordinances.

Name	Map #	Lot #
Patrick Tracy Square	001	022
Market Square Bullnose	004	Not numbered

Inn Street Playground	004	002
Inn Street Mall	004	030 (portion)
Market Landing Park; Mayor Peter J. Mathews Memorial Boardwalk	011	001-B
Atwood Park (including Garrison Gardens)	019	030
Brown School Playground	021	003
	021	026 (portion)
Joppa Park	026	(Unnumbered)
Perkins Park	031	030
March's Hill	033	006
	033	007 (portion)
	034	020 (portion)
Bartlet Mall (including Frog Pond)	035	160
Washington Park (Eppa Way, Pond Street, High Street)	035	Not numbered
Bradley Fuller Park	037	001
Newburyport Skate Park	038	001 (portion)
Brown Square	047	004
Cushing Park (including Ayer's Playground)	051	042
Cashman Park	052	068
	052	083
Atkinson Common (includes so-called Lower Atkinson Common)	069	028
Cornelius Doyle Triangle	070	086
Moulton Square	071	023
Moseley Woods	072	014
Jason Sawyer Playground	077	125-A
Woodman Park	094	004
	100	001
Cherry Hill Athletic Fields	107	001-A
Clipper City Rail Trail – Phase 1	All locations depicted on a plan in __ sheets entitled “_____,” dated _____, as revised on _____, on file with the City Clerk	
Clipper City Rail Trail – Phase 2	All locations depicted on a plan in 17 sheets entitled “Newburyport/Newbury Clipper City Rail Trail - Phase 2, Preliminary Right of Way Property Plans,” dated June 8, 2015, as revised on June 22, 2015, on file with the City Clerk	

Delete Section 11-3 – “Parking limited.” in its entirety and replace it with the following text:

Sec. 11-3. – Limited parking at certain public parks and playgrounds.

(a) No person shall park any vehicle or trailer in the area known as Cushing Park for a period in excess of twenty-four (24) hours, except upon declaration of a snow emergency, or as authorized by an

individual license or permit issued by the Parks Commission. In the case of a declared snow emergency, vehicles may remain for the duration of the snow emergency and for twenty-four (24) hours after the declaration of the end of the snow emergency.

(b) No person shall park any vehicle or trailer in the playground area of the Bartlet Mall, located at the corner of Auburn Street and High Street, except upon declaration of a snow emergency. In the case of such declared snow emergency, vehicles, but excepting trailers, may remain for the duration of the snow emergency and for no more than twenty-four (24) hours after the declaration of the end of the snow emergency.

(c) No person shall park any vehicle or trailer in any portion of Bartlet Mall other than the playground area, even upon declaration of a snow emergency, with the sole exception of the presiding justice of the superior court and, in addition, no more than two (2) of his or her designee, who may park in proximity to the superior courthouse.

Add Section 11-4 – “Board of Parks Commissioners,” to read as follows:

Sec. 11-4. – Board of Parks Commissioners.

(a) A board of parks commissioners for the city is hereby established but with powers more limited than those set forth under chapter 45 of the Massachusetts General Laws (hereinafter referred to as the Parks Commission), and, instead, as enumerated herein.

(b) The Parks Commission shall consist of five persons, who shall hold office for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, from the first Monday in May next following such appointment, or until their successors are qualified; and thereafter the Mayor shall annually, before the first Monday in May, with like approval appoint one such commissioner for a term of five years from said first Monday in May; subject to confirmation by the City Council, as follows.

(i) any three residents of the city;

(ii) one member of a non-profit organization that (A) has as a principal purpose the maintenance, preservation, and improvement of Atkinson Common for the enjoyment of the citizens of and visitors to the city; (B) has at least ten members; and (C) allows any resident of the city to join as member; and

(iii) a member of a non-profit organization that (A) has as a principal purpose the maintenance, preservation, and improvement of Bartlet Mall for the enjoyment of the citizens of and visitors to the city; (B) has at least ten members; and (C) allows any resident of the city to join as member.

The two commissioners from non-profit organizations shall reside at the time of their respective appointments in different City Council wards.

All such commissioners shall serve without compensation. A vacancy in the Parks Commission shall be filled in like manner for the residue of the unexpired term. Any commissioner may be removed by a vote of two thirds of all the members of the City Council.

(c) Subject to appropriation, the Parks Commission may lay out and improve public parks, make rules for their use and government, appoint all necessary engineers, surveyors, clerks and other officers, including a police force to act in such parks, and define their powers and duties and fix their compensation. At parks and playgrounds under its jurisdiction, the Parks Commission shall have the authority given to the Mayor, City Council, and Tree Warden respectively by section 7 of chapter 84, and by chapter 87 of the Massachusetts General Laws. Subject to specific appropriation or order by the City Council, the Parks Commission shall also have the power to conduct park programs and recreation activities at places other than at a public park or playground under its jurisdiction, such as maintenance of athletic fields under the jurisdiction of the School Committee.

(d) The Parks Commission shall make reports of its doings, and detailed statements of all receipts, expenditures, and liabilities for the preceding fiscal year of the city, to the City Council annually, within thirty (30) days after the end of the city's fiscal year.

(e) The Parks Commission shall meet a minimum of every month.

Add Section 11-5 – “Rules and regulations,,” to read as follows:

Sec. 11-5. – Rules and regulations for all Public Parks and Playgrounds.

(a) All other city ordinances applying to public areas also apply to the public parks and playgrounds listed in section 11-2, including but not limited to the following:

(1) Dogs shall be leashed and animal waste cleaned up and disposed of pursuant to chapter 3 of the code of ordinances; provided, however, that pursuant to such chapter 3 dogs are permitted off leash certain locations, as set forth therein. Both the city marshal and the health director, and their designees, including, without limitation, the animal control officer, are expressly authorized to enforce these rules by issuing citations for civil infractions pursuant to section 21D of chapter 40 of the Massachusetts General Laws.

(2) No littering is permitted.

(3) No vandalism, damage or defacement or other acts of willful destruction of public property is permitted.

(4) Loud noise, music, and other sounds are prohibited from 10:00 p.m. to 7:00 a.m. pursuant to chapter 8 of the code of ordinances.

(5) No snowmobiles, motorcycles, motorbikes or other motorized vehicles, with the exception of wheelchairs, are permitted outside of designated driveways or parking lots, unless specifically authorized by City Council vote.

(6) No smoking pursuant to chapter 8 of the code of ordinances.

(7) For other activities regulated by city ordinances, additional authorization may be required from the city officer or department designated under this code of ordinances.

(8) No activities are permitted that would potentially endanger members of the public.

(b) No activities are permitted that would interfere with the use and enjoyment of the city's public parks and playgrounds, without prior written authorization from the Parks Commission.

(c) No commercial activities, including, without limitation, soliciting, are permitted without prior written authorization from the Parks Commission.

(d) No commercial activities of any nature are permitted on any portion of the Bartlet Mall unless for specific, nonprofit events that benefit the Newburyport community, unless it is approved in advance by a majority vote of the City Council.

(e) No vehicular parking is permitted in areas other than designated parking lots, in accordance with posted signs. No unauthorized vehicles are allowed in areas other than designated driveways and parking lots.

(f) No alcoholic beverages are permitted without prior written authorization from the Parks Commission.

(g) Horses are not allowed except as expressly authorized by rules and regulations promulgated under this chapter 11, and with prior written authorization from the Parks Commission.

(h) No dogs are permitted on athletic fields, tennis courts, in fountains, or in other restricted park areas.

(i) No bicycling, rollerblading, snowboarding, or skateboarding is permitted on play equipment or site furnishings, including, without limitation, benches, curbs, walls, statuary, handrails, fountains, ponds, tennis courts, playing fields, etc., except as specifically authorized by the Parks Commission. Within those public parks and playgrounds, as indicated by signage approved by the Parks Commission, bicycling, rollerblading, and skateboarding are prohibited entirely.

(j) Trash receptacles in public parks and playgrounds are intended for the collection of refuse related to public use of such facilities, and the disposal of other items in park trash receptacles is not permitted. Dumping of private yard waste is not permitted.

(k) No unauthorized posting of bills, signs, or any other materials is permitted.

(l) No fires are permitted except in specific locations expressly authorized by rules and regulations promulgated under this chapter 11, or with prior written authorization from the Parks Commission.

(m) No fireworks are permitted without prior written authorization from the fire chief.

(n) No firearms are permitted.

(o) No camping is permitted, unless specifically authorized by Parks Commission vote.

(p) No unauthorized change of any sort to the property, vegetation, equipment, or structures is permitted, including, without limitation, trimming, pruning, removal or harming of plantings.

(q) No use of water or electrical receptacles is permitted, with the specific exception of public drinking fountains, and as authorized under an individual license or permit issued by the Parks Commission.

(r) Athletic field lighting shall be turned off by 10:00 p.m.

(s) Fines for violation of any rules and regulations promulgated under this chapter 11 shall be established by ordinance of the City Council.

(u) The Parks Commission shall be the permitting authority for all of the city's public parks and playgrounds, and applications for activities therein shall be made to such commission. Solely for routine, non-recurring applications, the Parks Commission may delegate its authority to process such applications to the Parks Director, by promulgating a rule pursuant to section 11-6.

(v) For Market Landing Park and other Newburyport Waterfront Trust property, the Newburyport Waterfront Trust shall be the permitting agency, and applications for activities therein shall be made to the Newburyport Waterfront Trust.

(w) Permit applications for activities at parks and playgrounds, made pursuant to the rules and regulations of this chapter 11, shall be processed in the order of their receipt. The Parks Commission, or the Parks Director as its designee pursuant to subsection (u), shall determine whether to grant or deny an application within thirty (30) days of receipt of determining that such application is complete, in all respects, unless the applicant provides written consent to extend such period for a set period,

(x) A granted application for authorization made pursuant to the rules and regulations of this chapter 11 may permit the applicant a revocable license with a duration of no more than six (6) months to use designated areas of the relevant public park or playground. All other rights of use to any public park or playground, whether by revocable license, lease, or otherwise, shall be invalid unless approved by the City Council pursuant to all applicable laws. Notwithstanding the foregoing, the Newburyport Waterfront Trust may grant rights of use at Market Landing Park, and other property held by it in public trust, pursuant to its declaration of trust, as amended.

(y) All fees for use of any public park or playground, regardless of type or duration, shall be established by ordinance of the City Council, in consultation with the Parks Commission. Notwithstanding the foregoing, the Newburyport Waterfront Trust may grant rights of use at Market Landing Park, and other property held by it in public trust, pursuant to its declaration of trust, as amended.

(z) Denial of an application for authorization shall be in writing, and shall set forth clearly the grounds upon which the permit was denied. Where feasible, the Parks Commission, or the Parks Director as its designee pursuant to subsection (u), shall suggest in such written denial those measures by which the applicant may cure any defects in its permit application, or otherwise procure a permit in a subsequent application.

(aa) An application for authorization may be denied on any of the following grounds:

(1) The application (including any required attachments and submissions) is not fully completed and executed;

(2) The application contains a material falsehood or misrepresentation;

(3) The applicant is legally incompetent to contract, or to sue and be sued;

(4) The applicant has on a prior occasion damaged public park or playground property, and has not paid full compensation for such damage, or has other outstanding and unpaid debts to the relevant authorizing agency;

(5) A fully completed and executed application for an activity at the same time and place has been received, and authorization has been or will be granted to such prior applicant authorizing uses or activities that do not reasonably permit multiple occupancy of the particular public park or playground, or part thereof;

(6) The use or activity intended by the applicant would conflict with a program or activity previously planned by the parks department, or by another city department or city official, for the same time and place; or

(7) The proposed use or activity is prohibited by or inconsistent with any rules and regulations of this chapter 11, or with the classifications and uses of the relevant public park or playground.

Add Section 11-6 – “Parks Commission—Promulgation of rules,” to read as follows:

Sec. 11-6. – Parks Commission—Promulgation of rules.

(a) Provided they are not in conflict with the rules and regulations provided in this chapter 11, the Parks Commission may, as it deems appropriate, promulgate such additional, reasonable rules and regulations for the use of the city’s public parks and playgrounds under its oversight, rather than under that of the Newburyport Waterfront Trust. Such additional rules and regulations may include, but are not limited to, hours of use, conduct of persons, and the manner of use of particular facilities or areas within any public parks or playgrounds.

(b) Such additional rules and regulations, or any repeal or amendment thereof, shall become effective only after they have been published in each of not less than two (2) weeks in a newspaper of local circulation, posted for a period of two (2) weeks in one (1) or more prominent places in the public park or playground to which they are proposed to pertain, without the need for further action by the City Council, and submitted to the City Clerk as a communication to the City Council to be received and filed

Delete Article II. – “ATKINSON COMMON AND MOSELEY WOODS AND BARTLET MALL.” in its entirety and replace it with the following text:

ARTICLE II. – MARKET LANDING PARK, ATKINSON COMMON, AND BARTLET MALL

Sec. 11-26. – Promulgation of rules for Market Landing Park

(a) Provided they are not in conflict with the rules and regulations provided in this chapter 11, the Newburyport Waterfront Trust may, as it deems appropriate, promulgate such additional, reasonable rules and regulations for the use of those city’s public parks and playgrounds under their oversight. Such additional rules and regulations may include, but are not limited to, hours of use, conduct of persons, and the manner of use of particular facilities or areas within any public parks or playgrounds.

(b) Such additional rules and regulations, or any repeal or amendment thereof, shall become effective only after they have been published in each of not less than two (2) weeks in a newspaper of local circulation, and posted for a period of two (2) weeks in one (1) or more prominent places in the public

park or playground to which they are proposed to pertain, without the need for further action by the City Council.

(c) At those public parks and playgrounds under their oversight, the Newburyport Waterfront Trust shall have the authority given to the Mayor, aldermen, selectmen, road commissioners and tree warden respectively by section 7 of chapter 84, and by chapter 87.

Sec. 11-27. - Atkinson Common— Acceptance of provisions of Eunice Atkinson Currier will.

