

**APPOINTMENTS
SECOND READING**

SECOND READING APPOINTMENTS

- APPT259_07_12_2021 Susan Chase 44 Oak St. Emma Andrews Library 10/29/2022
- APPT261_07_12_2021 Willem E. 55 Highland St. Asst. Harbormmaster 8/1/2024
Van de Stadt Shellfish Const./Sp. Police
Officer

In City Council July 12, 2021:

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

ORDERS

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

That the City Council appropriates or reserves from the Community Preservation Act FY 2022 estimated revenues, in accordance with the provisions of M.G.L. Chapter 44B, for the following projects, based upon the Community Preservation Committee's recommendation, the total amount of **\$1,366,254**. The source of funds shall be FY2021 estimated revenues in the amount of \$1,293,240.44 and the Community Preservation Fund Balance in the amount of \$126,460. Each project listed below shall be considered a separate appropriation or reservation in the amount indicated for that project. Any conditions or stipulations indicated within the Community Preservation Committee's recommendation, incorporated herein, shall be considered a condition of this appropriation and subsequent grant award.

Project No.	Project Title	Applicant	Request	Recommendation
1	YWCA at Hillside	YWCA Greater Newburyport	\$50,000	\$50,000
2	Newburyport Rental Assistance	Affordable Housing Trust	\$200,000	\$200,000
3	Custom House Door Restoration	Newburyport Maritime Society, Inc.	\$43,832	\$43,832
4	Cushing House Landscape Restoration Phase III	Historical Society of Old Newbury	\$45,717	\$45,717
5	Garrison Birthplace Signage	Newburyport Preservation Trust	\$1,800	\$1,800
6	Open Space Reserve Fund	Open Space Committee	\$100,000	\$100,000
7	Market Landing Park Expansion	Newburyport Office of Planning & Development	\$250,000	\$250,000
8	Lower Atkinson Master Plan Amendment	Newburyport Parks Department	\$3,850	\$3,850
9	Bartlet Mall Frog Pond Improvements	Newburyport Parks Department & Commission	\$186,035	\$186,035
10	Restoration of Swan Fountain at Bartlet Mall	Newburyport Parks Department & Commission	\$126,000	\$126,000

11	Restoration of Nock Middle School Tennis Courts	Newburyport Parks Department and Friends	\$175,000	\$175,000
12	Atwood Park Lighting Improvements	Newburyport Parks Department & Commission	\$33,000	\$33,000

Total: \$1,215,234 \$1,215,234

13	NHS Stadium Bond Payment	127,080
14	Cherry Hill Soccer Field Bond Payment	\$11,940
15	Administrative Costs	\$12,000

Total: \$151,020

Councillor Charles F. Tontar

**NEWBURYPORT COMMUNITY PRESERVATION COMMITTEE
RECOMMENDATIONS FOR FY22 APPROPRIATIONS**

The Newburyport Community Preservation Committee recommends that the City Council appropriate or reserve, as indicated, **\$1,366,254** 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 - #5 and #7-#12:

- 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 rescission 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 32.3% of local revenue, expected in November 2021.

Attached are:

- 1. A draft Council Order and table summarizing all CPC recommendations.
- 2. Recommendations for appropriation numbers 1-15, 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 2022 total **\$1,419,700.44**. This figure includes estimated receipts of the local CPA surcharge through fiscal year end 2021, accumulated interest, the anticipated 32.3% state matching funds expected to be received in November 2021, 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. Applications received, including those recommended for funding, are also available for viewing on the City website at the following URL:

<https://www.cityofnewburyport.com/community-preservation-committee>

Respectfully submitted by:

Community Preservation Committee Members

Michael Dissette, Chair
Mark Rosen
Tom O'Brien
Don Little
Charles Griffin

Jane Healey, Vice Chair
Paul Healy
Don Walters
Glenn Richards

**PROJECT NO. 1
YWCA AT HILLSIDE**

The CPC recommends the appropriation of \$50,000 from the FY 2022 Estimated Revenues to the YWCA of Greater Newburyport for the YWCA at Hillside project.

The CPA category is Affordable Housing.

Project Summary: In 2016, YWCA was awarded \$150,000 of CPA funds to develop the YWCA at Hillside. Since then, the project has experienced some delays. The overall planning for Hillside Center for Sustainable Living took longer than anticipated after permitting was completed. One of the major changes which resulted from the project planning phase was to adopt the Passive Housing Institute Standards of the US. Hillside decided to develop the project in compliance with these, more rigorous, standards which was not originally anticipated. These design changes contributed to the delay in construction of YWCA at Hillside. YWCA at Hillside, when completed, will be a 10 unit lodging house that is designed to meet Passive Housing Institute Standards of the US and be net zero. This led to a series of engineering issues that needed to be solved, for example, air flow, heating, cooling and de-humidification. Both the delays themselves and the technical solutions to the mechanical issues resulted in additional costs to the project. The YWCA is requesting CPA funding to help close project funding gaps.

**PROJECT NO. 2
NEWBURYPORT RENTAL ASSISTANCE**

The CPC recommends the appropriation of \$200,000 from the FY 2022 Estimated Revenues to the Newburyport Affordable Housing Trust for rental assistance programming.

The CPA category for this appropriation is Affordable Housing.

Project Summary: The Newburyport Affordable Housing Trust (the "Trust") seeks CPA funding for reimbursement to support its existing Emergency Rental Assistance (ERA) Program in the amount of \$110,000 as well as \$90,000 of funding to support a new General Rental Assistance Pilot Program.

The City of Newburyport, through the Trust, has been providing funds since June 2020 through its existing Emergency Rental Assistance (ERA) Program to financially assist income qualified households during the current public health crisis in partnership with the Pettengill House. The Trust is requesting \$110,000 of CPA funding for reimbursement to support this program. The Pettengill House, Inc. is a nonprofit community social service agency serving nine Massachusetts communities including Newburyport. The Pettengill House is fully administering the program for the Trust and is contracted with the City per a Memorandum of Agreement. The Pettengill House accepts applications and determines eligibility. To date, 30 households (8 seniors, 34 adults and 23 children) have been assisted with \$87,681 in rental assistance stabilization funding.

Additionally, the Trust is requesting \$90,000 of CPA funding to begin a new General Rental Assistance Program. This new option for assistance will be a sister program run by the Pettengill House and will be able to provide assistance in the form of security deposit, first and last month's rent to income qualified applicants looking to rent an affordable unit in the city of Newburyport. According to reports by the Pettengill House, as staff has been working with applicants, there are often residents looking for general

rental assistance and this new program will be able to help address this existing need. The program guidelines and application will need to be developed and refined but will most likely be similar to those of the ERA Program.

**PROJECT NO. 3
CUSTOM HOUSE DOOR RESTORATION**

The CPC recommends the appropriation of \$43,832 from the FY 2022 Estimated Revenues to the Newburyport Maritime Society, Inc. for the Custom House door restoration project.

The CPA category for this appropriation is Historic Preservation.

Project Summary: The project consists of the restoration of the front (south) doors and the replacement of the rear (north) doors of the Custom House building. The tall oak doors at the front of the Custom House date back to 1872 and are in poor condition. The applicant's plan is to remove the existing front doors, restore them off-site and reinstall them when the work is finished. A temporary enclosure will be installed in the door opening. The existing rear doors are not period appropriate and poorly functioning, and the applicant's plan is to replace the doors with new period-appropriate wood airtight egress doors. The project will be overseen by Gregory Colling of Merrimack Design Architects. The Newburyport Historical Commission has submitted a support letter for the project. A new Preservation Restriction (PR) has been finalized, executed and recorded. The project conforms to the new PR. The restoration of the 1872 south (Water Street) entrance doors was originally part of the scope of the work for the museum's 2012 exterior preservation project, but due to lack of available funds the door work was removed from the project at that time. The proposed replacement of the north (waterside) 1975 aluminum storefront doors and the 2003 painted plywood side lights with period appropriate painted mahogany doors will respect the characteristics which contribute to the architectural and historic integrity of the building. A removable flood gate will also be installed to further protect the museum and its collections from storm water incursion and sea level rise.

**PROJECT NO. 4
CUSHING HOUSE LANDSCAPE RESTORATION PHASE III**

The CPC recommends the appropriation of \$45,717 from the FY 2022 Estimated Revenues to the Historical Society of Old Newbury to for the third and final phase of the Cushing House's historic landscape restoration project.

The CPA category for this appropriation is Historic Preservation.

Project Summary: The work will focus on the carriage drive and the so-called orchard or nursery garden that connects to the cobble courtyard to provide barrier free access to the formal garden, carriage barn and the Perkins Printing and Engraving building. Various improvements proposed include salvaging the cobblestones on the carriage drive, re-grading carriage drive, removal of the bulkhead adjacent to the carriage barn, providing an accessible walking path connecting the main campus with the Perkins Printing & Engraving Building, constructing board fences to match the existing ones along the property line and installing a low evergreen boxwood hedge. Original materials will be used whenever possible. Where original materials need to be replaced, i.e. fences where wood is rotted, materials will be

matched in kind. This is a highly visible project that will enhance the historic significance of the property and make it more widely available for the benefit for the community. The Newburyport Historical Commission has submitted a support letter for the project.

A new Preservation Restriction has been submitted to the Massachusetts Historical Commission for review. The applicant shall finalize, execute and record the new permanent Preservation Restriction (PR) on the entire exterior facade of the structure to be held by the Newburyport Historical Commission (NHC) prior to distribution of funds. The applicant has consulted and obtained approval from the NHC regarding the scope and details of a new draft PR. These requirements shall be met before any funds are distributed to the applicant.

PROJECT NO. 5 GARRISON BIRTHPLACE SIGNAGE

The CPC recommends the appropriation of \$1,800 from the FY 2022 Estimated Revenues to the Newburyport Preservation Trust to fund, create, and install two interpretive signs in the Garrison Gardens section of Newburyport's Atwood Park. The applicant originally requested a grant in the amount of \$3,694 but the request was subsequently revised to \$1,800.

The CPA category is Historic Preservation.

Project Summary: The proposed project includes the creation and installation of two interpretive signs (each 24 inches wide by 18-inches tall) in the Garrison Gardens section of Newburyport's Atwood Park, directly across from the 18th century house at 3-5 School Street, the birthplace of William Lloyd Garrison. The content of the two interpretive signs will relate to preeminent abolitionist, journalist, and suffragist, William Lloyd Garrison. One sign will focus on the house he was born in, and the other on Garrison the person. The installation of the signs has been preapproved by the Newburyport Parks Commission at its October 2020 public meeting. There are interpretative signs nearby the Garrison statute on Brown Square, elsewhere in Newburyport, but content of these new signs will be complementary to, rather than duplicative of, those other signs. Historian Dr. Kate Larson has agreed to write the text and her fee is included in the budget. A local graphic designer will create the format for each sign. Her fee is also included in the project budget. The Newburyport Historical Commission has submitted a support letter for the project.

PROJECT NO. 6 OPEN SPACE RESERVE FUND

The CPC recommends the reservation of \$100,000 from the FY 2022 Estimated Revenues to the Open Space Reserve Fund.

The CPA category for this reservation is Open Space.

Project Summary: Since 2014, through appropriations from the Open Space Reserve Fund, the City successfully protected 10+ acres of land on Curzon Mill Road, a significant portion of the Colby Farm land on Low Street and helped secure protection of our water supply in partnership with West Newbury, Greenbelt and DCR. The existence of the Reserve allowed and will allow the City to take the

opportunities when they are presented. Recent CPC funding rounds have restored the Reserve to its current balance of \$629,966. With this application the Open Space Committee asks that the process of restoring the Reserve be continued so that the Committee is in a stronger position to address future opportunities for land protection and preservation as they arise.

**PROJECT NO. 7
MARKET LANDING PARK EXPANSION**

The CPC recommends the appropriation of \$250,000 from the FY 2022 Estimated Revenues to the Newburyport Office of Planning & Development for the Market Landing Park Expansion. The purpose of this application is to secure funding for park construction.

The CPA category for this project is Open Space and Recreation.

Project Summary: Market Landing Park is Newburyport’s flagship park in a prominent location. This project will expand existing park space, upgrade “interim” park space (grass lawns), and reconfigure existing parking areas to accommodate park expansion. In addition, this project will incorporate a much needed connection between Clipper City Rail Trail phases I & II, across the central waterfront (see application’s schematic “framework” plan for conceptual layout). This project will beautify our downtown and central waterfront, extending park and pedestrian usage across the site and throughout the year, in lieu of the existing park edges which bleed off into dirt and gravel parking lots. The land in question is already protected by Article 97 and explicitly reserved for park purposes.

In conjunction with the City Council’s Ad Hoc Committee on Market Landing Park Expansion, the Office of Planning & Development issued a Request for Proposals (RFP) for design services necessary to design the park expansion beyond the basic layout agreed to in the schematic “framework” plan. Following schematic design, now underway with assistance from the design firm Sasaki, final design will provide plans, details and specifications suitable for public bidding. As stated above, the purpose of this application is to begin to secure funding toward park construction costs which are expected to be in the range of \$5,000,000. Appropriation toward construction funding now will put the City in a stronger position when applying for state and other grants when local funding commitments are expected.

**PROJECT NO. 8
LOWER ATKINSON MASTER PLAN AMENDMENT**

The CPC recommends the appropriation of \$3,850 from the FY 2022 Estimated Revenues to the Newburyport Parks Department for supplemental services to the Lower Atkinson Common Master Plan project to provide renderings/elevations of the proposed clubhouse.

The CPA category is Recreation.

Project Summary: The Parks Department plans 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 for High School girls’ softball. The impetus for this project is the need to improve safety in the parking area and on Merrimac Street which experiences a high number of speeding vehicles along that stretch of road creating a hazard for pedestrians and other drivers. Reconfiguring the park will improve safety. In order to determine the best configuration, the Parks Department hired a consultant to create a Master Plan

with 2018 CPC funding. The Parks Department is now seeking supplemental services for the Lower Atkinson Common Master Plan project to provide renderings/elevations of the proposed clubhouse which are not part of the current scope of services with the consultant.