The city hereby confirms its acceptance of the provisions of paragraph 7 of the will of Mrs. Eunice Atkinson Currier, dated March 23, 1867, granting the Atkinson Common to the city for use as a common public and free to all the inhabitants of the city, and in exercising the proper care, management and supervision of the Atkinson Common as well as the adjacent land purchased from Merrill Estate by Belleville Improvement Society and given to the city.

Sec. 11-28. - Atkinson Common — Board of commissioners abolished.

The board of commissioners of Atkinson Common is hereby abolished and dissolved, upon the effective date of this new section 11-28.

Sec. 11-29. - Atkinson Common —Financial matters.

The money annually appropriated by the City Council for the operation, maintenance, and improvement of Atkinson Common, together with such sums as may be received from other sources, including, without limitation, the Belleville Improvement Society, shall be available for expenditure only upon an affirmative vote of a majority of the Parks Commission, and only for the operation, maintenance, and improvement of Atkinson Common.

Sec. 11-30. - Moseley Woods—Acceptance of provisions of Charles W. Moseley will.

The city hereby confirms its acceptance of the provisions of paragraph 7 of the will of Charles W. Moseley, dated September 3, 1918, granting Moseley Woods to the city, to be held as a public park. Accordingly, the city shall annually appropriate and spend to the satisfaction of the trustees of the Charles W. Moseley Trust not less than five hundred dollars (\$500.00) for the care of Moseley Woods, and especially for the policing thereof.

Sec. 11-31. – Moseley Woods—Board of commissioners abolished.

The board of commissioners of Moseley Woods is hereby abolished and dissolved, upon the effective date of this new section 11-32.

Sec. 11-32. – Moseley Woods—Financial matters.

The money annually appropriated by the City Council for the operation, maintenance, and improvement of Moseley Woods, together with such sums as may be received from other sources, including, without limitation, the trustees of the Charles W. Moseley Trust, shall be available for expenditure only upon an affirmative vote of a majority of the Parks Commission, and only for the operation, maintenance, and improvement of Moseley Woods.

Sec. 11-33. - Bartlet Mall—Board of commissioners abolished.

The board of commissioners of Bartlet Mall is hereby abolished and dissolved, upon the effective date of this new section 11-34.

Sec. 11-34. - Bartlet Mall—Minimum annual appropriation.

The Mayor and City Council shall annually appropriate a sum of not less than five hundred dollars (\$500.00) for the general care and policing of Bartlet Mall, including the maintenance of public ice skating on the pond.

Sec. 11-35. - Bartlet Mall—Financial matters.

The money annually appropriated by the city for the operation, maintenance, and improvement of Bartlet Mall, together with such sums as may be received from other sources, including, without limitation, the City Improvement Society, shall be available for expenditure only upon an affirmative vote of a majority of the Parks Commission, and only for the operation, maintenance, and improvement of Bartlet Mall.

Secs. 11-36—11-50. - Reserved.

Delete Article III. – “RECREATION AREAS.” in its entirety.

Councilor Jared J. Eigerman

Councilor Sharif I. Zeid

August 13, 2018
Committee Items-
Planning & Development

1. ODNC017_10_30_17 Zoning Amendment – No Use Variances (COTW)
2. COMM036_04_30_18 Memo re: Proposed Marijuana Zoning Amendments
3. ODNC016_04_30_18 Marijuana Zoning - Retail Sales (COTW)
4. COMM042_05_14_18 Ltr re: Marijuana Moratorium
5. ORDR036_05_14_18 Marijuana Retailers Ballot Question
6. ODNC024_06_11_18 Zoning Amendment - Marijuana Retail Sales Locations (COTW)
7. ORDR049_7_16_18 Preservation Restriction Agreement - 50-58 Middle Street

PRO
COTW
file
7-C
12/11/17

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

October 30, 2017

A ZONING ORDINANCE TO FORBID USE VARIANCES

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

APPENDIX A: ZONING ORDINANCE OF THE CITY OF NEWBURYPORT

THAT subsection X-H.6.A of said Zoning Ordinance, entitled "Variances," 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.

- 6. Variances. [Variances from the provisions of this ordinance shall be subject to the following:]
 - A. The zoning board of appeals shall have the power, after giving appropriate public hearing notice as described in section X-H, and after holding said hearing within sixty-five (65) days after the zoning board of appeals receives the petition from the city clerk, to grant, upon appeal or upon petition, a variance, including expressly excluding any use variance, notwithstanding anything in this ordinance to the contrary, from the terms of this zoning ordinance where the zoning board of appeals finds that, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this ordinance would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this ordinance.

Councillor Jared Eigerman



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

TO: **City Council / Planning & Development Committee
 Planning Board**

FROM: **Andrew R. Port, Director of Planning & Development**

CC: **Donna D. Holaday, Mayor
 Paul O'Brien, Chief Administrative Officer**

DATE: **April 24, 2018**

RE: **Proposed Zoning Amendments on Council Agenda / in Planning & Development Committee Docket:**

(1) "Zoning Amendment – Marijuana Businesses with Retail Sales"
 (2) "Zoning Amendment – Marijuana Businesses without Retail Sales (Cultivation)"

Background

Two (2) zoning amendments addressing permitting requirements for marijuana-related businesses are submitted herewith for the April 30, 2018 Council meeting. Pursuant to the Newburyport Zoning Ordinance these two amendments should be forwarded collectively to the Planning Board and Planning & Development Committee for a joint public hearing and recommendation prior to a vote by the full Council. As most of you know now it is imperative that the City move forward with adoption of zoning provisions addressing this new category of uses, for which licenses will be issued throughout the Commonwealth beginning in June (*by the Massachusetts Cannabis Control Commission or "CCC"*).

The attached zoning amendments should be discussed collectively since they are related and address the following categories of marijuana-related uses:

1. Marijuana Businesses with Retail Sales (*also known as dispensaries*) – the "long amendment"
2. Marijuana Businesses without Retail Sales (*primarily cultivation*) – the "short amendment"

While this office would typically recommend adoption of a single zoning amendment addressing the full scope of the above uses in a single document, it is my understanding that the Council may wish to deliberate and vote on each of the above components separately. Accordingly, we have parsed the substantive content into two (2) parts, as noted above, and attached hereto.

At this time we anticipate that the Planning Board and City Council Planning & Development (P&D) Committee hold a Joint Public Hearing regarding these zoning amendments on May 16, 2018. We

anticipate that the Council will take action on these proposed amendments in the coming weeks, pending receipt of recommendations from the Planning Board and Planning & Development Committee.

The attached City-wide zoning map depicts various locations considered as potential “suitable” locations for marijuana-related businesses by the “Marijuana Ad Hoc Committee” comprised of various community leaders and stakeholders. Ultimately, the attached zoning amendment(s) are the product of these discussions and general consensus reached therein. Please note that Option C (*downtown business districts*) was rejected as a suitable location for marijuana-related businesses (*in particular retail sales*). Since the City of Newburyport has only three (3) notable retail/commercial districts (*Downtown, Storey Ave and the Route 1 Traffic Circle*) the result (*by process of elimination*) was to designate the latter two (*Storey Ave and the Route 1 Traffic Circle*) as areas suitable for supporting retail sales of marijuana, and the associated vehicular traffic these uses may generate. Conversely, there was consensus that the only area suitable to support the cultivation of marijuana, and ancillary uses like research and development (R&D), is the Newburyport Business and Industry Park. Provided such cultivation, or R&D, is operating within an enclosed building or structure, and there are no retail sales on premises, there would be no notable distinction between these uses and any other manufacturing use elsewhere in the Business Park.

Following is a summary of the content and substance of each of the two related amendments:

Marijuana Businesses with Retail Sales

This is the longer of the two zoning amendments because it includes provisions, standards and permitting procedures applicable to both retail and non-retail (*e.g. cultivation* and R&D) marijuana uses. More specifically, this amendment would:

- A. Require a discretionary Special Permit from the Planning Board for all marijuana-related uses within the City;
- B. Differentiate between marijuana businesses which include retail sales and those that do not;
- C. Allow medical marijuana businesses *which do not include retail sales* within the Business Park;
- D. Allow marijuana businesses (*both medical and adult/recreational*) *which do include retail sales* within the B-1 Zoning District (*i.e. Storey Ave and the Route 1 Traffic Circle*) thereby eliminating all retail sales “dispensaries” (*and associated retail traffic*) from the Business Park;
- E. Require a 250’ buffer zone from residential districts for all marijuana-related businesses within the Business Park.
- F. Require a 500’ buffer zone from various “protected uses” for all marijuana-related businesses (*e.g. schools, parks, daycare facilities, etc.*)
- G. Establish permitting and parking requirements for all marijuana-related businesses to be administered by the Newburyport Planning Board during review of Special Permit applications.

Marijuana Businesses without Retail Sales (Cultivation)

This is the shorter of the two zoning amendments because it relies upon the preceding amendment to address provisions, standards and permitting procedures applicable to all marijuana uses. While this

amendment specifically addresses the cultivation of marijuana (*i.e. within the Business Park*) it should be viewed as a supplement to the previous zoning amendment (*which primarily deals with retail sales establishments*). This amendment would:

- A. Allow adult/recreational marijuana businesses *which do not include retail sales (primarily those involving cultivation)* within the Business Park; and
- B. Amend the Newburyport Zoning Map to eliminate the duplicative, and henceforth unnecessary, "Medical Marijuana Overlay District" within the Business Park.

Illustrative Maps

The attached illustrative maps depict the location of relevant zoning districts, and the associated buffer zones required, applicable to siting of licensed marijuana businesses in the City. They are as follows:

- i. **Industrial Park** (*Zoning Districts I-1 & I-1B*) *[cultivation, R&D, etc.]*
- ii. **Storey Ave** (*Zoning District B-1*) *[retail sales]*
- iii. **Route 1 Traffic Circle** (*Zoning District B-1*) *[retail sales]*

Conclusion

Collectively, these two amendments address the location, protective buffers, and permitting requirements associated with marijuana sales and cultivation, as well as ancillary marijuana-related uses such as research and development. I strongly recommend that discussion, deliberation and final votes on these amendments be done simultaneously (*i.e. on the same night*) so that there are no inconsistencies, gaps or loopholes in the adopted zoning provisions. Failure to adopt both amendments at the same time may result in unintended consequences, since the City is obligated to address the permitting requirements of all marijuana-related businesses, now legal in Massachusetts. While these uses are new, still evolving, and the subject of much debate, failure to reach consensus and adopt zoning provisions addressing them in a timely manner may leave the City open to proposals and litigation for the siting of marijuana-related businesses in less desirable locations across the City.

PHD

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

April 30, 2018

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEWBURYPORT

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

THAT the Zoning Ordinance, Appendix A of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended pursuant to Section XII-B "Adoption and Amendment" as follows:

Section V-D: Table of Use Regulations

Delete the following use from the Table of Use Regulations, along with the corresponding row:

- Medical Marijuana Treatment Center (Num 217)

Add the following new uses to the Table of Use Regulations, as additional rows inserted in alphabetical order under a new grouping numbered 8 and entitled "Marijuana-Related Uses":

Use	Num
• Marijuana Establishment <i>(with retail sales)</i>	801
• Marijuana Establishment <i>(without retail sales)</i>	802
• Medical Marijuana Treatment Center or Registered Marijuana Dispensary <i>(with retail sales)</i>	803
• Medical Marijuana Treatment Center or Registered Marijuana Dispensary <i>(without retail sales)</i>	804

The above referenced use numbered 804 shall be permitted only by Special Permit (SP) in the following zoning districts, and so indicated in said table:

- I-1 (Industrial District)
- I-1B (Industrial District)

Wherever the above referenced use numbered 804 is listed as permitted by Special Permit (SP) said notation shall be accompanied by reference to footnote (h) of the Table of Use Regulations, which reads as follows:

(h) See section V-G entitled "Medical Marijuana Treatment Centers" for additional requirements and restrictions.

The above referenced uses numbered 801 and 803 shall be permitted only by Special Permit (SP) in the following zoning district, and so indicated in said table:

- B-1 (Business District)

For all other zoning districts the above referenced uses shall be prohibited, or "Not Permitted" (NP), and so indicated in said table.

Wherever the above referenced uses numbered 801 and 803 are listed as permitted by Special Permit (SP) said notation shall be accompanied by reference to the following new footnote to the Table of Use Regulations:

- (i) *The Planning Board shall act as the designated Special Permit Granting Authority (SPGA) for this use. See Section XXX entitled "Licensed Marijuana Businesses" for additional requirements and restrictions.*

Section XXX: Licensed Marijuana Businesses

Insert a new Section XXX, entitled "Licensed Marijuana Businesses" as follows:

XXX-A Purposes.

The purpose of this Section is to provide for the establishment of both medical and recreational Marijuana Businesses in the City of Newburyport in as much as:

1. Medical Marijuana Treatment Centers (MMTCs), also known as "Registered Marijuana Dispensaries" (RMDs), are authorized in the Commonwealth of Massachusetts pursuant to Chapter 369 of the Acts of 2012 (entitled "An Act for the Humanitarian Medical Use of Marijuana"), M.G.L. Chapter 94I (entitled "Medical Use of Marijuana") and 105 CMR 725 (entitled "Implementation of an act for the humanitarian medical use of marijuana");
2. "Marijuana Establishments" for the adult, non-medical use of marijuana, are authorized in the Commonwealth of Massachusetts pursuant to Chapter 334 of the Acts of 2016, as amended by Chapter 351 of the Acts of 2016 and Chapter 55 of the Acts of 2017, as further codified in General Laws Chapter 94G (entitled "Regulation of the Use and Distribution of Marijuana Not Medically Prescribed") and regulations promulgated by the Massachusetts Cannabis Control Commission (CCC) in 935 CMR 500 (entitled "Adult Use of Marijuana");
3. The City seeks to protect the public welfare, health and safety of the residents of Newburyport;
4. These zoning regulations provide for the placement of all medical and recreational marijuana-related businesses in suitable locations; and
5. The City seeks to minimize any potential adverse impacts of medical and recreational marijuana-related businesses on adjacent properties, residential neighborhoods, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security and removal of such marijuana businesses.