**PROJECT NO. 9
BARTLET MALL FROG POND IMPROVEMENTS**

The CPC recommends the appropriation of \$186,035 from the FY 2022 Estimated Revenues to the Newburyport Parks Department and Parks Commission for Bartlet Mall Frog Pond Improvements Project.

The CPA category for this reservation is Historic Resources and Recreation.

Project Summary: The Parks Commission and Parks Department are requesting funding for the first of several phases to breathe life back into the Bartlet Mall Frog Pond. As the applicant puts it in the application, this project has reached a critical point, requiring immediate attention, as the algal blooms in the pond have increased in duration, toxicity and frequency over the past few years and may pose a health risk to small animals, wildlife and people. The applicant is currently requesting funding to complete the following three items:

1. A bathymetric survey. This survey will provide the applicant with the contours of the bottom of the Frog Pond, extending out 30' from the edge, and will inform the work required in future phases of the project.
2. Two shallow wells to provide irrigation to the Park and eventually provide a clean source of water to fill and maintain the Frog Pond at a consistent level, without the need to tap into City water resources.
3. Acquisition of granite stones which will eventually create a coping around portions of the perimeter of the pond, stabilizing the edge while also providing a funding source for the remainder of the project. These stones will be engraved with a history of the park as well as donor names which will support the completion of future phases of Bartlet Mall restoration plan. If the Conservation Commission rejects the use of these stones around the pond edge, they will be used in other parts of the park as a means to fundraise and educate the public on the history of the Mall.
4. Further designing and engineering work as may be necessary. *

The City of Newburyport, applicant, is the owner of this park. The park is under the jurisdiction of the Parks Commission.

*The applicant submitted an amendment to the original request on May 18, 2021. The applicant reported to the CPC that in the months since the original application as submitted, work has begun with a consultant team on cleanup of the pond. As a result of that work, the applicant has become aware that it will likely be necessary to perform further design-engineering work to move the project forward. Therefore, the applicant asked that the CPC allow the applicant to use any amount awarded for the current application toward design-engineering, should the applicant determine such services are needed. Any remaining balance would be used for the original request.

PROJECT NO. 10
RESTORATION OF THE SWAN FOUNTAIN AT BARTLET MALL

The CPC recommends the appropriation of \$126,000 from the FY 2022 Estimated Revenues to the Newburyport Parks Department and Parks Commission for Restoration of the Swan Fountain at Bartlet Mall.

The CPA category for this appropriation is Historic Preservation.

Project Summary: The Parks Commission and Parks Department are requesting funding for restoration of the Frog Pond Swan Fountain. This project would include removal, repair, cleaning and re-painting with a four part paint system to all interior and exterior surfaces, and re-installation of the fountain. Since the late 1800's, the Bartlet Mall has seen several waves of stewards who have fought to protect its history and resources to support community quality of life. However, it has suffered decline in recent years and deserves to be brought back to its former glory, while supporting the needs of its present day users. Further, the Swan Fountain has now been sitting idle in the center of the pond for the last decade and deserves to be a showcase of the Park once again. This project meets the CPC's criteria of preservation of an historic asset. The Bartlet Mall is a contributing property to the National Register District and is, itself, listed in the National Register. The Newburyport Historical Commission has submitted a support letter for the project.

PROJECT NO. 11
RESTORATION OF THE NOCK MIDDLE SCHOOL TENNIS COURTS

The CPC recommends the appropriation of \$175,000 from the FY 2022 Estimated Revenues to the Newburyport Parks Department and Friends of Newburyport Tennis for the renovation of Nock Middle School Tennis Courts.

The CPA category for this appropriation is Recreation.

Project Summary: The Friends of Newburyport Tennis (FNT) has been established to initiate the renovation of the two defunct tennis courts at the Rupert A. Nock Middle School, in cooperation with Newburyport Parks Department. The two existing tennis courts at the middle school have been in unusable condition for 20+ years, have never satisfied the USTA regulations for tennis court size, and have become an eyesore for the schools, neighbors and the community. FNT proposes that the existing courts and fence be entirely removed, and replaced with two new asphalt courts. The new courts will be rotated from the existing layout to allow for two USTA regulation-sized courts. Courts will be surrounded by new chain link fences, and will include a backboard.

The applicant's primary goals are (1) to make the property functional for recreation and (2) to enhance the property for the school and its neighbors. As the courts exist today, they are overgrown, neglected and pose a potential hazard to children. Eventually, FNT and the Newburyport School Committee would like to see a total of five courts constructed at the Middle School. There is community need for additional courts in our city. Further, a minimum of five courts are needed to host a varsity tennis match. Existing courts at Atkinson Commons have never satisfied this requirement and do not offer sufficient parking. The applicant intends to approach the court development in two phases. The first

phase, and the basis of this grant, is to redesign and replace the existing courts. The second phase will include exploring the best location on the school's property for three additional courts and construction of those courts.

**PROJECT NO. 12
ATWOOD PARK LIGHTING IMPROVEMENTS**

The CPC recommends the appropriation of \$33,000 from the FY 2022 Estimated Revenues to the Newburyport Parks Department and Commission for Atwood Park lighting improvements.

The CPA category is Recreation.

Project Summary: Atwood Park is a 0.6 acre neighborhood park in the heart of Newburyport's South End. It is a well-used asset as both a recreational and quiet contemplation space for residents. The park has seen many renovations over the past decade including new fencing, a new garden and lawn area in the former dilapidated asphalt tennis court, new benches, and removal of hazard trees and replacement with new ornamental trees. Much of the renovation work, including pruning of tree limbs and removal of an elevated central berm, was undergone in order to improve visibility into the interior of the park from the street.

This next phase of the Atwood Park improvements requires lighting to improve the safety and visibility of the open space. The applicant is proposing installing 4 post lights along the interior walkways, where existing trees and sight lines are creating the most darkness. These lights are a more contemporary spin on a traditional and historical silhouette, while being high-quality and vandal-proof. The LED lights can be dimmed to reduce glare toward neighbors and are dark-sky compliant. This improvement of a City-owned asset will enhance the usage and safety of the park for the public.

The City of Newburyport, applicant, is the owner of this park. The park is under the jurisdiction of the Parks Commission. The Parks Commission has approved this project. The City's Electrical Inspector has been contacted and has verified the location of electrical connections for this project.

**PROJECT NO. 13
NEWBURYPORT HIGH SCHOOL WORLD WAR MEMORIAL STADIUM MULTI-PURPOSE FIELD PROJECT
BOND DEBT
PAYMENT**

The CPC recommends the appropriation of \$127,080 from the FY 2022 Estimated Revenues to the City of Newburyport for the fifth annual payment of interest and principal on the World War Memorial Stadium Multi- Purpose Field Project Bond.

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. 14
CHERRY HILL PARCEL B SOCCER FIELD IMPROVEMENT PROJECT BOND DEBT PAYMENT

The CPC recommends the appropriation of \$11,940 from the FY 2022 Estimated Revenues to the City of Newburyport for the sixth 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. 15
ADMINISTRATIVE COSTS

The CPC recommends the appropriation of \$12,000 from the FY 2022 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.



IN CITY COUNCIL

ORDERED:

July 26, 2021

That the City Council of the City of Newburyport hereby approves the painting of the Green Street Lot parking space designated as 'Parking for Military Plates Only' the color red.

Councillor Charles F. Tontar

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

August 9, 2021

**EMERGENCY ORDER ON THE MATTER OF THE EARLY VOTING IN PERSON AT
THE SENIOR/COMMUNITY CENR FOR THE PRELIMINARY AND FINAL 2021
MUNICIPAL ELECTIONS**

EMERGENCY PREAMBLE

Pursuant to Newburyport Charter Section 2-9(b), and as further defined in section 1-7(7) thereof, an emergency exists to the final passage of Amended Acts of 2020 in July, 2021 allowing for early voting in person to be established for the September 21, 2021 Preliminary Election and the Final Election on November 2, 2021. Therefore, the City Council hereby affirmatively declares that an emergency exists such that ORD267_08_09_2021 may be voted upon at its first introduction.

Councillor Jared Eigerman

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

August 9, 2021

Pursuant to Chapter 255 of the Acts of 2020 (Amended) the City Council of the City of Newburyport hereby approves early voting in person at the Senior/Community Center, 331 High Street, Newburyport for the Preliminary and Final Municipal Elections during the week prior to said elections according to the following schedule:

Monday	8:30 am to 3:30 pm
Tuesday	8:30 am to 3:30 pm
Wednesday	8:30 am to 3:30 pm
Thursday	8:30 am to 6:30 pm
Friday	8:30 am to 11:30 am

The City Clerk is hereby instructed to send a notice of this order to the Elections Division of the Secretary of State and to publish these days and hours on the internet.

Councillor Jared J. Eigerman

CITY OF NEWBURYPORT



IN CITY COUNCIL

August 9, 2021

ORDERED:

WHEREAS, the Federal Emergency Management Agency (FEMA), an agency of the U.S. Department of Homeland Security, administers the Port Security Grant Program (PSGP) as part of their annual funding for preparedness programs throughout the United States; and

WHEREAS, the PSGP provides funding for transportation infrastructure security activities to implement Area Maritime Transportation Security Plans and facility security plans among port authorities, facility operators, and state and local government agencies required to provide port security services; and

WHEREAS, the intent of the FY2021 PSGP is to competitively award grant funding to assist ports in obtaining the resources required to support the development and sustainment of core capabilities identified in the National Preparedness Goal of a secure and resilient nation; and

WHEREAS, the Harbormaster's Department was awarded a PSGP grant in the amount of \$190,859, to supplement \$82,365 in insurance settlement proceeds that were received in 2020 from a capsized vessel that was deemed a total loss by the insurer; and

WHEREAS, the Harbormaster's Department applied for this grant opportunity in order to replace the totaled vessel with one that is designed and built to be highly reliable and extremely durable, which are widely used by the military, law enforcement and other public safety agencies;

NOW, THEREFORE, the CITY COUNCIL of the CITY OF NEWBURYPORT hereby accepts a grant from the FEMA-PSGP in the amount of \$190,859 to be used to purchase and equip a twenty five foot, center console SAFE Boat to be utilized by the Harbormaster's Department. These funds are accepted in accordance with M.G.L. Chapter 44, Section 53A.

Councillor Sharif I. Zeid




FEMA

Excerpt from GPD Information Bulletin No. 464. Full award announcement available at:
https://www.fema.gov/sites/default/files/documents/fema_ib-464-fy-2021-award-announcement_71321.pdf

**Grant Programs Directorate
Information Bulletin No. 464
July 16, 2021**

MEMORANDUM FOR: All State Administrative Agency Heads
All State Administrative Agency Points of Contact
All Urban Area Security Initiative Points of Contact
All State Homeland Security Directors
All State Emergency Management Agency Directors
All Eligible Regional Transit Agencies
All Private Sector Transportation Security Partners
All Public and Private Sector Port Security Partners
All Tribal Nation Points of Contact

FROM: Christopher P. Logan 
Acting Assistant Administrator
Grant Programs Directorate

SUBJECT: Fiscal Year 2021 Preparedness Grant Programs
Final Allocation Announcement

The Federal Emergency Management Agency (FEMA), a component of the Department of Homeland Security (DHS), is announcing the final awards and allocations under the Fiscal Year (FY) 2021 preparedness grant programs. These are:

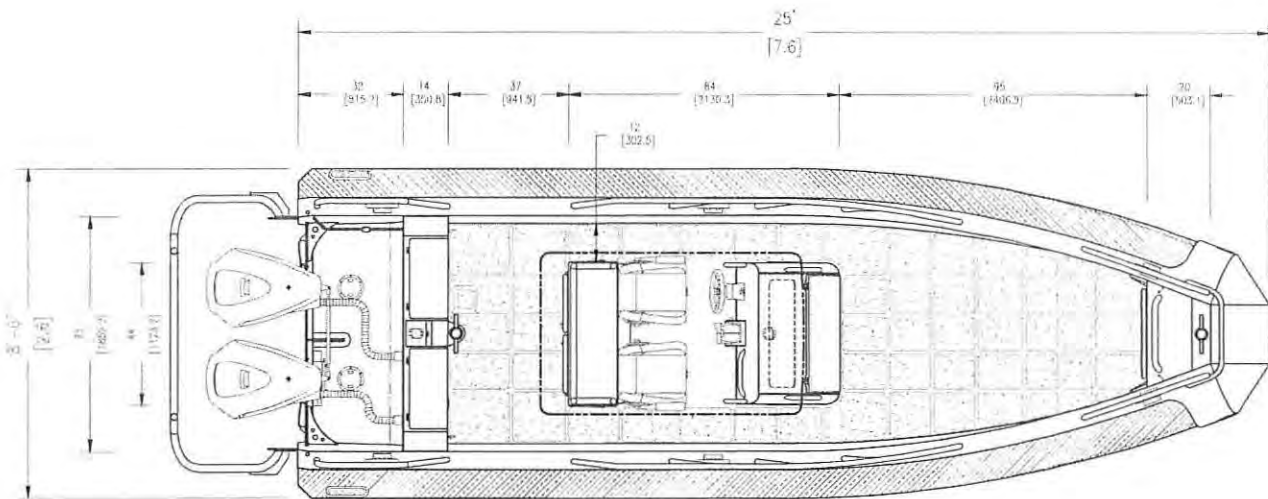
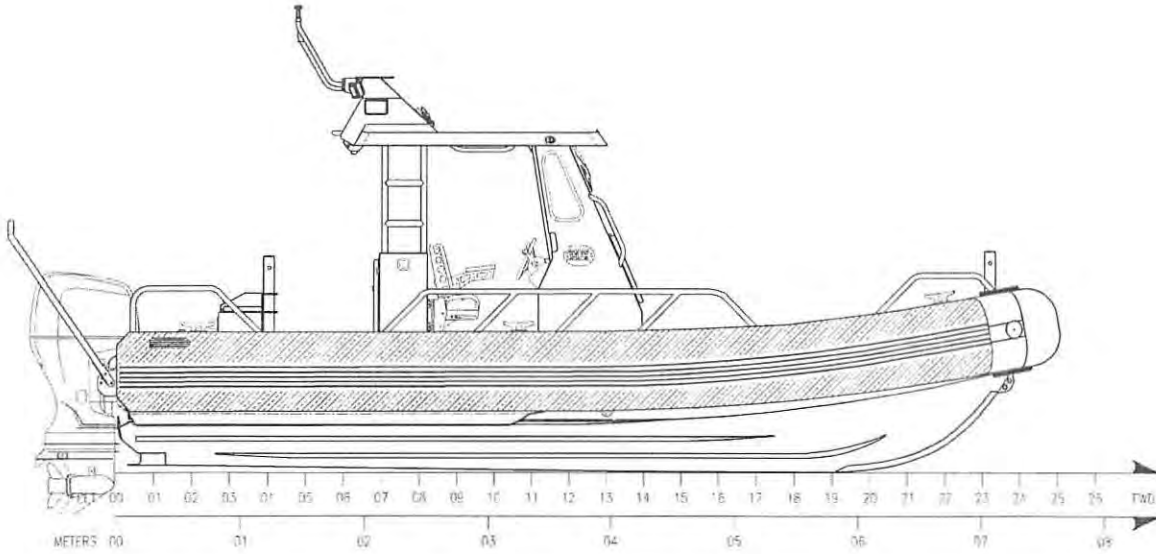
- Homeland Security Grant Program (HSGP)
 - State Homeland Security Program¹
 - Urban Area Security Initiative¹
 - Operation Stonegarden
- Emergency Management Performance Grant (EMPG) Program, including American Rescue Plan Act funding¹
- Tribal Homeland Security Grant Program (THSGP)
- Nonprofit Security Grant Program (NSGP)
- Port Security Grant Program (PSGP)
- Transit Security Grant Program (TSGP)
- Intercity Passenger Rail (IPR) Program – Amtrak¹
- Intercity Bus Security Grant Program (IBSGP)