XXX-B Definitions.

Where not expressly defined in this section or elsewhere in the Newburyport Zoning Ordinance, terms used in this section (XXX) shall be interpreted as defined in the statutes and regulations cited in Section XXX-A § 1 & 2 above.

Commission or CCC means the Massachusetts Cannabis Control Commission established by G.L. c. 10, §76, or its designee.

Department of Public Health or DPH means the Massachusetts Department of Public Health.

License means the required certificate issued by the Commonwealth for a Marijuana Business.

Licensee means a person or entity licensed by the Commonwealth to operate a Marijuana Business.

Marijuana Business means a Medical Marijuana Treatment Center, Marijuana Establishment, or any combination or part thereof.

Marijuana Establishment means a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, as set forth in G.L. c.94G, § 1 and regulations promulgated thereunder.

Medical Marijuana Treatment Center (MMTC), also known as a Registered Marijuana Dispensary (RMD), means an entity registered under 105 CMR 725.100: Registration of Registered Marijuana Dispensaries, or licensed by the Cannabis Control Commission pursuant to G.L. c.94I, that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

XXX-C Special Permit Required.

Pursuant to Chapter 40A of the Massachusetts General Laws, as well as under the home-rule powers of the City pursuant to Sections 1 and 6 of Article II of the Articles of Amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article LXXXIX of said Articles of Amendment, and in order to mitigate potential secondary adverse impacts, a special permit is required for a Marijuana Business within the City of Newburyport.

XXX-D License Requirements and Conditions of Use.

1. Marijuana Businesses shall be properly licensed by the Commonwealth of Massachusetts Cannabis Control Commission (CCC) or Department of Public Health (DPH), as applicable, pursuant to regulations promulgated therefore.
2. No Marijuana Business shall be permitted for, or otherwise allow, on-premises social consumption.

3. No Marijuana Business shall be permitted to operate outside of an enclosed building or structure.
4. No Marijuana Business located within the Business and Industry Park zoning districts (I-1 and I-1B) shall be permitted to conduct in-person retail sales on premises. This restriction shall not be construed to prohibit the transfer or delivery of marijuana-related products to other locations where in-person retail sales of marijuana-related products are permitted.

XXX-E Parking Requirements.

Parking requirements for Marijuana Businesses, as those businesses are more particularly defined in G.L. c.94G and the regulations promulgated thereunder, shall be as follows:

- “Craft Marijuana Cooperative”: 1 per employee plus 1 per 300 square feet gross floor area
- “Independent Testing Laboratory”: 0.75 per employee in maximum shift plus 1 per company vehicle
- “Marijuana Cultivator”; 0.75 per employee in maximum shift plus 1 per company vehicle
- “Marijuana Establishment”; 0.75 per employee in maximum shift plus 1 per company vehicle, unless otherwise noted
- “Marijuana Product Manufacturer”; 0.75 per employee in maximum shift plus 1 per company vehicle
- “Marijuana Retailer”; 3 per 1,000 square feet of gross floor area (GFA)
- “Marijuana Transporter”; 0.75 per employee in maximum shift plus 1 per company vehicle
- “Medical Marijuana Treatment Center”; 1 per employee plus 1 per 300 square feet gross floor area
- “Microbusiness”; 0.75 per employee in maximum shift plus 1 per company vehicle
- “Research Facility”; 0.75 per employee in maximum shift plus 1 per company vehicle
- Any other Marijuana Business: 0.75 per employee in maximum shift plus 1 per company vehicle

XXX-F Required Buffer Zones & Restrictions on Location

1. Residential Districts: No Marijuana Business within the Business and Industry Park zoning districts (I-1 and I-1B) shall be located or permitted within two hundred and fifty (250) feet of any residential district. Nor shall any Marijuana Business within said districts (I-1 and I-1B) be located or permitted northwest of Hale Street.
2. Protected Uses: No Marijuana Business shall be located or permitted within five hundred (500) feet of:
 - a. a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12;
 - b. a nursery school or daycare facility;
 - c. a public library;

- d. a public park or playground;
 - e. a municipal youth or recreation center;
 - f. a public swimming pool; or
 - g. any similar facility in which children commonly congregate in an organized, ongoing, formal basis.
3. **Measurement:** The distance under this section shall be measured in a straight line from the nearest point of the property or district line in question to the nearest point of the building or structure where the Marijuana Business is or will be located.

XXX-G Permitting Procedure & Criteria for Approval.

Permit Granting Authority: The Planning Board shall act as the designated Special Permit Granting Authority (SPGA) in administering this section.

Special Permit Required: Marijuana Businesses may be permitted only pursuant to a Special Permit hereunder. The Planning Board shall review and may deny, approve, or approve with conditions all applications hereunder in accordance with the procedures listed in Subsection X-H.8. The SPGA shall approve a Business if the SPGA determines that the proposed use meets all the requirements of this section and, in addition, the special permit criteria of Subsection X-H.7. Application for a special permit shall be submitted to the SPGA pursuant to the submission requirements, and procedures contained in Section X-H.7.

Documentation Required to Support an Application: To support any Special Permit application under this section, the applicant shall provide as part of the application to the SPGA the following documentation:

1. A copy of its application, registration and/or certificate as a Marijuana Business from the CCC or DPH (as applicable);
2. A letter from the owner of the property on which the proposed Marijuana Business is to be located indicating approval of the proposed use and submission of the application to the SPGA.
3. A detailed floor plan of the premises of the proposed Marijuana Business that identifies the square footage available and describes the functional areas of the proposed use;
4. Detailed site plans that include the following information:
 - a. Compliance with the requirements for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings, and all other provisions of this Ordinance;
 - b. Convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
 - c. Convenience and safety of vehicular and pedestrian movement off the site, if vehicular and pedestrian traffic off-site can reasonably be expected to be substantially affected by on-site changes;
 - d. Adequacy as to the arrangement and the number of parking and loading spaces in relation to the proposed use of the premises (and anticipated number of visitors), including designated parking for employees and home delivery vehicle(s), as applicable;

- e. Design and appearance of proposed buildings, structures, freestanding signs, screening and landscaping; and
 - f. Adequacy of water and electrical supply, surface and subsurface drainage and site lighting.
5. A description of any proposed security measures for the Marijuana Business, including but not limited to security cameras and employee security policies;
 6. A copy of proposed waste disposal procedures for the Marijuana Business;
 7. A detailed description of the applicant's proposed measures to advertise services available at the proposed Marijuana Business, including but not limited to the use of websites, local media and signage.
 8. A Traffic Impact Analysis (Traffic Study) for the proposed use and site consistent with the requirements of Section XV-E(b)(4) of this Ordinance; and
 9. Documentation regarding the projected use, and adequacy, of public and private utilities and infrastructure required for operation of the proposed Marijuana Business, including, but not limited to:
 - a. Water
 - b. Wastewater
 - c. Electricity

These materials shall be in addition to those submission materials required in section X-H(7) "Special Permits."

Traffic & Impact Studies: To aid the SPGA in its review, the owner shall pay all costs for the SPGA to engage a properly licensed traffic engineer, consulting engineer or other professionals experienced in the review of traffic studies and/or community impact reports, deemed necessary in the opinion of the SPGA to ensure that the proposed Marijuana Business will not unduly burden the City's water and wastewater systems or result in undue traffic congestion or safety concerns in the immediate vicinity of the proposed facility and/or site. The portions of this section (and its regulations, if any) requiring the payment of consultant fees are promulgated under the concurrent authority of Massachusetts General Laws Chapter 44, Section 53G.

Signage: All signage shall conform to the requirements of the Newburyport Zoning Ordinance. The SPGA may impose additional restrictions on signage as appropriate to mitigate any aesthetic impacts. Use of medical symbols, images of marijuana, related paraphernalia, and text or colloquial references to cannabis and marijuana on any signage is prohibited.

Departmental Review: The SPGA shall refer copies of the application to the Building Department, Fire Department, Police Department, Board of Health, and the Department of Public Works. These boards/departments shall review the application and shall submit their written recommendations to the SPGA. Failure to make recommendations within 45 days of referral of the application shall be deemed lack of opposition.

XXX-H Decision and Conditions of Approval

Public Hearing and Decision: After notice and public hearing (in accordance with Section X-H(7) and consideration of application materials, consultant reviews, public comments, and

- x. The Police Department, Fire Department, Building Inspector, Zoning Enforcement Officer, Director of Planning & Development and Director of Public Health shall have the right to inspect the subject premises to assure compliance with the special permit.
- xi. Prohibition Against Nuisances: No use or operation shall be allowed at any Marijuana Business which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

XXX-I Severability.

The provisions of this section are severable. If any of its provisions, sections, subsections, paragraphs, sentences, or clauses, or the application thereof to any person, entity, establishment, or circumstances shall be held to be invalid or unconstitutional by any court of competent jurisdiction, then the remainder of this section and the application thereof shall continue to be in full force and effect. The invalidity of any provision of this Section shall not affect the validity of the remainder of this Section or the Newburyport Zoning Ordinance.

Councillor Barry N. Connell

p10

Dear Jared:

Pursuant to our telephone conversation, attached please find relevant portions from the CCC's most recent *Guidance for Municipalities*. Although not a legal opinion, the Guidance document reflects the CCC's interpretation of the law. It indicates that a moratorium of reasonable length may be passed as a zoning amendment. It also states that the number of marijuana *retailers* may be limited to 20% of the number of liquor licenses (the proposed Newburyport Ordinance contains no limitation). The question of whether to enact a complete prohibition on marijuana establishments for adult use (cultivation and/or retail) may be posed to the people of the municipality at a regular or special election per the Guidelines. A Registered Marijuana Dispensary cannot be prevented from converting to a marijuana establishment for adult use.

There are a number of different types of marijuana establishments, but the proposed Newburyport ordinance does not make any distinction except as to "with" or "without" retail. The proposed ordinance does not include any residential buffer zone for retail marijuana use and the proposed marijuana retail zone abuts residential areas. As I understand it, the proposed marijuana retail use corridor is too narrow to accommodate even a 250 ft. buffer zone and still remain viable, so no buffer zone is proposed. The expanded proposed marijuana cultivation zone, **which now includes the entire Industrial Park**, also abuts residential areas and the buffer zone is only 250 ft. for residential areas that abut Districts I-1 and I-1B. As we understand it, two companies have expressed an interest to operate marijuana establishments in the Park. If this becomes a permitted use throughout the Park, it is conceivable that marijuana establishments may buy out existing leases and properties, if the price is right. This could result in a de facto major shift in policy and economic strategy for the City.

A moratorium would afford a more reasonable time frame to evaluate the City's options and would afford the citizens of Newburyport an opportunity to opine through a ballot initiative. The proposed changes will have a long-term impact on the Business and Industry Park and on residents, with potentially harmful and unintended consequences.

The Joint Planning Board and City Council Committee Meeting on this issue will take place at City Hall on May 16. The hearing before the Zoning Board of Appeals on the pending zoning variance application to add restaurant use and entertainment in the Park is scheduled for May 22.

The Chamber and EDAC appreciate the opportunity to work with you and our other councilors on these important issues.

As always, thank you for your time and consideration. Grace

Grace Gonzalez Connolly
Law Offices of Connolly & Connolly
P.O. Box 332 51 Green Street
Newburyport, MA 01950978-462-2251
978-463-8282 (Fax)
grace@connolly.legal

Cannabis Control Comm

Guidance for Municipalities 2018 MAY -3 PM 2:25

same type of activities for adult use of marijuana that it is engaged in for medical use of marijuana. For a discussion on bans or limiting the number of marijuana establishments through a general bylaw or ordinance, please see the next page.

Local Control: Moratoria — *to be passed as a Zoning Amendment*

A Moratorium of a Reasonable Length of Time is Permitted. Although municipalities are prohibited from using a zoning bylaw or ordinance to prevent the conversion of a registered marijuana dispensary, the Commission does not interpret the word prevent to prohibit the municipality from imposing a moratorium, a temporary delay passed as a zoning amendment to allow a municipality to engage in a planning process to determine how best to zone marijuana establishments for adult use in its community.

The Commission will interpret the reasonableness of the length of a moratorium in a manner consistent with the opinions issued by the Attorney General's Office in reviewing moratoria proposed by communities, which, as of the date of this publication, in the majority of cases has allowed moratoria through December 31, 2018. When the moratorium expires, the Commission cautions local officials from amending their zoning bylaws or ordinances in a manner that could be deemed to conflict with the statute and recommends consulting the City Solicitor and Town Counsel regarding any zoning amendments.

Local Control: Additional Permits

Additional Local Permits for Adult Use May Be Required. Although municipalities are prohibited from using a zoning bylaw or ordinance to prevent the conversion of a registered marijuana dispensary, the Commission does not interpret the word prevent to prohibit the municipality from requiring a registered marijuana dispensary eligible under the statute to apply for any additional local permits required to change its existing operation with a marijuana establishment for adult use. The Commission cautions local permitting boards from exercising their discretion in acting on a request for a local permit in a manner that could be deemed to conflict with the statute and recommends consulting the City Solicitor and Town Counsel during their decision-making.

Local Control: Bylaws, Ordinances, and Ballots

Banning or Limiting the Number of Marijuana Establishments in a Municipality:

A municipality may restrict the number of marijuana establishments in its community, but it must follow certain procedures to do so.

- A municipality may pass a bylaw or ordinance limiting the number of marijuana retailers to 20% or more of the number of liquor licenses issued pursuant to G.L. c.138 §15 (commonly known as "package stores") in that municipality. For example, if a municipality has 100 such liquor licenses, that municipality may set a maximum limit for 20 marijuana retailers.
- If the governing body of a municipality seeks to ban marijuana retailers from operating in the municipality, limit the number of them to fewer than 20% of the number of liquor licenses or limit the number of any type of marijuana establishment to fewer than the number of RMDs registered to engage in the same type of activity in the city or town, there are two different procedures for proceeding, which depend on how the municipality voted on the ballot initiative to legalize marijuana in 2016.