¹ Final allocations for these programs were announced on February 25, 2021 and April 15, 2021 as part of the Notices of Funding Opportunity release.

State	Port Area	Entity Name	FY 2021 PSGP Allocation
IL	Southern Tip Lake Michigan	Village of Westmont	\$451,557
IL	St. Louis	Illinois State Police	\$115,781
IN	Evansville	Evansville Police Department	\$55,658
IN	Southern Tip Lake Michigan	Indiana Department of Natural Resources Law Enforcement Division	\$120,000
KY	Louisville	Clark County Sheriff's Office	\$17,162
KY	Louisville	Indiana Department of Natural Resources	\$24,850
KY	Louisville	Jeffersonville Fire Department	\$34,612
KY	Louisville	Louisville Fire Department	\$60,000
KY	Louisville	Louisville Metro Police Department	\$629,287
KY	Louisville	Trimble County Water Safety	\$22,300
LA	Lake Charles	Calcasieu Parish Sheriff's Office	\$740,860
LA	New Orleans	Ascension Parish Sheriff's Office	\$48,900
LA	New Orleans	Board of Commissioners Port of New Orleans	\$514,987
LA	New Orleans	Chalmette Refinery	\$37,025
LA	New Orleans	Enterprise Products, New Orleans	\$22,791
LA	New Orleans	Jefferson Parish Sheriff Office	\$607,147
LA	New Orleans	Kinder Morgan St. Gabriel Terminal	\$16,500
LA	New Orleans	Louisiana State Police	\$24,660
LA	New Orleans	Marathon Petroleum Corp/Garyville Refinery	\$35,569
LA	New Orleans	PCS Nitrogen	\$189,300
LA	New Orleans	Plaquemines Port	\$776,639
LA	New Orleans	Port of South Louisiana	\$343,596
LA	New Orleans	Port of St. Bernard	\$1,313,900
LA	New Orleans	Southeast Louisiana Flood Protection Authority East	\$277,843
LA	New Orleans	St Charles Parish Sheriff Office	\$96,089
LA	Port Fourchon	Greater Lafourche Port Commission	\$634,293
MA	Boston	Boston Marine Incident and Resources Training Partnership	\$24,900
MA	Boston	Boston Police Department	\$84,918
MA	Boston	Braintree Fire Department	\$16,800
MA	Boston	City of Boston	\$10,200
MA	Boston	City of Newburyport	\$190,859
MA	Boston	City of Salem Police Department	\$96,500
MA	Boston	Massachusetts Environmental Police	\$86,625
MA	Boston	Massachusetts Port Authority	\$915,954
MA	Boston	Massachusetts State Police	\$180,430
MA	Boston	Metropolitan Law Enforcement Council (METRO-LEC)	\$48,074
MA	Boston	Quincy Police Department	\$24,999
MA	Boston	Town of Braintree Police Department	\$300,000
MA	Boston	Town of Hingham	\$225,000



SAFE 25 CENTER CONSOLE
VISUAL REFERENCE + SPECIFICATIONS



Length Overall (LOA) (feet) **25'**
 Length Overall (meters)..... **7.6**
 Beam Overall (BOA) (feet) **8'-6"**
 Beam Overall (meters) **2.6**
 Deadrise at Transom (degrees) **25**
 Draft (engine trimmed up) (inches) **19"**
 Max HP **500**
 Top Speed (knots) **48**

Max Range (NM) **290 @ 30 knots**
 Fuel Cap (gal) **150**
 Seated Positions **6**
 Dry Weight: vessel, no engines, no fuel,
 no options, no liquids, no people, no cargo
 (approximate) (lbs) **4,998**
 Light Load: dry weight, weight of heaviest
 engines (lbs) **6,954**
 Operational Load (lbs) **8,603**

Cargo/Personnel Capacity-Net-Gross:
 minus weight of heaviest engines, weight of
 fuel, and options (lbs) **3,049**
 Height on trailer - Road Transport (feet) . . . **11'**
 Length on trailer - Road Transport
 (feet) **36'-3"**
 Weight on Trailer (lbs) **7,883**

**All specs, features and GAs shown are
 subject to change*



HULL & DECK

- 1/4" - 5086 bottom plate
- Reinforced keel beaching plate
- Notched transom with speed shoe in bottom plate
- Performance wings below collars for increased lift and stabilization while maneuvering
- Fully welded performance lifting strakes
- Self-bailing decks with high-volume scupper drains
- Bow storage/anchor locker with aft-facing door
- Dual aft rigging locker system with topside access
- Sacrificial hull anode(s)

SUPER STRUCTURE

- Aluminum T-top with rain capture ring and down spouts to self-bailing deck
- Laminated safety glass windshield and side windows with blow-out resistant gasket
- Swing down radar pod
- Safety hand/grab rail system

CONSOLE & DASH

- Starboard side helm
- OHIP - Over Head Instrument Panel

SEATING, SEAT STORAGE & UPHOLSTERY

- Two (2) flip-up seats with seat belts mounted on bolster storage box
- Aft storage bolster with large aft-facing gasketed aluminum doors

COLLAR SYSTEM

- Patented 100% foam SAFE XDR-1 Extreme Duty Reinforced collar system with black rubstrake
- Available collar colors include: black, blue, gray, orange, green, red

COATINGS, COVERINGS & LETTERING

- Upholstered headliner

TOWING, LIFTING & ATTACHMENT POINTS

- Six (6), 10" cast aluminum weld-on cleats
- Bow and stern lifting eyes
- Weld-on bow eye with dual stainless steel inserts
- Weld-on transom tie downs
- Fore and aft tow posts with single stainless steel cross pin
- Motor guard/tow line guide

ELECTRICAL SYSTEM & POWER GENERATION

- House battery system 12VDC - one (1) marine-grade battery with switch
- Backlit switch panel with marine-grade switches
- Four (4) 12VDC power receptacles - two (2) on dash and two (2) on arch
- Self-parking, intermittent windshield wiper system with washer

LIGHTING

- House battery system 12VDC - one (1) marine-grade battery with switch
- Backlit switch panel with marine-grade switches
- Four (4) 12VDC power receptacles - two (2) on dash and two (2) on arch
- Self-parking, intermittent windshield wiper system with washer

ELECTRONICS, NAVIGATION & COMMUNICATION

- Navigation horn

SAFETY, RESCUE & DIVING EQUIPMENT

- Two (2) fire extinguishers
- Life ring mount

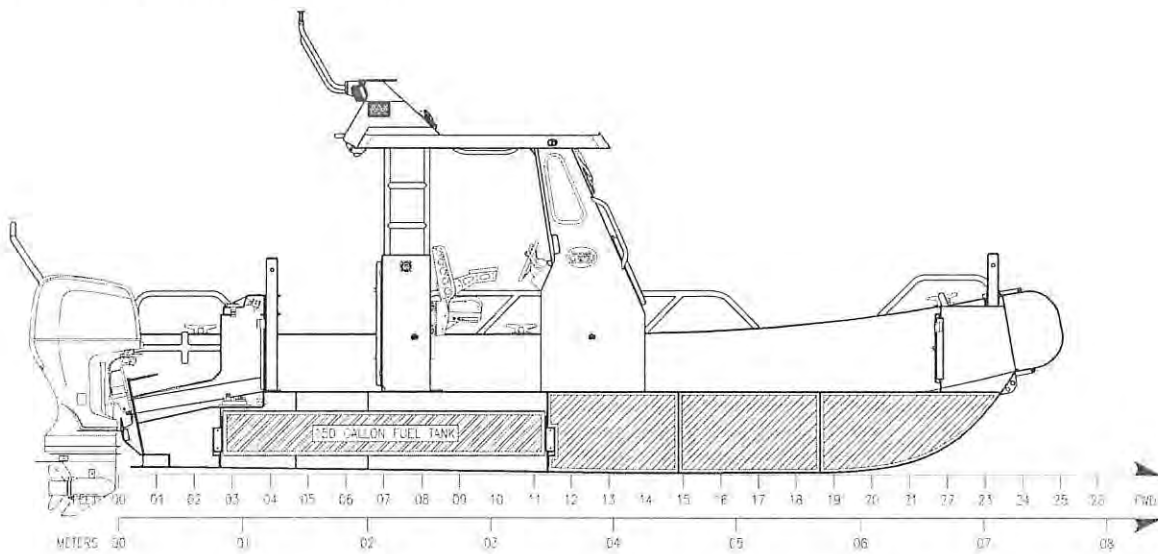
FUEL SYSTEM

- 150-gallon fuel tank with a formed bottom (1/4" - 5086)
- EPA-compliant fill and vent system with integrated check-valves, refueling vapors through carbon canister



SAFE 25 CENTER CONSOLE

VISUAL REFERENCE + OPTIONAL EQUIPMENT



PROPULSION

- Engines
- Engine(s) Rigging
- Power Assist Steering Upgrade

CONFIGURATION OPTIONS

- Seat Storage Locker Forward of Console
- Flip-Up Seat Forward of Console
- Aft-facing Seat Bolster
- Canvas Helm Enclosure
- Bimini Top
- Bow Cover
- Personnel Recovery Cut-Outs (collar)
- Hydraulically Actuated Drop Bow
- Reinforced Push Knees
- Locker System(s)
- Shock Mitigating Bolster Mounted Crew Seats
- SAFE XDR-2 Upgrade (lines & D-rings)
- Topsides/Cabin Paint
- Bottom Paint
- Tow Spool/Cover/Line
- Davit/Electric Winch
- Engine Guard/Tow Line Guide (standard on some models)
- Tow Post(s) (standard on some models)

ELECTRONICS/LIGHTING

- Navigation Package(s)
- Side Scan Sonar
- Thermal/Low Light Camera Systems
- Loudhailer
- AIS
- Satellite Weather Receiver/Overlay
- VHF/UHF
- Wired/Wireless Intercom System
- EPIRB
- Chemical Biological Radiological Nuclear Detection Equipment (CBRNE)
- Law Enforcement Lighting Strobes/Bars (blue/red/amber)
- Searchlights
- Upgraded flood Lights
- Underwater Dive Lights
- Laptop Mounting/Docking station(s)
- Shore Power
- Diesel Heater
- Customer Furnished Equipment (CFE) Installation

OUTFIT

- Safety Kit
- Docking Kit
- Anchor Kit
- Personnel Flotation Device(s) (PFD)

TRAILERING

- Trailer
- Rolling Ship Yard Cradle

DOCUMENTATION

- Wire Label Package/Diagram(s)
- Drawing Package(s)
- Operator/Repair Manual(s)

MISCELLANEOUS

- Fresh/Raw Water Washdown
- Dive Ladder(s)
- Dive Tank Storage/holders
- Dive Light Mast
- Tow Light Mast
- Gun Locks/Locker(s)
- Fire Fighting Pump/Engine Systems

**All specifications and standard features are subject to change. Not all options are available on all models. Please contact SAFE Sales Department for details.*