- o If a municipality voted no on the initiative, then the governing body may limit or ban the number of marijuana establishments by passing a bylaw or ordinance prior to and including December 31, 2019.
- o If a municipality voted yes on the initiative or if it is after December 31, 2019, then the question must be posed to the people of the municipality at a regular or special election following a specific process and wording.

*Rec Not
Regular
Special
Election*

- There is legislation pending - malegislature.gov/Bills/190/H4284 - to clarify the election process.

Ban:

If a municipality enacts a complete prohibition on marijuana establishments for adult use through a general bylaw or ordinance, the Commission will not issue a license so as to authorize the conversion of a registered marijuana dispensary to a marijuana establishment for adult use in that municipality.

Limited Number:

If a municipality adopts a general bylaw or ordinance imposing a limitation on the number of marijuana establishments within its community, such that the amount allowed is less than the registered marijuana dispensaries within that community, the municipality must determine which registered marijuana dispensaries will be permitted to proceed to the application process for adult use by executing a host community agreement with those dispensaries.

Local Control: Buffer Zones, Signage, and Transportation

Buffer Zone:

Under state law, a marijuana establishment may not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. Municipalities may adopt an ordinance or bylaw to reduce that distance requirement.

Signage:

A municipality may regulate, by bylaw or ordinance, signage regarding marijuana-related uses, but the ordinance or bylaw may not impose a standard more restrictive than those applied to retail establishments selling alcoholic beverages within the municipality.

Transportation:

Municipalities are prohibited from barring the transportation of marijuana or marijuana products or adopting an ordinance or by-law that makes the transportation of marijuana or marijuana products unreasonably impracticable.

Questions?

If you have additional questions regarding types of Marijuana Establishments, please contact the Commission at CannabisCommission@State.MA.US or (617) 701-8400.

The Commission encourages municipalities to carefully consider the impact of the particular marijuana establishment proposed for a community, as well as benefits it may bring in local revenue and employment, when negotiating a host community agreement.

There is legislation pending to protect host community agreements executed on or before July 1, 2017 malegislature.gov/Bills/190/H4284. The same legislation requires municipalities receiving community impact fee payments to establish a separate account into which fee payments must be deposited.

Local Control: Taxes

A municipality that accepts the local sales tax option may collect a 3% tax on sales of marijuana by a marijuana retailer to a consumer. The tax will be collected with other sales tax and distributed to municipalities at least four times per year. Please note that there is legislation pending - malegislature.gov/Bills/190/H4284 - that would remove “marijuana products intended for consumption as defined in G.L. c.94G” from the exemption from sales tax for food products for human consumption in G.L. c.64H §6.

Local Control: Bylaws & Ordinances

The law allows, but does not require, municipalities to pass bylaws and ordinances governing the “time, place, and manner” of marijuana establishments (cultivators, retailers, manufacturers, testing labs, and any other licensed marijuana-related businesses) as well as businesses dealing with marijuana accessories. Such bylaws and ordinances may not be “unreasonably impracticable.”

Under the definition in the law, this means that the local laws cannot be so difficult to comply with that they would subject licensees to unreasonable risk, or require such a high investment of risk, money, time or any other resource or asset, that a reasonably prudent businessperson would not operate a marijuana establishment.

Alternatively, a municipality may determine a proposed marijuana-related use falls under an existing use authorized by its bylaws or ordinances. For the purpose of understanding how to respond to a notification from the Commission that an application has been deemed to be complete, the Commission provides the following interpretation of the limits of local control.

Local Control: Conversion from Medical Use to Adult Use

Zoning bylaws or ordinances are not permitted to operate to prevent the conversion of an RMD registered not later than July 1, 2017 that is engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment for adult use engaged in the same type of activity. The Commission interprets conversion to include not only replacing the operation of a registered marijuana dispensary entirely with the operation of a marijuana establishment, but also to address adding marijuana establishment operations to the operations of a RMD.

There is legislation pending - malegislature.gov/Bills/190/H4284 - that clarifies this interpretation. A registered marijuana dispensary that has received its provisional or final registration no later than July 1, 2017 is grandfathered against zoning bylaws or ordinances that would prevent it from conducting the

B+D

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 14, 2018

Newburyport Ballot Question for Non-Medical Marijuana Retailer Ban

Shall this City adopt the following zoning and general ordinances?

Summary: This question seeks voter approval of a zoning ordinance and a general ordinance prohibiting non-medical marijuana retailers, to include entities licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers, from locating and operating within the City. This ballot question and the related ordinances will not affect the location or operation of medical marijuana dispensaries or other non-medical marijuana establishments within the City.

- A. Zoning Ordinance:
Section V-I, Prohibition of Non-Medical Marijuana Retailers. Consistent with G.L. c. 94G, Section 3(a)(2), "Marijuana Retailers" as defined in G.L. c. 94G, Section 1, shall be prohibited within the City of Newburyport. This prohibition shall not apply to the sale, distribution, manufacture or cultivation of marijuana for medical purposes..
- B. General Ordinance:
Chapter 9, Article X, Prohibition of Non-Medical Marijuana Retailers. Consistent with G.L. c. 94G, Section 3(a)(2), "Marijuana Retailers", as defined in G.L. c. 94G, Section 1, shall be prohibited within the City of Newburyport. This prohibition shall not apply to the sale, distribution, manufacture or cultivation of marijuana for medical purposes.

Yes ___

No ___

Afroz Khan
At-Large City Councillor

Larry G. Giunta
Ward 5 City Councillor

Heather L. Shand
Ward 3 City Councillor

CITY OF NEWBURYPORT



 IN CITY COUNCIL

ORDERED:

June 11, 2018

Amendment proposed in Cmte. on August 8, 2018**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEWBURYPORT**

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

THAT the Zoning Ordinance, Appendix A of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended pursuant to Section XII-B "Adoption and Amendment" as follows:

Section V-D: Table of Use Regulations

Uses numbered 801 ["Marijuana Establishment (with retail sales)"] and 803 ["Medical Marijuana Treatment Center or Registered Marijuana Dispensary (with retail sales)"] shall be permitted only by Special Permit (SP) in the following zoning districts, and so indicated in said table:

- B-1 (Business District)*
- ~~B-2 (Downtown Business District)~~
- ~~B-3 (Neighborhood Business District)~~

* Uses 801 and 803 are permitted are so permitted solely within that certain B1 zoning district centered around the intersection of State Street and Route 1 (Route 1 Traffic Circle), and, in addition, Use 801 is limited to the Marijuana Retailer subtype. For further limitations see Section XXXI.

Wherever the above referenced uses numbered 801 and 803 are listed as permitted by Special Permit (SP) said notation shall be accompanied by reference to the following footnote to the Table of Use Regulations:

- (h) *The Planning Board shall act as the designated Special Permit Granting Authority (SPGA) for this use. See Section XXX entitled "Licensed Marijuana Businesses" for additional requirements and restrictions.*

For all other zoning districts the above referenced uses 801 and 803 shall be prohibited, or "Not Permitted" (NP), and so indicated in said table.

Section V-H: Temporary Moratorium on Recreational Marijuana Establishments

Delete Section V-H (entitled "Temporary Moratorium on Recreational Marijuana Establishments") in its entirety.

XXXI-F – Required Buffer Zones & Restrictions on Use.

Amend Section XXXI-F (entitled "Required Buffer Zones & Restrictions on Use") to read as follows, with deletions ~~double-stricken through and italicized~~, and additions double-underlined and italicized:

1. Residential Districts: No Marijuana Business within the Business and Industry Park zoning districts ~~(BPI-I and I-IB)~~ shall be located or permitted within two hundred and fifty (250) feet of any residential district measured in a straight line from the nearest point of the property or district line in question to the nearest point of the building or structure where the Marijuana Business is or will be located. Nor shall any Marijuana Business within said districts ~~(BPI-I and I-IB)~~ be located or permitted northwest of Hale Street. No Marijuana Business within the Business district (B1) shall be located or permitted within one hundred (100) feet of any residential district, measured in a straight line from the nearest point of the property or district line in question to the nearest point of the building or structure where the Marijuana Business is or will be located. Nor shall any Marijuana Business within said district (B1) be located or permitted at a lot that is both west of State Street and north of Parker Street, nor on the easterly side of State Street north of 149 State Street (Map 34, Parcel 14).

2. Protected Uses: No Marijuana Business shall be located or permitted within ~~five hundred (500)~~ two hundred and fifty (250) feet, measured in a straight line from the main entrance of the establishment to be protected and the nearest point of the building or structure where the Marijuana Business is or will be located, of:
 - a. a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12;
 - b. a pre-existing nursery school or daycare facility;
 - c. a pre-existing public library;
 - d. a pre-existing public park or playground;
 - e. a pre-existing municipal youth or recreation center;
 - f. a pre-existing public swimming pool; or
 - g. any similar pre-existing facility in which children commonly congregate in an organized, ongoing, formal basis.

3. ~~Measurement: The distance under this section shall be measured in a straight line from the nearest point of the property or district line in question to the nearest point of the building or structure where the Marijuana Business is or will be located.~~

Councillor Gregory D. Earls



XXXI-F Required Buffer Zones Route 1/Traffic Circle (B1)

Legend	
	100' Buffer From Residential Districts
	Specifically Excluded
	250' Buffer from Entrance of Protected Use

PKD

ORDR049_07_16_18

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

July 16, 2018

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

THAT the City Council of the City of Newburyport hereby approves and authorizes the acceptance of a Preservation Restriction between the City, acting by and through the Newburyport Historical Commission, and 58 Middle Street Realty Trust, for the property located at 50-58 Middle Street, Newburyport; and

Further, that the Mayor of the City of Newburyport, the City Council President and City Clerk are hereby authorized to sign the said Preservation Restriction as may be required, to act on behalf of the City and enter into any and all instruments, including acceptance of said Preservation Restriction, and in accordance with Massachusetts General Laws Chapter 184, and to take any other actions necessary to execute this acceptance and the associated Preservation Restriction accordingly.

Councillor Jared J. Eigerman

PKD
JJE/C

PRESERVATION RESTRICTION AGREEMENT

Between

58 Middle Street Realty Trust
and the

CITY OF NEWBURYPORT, MASSACHUSETTS

BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION is made this ____ day of _____ 2018 (this "Restriction") by and between 58 Middle Street Realty Trust, located at 50-58 Middle Street, Newburyport, Essex County, Massachusetts 01950 ("Grantor"), and the CITY OF NEWBURYPORT ("Grantee"), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, to be managed and enforced by its agent, the NEWBURYPORT HISTORICAL COMMISSION (the "Commission"), located at 60 Pleasant Street, Newburyport, Massachusetts, 01950.

WHEREAS, the Grantor is the owner in fee simple of certain real property located at 50-58 Middle Street, Newburyport, Massachusetts which was conveyed to 58 Middle Street Realty Trust by deed recorded with the Essex South Registry of Deeds on September 26, 2016 in Book 35617 and Page 183, attached hereto as Exhibit A. A portion of the foregoing property is that shown as **Lot B** on a plan titled "Plan of Land in Newburyport, MA, Showing Proposed Site Plan at 50-58 Middle Street (Map 7 – Lot 21)" prepared by Millennium Engineering for 58 Middle Street Realty Trust, George A. Haseltine Trustee and recorded in the Essex South Registry of Deeds Plan Book 465 Plan 21 on April 26, 2018 (the "Plan"), which Plan is attached hereto as Exhibit B, and incorporated herein by reference (the "Property"). This Restriction shall apply to the Property the exterior of said existing principal building, referred to as the "50 Middle Street House", and described as follows:

A gable-front-and-wing shaped house, believed to have been built circa 1900-1904. The house has a shed-roofed porch placed within the L made by the two wings, which is common in urban, folk-Victorian style buildings in the northeast. The roof ridge is of uniform height across both the front and the wing. The key architectural features of the house are described and shown in further detail in the Baseline Documentation.

WHEREAS, the Property is a contributing resource to the Newburyport Historic District listed in the State and National Registers of Historic Places on August 2, 1984, is historically significant for its architecture, associations, and/or archeology, and qualifies for the protections of perpetual preservation restrictions under Massachusetts General Laws, Chapter 184, sections 31, 32 and 33; and

WHEREAS, Grantor and Grantee recognize the architectural, historic and cultural values (hereinafter "preservation values") and significance of the Property, and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Property; and

WHEREAS, the preservation values of the 50 Middle Street House are documented in a series of photographs and documents (hereinafter, "Baseline Documentation") incorporated herein and attached hereto as Exhibits A (Property Description), B (Site Plans), C (Massachusetts Historical Commission Inventory Form B) which Baseline Documentation the parties agree provides an accurate representation of the 19. Runs with the Land: Except as provided in paragraphs 9 and 10, the restrictions, obligations and duties set forth in this Restriction shall run with the Property and shall inure to the benefit of the

Commission and all parties claiming by, through or under the Commission and shall bind the Grantor and all parties claiming by, through or under the Grantor. The rights hereby granted to the Commission constitute the perpetual right of the Commission to enforce this Preservation Restriction Agreement. The Grantor hereby covenants for itself to stand seized and hold title to the Property subject to the terms of respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor", "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, Grantor of the Property shall have no obligation pursuant to this instrument where such Grantor shall cease to have any Grantorship interest in the Property by reason of a bona fide transfer. The restrictions, stipulations and covenants contained in this Restriction shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property, as of the date hereof.

WHEREAS, the Photographic Documentation (Exhibit D)

Digital and archival photographic print copies of the Baseline Photographs shall be maintained by the Grantee with an address of:

City of Newburyport
c/o Newburyport Historical Commission
Newburyport City Hall,
60 Pleasant Street
Newburyport, MA 01950

WHEREAS, the 50 Middle Street House is in need of preservation and restoration; and will have its exterior restored in the following manner:

1. Vinyl siding to be replaced by cedar clapboards with four-inch reveal.
2. Bay window in front to be replaced by two windows to match above on second floor.
3. All windows to be replaced with aluminum clad, wood interior units with 2/2 muntin pattern, simulated divided light.
4. Asphalt used as driveway will be removed and replaced with Boston City Brick Pavers per the proposed site plan.
5. Boston City Brick Pavers will also be used for the driveway for Lot A.
6. Existing asphalt walkways around existing house on Lot B will be removed and replaced with natural stone.