CITY OF NEWBURYPORT



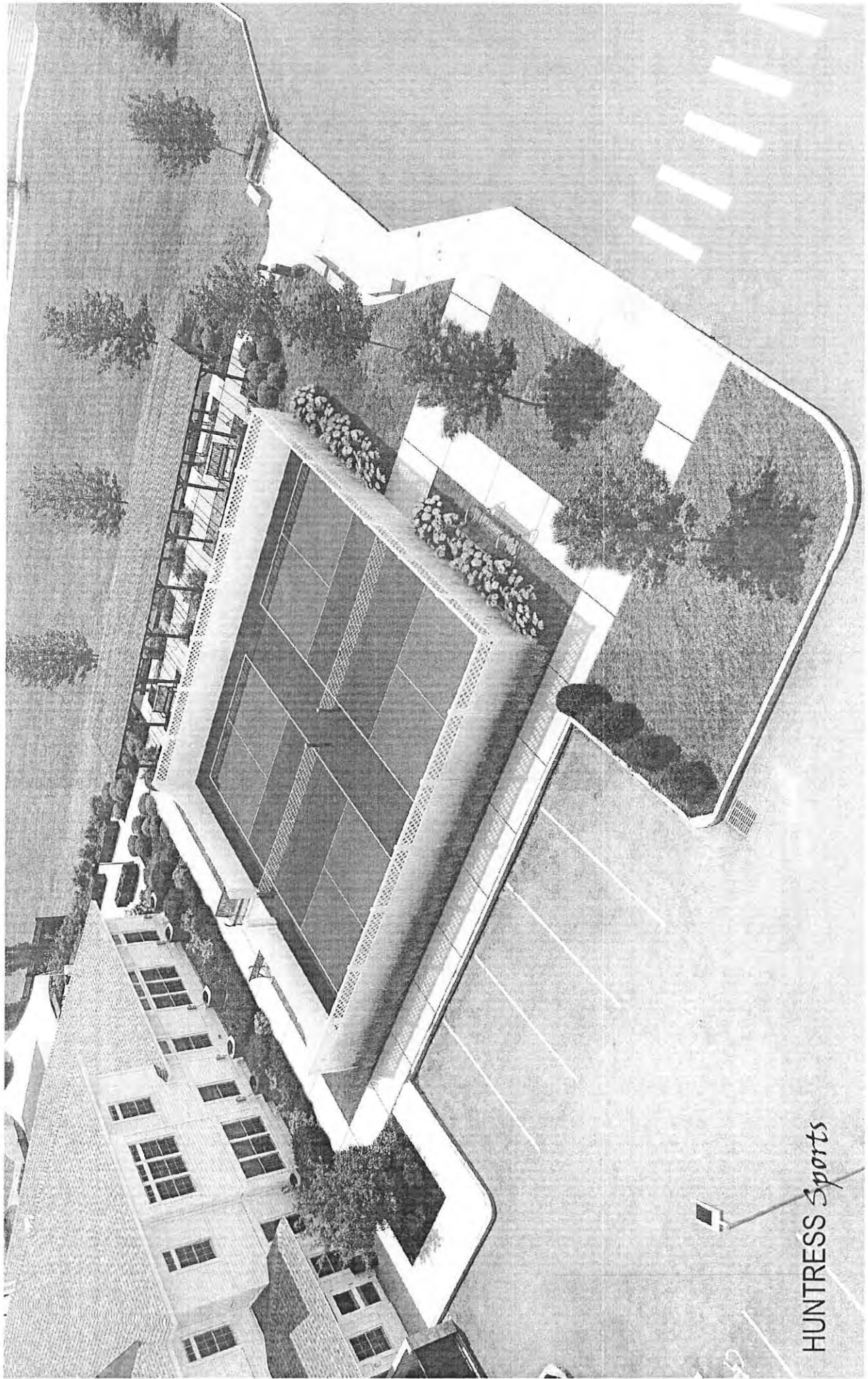
IN CITY COUNCIL

ORDERED:

August 9, 2021

THAT, The CITY COUNCIL of the City of Newburyport accepts with gratitude a gift from the Newburyport Friends of the Council on Aging in the amount of \$15,700 for the design of a Multi-Purpose Outdoor Space that will accommodate two pickleball courts at the Newburyport Senior/Community Center. These funds are accepted in accordance with M.G.L. Chapter 44, Section 53A.

Councillor Sharif I. Zeid



HUNTRESS Sports

CITY OF NEWBURYPORT



IN CITY COUNCIL

August 9, 2021

ORDERED:**Indigenous Peoples Day**

That the City Council of the City of Newburyport hereby approves the call to rename Columbus Day to Indigenous Peoples Day. The Newburyport Diversity, Equity and Inclusion Alliance (DEI) Human Rights Commission, students and faculty at the River Valley Charter School and the City of Newburyport requests the observance of Columbus Day be changed to Indigenous Peoples Day as a recognition and celebration of the heritage of Native Americans and the history of their Nations. Recognizing this day in place of what's currently known as "Columbus Day" is a way to correct false histories, honor Indigenous peoples, and to begin to correct some of the countless wrongs committed against Indigenous peoples.

Many American cities and states have already legally abolished Columbus Day and recognized Indigenous Peoples Day in its place. The movement to replace Columbus Day with Indigenous Peoples' Day or Native American Day has gained momentum and spread to states, cities, and towns across the United States. Massachusetts has long considered itself a beacon of progress for the United States as a whole. For Massachusetts to become a truly progressive, inclusive, diverse and equitable state, Columbus Day needs to be abolished and replaced by Indigenous People's Day.

Councillor Heather L. Shand

The Indigenous Peoples Day Rename Campaign:

Indigenous Peoples Day recognizes and celebrates the heritage of Native Americans and the history of their Nations. Honoring Columbus Day celebrates a legacy of genocide and perpetuates ongoing racism and neocolonialism towards Indigenous peoples.

Columbus did not discover the Americas; you can't "discover" lands that are already inhabited. The historical record needs to be set straight in order to respect the culture, language and traditional lifestyles of the Indigenous ancestors who existed long before Columbus' voyage.

Indigenous Peoples Day is about more than a name change; it's a refusal to allow the genocide of millions of Indigenous peoples to go unnoticed, and a demand for recognition of Indigenous humanity.

Recognizing this day in place of what's currently known as "Columbus Day" is a way to correct false histories, honor Indigenous peoples, and begin to correct some of the countless wrongs committed against Indigenous peoples.

Many American cities and states have already legally abolished Columbus Day and recognized Indigenous Peoples Day in its place. Enacting an officially recognized Indigenous Peoples Day would shed light on the disproportionately higher rates of poverty, unemployment, and incarceration experienced by Native Americans, as well as the lack of sufficient federal funding for education and health care on reservations. The various cultures and histories of Indigenous people within the United States are often reduced to harmful stereotypes, offensive mascots, or virtual erasure. A national holiday can be an opportunity for both education and celebration.

Massachusetts has long considered itself a beacon of progress for the United States as a whole, and needs to stop clinging to the concept of Columbus as a hero. For Massachusetts to become a truly progressive, inclusive, diverse and equitable state, Columbus Day needs to be abolished and replaced by Indigenous People's Day.

Massachusetts cities and towns that celebrate Indigenous Peoples Day:

- Amherst
- Arlington
- Brookline
- Cambridge
- Easthampton
- Great Barrington
- Marblehead
- Mashpee
- Maynard
- Melrose
- Newton
- Northampton
- Provincetown
- Salem
- Somerville
- Wellesley

History of Indigenous People of the Newburyport Area

Research compiled by Erin-Hutchinson-Himmel, member of the FRS Indigenous Peoples Day Initiative

The history of the Indigenous people of the Newburyport area has been documented by many sources. According to the article, *The People Of Merrimack Valley* from the May 2010 issue of *Merrimack Valley Magazine*, "Six hundred years ago, there were no such things as "New Hampshire," "Massachusetts" or the "Merrimack Valley." There was only Wobanaki, or "Dawnland." The People who lived here were known as the Alnobak, or "People of the Dawn." We now call them the Abenaki."

Within the Abenaki people there were three divisions- The Eastern Abenaki, the Western Abenaki, and "in the middle, in the Merrimack Valley, were the Benokoiak, which means "Falling Hill People," referring to their main village along the Merrimack River in what is now Concord, N.H. Today they are known as the Penacook. The land of the Penacook ran from south and central New Hampshire, east to southern Maine and then south to northeastern Massachusetts. According to the MHC Reconnaissance Survey Town Report NEWBURYPORT Report Date: 1985; During the time period between 1500 to 1620 Newburyport was inhabited by members of the "Pawtucket Indians and related groups whose territory lay between the Piscataqua River and the Charles River then inland to Concord, New Hampshire."

In the Newburyport area the indigenous population included the Penacook Indians in the vicinity of the lower Merrimack drainage and the Agawam Indians south towards the Ipswich/Rowley area. Historical records by "Gookin (1792) lists ca. 3,000 men as belonging to the Pawtucket group prior to the 1617-19 epidemics." Historical records shared also by "Mooney (1928:4) lists 2,000 men belonging to the Penacook group." This clearly shows that the Penacook had very little direct contact with the Europeans before 1620. However, through trade with other Native groups, the Penacook obtained items brought to North America by the English, French and Dutch, "but it was not these material things that affected the Penacook most. It was the diseases that the Europeans brought with them."

As early as the 1500s these illnesses started taking their toll, not only on the Penacook, but on other Native nations, as well. "Between 1564 and 1570, an unknown epidemic struck the Northeast, followed by an outbreak of typhus in 1586. The disease hit the Penacook, leaving a 75 percent mortality rate in some areas. By 1620 the Penacook population was down to an estimated 2,500.

In 1631, a smallpox epidemic began in the Merrimack Valley and quickly spread throughout New England. Another wave of smallpox began in 1639. This was followed by influenza in 1647, smallpox in 1649 and diphtheria in 1659. It is estimated that the Penacook population in 1675 was down to about 1,200." In 1676, disease and conflict with the English forced the Penacook to leave the Lower Merrimack Valley.

Once the 1750's arrived the Penacook had been completely displaced from their homeland and were now living within the Abenaki nations within Maine, Vermont, and Canada. It has been shown that "Many of the Penacook left the area to join up with other Native Americans, but many more stayed behind, hiding their "Indian-ness" and living within the dominant society, all the while trying to keep their old ways alive." With the invention of home DNA testing it is being seen that many New Englanders have Abenaki genealogy.

Works Cited:

The MHC Reconnaissance Survey Town Report: *NEWBURYPORT* Report Date: 1985
The People of the Merrimack Valley; May 2010 issue of Merrimack Valley Magazine.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

August 09, 2021

WHEREAS, the City of Newburyport Home Rule Charter provides at Section 2-5 that, except as otherwise provided by general law or by the charter, all powers of the City shall be vested in the City Council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the City by law; and

WHEREAS, the Newburyport Code provides at Section 12-30 that the surveying and laying out, relocation or altering of a street, highway, or private way, or part thereof, shall be done under the supervision of the City Council; and

WHEREAS, the Newburyport Code provides at Section 13-46 that the City Council is authorized, and as to those signs and signals required under such code it shall be its duty, to place and maintain or cause to be placed and maintained all official traffic signs, signals, markings and safety zones;

NOW, THEREFORE, the City Council shall review and approve the Merrimac Street striping plan submitted herewith, and authorize the Department of Public Service and the City Engineer to use said plan and complete the same within 14 days from the date of approval of this order.

Councillor Christine Wallace

ORDINANCES

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

June 7, 2021

AN ORDINANCE TO LIMIT ON-STREET PARKING ON UNION STREET

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

THAT Chapter 13 Article IV of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in italicized~~, and additions double-underlined and italicized:

Sec. 13-168. - Parking limited—Generally.

No person shall park any vehicle on the following streets or portions of streets as indicated below:

Street	Zones
<u>Union Street</u>	<u>Both sides, beginning at the westerly bound of 18 Union Street and running easterly for a distance of 178 feet</u>

Submitted,

Councillor Sharif I. Zeid

Approve: _____
Donna D. Holaday, Mayor

Attest: _____
Richard B. Jones, City Clerk

Date: _____

In City Council June 7, 2021:

Motion to refer to Public Safety by Councillor Zeid, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.

In City Council July 12, 2021:

Motion to approve on 1st reading by Councillor McCauley, seconded by Councillor Connell. Roll call vote. 11 yes. Motion passes.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

June 7, 2021

AN ORDINANCE TO AMEND THE REQUIREMENT FOR A QUORUM ON THE HISTORICAL COMMISSION

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

THAT Chapter 2 Administration of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in italicized~~, and additions double-underlined and italicized:

**Article III Boards, Committees, Commissions 3. Newburyport Historical Commission.
Division 3. Newburyport Historical Commission.
Sec. 2-102. Governance.**

(c) *Quorum*. Four (4) members of the commission, which is a simple majority of its members, shall constitute a quorum. Any approval, approval with provisos, disapproval, or disapproval with recommendations shall require an affirmative positive vote on the relevant motion of a no less than four (4) members (i.e. no less than said quorum).

Submitted,

Councillor Heather Shand

In City Council June 7, 2021:

Motion to refer to Planning & Development by Councillor Shand, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.

In City Council July 12, 2021:

Motion to approve on 1st reading as updated by Councillor Shand, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.



IN CITY COUNCIL

ORDERED:

August 9, 2021

AN ORDER TO INCREASE MEMBERSHIP ON THE NEWBURYPORT AFFORDABLE HOUSING TRUST AND PROPERLY CODIFY SAID TRUST AS A MUNICIPAL BOARD IN THE GENERAL ORDINANCES OF THE CITY OF NEWBURYPORT

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

WHEREAS, on May 26, 2009 the City Council voted to accept the provisions of M.G.L. Chapter 44 Section 55C and established the Newburyport Affordable Housing Trust (the "Housing Trust"); and

WHEREAS, the original May 26, 2009 Order amended the General Ordinances of the City to add an unnumbered section providing for such Housing Trust; and

WHEREAS, said new section was inadvertently inserted as Section 2-125 within Division 5 ("Community Preservation Committee") of Article III ("Boards, Commissions and Committees"); and

WHEREAS, the Housing Trust requests that the City Council delete Section 2-125 from Division 5 of Article III of the General Ordinances of the City and add Section 2-125 in a new Division of Article III, setting forth the provisions of the Housing Trust; and

WHEREAS, the Housing Trust has also requested an increase in its membership to allow for wider participation, engagement and leadership on the Housing Trust consistent with its mission; and

WHEREAS, the need for affordable housing in the City has never been greater.