WHEREAS, the Grantor has received a Variance from the City of Newburyport issued June 20, 2017 and filed with the City Clerk June 20, 2017 and recorded with the Essex (South) District Registry of Deeds in Book 36012, Page 205 for the construction and renovation of the structure along with a second Variance from the City of Newburyport issued June 20, 2017 and filed with the City Clerk June 20, 2017 and recorded with the Essex (South) District Registry of Deeds in Book 36012, Page 193 for the construction of another residential structure at 58 Middle Street, Newburyport, Essex County, Massachusetts on Lot A as shown on the Plan and the Grantor has agreed to impose a restriction in perpetuity on the Property for the preservation and renovation of the 50 Middle Street House, under the terms and conditions set forth herein and in such other documents as the parties may execute (the "Restriction" or "Preservation Restriction");

WHEREAS, the Grantor agrees and desires to impose certain restrictions, obligations and duties upon itself, its successors and assigns, so as to maintain, protect and preserve the architectural and historical integrity of the 50 Middle Street House; and

WHEREAS, the preservation of the 50 Middle Street House is important to the public for the enjoyment and appreciation of its architectural and historical heritage and serves the public interest in a manner consistent with the purposes of Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 ("Act"); and

WHEREAS, the Commission is authorized to accept preservation restrictions in the name of the City of Newburyport and the Commission is a governmental body duly organized under the laws of the Commonwealth of Massachusetts, including the General Laws, Chapter 40, Section 8D, authorized and directed by the Grantee to manage the Property and 50 Middle Street House burdened by such restrictions and to administer and enforce this restriction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross this Restriction over the Property and the exterior of the 50 Middle Street House to be administered, managed and enforced by the Commission during the Term of this Restriction.

1. Purpose: It is the purpose of this Restriction to assure that the architectural, historic, and cultural features of the exterior of the 50 Middle Street House, as described and documented in the Baseline Documentation, will be retained and maintained forever substantially in their historically-appropriate condition for preservation purposes and to prevent any use or change to the exterior of the 50 Middle Street House and specified interior features of the 50 Middle Street House or the Property that will significantly impair or interfere with the 50 Middle Street House's Preservation Values (the "Purpose of this Restriction"). Characteristics that contribute to the architectural and historical integrity of the Property including include, but are not limited to, the setting and location of the 50 Middle Street House; and the architectural features, materials, appearance, and workmanship thereof. All Exhibits shall be attached to and recorded with this Restriction.
2. Preservation Restriction: The Grantor grants the grantee the right to forbid or limit:
 - a. Any alteration to the appearance, materials, workmanship, condition or structural stability of the 50 Middle Street House unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the 50 Middle Street House, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with requirements in paragraph 9. For the purposes of this Agreement, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached hereto as Exhibit E.
 - b. Any alteration to the appearance, materials, workmanship, condition or structural stability of the 50 Middle Street House governed by the Newburyport Historical Commission as listed and attached hereto as Exhibit E.
 - c. Any other act or use that may be harmful to the historic preservation of the 50 Middle Street House or the Property.
 - d. Notwithstanding anything to the contrary in this section 2, in the event the Grantor is required by law to make improvements to the 50 Middle Street House or the Property or is required in writing by its insurance carrier to make improvements to the 50 Middle Street House or the Property in order to avoid revocation of insurance and the Grantor has exhausted all methods of variance or appeal process related to either applicable law or insurance qualifications, the

Grantee and the Grantor agree that the Grantee may not forbid or limit the Grantor's ability to make the improvements. Said changes or improvements shall comply with the Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36CFR 67 and 68) (hereinafter the "Secretary's Standards"), and shall be designed in consultation with and subject to reasonable review by Grantee.

- e. Grantor agrees at all times to maintain the exterior of the 50 Middle Street House or the Property, as shown in the Restoration plans and in accordance with this Restriction and in compliance with all Federal, state and local laws, codes and ordinances applicable to the 50 Middle Street House or the Property. Grantor's obligation to maintain shall require repair, reconstruction and, where necessary, replacement in kind whenever necessary to preserve the 50 Middle Street House in a good, sound condition and state of repair.
3. Grantor's Covenants: Covenant to Maintain: Subject to paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the 50 Middle Street House in the same structural condition and state of repair existing as of the date of this Restriction, and thereafter to that existing following the substantial completion of restoration work to be completed. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the 50 Middle Street House. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the 50 Middle Street House whenever necessary in accordance with the policies and procedures of the Commission and in accordance with the Secretary's Standards.
 4. Grantor's Covenants: Prohibited Activities: The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:
 - a. The 50 Middle Street House shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
 - b. The dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;
 - c. No above-ground utility transmission lines, except those reasonably necessary for the existing 50 Middle Street House, may be created on the Property, subject to utility easements already recorded;
 - d. No additions and/or outbuildings may be attached to the 50 Middle Street House without prior approval of the Commission; and
 - e. Moving the 50 Middle Street House to another location shall be forbidden without prior approval of the Commission.
 5. Conditional Rights Requiring Grantee Approval: Subject to Paragraphs 3 and 4, and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the 50 Middle Street House without prior express written approval of the Commission. Without said approval Grantor shall not make any changes to the 50 Middle Street House, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the 50 Middle Street House. Grantor shall similarly not make any alterations to the surrounding Property that

would obscure the current view of the 50 Middle Street House, such as the installation of permanent signage without approval of the Commission.

Activities by Grantor to maintain the 50 Middle Street House and the Property, which are intended to be performed in accordance with the provisions of paragraph 3, and which are of a minor nature, shall not require the prior approval of the Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by Restriction Guidelines (Exhibit E), which are attached to this Agreement and hereby incorporated by reference.

6. Grantor's Reserved Rights Not Requiring Further Approval by the Grantee: Subject to the provisions of paragraphs 2 and 4, the following rights, uses and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by the Commission without further approval by the Commission:

- a. The right to engage in all those acts and uses that:
 - i. Are permitted by governmental statute or regulation;
 - ii. Do not substantially impair the preservation values of the 50 Middle Street House and the Property; and
 - iii. Are not inconsistent with the Purpose of this Restriction;
 - iv. Without further approval, are in conformance with the Restriction Guidelines attached as Exhibit E and Restoration Plan attached as Exhibit F.
- b. Pursuant to the provisions of paragraph 3, the right to maintain and repair the 50 Middle Street House strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the 50 Middle Street House. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of paragraph 5.

7. Review of Grantor's Requests for Approval: Grantor shall submit to the Commission for the Commission's approval of those conditional rights set out at paragraphs 2 and 5 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity sufficient to permit the Commission to monitor such activity. Within forty-five (45) days of the Commission's receipt of any plan or written request for approval hereunder, the Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Commission shall provide Grantor with written suggestions for modification or a written explanation for the Commission's disapproval. Any failure by the Commission to act within forty-five (45) days or receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time, provided nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

8. Standards for Review: In exercising any authority created by this Restriction to inspect the 50 Middle Street House; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the 50 Middle Street House following casualty damage, the Commission shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event the 50 Middle Street House shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of damage or destruction, such notification including what, if any, temporary emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the 50 Middle Street House and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work. Within one hundred twenty (120) days of the date of damage or destruction, if required by the Commission, Grantor at its expense shall submit to the Commission a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, which Commission approval shall not be unreasonably withheld, which report shall include the following:
- a. An assessment of the nature and extent of damage;
 - b. A determination of the feasibility of the restoration of the 50 Middle Street House and/or reconstruction of damaged or destroyed portions of the 50 Middle Street House; and
 - c. A report of such restoration/reconstruction work necessary to return the 50 Middle Street House to the condition existing at the date hereof or the condition subsequently approved by the Commission.
10. Review After Casualty Damage or Destruction: If, after reviewing the report provided in paragraph 9 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and the Commission shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the 50 Middle Street House in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that restoration/reconstruction of the 50 Middle Street House is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Commission, alter, demolish, remove or raze the 50 Middle Street House, and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts and paragraph 23 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

11. Insurance: Grantor shall keep the 50 Middle Street House insured by an insurance company rated "A-1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the 50 Middle Street House, if damaged, without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission, within ten (10) business days of the Commission's

written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

12. Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions, appointees, agents, directors, employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the 50 Middle Street House; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the 50 Middle Street House; unless such injury, death, or damage is caused by Grantee or its boards, commission, appointees, agents, directors, employees, or independent contractors. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

13. Written Notice: Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing;

Grantor: 58 Middle Street Realty Trust
c/o Lisa Mead, Mead, Talerman & Costa
30 Green Street,
Newburyport, Massachusetts 01950

Grantee: City of Newburyport
c/o Newburyport Historical Commission
Newburyport City Hall
60 Pleasant Street
Newburyport, MA 01950

Each party may change its address set forth herein by a notice to such effect to the other party.

14. Evidence of Compliance: Upon reasonable request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidence the status of this Restriction to the extent of Grantee's knowledge thereof.

15. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the exterior of the 50 Middle Street House and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

16. Grantee's Remedies: The Grantor, for itself, its assigns and successors, expressly acknowledges that a violation of this Preservation Restriction Agreement may result in the Commission exercising its right to enforce the terms and conditions of the Restriction by seeking appropriate legal and equitable relief, including, but not limited to, restoration of the 50 Middle Street House and such other legal and equitable remedies as may be available to the Commission to effectuate the purposes of this Restriction and to enforce the Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including all court costs, and attorneys', architectural, engineering, and expert-witness fees. Grantor shall,

at its own expense and with approval of Commission, reverse any actions or activities which violated this restriction and altered the 50 Middle Street House.

Nothing in this Restriction shall impose upon the Commission any duty to maintain or require that the 50 Middle Street House be maintained in any particular state or condition; notwithstanding the Commission's acceptance hereof Enforcement of the terms of this Preservation Restriction shall be at the discretion of the Commission. Any election by the Commission as to the manner and timing of exercising of its right to enforce this Preservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. By its acceptance of this Preservation Restriction, the Commission does not assume any liability or obligation relating to the condition of the 50 Middle Street House or the Property, including compliance with hazardous materials or other environmental laws and regulations.

17. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the 50 Middle Street House or Property received by Grantor from any government authority within five (5) business days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.
18. Notice of Proposed Sale: Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.
19. Runs with the Land: Except as provided in paragraphs 9 and 10, the restrictions, obligations and duties set forth in this Restriction shall run with the Property. The Grantor covenants that the Property will at all times be held, used, and conveyed subject to and not used in violation of the following restrictions, obligations and duties that shall run with the Property for ninety-nine (99) years. In any event, at the expiration of twenty-nine (29) years, the Grantor does hereby grant to the Commission the right to file an extension of this Restriction pursuant to the powers and assignment herein set forth, for any additional amount of time the Commission determines is in the best interest of the Commission to so file. The Commission is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Preservation Restriction; the Grantor on behalf of the Grantor and the Grantor's successors and assigns appoints the Commission as the Grantor's attorney-in-fact to execute, acknowledge and deliver any such instruments on the Grantor's behalf. Without limiting the foregoing, the Grantor and the Grantor's successors and assigns agree to execute any such instruments upon request.
20. Assignment: Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government, to a local, state, or national charitable corporation or trust that qualifies under the Act, and whose purposes, inter alia, are to promote preservation of historical, cultural, or architectural resources. Conveyance, assignment, or transfer of this Restriction requires that the Purpose for which the Restriction was granted will continue to be carried out. Grantee shall seek Grantor's approval of said conveyance, assignment or transfer and Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.
21. Alternate Designee: Grantee may, at its discretion, remove and replace the Commission as its designee to administer, manage, and enforce this Restriction, provided that any new designee is qualified as such under the Act and other applicable law. In the event Grantee does so remove, the Grantee shall provide notice of same to the Grantor and shall forthwith provide the Grantor with the name, address and further contact information of the designee.

22. Recording and Effective Date: Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor, the City of Newburyport, by and through its Historical Commission, and its being recorded with the Essex (South) District Registry of Deeds.
23. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in conditions surrounding the Property may make impossible the continued Grantorship or use of the Property for the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but is not limited to, partial or total destruction of the 50 Middle Street House resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including approvals by the City of Newburyport by and through its Historical Commission following public hearings to determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.
24. Condemnation: If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interest in the Property that are subject to the taking and all incidental and direct damages resulting from taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to Grantor.
25. Interpretation: The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction:
 - a. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Property shall not apply in the construction or interpretation of this Restriction and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use contained herein.
 - b. This instrument may be executed in two counterparts, one of which is to be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall constitute the entire Restriction of the parties.
 - c. This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private Restriction either in existence now or at any time subsequent hereto.
 - d. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been incorporated herein automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event any provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted

from this Preservation Restriction as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

26. Amendment: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.
27. Release: This Preservation Restriction is intended to be a restriction in gross in perpetuity and may only be released, in whole or in part, by the Grantee pursuant to the procedures for release established by the Act and otherwise by law, including approvals following public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such a release is in the public interest.
28. Archeological Activities: The conduct of archaeological activities on the Property, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. C. 9, Sec. 27C, 950 C.M.R. 70.00).
29. Revised Baseline Documentation: Following completion of the approved work as specified in the Restoration Plan (Exhibit F), a new set of comprehensive Baseline photographs shall be prepared to be filed with the Grantor and Grantee. Digital and archival photographic print copies of the Baseline Photographs shall be maintained by the Grantee with an address of:

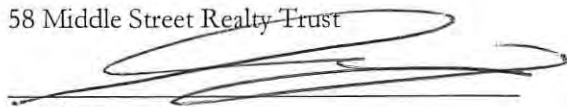
City of Newburyport
c/o Newburyport Historical Commission
Newburyport City Hall,
60 Pleasant Street
Newburyport, MA 01950

IN WITNESS WHEREOF, the Grantor sets its hand and seal this 29th day of June, 2018.

By:

GRANTOR:

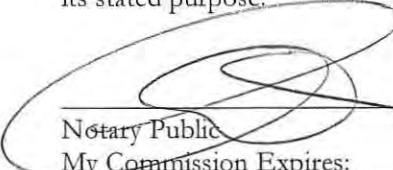
58 Middle Street Realty Trust


Its Trustee,
George Haseltine

Massachusetts

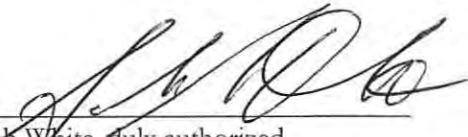
Essex, ss.

On this 29th day of June, 2018, before me, the undersigned notary public, personally appeared George A. Haseltine, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.


Notary Public
My Commission Expires: _____



ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION

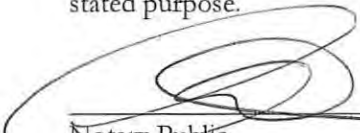


Sarah White, duly authorized
Chair, Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 27 day of June, 2018, before me, the undersigned notary public, personally appeared Sarah White, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.



Notary Public
My Commission Expires: _____



ACCEPTANCE AND APPROVAL BY THE CITY OF NEWBURYPORT

I, the undersigned City Clerk of the City of Newburyport, Massachusetts, hereby certify that at a meeting duly held on _____, 2018, the City Council voted to approve and accept the foregoing Preservation Restriction Agreement for the preservation of the historic resources of said City and being the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

CITY OF NEWBURYPORT

By its Clerk

Richard B. Jones

The undersigned hereby certifies that the foregoing preservation restrictions have been approved and accepted by the City of Newburyport

CITY OF NEWBURYPORT

Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Richard B. Jones, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Donna D. Holaday, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

List of Exhibits/Attachments

Exhibit A: Legal Property Description

Exhibit B: Plot Plans

Exhibit C: Massachusetts Historical Commission Inventory Form B

Exhibit D: Baseline Photographic Documentation

Exhibit E: Restriction Guidelines

Exhibit F: Restoration Plan

Exhibit A
Legal Property Description

PARCEL ONE: The land in said Newburyport with the buildings thereon numbered 58 Middle Street, bounded and described as follows:

Commencing at the Northerly corner thereof on Middle Street by land formerly of Walter Picuch; thence running Southeasterly by said Street, 8 feet to land now or formerly of George F. Poor; thence by said land now or formerly of Poor, Southwesterly $83 \frac{5}{10}$ feet to a corner; Southeasterly 2.75 feet; and Southwesterly again $4 \frac{8}{10}$ feet to land now or formerly of Charles F. Badger; thence by said land now or formerly of said Badger $71 \frac{9}{10}$ feet to land now or formerly of Edith A. Fowler; thence Northeasterly by said land now or formerly of Fowler 19 feet 9 inches to said land formerly of Picuch; thence by the last mentioned land Southeasterly, 35 feet, 3 inches to a corner; Northeasterly 21 feet to a corner; Southeasterly again 11 feet, 8 inches to a corner; and Northeasterly again 47 feet, 6 inches to the point of beginning. All of said measurements being more or less.

Together with a right of way 3 feet wide running Southwesterly from said Middle Street along the Southeasterly side of said land now or formerly of Picuch 47 feet, 6 inches.

PARCEL TWO: A parcel of land being the same premises known as No. 50 to 56 Middle Street on Newburyport Assessors' Map No. 7, supposed to contain 3,544 square feet.

The above-described premises are conveyed subject to and together with a right of way referred to in a deed dated May 8, 1944, and recorded with the Essex South District Registry of Deeds in Book 3370, Page 73.

Being the same premises conveyed to the Grantor by deed of Wojcicki Development Corp. dated January 17, 2017, and recorded with the Essex South District Registry of Deeds in Book 35617 Page 183.

Exhibit B
Plot Plans



OWNER OF RECORD
58 MIDDLE STREET REALTY TRUST
BK. 35617 PG. 183

ZONING DISTRICT
RESIDENCE 3
SINGLE FAMILY

PLAN BOOK 465 PLAN 21
ESSEX REALTY OF DEEDS, PA NOT
SALUB. VAL. 2018

REGISTERED APRIL 26 2018

Inc. 0
JUL 30 2018
Register of Deeds

FOR REGISTRY USE

LOCUS MAP N.T.S.

2/14/15

LEGEND

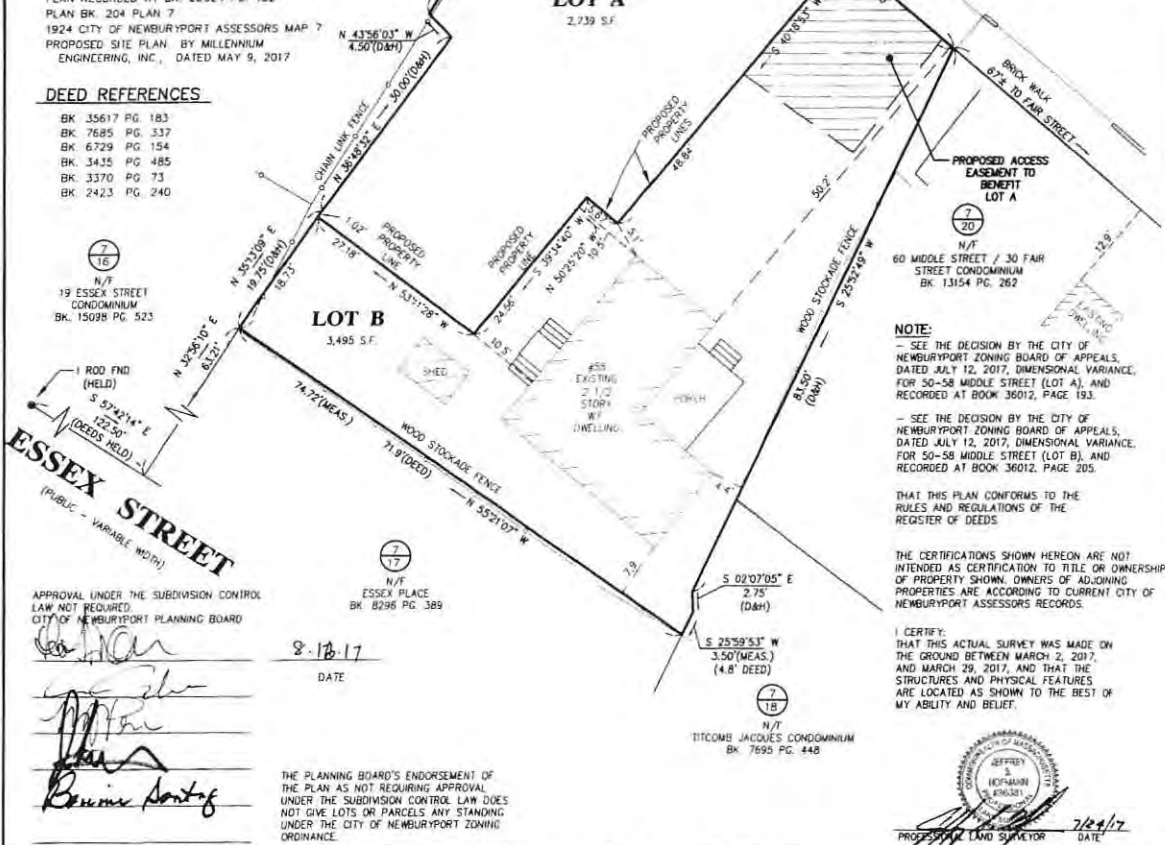
- IRON ROD
- FND FOUND
- (DAH) DEED & HELD
- (MEAS.) MEASURED
- W.F. WOOD FRAMED
- N/F NOW OR FORMERLY
- (D) ASSESSORS MAP #
- (DD) PARCEL #

PLAN REFERENCES

- PLAN 448 OF 1948
- PLAN 844 OF 1954
- PLAN RECORDED AT BK. 26924 PG. 452
- PLAN BK. 204 PLAN 7
- 1924 CITY OF NEWBURYPORT ASSESSORS MAP 7
- PROPOSED SITE PLAN BY MILLENNIUM ENGINEERING, INC., DATED MAY 9, 2017

DEED REFERENCES

- BK. 35617 PG. 183
- BK. 76885 PG. 337
- BK. 6729 PG. 154
- BK. 3415 PG. 485
- BK. 3370 PG. 73
- BK. 2423 PG. 240



ESSEX STREET
(PUBLIC - VARIABLE WIDTH)

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED.
CITY OF NEWBURYPORT PLANNING BOARD

[Signatures]
8-18-17
DATE

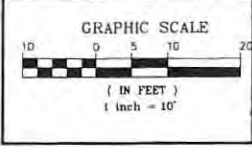
THE PLANNING BOARD'S ENDORSEMENT OF THE PLAN AS NOT REQUIRING APPROVAL UNDER THE SUBDIVISION CONTROL LAW DOES NOT GIVE LOTS OR PARCELS ANY STANDING UNDER THE CITY OF NEWBURYPORT ZONING ORDINANCE.

NOTE:
- SEE THE DECISION BY THE CITY OF NEWBURYPORT ZONING BOARD OF APPEALS, DATED JULY 12, 2017, DIMENSIONAL VARIANCE, FOR 50-58 MIDDLE STREET (LOT A), AND RECORDED AT BOOK 36012, PAGE 193.
- SEE THE DECISION BY THE CITY OF NEWBURYPORT ZONING BOARD OF APPEALS, DATED JULY 12, 2017, DIMENSIONAL VARIANCE, FOR 50-58 MIDDLE STREET (LOT B), AND RECORDED AT BOOK 36012, PAGE 205.
THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.

THE CERTIFICATIONS SHOWN HEREON ARE NOT INTENDED AS CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT CITY OF NEWBURYPORT ASSESSORS RECORDS.

I CERTIFY: THAT THIS ACTUAL SURVEY WAS MADE ON THE GROUND BETWEEN MARCH 2, 2017, AND MARCH 29, 2017, AND THAT THE STRUCTURES AND PHYSICAL FEATURES ARE LOCATED AS SHOWN TO THE BEST OF MY ABILITY AND BELIEF.

[Professional Seal]
7/24/17
DATE



PREPARED FOR
58 MIDDLE STREET REALTY TRUST
GEORGE A. HASELTINE, TRUSTEE
66 GILCREAST ROAD
LONDONDERRY, NH 03053

PLAN OF LAND
IN
NEWBURYPORT, MA
SHOWING
APPROVAL NOT REQUIRED PLAN
AT
50-58 MIDDLE STREET
(MAP 7 - LOT 21)

MILLENNIUM ENGINEERING, INC.
ENGINEERING AND LAND SURVEYING
62 ELM ST. SAUBSBURY, MA 01952 (978) 463-8980
13 HAMPTON RD. EXETER, NH 03833 (603) 778-0528

SCALE: 1"=10'
DATE: JULY 24, 2017
CALC. BY: S.F.R.
CHKD. BY: J.S.H.
PROJECT: M173100
SHEET: 1 OF 1

Exhibit C
Massachusetts Historical Commission Inventory Form B

FORM B – BUILDING

MASSACHUSETTS HISTORICAL COMMISSION
MASSACHUSETTS ARCHIVES BUILDING
220 MORRISSEY BOULEVARD
BOSTON, MASSACHUSETTS 02125

Assessor's Number USGS Quad Area(s) Form Number

--	--	--	--

Town/City: **Newburyport**

Place: *(neighborhood or village):*

Photograph

Insert here or on a Continuation Sheet a digital photograph (either color or black and white).

A paper photographic print (3½x5¼" or 4x6" must also be attached to the form in this space or to a Continuation Sheet. Prints, from a photo-quality inkjet printer, must use brand name paper and inks approved by MHC. Attached photographs should be clearly identified with town name and property address. See MHC's Guidelines for Inventory Form Photographs.

Address: 50-58 Middle Street

Historic Name:

Uses: Present: Residential

Original: Residential

Date of Construction: Circa 1900-1904

Source: Southern Essex Registry of Deeds;

Sanborn maps

Style/Form: Folk-Victorian

Architect/Builder: Unknown

Exterior Material:

Foundation: Brick

Wall/Trim: Vinyl siding

Roof: Asphalt shingle

Outbuildings/Secondary Structures:
None

Major Alterations *(with dates):*

Condition: Average

Moved: no yes Date:

Acreeage: 8,086 SF

Setting: Urban residential; Historic District

Locus Map

Insert here or on a Continuation Sheet a map clearly showing the location of the property including the name of the nearest road or street and at least one other intersecting road or feature.

Assessor's maps are preferred, but other forms of detailed plans such as an excerpt from a USGS topographic map or an aerial or satellite photo clearly marked are also acceptable. See MHC's Guidelines for Inventory Form Locational Information.

Recorded by:

Organization:

Date (month / year):

INVENTORY FORM B CONTINUATION SHEET

TOWN

ADDRESS

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

--	--

Recommended for listing in the National Register of Historic Places.
If checked, you must attach a completed National Register Criteria Statement form.

Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.

ARCHITECTURAL DESCRIPTION:

Describe architectural features. Evaluate the characteristics of this building in terms of other buildings within the community.

This is a gable-front-and-wing shaped house, believed to have been built circa 1900 - 1904. Common in urban, folk-Victorian style buildings in the northeast, the house has a shed-roofed porch placed within the L made by the two wings. The roof ridge is of uniform height across both the front and wing.

HISTORICAL NARRATIVE

Discuss the history of the building. Explain its associations with local (or state) history. Include uses of the building, and the role(s) the owners/occupants played within the community.

The house was built between 1900 and 1904.

The local Newburyport Historic Commission has listed the house as being contributory to the overall historic character of the neighborhood.