NOW THEREFORE, LET IT BE ORDAINED THAT the City of Newburyport hereby reaffirms its acceptance of the provisions of M.G.L. Chapter 44 Section 55C pertaining to such Housing Trust;

AND FURTHER, THAT an amendment is hereby approved to the May 26, 2009 Council Order to increase the membership of the Housing Trust from five (5) trustees to seven (7) trustees, and, consistent therewith, to amend the General Ordinances of the City of Newburyport as follows:

- A. Delete Section 2-125 from Division 5 of Article III (“Boards, Commissions and Committees”) in its entirety.
- B. Insert a new Division 7 under Article III (“Boards, Commissions and Committees”) as follows:

Division 7. Newburyport Affordable Housing Trust

Sec. 2-125d. Membership of the Trust

There shall be a board of trustees of the Newburyport Affordable Housing Trust, which shall include seven (7) trustees, including the mayor, with the remaining members to be appointed by the mayor, subject to confirmation by the city council. Trustees shall include one member with expertise from each of the following fields: Affordable housing, real estate, planning and lending. Initially, three (3) members shall be appointed for a one-year term and three (3) members shall be appointed for two-year terms. As the term of each member expires, his successor shall be appointed for a term of two years. Members may be appointed for successive terms. Vacancies shall be filled by the mayor, subject to confirmation by the city council, for the remainder of the unexpired term. Any member of the board may be removed for cause by the mayor, with the approval of the city council, after the opportunity for a hearing. A quorum of the board of trustees shall be the majority of the trustees.

Sec. 2-125e. Powers of the Trust

The powers of the board, all of which shall be carried out in furtherance of the purposes set forth in M.G.L.A. c. 44, § 55C, shall include the following:

- (a) To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or any general or special law or any other source, including money from M.G.L.A. c. 44B;
- (b) To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- (c) To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;
- (d) To execute, acknowledge, and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;
- (e) To employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

- (f) To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;
- (g) To apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- (h) To participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- (i) To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
- (j) To carry property for accounting purposes other than acquisition date values;
- (k) To borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;
- (l) To make distributions or divisions of principal in kind;
- (m) To comprise, attribute, defend, enforce, release, settle, or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this Act, to continue to hold the same for such period of time as the board may deem appropriate;
- (n) To manage or improve real property; and to abandon any property which the board determined not to be worth retaining;
- (o) To hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
- (p) To extend the time for payment of any obligation to the trust.

Sec. 2-125f. Board of the City

The trust is a board of the city for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city shall be exempt from said chapter 30B.

Councillor Heather L. Shand

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

August 9, 2021

AN ORDINANCE TO ADD A SERVICE AREA ON LIBERTY STREET

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

THAT Chapter 13 Article IV of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in italicized~~, and additions double-underlined and italicized:

Sec. 13-171. – Service zones..

No person shall park a vehicle other than a commercial vehicle used exclusively for loading and unloading for a period of time longer than one-half hour between the hours of 9:00 a.m. and 4:00 p.m. excluding Sundays and holidays in the following designated service zones:

Street	Zones
<u>Liberty Street</u>	<u>The first space on the northerly side running for a distance of 25 feet beginning at the corner of State Street and Liberty Street</u>

Submitted,

Councillor Jared J. Eigerman

CITY OF NEWBURYPORT



 IN CITY COUNCIL

August 9, 2021

ORDERED:

AN ORDINANCE REGARDING ANNUAL REPORTING ON THE CONDITION AND OPERATIONAL PERFORMANCE OF CITY-OWNED BUILDINGS

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

Amend existing Section 5-47 as follows, with additions double-underlined, and ~~deletions double-stricken out~~:

Sec. 5-47. – Municipal building reports and operational requirements.

Each year ~~all in the month of February~~ department heads whose departments have custody responsible for maintenance of municipal buildings, expressly including the Superintendent of Schools as to buildings in the custody of the School Department ~~except schools~~, shall submit a report on the physical conditions and energy, water, and trash waste performance of each such municipal building to the ~~Mayor~~ Mayor with a copy filed with the City Clerk and also posted in its entirety on the City's website in the city clerk's office. Upon receipt, the City Clerk ~~The city clerk~~ shall distribute said report to all members of the City Council ~~city councillors~~. The report shall include at a minimum information regarding ~~but not limited to~~ structural condition, handicapped access ~~ADA compliance and concerns~~, plumbing, heating, electrical, and other building utilities and services in compliance with this Section 5-47, and details about personal and premises protection. Each such report shall use the Energy Star tool promulgated and maintained by the United States Environmental Protection Actions, which is linked to the MassEnergyInsight (MEI) web-based, reporting tool. Metrics to be reported include: (i) Total GHG Emissions Intensity in metric tons of CO₂e per square meter of gross floor area per year; (ii) Energy Use Intensity (EUI) in gigajoules (GJ) per square meter per year; (iii) Water Use in liters per square meter per year; and (iv) Total Waste in metric tons per square meter per year.

 Councillor Jared J. Eigerman

CITY OF NEWBURYPORT



August 9, 2021

IN CITY COUNCIL

ORDERED:

AN ORDINANCE REQUIRING A GHG PROTOCOL FOR SIGNIFICANT CITY PROJECTS

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

Add new Section 5-49 as follows, with additions double-underlined, and ~~deletions double-stricken-out~~:

Sec. 5-48. – GHG Protocol.

It is the policy of the City of Newburyport for its buildings and structures to consume the minimum amount of energy, with an ideal of “net zero energy” when measured across the City’s entire portfolio of real property, and also for the construction, maintenance, and operation of its buildings to result in the minimal emission of greenhouse gases with an ideal of “net zero CO2 emissions” when measured across the City’s entire portfolio of real property.

- (a) Definitions. The following definitions apply under this Section 5-48.
- i. City shall mean the City of Newburyport, Massachusetts.
 - ii. City Action shall mean any formal and final authorization, appropriation, execution of a contract or other decision by the City to proceed to Commencement of a Significant City Project.
 - iii. Carbon Dioxide (CO2) equivalent (CO2e) shall mean the number of metric tons of CO2 emissions with the same global warming potential as one metric ton of another greenhouse gas, and is calculated using Equation A-1 in 40 CFR Part 98.
 - iv. Commencement of Construction shall mean the initiation of on-site physical or construction work or activity. Research, design, or other work or activity necessary to evaluate a Significant City Project under this Section 5-48 shall not be considered Commencement of Construction.
 - v. Commencement of a Significant City Project shall mean the earliest of: (A) initiation of any preparatory phase of the Significant City Project, including any action or expenditure of funds on the financing, marketing, or development of the Significant City Project; (B) Commencement of Construction; and (C) initiation of the operational phase of the Significant

City Project. Research, design, or other work or activity necessary to evaluate a Significant City Project for purposes of this Section 5-48 shall not be considered Commencement of a Significant City Project.

- vi. Delivered Energy shall mean any type of energy that could be bought or sold for use as building energy, including, without limitation, electricity, steam, hot water or chilled water, natural gas, biogas, landfill gas, coal, coke, propane, petroleum and its derivatives, residual fuel oil, alcohol based fuels, wood, biomass and any other material consumed as fuel.
- vii. Greenhouse Gas (GHG) shall mean any of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.
- viii. GHG Protocol shall mean the "Revised EPA GHG Emissions Policy and Protocol," promulgated by the Commonwealth's Executive Office of Energy and Environmental Affairs, and effective March 5, 2010, as it may be amended from time to time, which policy and protocol is hereby incorporated in this Section 5-48 by reference as if restated completely.
- ix. Gross Floor Area shall mean gross floor area as that term is defined under the Zoning Ordinance of the City of Newburyport, Massachusetts.
- x. MEPA shall mean the Massachusetts Environmental Policy Act (MEPA) (M.G.L. c. 30, ss. 61-62I and its implementing regulations at 301 CMR 11.00, as they may be amended from time to time.
- xi. On-Site Renewable Energy shall mean Renewable Energy collected and generated within the site boundary that is used for Site Energy and the excess Renewable Energy could be exported outside the site boundary, for which renewable energy certificates (RECs) are retained or retired by the owner of the site.
- xii. Net Zero GHG Emissions shall mean a condition when anthropogenic GHG emissions are balanced globally by anthropogenic GHG removal over a specific period.
- xiii. Net Zero Energy shall mean, on a Source Energy basis, a condition when the actual, annual Delivered Energy at a site is less than or equal to the exported On-Site Renewable Energy exported.
- xiv. Non-City Proponent shall mean any Person other than the City, including a designee or successor-in-interest, that undertakes a Significant City Project.
- xv. Person shall mean any individual, corporation, partnership, trust, association, or other business or non-profit organization, or any federal, state, regional, or municipal governmental, intergovernmental or other entity that is not the City.

- xvi. Renewable Energy shall mean energy resources that are naturally replenishing but flow-limited, including, without limitation, biomass, hydro, geothermal, solar, wind, ocean thermal, wave action and tidal action.
- xvii. Routine Maintenance shall mean any maintenance work or activity carried out on a regular or periodic basis in a manner that has no potential for GHG emissions or for which performance standards have been developed that avoid, minimize, or mitigate potential GHG emissions to the maximum extent practicable.
- xviii. Significant City Financial Assistance shall mean any direct or indirect financial aid to any Person provided by the City, including, but not limited to, mortgage assistance, special taxing arrangements, grants, issuance of bonds, loans, loan guarantees, debt or equity assistance, and the allocation of municipal funds, with a value exceeding five thousand dollars (\$5,000). Financial Assistance shall not be considered to include: (A) the grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or third party on behalf of an individual; (B) pass-through of federal or state funds or issuance of bonds solely on behalf of a local economic development or financing agency, without allocation by the City; or (C) routine assistance by City staff.
- xix. Significant City Project shall mean any Significant Construction either (A) undertaken by the City or (B) or receiving Significant City Financial Assistance.
- xx. Significant Construction shall mean: (A) the erection of a building or structure having a Gross Floor Area of five thousand (5,000) or more square feet; (B) expansion or other enlargement of an existing building or structure so as to increase its Gross Floor Area by five thousand (5,000) or more square feet; (C) to establish or change the use(s) of a Gross Floor Area of five thousand (5,000) or more square feet; or (D) Substantial rehabilitation of a building or structure having, or to have after rehabilitation, a Gross Floor Area of more than ten thousand (10,000) square feet.
- xxi. Site Energy shall mean energy consumed at the site as measured at the site boundary, including heating, cooling, ventilation, domestic hot water, indoor and outdoor lighting, plug loads, process energy, elevators and conveying systems, and intra-site transportation systems.
- xxii. Source Energy shall mean Site Energy plus the energy consumed in the extraction, processing and transport of primary fuels, such as coal, oil and natural gas, energy losses in thermal combustion in power generation plants, and energy losses in transmission and distribution to the site.
- xxiii. Substantial Rehabilitation shall mean alterations, extension, reconstruction, or repairs to a building or structure within any period of twelve (12) months that together cost more than fifty percent (50%) of the physical value of the building or structure, where physical value is based upon the assessed value by the City Assessor as of the January 1

preceding the date of determining the applicability to a Significant City Project of this Section 5-48.

- (b) *Applicability of GHG Protocol.* Regardless of whether a Significant City Project is subject to review under MEPA, and unless an exemption applies under subsection (b)(iii) below, every Significant City Project shall be subject to the GHG Protocol as if an Environmental Impact Report (EIR) were required under MEPA, and as such GHG Protocol is modified under this Section 5-48.
- i. *Generally.* The general requirement of this Section 5-48 is that the City or the Non-City Proponent of a Significant City Project quantify the potential annual GHG emissions from a proposed Significant City Project according to the quantification protocol outlined in the GHG Protocol, and report the results of that analysis in a document called a "GHG Report" to be submitted to the Mayor with a copy filed with the City Clerk, who, upon receipt, shall distribute said report to all members of the City Council. GHG emissions shall be expressed in metric tons of CO₂e.
- ii. *GHG Report.* The GHG Report shall include a calculation of the Significant City Project's baseline GHG emissions in accordance with GHG Protocol, and estimated GHG emissions associated with the preferred alternative, as well as outline and commit to a series of mitigation measures that will help to reduce GHG emissions from the proposed Significant City Project. To demonstrate the efficacy of the mitigation measures, the GHG Report shall include a measurement of GHG emissions reductions and energy savings estimated to be achieved by the 's preferred alternative against the Significant City Project baseline, and also discuss the rationale and GHG emissions reduction potential of mitigation measures that were not selected for the preferred alternative. In summary, the GHG Report is intended to include a three-step analysis: (A) identify a project baseline; (B) calculate estimated GHG emissions from the project baseline condition; and (C) calculate estimated emissions reductions based on mitigation measures by comparing project alternatives to the baseline.. In addition, the GHG Report shall describe: (I) all feasible measures to be taken by the City or the Non-City Proponent of a Significant City Project receiving Significant City Financial Assistance to avoid GHG emissions, or, to the extent GHG emissions cannot be avoided, to minimize and mitigate GHG emissions to the maximum extent practicable; (II) a Person responsible for funding and implementing mitigation measures; and (III) the anticipated implementation schedule that will ensure that such described mitigation measures shall be implemented prior to or when appropriate in relation to GHG emissions.
- iii. *Exemptions.* Notwithstanding anything in this Section 5-48 to the contrary, the GHG Protocol shall not apply, and no GHG Report shall be required for (A) Routine Maintenance; and (B) those Significant City Projects for which the City's Planning Director has issued a written determination that little or no GHG emissions are reasonably expected.

- (c) Design and Engineering Contracts and RFPs. Every design or engineering contract entered into by the City, as well as any Request for Proposals (RFP) issued by the City, for a Significant City Project shall require the design, engineering, or other contractor or respondent, to demonstrate experience within the past three (3) calendar years designing buildings or structures to Net Zero Energy and/or Net Zero Carbon standards, and such experience shall be included among the criteria used by the City to award any such contract or select a respondent under any such RFP.