BIBLIOGRAPHY and/or REFERENCES

Southern Essex County Registry of Deeds; Sanborn maps



Exhibit D
Baseline Photographic Documentation

1. East Elevation 2017



2. East Front Elevation 2017



3. Front and West Elevation 2017



4. Front Elevation 2017



5. Porch



6. Porch



7. Porch Detail



8. Porch Detail



Exhibit E
Restriction Guidelines

The purpose of the Restriction Guidelines is to clarify paragraph three of the terms of the preservation restriction, which deals with alterations to the Property. Under this section permission from the GRANTEE is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require GRANTEE review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the GRANTEE, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by the property owner.

PAINT

Minor - Exterior or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, ornamental woodwork, stone, masonry, decorative or significant original stucco or plaster.

WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences; ground disturbance affecting archaeological resources.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the preservation restriction such changes must be reviewed by the GRANTEE and their impact on the historic integrity of the property assessed.

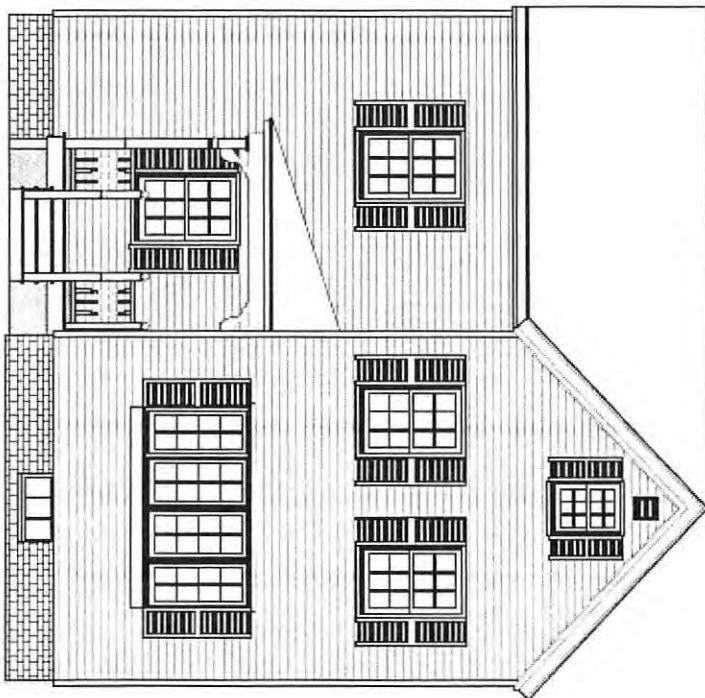
It is the responsibility of the property owner to notify the GRANTEE in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the preservation restriction is to enable the GRANTEE to review proposed alterations and assess their impact on the integrity of the building, not to preclude future change. GRANTEE will attempt to work with property owner to develop mutually satisfactory solutions, which are in the best interests of the Property.

Exhibit F:
Restoration Plan

1-15-2018
 2018-2019 Standard S.D. 2018 (1/18)

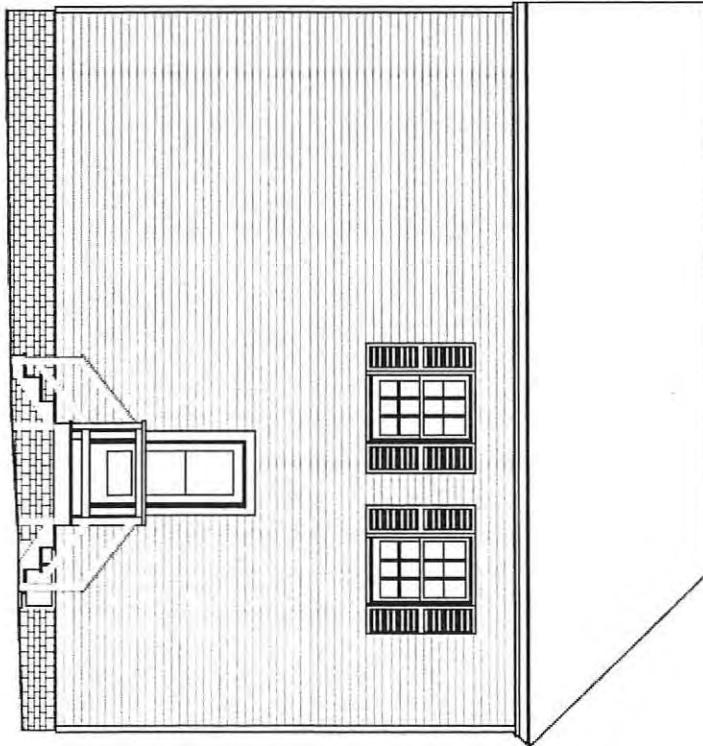
1 Front Elevation
 Scale: 1/4" = 1'-0"



SCOTT & BROWN ARCHITECTS 100 STATE STREET NEWBURYPORT, MA 01950 TEL: 978.532.1111 WWW.SCOTTANDBROWN.COM	RENOVATION TO: 58 MIDDLE STREET NEWBURYPORT, MA	PROJECT NO: 18-01 DATE: 10/15/18 SCALE: AS SHOWN
EXISTING ELEVATIONS		
1/18		

1/4" = 1'-0"
 1/8" = 1'-0"
 1/16" = 1'-0"

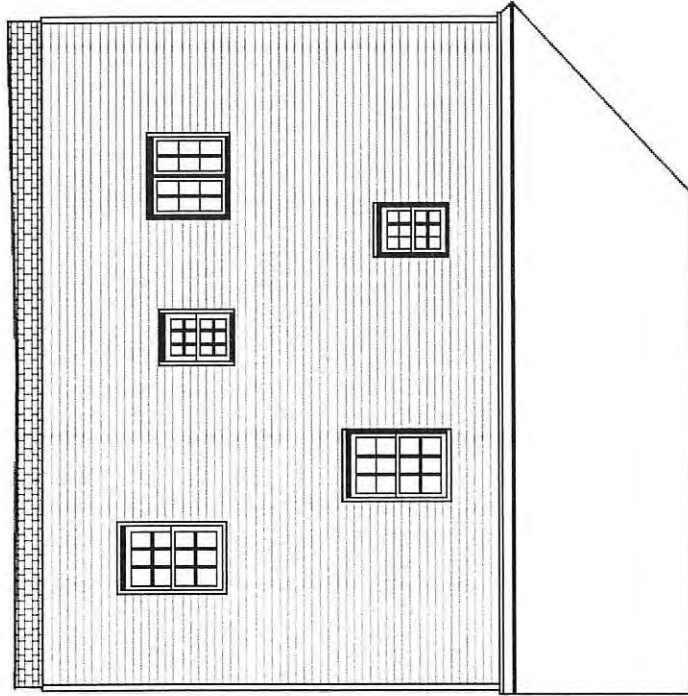
1 Right Elevation
 Scale: 1/4" = 1'-0"



		RENOVATION TO: 58 MIDDLE STREET NEWBURYPORT, MA	
2000 STATE STREET NEWBURYPORT, MA 01960 WWW.SCOTTBROWNARCHITECT.COM		LEONARD & BERTHOLDI ARCHITECTS 100 STATE STREET NEWBURYPORT, MA	
PROJECT NO. 10000000000000000000 DATE 10/10/10 SCALE AS SHOWN	DRAWN BY CHECKED BY APPROVED BY	DATE DATE DATE	PROJECT NO. DATE SCALE
EXISTING ELEVATIONS A2			

1st FLR
 2nd FLR
 3rd FLR

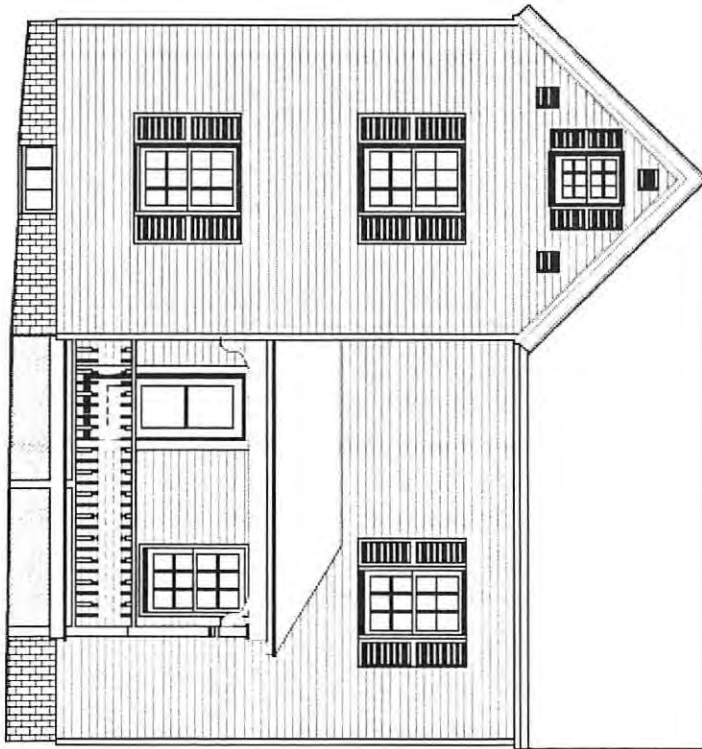
1 Rear Elevation
 Scale: 1/4" = 1'-0"



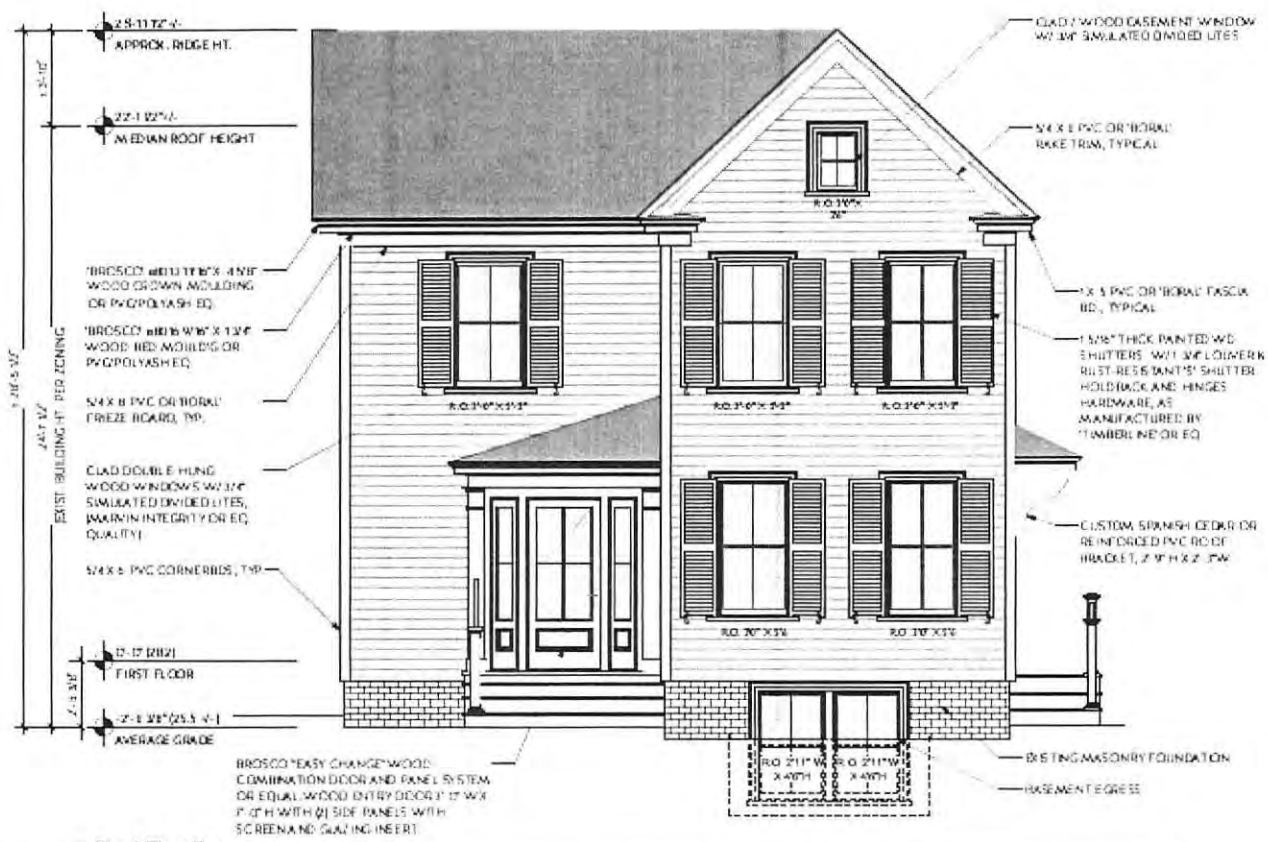
SCOTT BROWN ARCHITECTS 200 WEST STREET NEWBURYPORT, MA 01950 PHONE: 978.532.4100 FAX: 978.532.4101 WWW: WWW.SCOTTBROWNARCHITECTS.COM	RENOVATION TO: 58 MIDDLE STREET NEWBURYPORT, MA		EXISTING ELEVATIONS A3
	200 WEST STREET NEWBURYPORT, MA 01950 PHONE: 978.532.4100 FAX: 978.532.4101 WWW: WWW.SCOTTBROWNARCHITECTS.COM		

1-15/16
 1/4" = 1'-0"

1 Left Elevation
 Scale: 1/4" = 1'-0"



SCOTT T. BROWN ARCHITECT 200 N. BROAD ST. NEWBURYPORT, MA 01950 PHONE: 978-535-2100 FAX: 978-535-2101 WWW.SCOTTBROWNARCHITECT.COM	RENOVATION TO: 58 MIDDLE STREET NEWBURYPORT, MA	EXISTING ARCHITECTURAL ELEVATIONS DATE: 05/18 2018 DRAWN BY: JMB SCALE: 1/4" = 1'-0"
EXISTING ELEVATIONS A4		