Councillor Jared J. Eigerman

CITY OF NEWBURYPORT



 IN CITY COUNCIL

ORDERED:

AUGUST 9, 2021

A ZONING ORDINANCE TO CLARIFY NEWBURYPORT'S OFF-STREET PARKING REGULATIONS

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

Amend existing Section VII-A – Off-Street Parking Regulations as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

VII-A. - Off-street parking regulations.

New uses or development: No use of any premises shall be authorized or extended and no building or structure shall be erected or enlarged, unless on-site or off-site parking is provided for such extension, erection, or enlargement, as provided herein; *provided, however, that for any structure or use both (i) lawfully existing as of December 17, 2017, and (ii) currently located within three hundred (300) feet of a municipal parking lot and/or structure that is located within the Downtown Overlay District (DOD), any lawful deficiency in off-street parking spaces existing on December 17, 2017, may be carried forward for the structure or use by right, notwithstanding any extension, erection, or enlargement.* Any outdoor parking spaces shall be treated with a surface binder, gravel or crushed stone surface. Except as otherwise provided under section XXIV or, alternatively, through a special permit from the city council as set forth below, all parking spaces shall be provided as follows:

 Councillor Jared J. Eigerman

COMMITTEE ITEMS

Committee Items- August 09, 2021

Budget & Finance

Budget & Finance
In Committee:

TRAN108_07_12_2021

Multiple Accts \$99,921 to Multiple Accts \$99, 921



CITY OF NEWBURYPORT FY 2022 TRANSFER/APPROPRIATION REQUEST

RECEIVED
CITY CLERK'S OFFICE
JUL 12 2021

Department: Mayor's Office
Submitted by: Donna D. Holaday, Mayor **Date Submitted:** 7/12/2021

Transfer From:

Account Name:	<u>Multiple - See attached</u>	Balance:	<u>\$ -</u>
Account Number:	<u>Multiple - See attached</u>	Category:	<u>\$ -</u>
Amount:	<u>\$99,921.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

The City budgets an annual contingency for expiring collective bargaining agreements.

Transfer To:

Account Name:	<u>Multiple - See attached</u>	Balance:	<u>\$ -</u>
Account Number:	<u>Multiple - See attached</u>	Category:	<u>\$ -</u>
Amount:	<u>\$99,921.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

To fund FY2022 cost items in the the newly settled collective bargaining agreement between the City of Newburyport and the AFSCME, Council 93, Local 939 effective July 1, 2021. See attached memo and tentative agreement.

Donna D. Holaday, Mayor:  Date: 7/7/21
 Ethan R. Manning, Auditor:  Date: 7/12/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:

BST

AFSCME, Council 93, Local 939 - FY2022 Funding
Transfer Submitted July 12, 2021

Transfer From:

Transfer To:

<u>Account Name</u>	<u>Org</u>	<u>Object</u>	<u>Amount</u>	<u>Account Name</u>	<u>Org</u>	<u>Object</u>	<u>Amount</u>
BUC BUDGET CONTINGENCY	01132007	57805	\$59,818.38	TRS SAL STAFF	01145001	51103	\$2,341.85
				OPD SAL ADMIN ASSISTANT	01182001	51104	\$1,400.67
				POL SAL CLERICAL	01210001	51152	\$615.44
				POL SAL DISPATCH F/T	01210001	51156	\$4,236.97
				POL DIS OVERTIME	01210001	51302	\$350.00
				POL DIS PAID HOLIDAYS	01210001	51403	\$724.65
				POL DIS NIGHT DIFFERENTIAL	01210001	51411	\$598.00
				POL ACCREDITATION ALLOWANCE	01210001	51413	\$900.00
				FIR SAL DISPATCHERS	01220001	51156	\$4,294.10
				FIR DISP OVERTIME	01220001	51302	\$600.00
				FIR DISPATCH HOLIDAY	01220001	51403	\$1,260.00
				HWY SAL FACILITIES MAINT	01421001	51150	\$6,718.77
				HWY SAL LABOR	01421001	51158	\$25,399.87
				COA SAL VAN DRIVERS	01541001	51156	\$2,153.98
				LIB SAL STAFF	01610001	51156	\$6,400.00
				PRK SAL FT LABOR	01630001	51168	\$1,824.08
WAT BUDGET CONTINGENCY	60450007	57805	\$19,242.08	WAT SAL LABOR	60450001	51158	\$19,242.08
SEW BUDGET CONTINGENCY	61440007	57805	\$20,860.54	SEW SAL LABOR	61440001	51158	\$20,860.54
Total			<u>\$99,921.00</u>	Total			<u>\$99,921.00</u>



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY

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

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: July 6, 2021
Subject: AFSCME Local 939 Tentative Agreement FY22 – FY24

The Administration has agreed to terms for a new, three-year collective bargaining agreement with the AFSCME Local 939 Bargaining Unit. The contract would go into effect retroactively from July 1, 2021 through June 30, 2024, subject to appropriation of funding for the first year of the contract by the City Council. The Local 939 have voted to ratify the terms of this agreement. Included with this memo is a transfer request that appropriates funding for the first year of the contract by the City Council, as well as a summary of the agreed changes to the contract.

As a courtesy to the City Council to track the terms and changes to the new contract, I will make available a redlined version of the previously expired contract upon request.

The Administration worked diligently and collaboratively with the Local 939 to agree to terms for a new contract.

My staff, is available if you require any additional information regarding information on the appropriation request or terms of the new contract.

Summary of Changes to New AFSCME Contract

July 6, 2021

Article III (p. 2) Union Dues & Agency Fee – Replace section:

Upon receipt of signed authorization from employees who are subject to this agreement, the employer shall deduct from the employee's pay dues payable by such employees to the Union. Such authorization shall be for the life of the Contract and shall be continued thereafter if a contract exists between the City and the Union. The deductions shall be remitted to the Union no later than ten (10) days from the date on which the deduction was made. The City shall furnish the Union with a record of each deduction showing the amount and the employees from whom such deduction was made. (As authorized by MGL Chapter 180, Section 17A)

- B. The exclusive representative may require a non-member to pay for the reasonable costs and fees, including arbitrator fees and related attorney fees for grieving or arbitrating a matter arising under an agreement negotiated pursuant to this section and brought at the nonmember's request. The exclusive representative may require non-members to pay any anticipated proportional costs and fees prior to a grievance or arbitration hearing. Failure to pay costs and fees shall relieve the exclusive representative of further responsibility to the non-member regarding the matter.

An exclusive representative's duty of fair representation to a public employee who is in the bargaining unit shall be limited to the negotiation and enforcement of the terms of agreements with the public employer. The laws of the commonwealth shall not be construed to prohibit an employee organization from providing only to its members legal, economic or job-related services or benefits outside of the collective bargaining agreement. [As authorized by MGL Chapter 150E, Section 5]

- C. The employer agrees to deduct from the wages of any employee who voluntarily becomes a member of the Union a PEOPLE deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the employer and the Union. The employer agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the name of each employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance. [As authorized by MGL Chapter 180, Section 17J.]
- D. The employer shall provide the opportunity for Union officials to meet with newly hired employees, without charge to the pay or leave time of the employees, for a minimum of 30 minutes, not later than 10 calendar days after the date of hire. [As authorized by MGL 150E, Section 5A (a) (iii)]
- E. The Union shall indemnify and hold the Employer harmless against any and all claims, demands, suits, or other forms of liability including, without limitation, attorney's fees, which

may arise by reason of any action taken in making deductions and remitting the same to the Union pursuant to the provisions of this Article.

Article V Work Week (p.5)

A – F: Reorganized, includes hours operations for all departments with bargaining members, no changes in hours

Miscellaneous 7 – new section laying out closing:

In the event of a decision by the City to delay the opening, early closing, or full closing due to severe weather, loss of power or heat, disaster, or other unforeseen emergency, employees on the schedule to work that day shall be paid. When possible, employees who have the ability to work remotely may be required to do so consistent with the City's Remote Operating Procedures, however if the employee is unable to work remotely due to the type of work assigned, or technology constraints they will still be paid for their scheduled time.

If an employee scheduled to work is not able to get to their primary workplace due to inclement weather on a day when the workplace is open, i.e. the City has not made the decision to alter the operating hours, the employee who cannot report to work shall use vacation, personal, or compensatory time to account for their absence.

Article VI Job Posting & Bidding (p. 11)

New Section 3:

Upon approval of the Union, the City shall have the option to negotiate with prospective replacements with relevant experience, a starting annual wage based on the hiring range not to exceed Step 4 of the pay grade. If the city chooses to exercise this option, it shall also review all employees hired within the same job title within the past three (3) years, evaluate their training and experience, and make pay scale adjustments where necessary upon approval of the Union. Upon approval of the Union, the newly hired replacement shall receive the same negotiated across the board increases as other unit employees.

Article VII Seniority (p. 11): Delete last paragraph

Article VIII Overtime (p. 12)

Paragraph 6 replace 3 with 4 in first sentence "Employees called in to work for an emergency call out on weekdays shall receive a minimum of four (4) hours pay at the premium rate of one and one half (1 ½) times their straight time.

Article IX Vacations (p. 13): Delete "note".

Section 2 Vacation Scheduling, B Reserve days (p.14): change March to May, April 1 to June 1,

Article X Holidays (p. 16) – Add Juneteenth

Paragraph 5 (p. 17) – Add sentence "Employees called in for non-scheduled work on a holiday shall be paid at two- time (2X) their regular rate for all hours worked."

New Paragraph 7 (p. 17): "If the Mayor releases employees early on Christmas Eve, affected employees shall be released without reduction to their pay, unless Christmas falls on a Sunday or a Monday. Employees who cannot be released early due to the nature of their work shall receive additional compensation equal to one-half (1/2) their regularly scheduled hours at straight time."

Article XIV Miscellaneous

New 6 (p. 20): "When the heat index exceeds one hundred (100) as calculated by the National Weather Service Chart in Appendix G, outdoor employees will be called to come indoors (preferable in air-conditioned space). Temperature and humidity, for the purpose of this section, shall be determined by the current conditions as reported by the National Weather Service of the National Oceanic and Atmospheric Administration, US Department of Commerce. (<https://www.weather.gov>)."

Misc. 8 (p. 21): Allow personal days to be taken in less than ½ day increments at the discretion of the department head.

Misc. 11 (p.21): Call in pay – Increase pay per call in day each year of contract FY22: 1 hour, in day, FY23: 1.5 hour, FY24: 2 hours

Misc. 22 New GPS Language: "All members of the Union who are authorized to operate City vehicles acknowledge that the vehicle they operate may be equipped with a GPS tracking device. The GPS tracking device will allow the City to monitor the vehicle for geographic location, speed, hours of operation, and other relevant information to the vehicle's utilization for the purpose of maintaining orderly and efficient operations of the City. This information shall not be used for disciplinary purposes against members of the Union, absent a violation of Federal, State or Local law, or any serious misconduct or serious violations of work rules or safety precautions."

New Misc 23: "An accreditation stipend will be paid to each member of the bargaining unit working in the Police Department upon re-accreditation annually in the first pay period in September. The Stipend will be \$250.00. The Union and city agree to continue to make a good faith effort to maintain accreditation."

Article XVI Wage and Classification (p. 23): Replace Section 2: "Any employee assigned to work in a higher rated classification, and who assumes the duties of that higher classification, shall be paid day for day at the higher rate of pay."

Article XVII Night Differential (p.25)

Replace Section 2 with: "Full-time police dispatching personnel who are regularly scheduled to work the second shift shall be eligible to receive a night differential of \$0.50 per hour and those who work third shift (overnight) shall be eligible to receive a night differential of \$1.00 per hour."

Delete Section 3

Article XIX Clothing & Tool Allowance (p. 25)

Add black, hi-visibility to DPS clothing chart

Add new section to shorts trial FY22 & FY23

New City Hall attire language

Article XX Discipline and Discharge p. 28 Replace Section: All employees shall be given a six (6) month probationary period. The employee shall, upon the successful completion of the probationary period, become eligible for UNION membership and dues deduction but shall otherwise be eligible to receive other benefits provided in this agreement."

Article XXI Schooling (p. 29)

Add to Section 1: Effective July 1, 2021

A. The educational stipend shall be payable to employees of the library where the job description or job posting indicates that a Master's Degree is "required" or "preferred".

B. Other City employees receiving the education stipend pursuant to his paragraph prior to July 1, 2021 will continue to receive the stipend.

Article XXIII Duration (p. 30): July 1, 2021 to June 30, 2024

Appendix A Wage & Classification

- Eliminate grades 1 to 4
- FY22 Upgrades
 - Mechanic Foreman Fleet Highway (20 to 24)
 - New Position – Water Treatment Plant Foreman/ Operator
- FY23 Upgrades
 - PI Vacuum Sewer System Operator (14 to 16)
 - Waste Water Plan Operator Grade 4 (16 to 18)
 - Waste Water Plan Operator Grade 5 (18 to 20)
 - Waste Water Plan Operator Grade 6 (20 to 22)
- New wage chart reflecting 2% COLA
- Re-establish regular labor/ management meetings
- Commitment to wage and classification study:
 - In FY 2022 the parties shall meet to review and update all job descriptions for classifications under this agreement.
 - In FY 2023 the updated job descriptions will be submitted to a vendor for the purpose of a comprehensive wage and benefit study, along with recommendations.
 - Both parties will be provided the results of the Study.

New Appendix G Heat Index Chart

Summary of Changes to New AFSCME Contract

July 6, 2021

Article III (p. 2) Union Dues & Agency Fee – Replace section:

Upon receipt of signed authorization from employees who are subject to this agreement, the employer shall deduct from the employee's pay dues payable by such employees to the Union. Such authorization shall be for the life of the Contract and shall be continued thereafter if a contract exists between the City and the Union. The deductions shall be remitted to the Union no later than ten (10) days from the date on which the deduction was made. The City shall furnish the Union with a record of each deduction showing the amount and the employees from whom such deduction was made. (As authorized by MGL Chapter 180, Section 17A)

- B. The exclusive representative may require a non-member to pay for the reasonable costs and fees, including arbitrator fees and related attorney fees for grieving or arbitrating a matter arising under an agreement negotiated pursuant to this section and brought at the nonmember's request. The exclusive representative may require non-members to pay any anticipated proportional costs and fees prior to a grievance or arbitration hearing. Failure to pay costs and fees shall relieve the exclusive representative of further responsibility to the non-member regarding the matter.

An exclusive representative's duty of fair representation to a public employee who is in the bargaining unit shall be limited to the negotiation and enforcement of the terms of agreements with the public employer. The laws of the commonwealth shall not be construed to prohibit an employee organization from providing only to its members legal, economic or job-related services or benefits outside of the collective bargaining agreement. [As authorized by MGL Chapter 150E, Section 5]

- C. The employer agrees to deduct from the wages of any employee who voluntarily becomes a member of the Union a PEOPLE deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the employer and the Union. The employer agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the name of each employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance. [As authorized by MGL Chapter 180, Section 17J.]
- D. The employer shall provide the opportunity for Union officials to meet with newly hired employees, without charge to the pay or leave time of the employees, for a minimum of 30 minutes, not later than 10 calendar days after the date of hire. [As authorized by MGL 150E, Section 5A (a) (iii)]
- E. The Union shall indemnify and hold the Employer harmless against any and all claims, demands, suits, or other forms of liability including, without limitation, attorney's fees, which

may arise by reason of any action taken in making deductions and remitting the same to the Union pursuant to the provisions of this Article.

Article V Work Week (p.5)

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Miscellaneous 7 – new section laying out closing:

In the event of a decision by the City to delay the opening, early closing, or full closing due to severe weather, loss of power or heat, disaster, or other unforeseen emergency, employees on the schedule to work that day shall be paid. When possible, employees who have the ability to work remotely may be required to do so consistent with the City's Remote Operating Procedures, however if the employee is unable to work remotely due to the type of work assigned, or technology constraints they will still be paid for their scheduled time.

If an employee scheduled to work is not able to get to their primary workplace due to inclement weather on a day when the workplace is open, i.e. the City has not made the decision to alter the operating hours, the employee who cannot report to work shall use vacation, personal, or compensatory time to account for their absence.

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Article X Holidays (p. 16) – Add Juneteenth

Paragraph 5 (p. 17) – Add sentence "Employees called in for non-scheduled work on a holiday shall be paid at two- time (2X) their regular rate for all hours worked."

New Paragraph 7 (p. 17): "If the Mayor releases employees early on Christmas Eve, affected employees shall be released without reduction to their pay, unless Christmas falls on a Sunday or a Monday. Employees who cannot be released early due to the nature of their work shall receive additional compensation equal to one-half (1/2) their regularly scheduled hours at straight time."

Article XIV Miscellaneous

New 6 (p. 20): "When the heat index exceeds one hundred (100) as calculated by the National Weather Service Chart in Appendix G, outdoor employees will be called to come indoors (preferable in air-conditioned space). Temperature and humidity, for the purpose of this section, shall be determined by the current conditions as reported by the National Weather Service of the National Oceanic and Atmospheric Administration, US Department of Commerce. (<https://www.weather.gov>)."

Misc. 8 (p. 21): Allow personal days to be taken in less than ½ day increments at the discretion of the department head.

Misc. 11 (p.21): Call in pay – Increase pay per call in day each year of contract FY22: 1 hour, in day, FY23: 1.5 hour, FY24: 2 hours

Misc. 22 New GPS Language: "All members of the Union who are authorized to operate City vehicles acknowledge that the vehicle they operate may be equipped with a GPS tracking device. The GPS tracking device will allow the City to monitor the vehicle for geographic location, speed, hours of operation, and other relevant information to the vehicle's utilization for the purpose of maintaining orderly and efficient operations of the City. This information shall not be used for disciplinary purposes against members of the Union, absent a violation of Federal, State or Local law, or any serious misconduct or serious violations of work rules or safety precautions."

New Misc 23: "An accreditation stipend will be paid to each member of the bargaining unit working in the Police Department upon re-accreditation annually in the first pay period in September. The Stipend will be \$250.00. The Union and city agree to continue to make a good faith effort to maintain accreditation."

Article XVI Wage and Classification (p. 23): Replace Section 2: "Any employee assigned to work in a higher rated classification, and who assumes the duties of that higher classification, shall be paid day for day at the higher rate of pay."

Article XVII Night Differential (p.25)

Replace Section 2 with: "Full-time police dispatching personnel who are regularly scheduled to work the second shift shall be eligible to receive a night differential of \$0.50 per hour and those who work third shift (overnight) shall be eligible to receive a night differential of \$1.00 per hour."

Delete Section 3

Article XIX Clothing & Tool Allowance (p. 25)

Add black, hi-visibility to DPS clothing chart

Add new section to shorts trial FY22 & FY23

New City Hall attire language

Article XX Discipline and Discharge p. 28 Replace Section: All employees shall be given a six (6) month probationary period. The employee shall, upon the successful completion of the probationary period, become eligible for UNION membership and dues deduction but shall otherwise be eligible to receive other benefits provided in this agreement."

Article XXI Schooling (p. 29)

Add to Section 1: Effective July 1, 2021

A. The educational stipend shall be payable to employees of the library where the job description or job posting indicates that a Master's Degree is "required" or "preferred".

B. Other City employees receiving the education stipend pursuant to his paragraph prior to July 1, 2021 will continue to receive the stipend.

Article XXIII Duration (p. 30): July 1, 2021 to June 30, 2024

Appendix A Wage & Classification

- Eliminate grades 1 to 4
- FY22 Upgrades
 - Mechanic Foreman Fleet Highway (20 to 24)
 - New Position – Water Treatment Plant Foreman/ Operator
- FY23 Upgrades
 - PI Vacuum Sewer System Operator (14 to 16)
 - Waste Water Plan Operator Grade 4 (16 to 18)
 - Waste Water Plan Operator Grade 5 (18 to 20)
 - Waste Water Plan Operator Grade 6 (20 to 22)
- New wage chart reflecting 2% COLA
- Re-establish regular labor/ management meetings
- Commitment to wage and classification study:
 - In FY 2022 the parties shall meet to review and update all job descriptions for classifications under this agreement.
 - In FY 2023 the updated job descriptions will be submitted to a vendor for the purpose of a comprehensive wage and benefit study, along with recommendations.
 - Both parties will be provided the results of the Study.

New Appendix G Heat Index Chart

Committee Items- August 9, 2021
Neighborhood & City Services

ORDR256_06_07_2021 Letter of Intent 50 Parker St

N&CS

ORDR256_06_07_2021



COLDWELL

NRT

41 SENOZA AVENUE
HAVERHILL, MA 01830

TEL (978) 373-3897
FAX (978) 373-6803

WEBSITE www.coldwellbanker.com/ma/ldorta.com

May 18, 2021

230-232 E 49th St Assoc.
Mr. Gordon Hall
90 Munroe St.
Lynn, MA 01901

City of Newburyport
Newburyport Parks Department
Ms. Lisë Reid
P.O. Box 550
60 Pleasant Street
Newburyport, MA 01950

RE: Intent to Lease – 50 Parker Street Unit 6, Newburyport, MA 01950

This Letter of Intent to Lease for 50 Parker Street, Newburyport, MA 01950 is to serve for consideration to come to an mutually agreed upon Lease between the tenant, Newburyport Parks Department, and the property owner, 230-232 E 49th St Assoc., based upon the following terms:

- Lease Commencement: July 1, 2021 (Or ASAP after this date)
- Rent Commencement: July 1, 2021 (Upon delivery)
- Square Feet: 5,165 square feet more or less
- Term: 5 Years
- Lease Type: NNN
- Utilities: Tenant responsibility.
- Use: Field office for Parks & Recreation Department and storage and maintenance for landscaping equipment and materials.
- Deposits: \$4,304.17 Security Deposit
Total: \$8,285.52 payable upon Lease Commencement.
(representing \$4,304.17 in security deposit and \$3,981.35 in 1st month rent payment)

Lease Rate: \$9.25/SF
Year 1: @ \$3,981.35/month = \$47,776.25/yr
Year 2: @ \$3,981.35/month = \$47,776.25/yr
Year 3: @ \$3,981.35/month = \$47,776.25/yr
*Year 4: @ \$4,196.56/month = \$50,358.72/yr *(@\$9.75/SF)
*Year 5: @ \$4,304.17/month = \$51,650.00/yr *(@\$10/SF)

Lease Total = \$245,337.47

NNN Fees: \$3/SF

Additional Terms: Subject to approval by necessary City of Newburyport
Departments.

Subject to mutually agreeable solution to kitchenette
buildout, with sink.

Subject to mutually agreeable solution for small
outdoor storage area for materials – to be specified
as exhibit in lease.

Option to Extend: 3 year option to renew at 3% per year increase,
with six month advance notice.

Brokerage: The Landlord shall pay Coldwell Banker Commercial a
fee based upon the agreed to schedule. All parties represent
and warrant that there is no additional other broker who
has dealt in connection with the lease of the Unit.

The Parties acknowledge that this proposal omits many terms, some of which are material and this Letter of Intent is intended to be an indication of interest and is not a binding agreement until a Lease is fully executed by both parties, neither Landlord nor Tenant shall have any obligations to each other whatsoever.

Accepted by Tenant: _____
Donna D. Holaday, Mayor, City of Newburyport

Accepted by Lessor: _____
Gordon Hall, 230-232 E 49th St Assoc.

Sponsor: Councillor Tontar



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4413 • (978) 465-4402 (FAX)
WWW.CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: June 1, 2021
Subject: Parks Department Lease of 50 Parker Street

Included in your council packet for the June 7th City Council meeting is a request for the City Council to approve a five-year lease of 50 Parker Street to house the Parks Department Field Office. 50 Parker Street is a 5,100 SF space that could accommodate all the department's needs, including workspace and a breakroom, storage, and a loading dock. The space is also conveniently located near the Rail Trail. The first year of lease payments was included in the FY22 CIP Funding Request submitted to City Council at its May 24th meeting. Lease payments after year one would be included in the operating budget starting in FY2023.

We have been searching for a longer-term home for the Parks Department. As the Council will recall, the Administration had proposed purchasing a 2.17-acre parcel at 57 Low Street that included the approximately 5,000 square foot auxiliary building from the National Guard for \$220,000. The Parks Department had been utilizing a portion of the site and building and one scenario would have been fully fitting out the property for long term use by the Parks Department. Since the City Council voted not to approve this transaction earlier this year, we have been working on a plan to relocate staff and equipment out of 57 Low St. 50 Parker Street provides sufficient space for parks employees and parks equipment at a centralized location.

The lease agreement is being finalized with the landlord and we will be submitting it to the City Council shortly. For now, I have included a Letter of Intent from the landlord to lease 50 Parker Street. It outlines the terms of the agreement; a five-year lease at \$9.25 per square foot per year with a 3% increase in years 4 and 5. In addition, there is a Triple Net Lease fee of \$3 per SF per year. The goal is to begin leasing this property as soon as July 1st.

I ask that the City Council approve this lease that will provide adequate space for our Parks Department and I will have staff available to answer questions as you consider this request.

LEASE

LANDLORD: 230-232 East 49th Street Associates, a limited partnership

TENANT: City of Newburyport
(for use by Parks Department)

PREMISES: Unit 6
50 Parker Street
Newburyport, Massachusetts 01950

DATED: July __, 2021

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EXHIBITS:

- Exhibit A: Plan Showing Tenant's Space
- Exhibit B: Plan Showing Outside Storage Location
- Exhibit C: Legal Description of Lot

Lease dated as of the ___ day of July, 2021 by and between 230-232 East 49th Street Associates, a New York limited partnership qualified to do business in the Commonwealth of Massachusetts, as landlord ("Landlord"), and the City of Newburyport, Massachusetts as tenant ("Tenant").

**ARTICLE I
REFERENCE DATA**

1. (A) SUBJECTS REFERRED TO: Each reference in this lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this Section 1 (A):

LANDLORD'S ADDRESS: c/o The Hall Company, Inc.
90 Munroe Street
Lynn, Massachusetts 01901

TENANT'S ADDRESS: Newburyport City Hall
60 Pleasant Street
Newburyport, Massachusetts 01950
Attention: Mayor

BUILDING: That certain building known or numbered 50 Parker Street,
Newburyport, Massachusetts 01950

RENTABLE FLOOR
AREA OF
TENANT'S SPACE: Approximately 5,165 rentable square feet

TOTAL RENTABLE
FLOOR AREA OF THE
BUILDING: 30,000 square feet

ORIGINAL
TERM: Beginning on the Commencement Date and ending on
June 30, 2026

OPTION TO EXTEND: One (1) period of three (3) years

COMMENCEMENT
DATE: July 1, 2021

FIXED RENT:		<u>Annual</u>	<u>Monthly</u>
	July 1, 2021-June 30, 2022	\$47,776.25	\$3,981.35
	June 1, 2022-June 30, 2023	\$47,776.25	\$3,981.35
	July 1, 2023-June 30, 2024	\$47,776.25	\$3,981.35
	July 1, 2024-June 30, 2025	\$50,358.72	\$4,196.56
	July 1, 2025-June 30, 2026	\$51,650.00	\$4,304.17

TAXES AND OPERATING COSTS: See Section 5(B) (3)

RENT COMMENCEMENT DATE: July 1, 2021

SECURITY DEPOSIT: \$4,304.17

PERMITTED USE: Parks Department office and storage uses.