1 Front Elevation
 Scale: 1/4" = 1'-0"

1 = 5/16/18
 2 = 5/16/18
 3 = 5/16/18

SCOTT BROWN
ARCHITECTURE
 210 WASHINGTON ST.
 SUITE 200
 NEWBURYPORT, MA 01950
 (978) 552-8888
 WWW.SCOTTBROWNARCHITECT.COM

RENOVATION TO:
 58 MIDDLE STREET
 NEWBURYPORT, MA

REVISION AND SHEET NOTES

NO. DATE DESCRIPTION

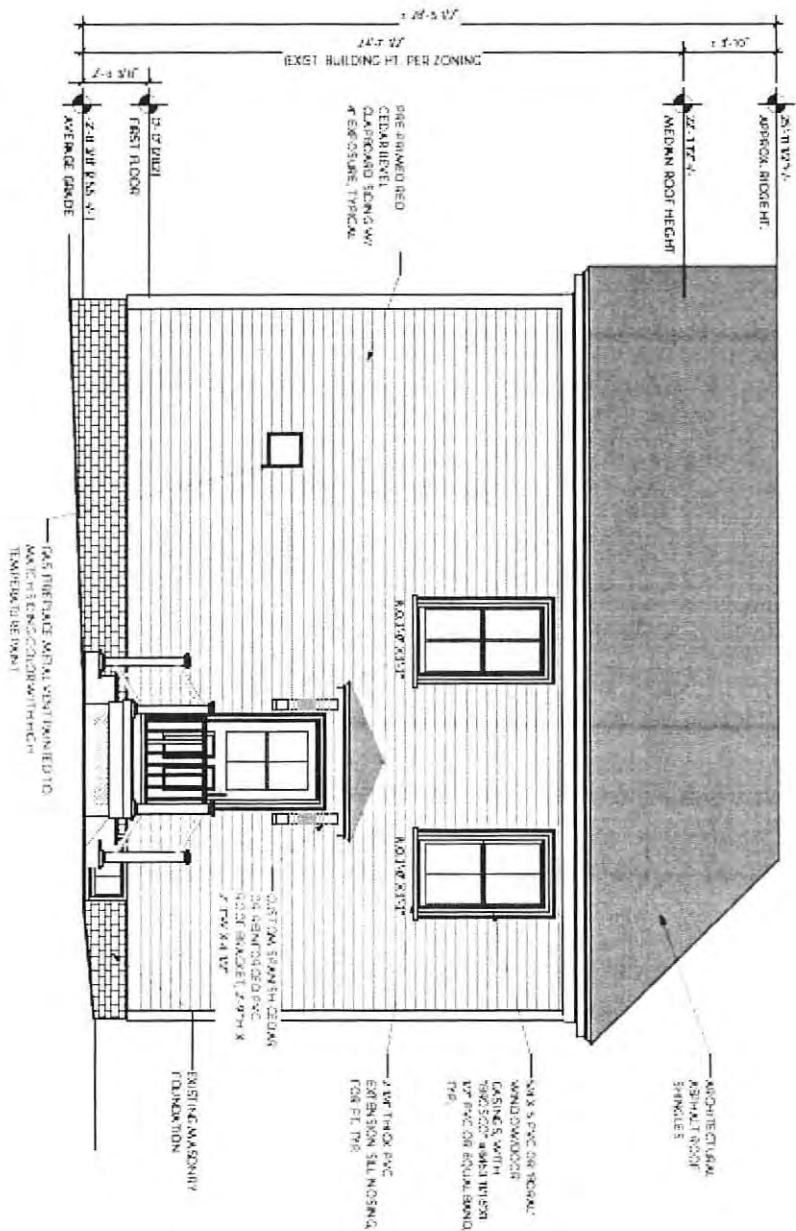
1	5.16.18	ISSUE
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PROJECT NO. 2018-0103
 330 332

DATE AS NOTED

PROPOSED ELEVATIONS
A5

FOR THE ARCHITECT'S RECORD ONLY



5 Right Elevation
 Scale: 1/4" = 1'-0"

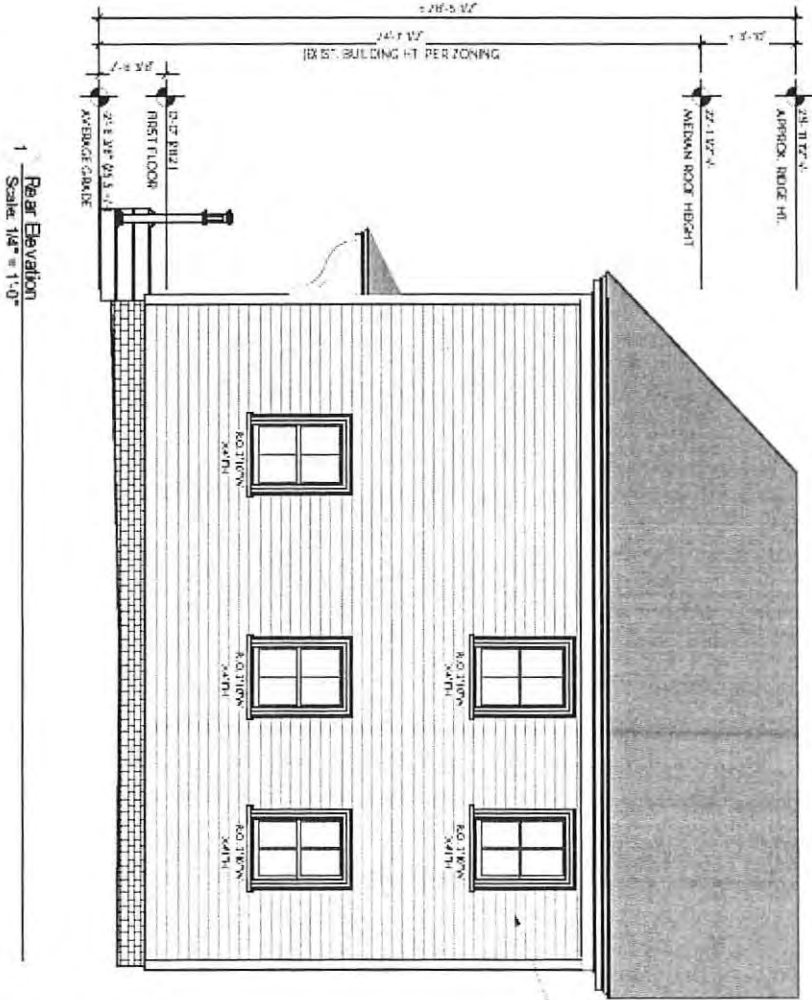
SCOTT H BROWN
 ARCHITECT
 1000 STATE STREET
 NEWBURYPORT, MA 01950
 WWW.SCOTTHBROWNARCHITECT.COM

RENOVATION TO:
 58 MIDDLE STREET
 NEWBURYPORT, MA

DATE: 10/15/18
 PROJECT: 58 MIDDLE STREET
 SHEET: A6 OF 10
 SCALE: 1/4" = 1'-0"

PROPOSED ELEVATIONS
A6

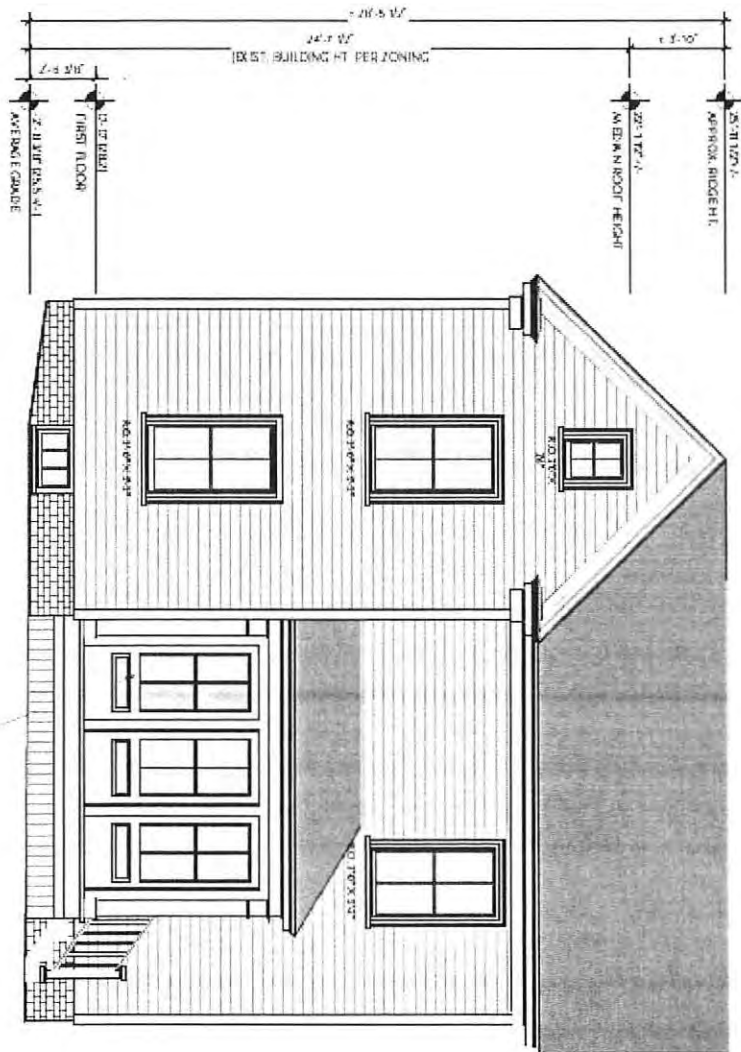
1-10-2018
 2nd Floor Standard Column View



1 Rear Elevation
 Scale: 1/4" = 1'-0"

— PINE PANK ED RED CEDAR BEVEL
 CLAPBOARD SIDING W/ 4"
 EXPOSURE TYPICAL

<p>SCOTT & BROWN ARCHITECTS, INC. 100 STATE STREET, SUITE 200 NEWBURYPORT, MA 01960 WWW.SCOTTANDBROWNARCHITECTS.COM</p>		<p>RENOVATION TO: 58 MIDDLE STREET NEWBURYPORT, MA</p>	
<p>PROPOSED ELEVATIONS</p> <p>A7</p>		<p>DATE: 10/10/18 DRAWN BY: [Name] CHECKED BY: [Name] PROJECT: [Name] SHEET: [Name]</p>	



2 Left Elevation
Scale: 1/4" = 1'-0"

RENOVATION TO:
58 MIDDLE STREET
NEWBURYPORT, MA

SCOTT BROWN
ARCHITECT
200
STATE STREET
NEWBURYPORT, MA 01950
WWW.SCOTTBROWNARCHITECT.COM

EDUCATIONAL BUSINESS CENTER
NO. 51/2 58 MIDDLE ST.
NEWBURYPORT, MA

PROJECT NO.	PROJECT PHASE	DATE
2013-13	S-C-B-1008	5-28-10
SCALE: AS SHOWN		

PROPOSED ELEVATIONS

A8

August 13, 2018
Committee Items-Public Safety

- Comm63_7-16-18 Letter Ferry Road Traffic/Parking
- Ord47_7-16-18 No parking Greenleaf at Auburn
- Ord43_6-11-18 Paid Parking Permits.

City Council of Newburyport
Newburyport, MA
June 29, 2018

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA
2018 JUL -9 AM 9:44

PS

Robert C. Solazzo
7 Ferry Road
Newburyport, MA

I am writing to Councilor Thomas O'Brien and the City Council of Newburyport about our concerns for the safety of the children, pedestrians and motorists who walk and travel on Ferry Road in Newburyport, MA on a daily basis.

The neighbors in the area of Harnch's Way to Chaisson Street have all agreed. We are inconvenience with annoying traffic, and excessive parked cars on the street from mid morning to after ten o'clock P.M. We would like to ask for Resident Parking Only signs to be posted in our neighborhood from Harnch's Way to Chassion Street on both sides of Ferry road.

The employees of Famous Pizza are using the street for parking their cars so that they can give their customer more room for parking. The problem being that the business is in a residential area. This makes it difficult to see on coming traffic when backing out of driveways and entering into on coming traffic.

Some of the neighbors have lived here for over 50 years and there has never been so many parked cars out in the front of our houses as there is now.

We hope you will consider making this change. It would mean a lot to us and the safety for all concerned.

Sincerely,

The Residents Of The Effect Area

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

July 16, 2018

THAT the City Council of the City of Newburyport hereby orders, pursuant to Code Section 13-166, that no person shall park any vehicle on the following streets or portions thereof as follows:

Street: Greenleaf St.

Restriction: No parking on the northerly side from Auburn Street running in an easterly direction for a distance of 285 feet.

Furthermore, the City Clerk shall add this restriction to the public list available in the Clerk's office. This list shall be updated and posted on the City of Newburyport website.

Councillor Heather L. Shand

*Refer PS
HS/JD
SL*

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Amended as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

Date: June 11, 2018

THAT pursuant to the CITY OF NEWBURYPORT Code of Ordinances Section 13-180.1 and Section 13-166 the CITY COUNCIL of the CITY OF NEWBURYPORT hereby amends and approves as follows:

Chapter 13	Traffic and Motor Vehicles
Article 4	Specific Street Schedules
Division 6	Stopping, Standing and Parking
Section 13-180.1	Paid parking permits

Amend existing Sections (a)(c) and (e) as follows, with deletions ~~double-stricken through~~, and additions double-underlined:

- (a) Definitions. As used in this section:
 - (1) Hales Court Lot
 - (2) Hales Court Lot
 - (3) Resident: A person who is sixteen (16) years of age or older, resides in the City of Newburyport, and is a Newburyport registered voter or eligible to register to vote (not registered in another jurisdiction).
 - (4) Senior Resident: A person who is sixty-five (65) years of age or older, resides in the City of Newburyport, and is a Newburyport registered voter or eligible to register to vote (not registered in another jurisdiction).
- (c) Issuance of resident and employee paid parking permits.
 - (1) ~~Two-year~~ One-year
- (e) Use of parking permits.
 - (3) Hales Court lot

Councillor Jared J. Eigerman