PUBLIC LIABILITY INSURANCE LIMITS:
 BODILY INJURY: \$2,000,000 per occurrence;
 PROPERTY DAMAGE: \$1,000,000

Comment [A1]: Review this with the Town's insurance person.

(B) EXHIBITS

referenced and are to be construed as part of this lease:

EXHIBIT A: Plan Showing Tenant's Space
 EXHIBIT B: Plan Showing Outside Storage Location
 EXHIBIT C: Legal Description of Lot

**ARTICLE II
PREMISES**

2. PREMISES

Subject to and with the benefit of the provisions of this lease, Landlord hereby leases to Tenant, and Tenant leases from Landlord, Tenant's Space in the Building as shown on Exhibit A, annexed, excluding exterior faces of exterior walls, all common facilities of the Building and all building service fixtures and equipment serving (exclusively or in common) other parts of the building. Tenant's Space, with such exclusions, is hereinafter referred to as "the demised premises". Tenant shall have, as appurtenant to the demised premises, the right to use in common with others entitled thereto, subject to reasonable rules from time to time made by Landlord of which Tenant is given notice: (a) the common facilities from time to time included in the Building or on the parcel of land on which the Building is located (said parcel being more particularly described in Exhibit C and being hereafter referred to as the "Lot"), to the extent from time to time designated by Landlord; (b) the building service fixtures and equipment serving the demised premises; and (c) the common facilities from time to time serving the Lot in common with other parcels of land, such as any so-called access roads, driveways, parking areas, retention ponds, sewer and utility lines and the like, all to the extent from time to time designated by Landlord. Landlord reserves the right from time to time: (i) to install, repair, replace, use, maintain and relocate for service to the demised premises and to other parts of the Building or either, building service fixtures and equipment wherever located in the Building; (ii) to alter, relocate or eliminate any other common facility; (iii) to designate specific parking areas upon the Lot to be for the exclusive use of one or more users thereof; and (iv) to increase and/or decrease the size of the Lot by the acquisition of adjacent land and/or the disposition of any portions thereof, including, but not limited to, leases to others of portion(s) of the Lot. Tenant shall have the right to use, on an exclusive basis, a portion of the exterior of the demised premises for outside storage in the location shown on Exhibit B.

Comment [A2]: Does the City want designated parking areas?

**ARTICLE III
TERM AND CONSTRUCTION**

3. (A) TERM; TENANT'S OPTION TO EXTEND

To have and to hold for a period ("the term") commencing on the Commencement Date, and, unless sooner terminated as provided herein, ending at the end of the term on June 30, 2026.

So long as this Lease is then in full force and effect and Tenant is not in default of this Lease, Tenant shall have the option to extend the term of this Lease for one (1) period of three (3) years (the "Extension Term"), commencing on July 1, 2026.

Tenant's option to extend the term of this Lease for the Extension Term shall be exercised (if at all) by written notice to Landlord (the "Extension Notice") not later than December 31, 2025. If Tenant shall exercise such option in a timely manner, then the term of this Lease shall automatically be extended for the Extension Term, on all of the terms and

conditions set forth herein, without the execution of any further instrument. If, however, Tenant shall not exercise such option in a timely manner, then Tenant shall have no further right to extend the term of this Lease, and this Lease shall expire on June 30, 2026.

If Tenant exercises its option to extend the term of this Lease for the Extension Term in a timely manner, then the Fixed Rent for the Extension Term shall be as follows:

EXTENSION TERM FIXED RENT:

	<u>Annual</u>	<u>Monthly</u>
July 1, 2026 – June 30, 2027	\$53,199.50	\$4,433.29
July 1, 2027 – June 30, 2028	\$54,795.49	\$4,566.29
July 1, 2028 – June 30, 2029	\$56,439.35	\$4,703.28

(B) LANDLORD’S REQUIRED WORK

(1) Tenant acknowledges that it has inspected the demised premises, and it is understood and agreed that Tenant accepts the demised premises in their existing physical condition, and Landlord shall be under no obligation to make any repairs, alterations or improvements to the demised premises prior to or at the commencement of the term hereof or at any time thereafter, except that Landlord agrees to on or before the Commencement Date: (1) provide a kitchenette with sink in the demised premises; and (2) deliver the demised premises in broom-clean condition.

Comment [A3]: Is this acceptable to the City?

(2) If at the commencement of or otherwise during the term of this Lease, Tenant shall desire to perform any construction work, then Tenant shall do so at its sole risk and its own cost and expense (pursuant to plans and specifications therefor approved in writing by Landlord), and shall equip the demised premises with all trade fixtures and personal property suitable or appropriate to the regular and normal operation of the type of business in which Tenant is engaged.

Comment [A4]: Does the City expect to make any improvements?

(3) Tenant shall have the right to install signage at Tenant’s expense, pursuant to plans and at the locations approved by Landlord in advance, which approval shall not be unreasonably withheld. Such signage shall be in strict conformance with all applicable codes and ordinances, including, without limitation, all requirements of the City of Newburyport.

(4) Landlord represents and warrants to Tenant that as of the date of this Lease Landlord has received no notice of any violation(s) of laws with respect to the demised premises, the Building, or the Lot.

(C) TENANT WORK AND GENERAL CONSTRUCTION PROVISIONS

All construction work permitted of Tenant under this Lease shall be done in a good and workmanlike manner and in compliance with all applicable laws, codes, ordinances, regulations and orders of governmental authorities and insurance rating or inspection bureaus having jurisdiction over the Building and in accordance with the terms of this Lease. Landlord may

inspect the work of Tenant at reasonable times and shall promptly give notice of observed defects in writing.

**ARTICLE IV
LANDLORD'S COVENANTS**

4. (A) LANDLORD'S COVENANTS DURING THE TERM:

Landlord covenants during the term:

(1) To pay all real estate taxes when due;

(2) To provide maintenance for the exterior of the Building and the common systems of the Building and the Lot and remove snow and ice from the Lot; and

(3) To make repairs (and, if necessary, replacements) to the roof, exterior walls, and common facilities of the Building and the Lot, including the heating and air conditioning system (the "HVAC System"), exterior windows, exterior doors, exterior window frames and exterior door frames serving the demised premises. To the extent that the necessity for repair or replacement results from the negligence or other wrongful act of Tenant, Tenant shall reimburse Landlord for the reasonable cost incurred by Landlord in performing such repair or replacement. Furthermore, notwithstanding the foregoing, Tenant – and not Landlord – shall be responsible for ordinary maintenance of the HVAC System – i.e., changing of filters, cleaning of condensate coils, checking charge, clearing out condensate drains, replacement of belts and other similar maintenance activities provided under ordinary HVAC maintenance contracts.

Comment [A5]: Note this responsibility. See also Section 6 (17) re: HVAC service contract.

(B) INTERRUPTIONS

Landlord shall not be liable to Tenant for any compensation or reduction of rent by reason of inconvenience or annoyance or for loss of business arising from (a) power losses or shortages resulting from any cause not reasonably within the control of Landlord, or (b) the necessity of Landlord's entering the demised premises for any of the purposes in this lease authorized, including without limitation, for repairing the demised premises or for bringing materials into and/or through the demised premises in connection with the making of repairs or alterations to the demised premises (subject, however, to the provisions of Section (11) of Article VI, below).

In case Landlord is prevented or delayed from making any repairs, alterations or improvements or furnishing any service or performing any other covenant or duty to be performed on Landlord's part, by reason of any cause reasonably beyond Landlord's control, Landlord shall not be liable to Tenant therefor, nor, except as expressly otherwise provided in Article VIII, shall Tenant be entitled to any abatement or reduction of rent by reason thereof.

Landlord reserves the right to stop any service or utility system when necessary in Landlord's opinion by reason of accident or emergency or until necessary repairs have been completed. Except in case of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage and, in any event, Landlord will use reasonable efforts to avoid unnecessary inconvenience to Tenant by reason thereof.

**ARTICLE V
RENT**

5. (A) FIXED RENT

(1) Tenant agrees to pay, without any offset or reduction whatever (except as made in accordance with the express provisions of this lease), fixed monthly rent equal to 1/12th of the Fixed Rent, as adjusted in accordance with the provisions of paragraph (2) of Section B of Article V, below, such rent to be paid in equal installments in advance on the first day of each calendar month included in the term; and for any portion of a calendar month at the beginning or end of the term, a portion of such fixed monthly rent, prorated on a per diem basis. All payments of fixed and additional rent shall be made in lawful money of the United States and shall be made to Landlord and sent to Landlord c/o The Hall Company, Inc., 90 Munroe Street, Lynn, Massachusetts 01901, or to such other person and/or at such other address as Landlord may from time to time designate.

(2) If any payment of rent or any other payment payable hereunder by Tenant to Landlord is not paid within seven (7) days of when due, the same shall bear interest from the date when the same was payable until the date paid at the lesser of (a) twelve percent (12%) per annum, or (b) the highest lawful rate of interest which Landlord may charge to Tenant without violating any applicable law. Such interest shall constitute additional rent payable hereunder.

(B) ADDITIONAL RENT – TAXES AND OPERATING COSTS

(1) For the purposes of this Section, "Taxes" shall mean all taxes, assessments, betterments and other charges and impositions levied, assessed or imposed at any time during the term by any governmental authority upon or against the Building and the Lot, or taxes in lieu thereof, or "rent tax" or other tax levied or imposed by any governmental authority in addition to or as a substitute for real estate taxes (but not the personal property taxes, the payments for which shall be Tenant's responsibility).

(2) "Operating Costs" shall mean all expenses incurred by Landlord in operating and maintaining the Building, the Lot and their appurtenances.

(3) Tenant shall pay to Landlord, as additional rent, a fixed amount of \$15,495.00 (\$1,291.25 per month) as its contribution to Taxes and Operating Costs for each year of the Original Term. Tenant's contribution to Taxes and Operating Costs during the Extension Term of this Lease shall be as reasonably agreed upon by the parties.

Comment [A6]: Note this additional cost.

(C) ADDITIONAL RENT – WATER AND SEWER CHARGES

In addition to the payments for Taxes and Operating Costs specified above, Tenant shall pay to Landlord water and sewer charges incurred for the demised premises based on water meters that have been installed by Landlord that measure the actual consumption of water for the demised premises (it being understood that sewer charges are based on water consumption). Landlord represents that such water meters measure only the usage at the demised premises, and not the usage in any other space. Landlord shall bill Tenant separately for

Comment [A7]: Note this additional cost.

such water and sewer charges and Tenant shall pay Landlord for such charges as additional rent within fifteen (15) days of the date of such statement from Landlord for such charges.

(D) ADDITIONAL RENT - ELECTRICITY AND GAS

(1) Tenant shall pay to the applicable utility companies, promptly upon the receipt of bills therefor, the cost of all electricity and gas consumed in the demised premises from and after the Commencement Date. Landlord represents that (i) electricity and gas used in the demised premises are measured by separate meters and (ii) such meters measure only the usage at the demised premises, and not the usage in any other space.

Comment [A8]: Note this additional cost.

(2) Tenant's use of electricity and gas in the demised premises shall not at any time exceed the capacity of any of the electrical conductors or equipment or gas equipment in or otherwise serving the demised premises.

**ARTICLE VI
TENANT'S COVENANTS**

6. TENANT'S COVENANTS DURING THE TERM.

Tenant covenants during the term and such other time as Tenant occupies any part of the demised premises:

(1) To pay when due (a) all Fixed Rent and additional rent, (b) all taxes which may be imposed on Tenant's personal property in the demised premises (including without limitation, Tenant's fixtures and equipment) regardless to whomever assessed, and (c) all charges by any public utility for telephone and other utility services for services rendered to the demised premises. Tenant shall provide adequate heat to the demised premises to prevent the freezing and/or bursting of any pipes or ductwork therein, subject to the provisions of Section 4(A)(3) above.

(2) Except as otherwise provided in Article VIII and Subsection (3) of Section (A) of Article IV, to keep the demised premises in good order, repair and condition, reasonable wear and damage by fire or other casualty only excepted (To the extent that the necessity for repair or replacement results from the negligence or other wrongful act of Landlord, Landlord shall reimburse Tenant for the reasonable cost incurred by Tenant in performing such repair or replacement.); and at the expiration or termination of this lease peaceably to yield up the demised premises and all changes and additions therein in such order, repair and condition, first removing all goods and effects of Tenant and those claiming under Tenant and any items the removal of which is required by any agreement between Landlord and Tenant (or specified therein to be removed at Tenant's election and which Tenant elects to remove), and repairing all damage caused by such removal and restoring the demised premises and leaving them clean and neat. Notwithstanding anything to the contrary contained herein, Tenant shall forthwith remove from the demised premises (repairing any damage caused by such removal) any installations, alterations, additions or improvements made by Tenant or by Landlord at Tenant's request, and which Landlord requests Tenant to remove, or which is required to be removed pursuant to provisions of this Lease, within thirty (30) days after the expiration or termination of the term of

this lease, such removal to include returning the previously modified portions of the demised premises to their condition prior to the making of such installations, alterations, additions or improvements. Tenant's obligations hereunder shall survive the expiration or termination of the term of this lease. For purposes of this Section (2) the word "repairs" includes the making of replacements when necessary;

(3) To use and occupy the demised premises only for the Permitted Use; and not to injure or deface the demised premises, Building, or Lot; and not to permit in the demised premises any auction sale, nuisance, or the emission from the demised premises of any objectionable noise or odor; nor any use thereof which is improper, offensive, contrary to law or ordinance or liable to invalidate or increase the premiums for any insurance on the Building (or any portion thereof) or its contents, or liable to render necessary any alteration or addition to the Building. Without limiting the generality of the foregoing, Tenant shall be responsible for preventing the emission of any dust from the demised premises, and for keeping the outside storage area in a neat and orderly condition;

(4) To provide, solely at its expense, a dumpster or other waste removal method of a size and type adequate to handle all of its waste disposal needs, and to maintain, repair, replace, upgrade said waste disposal system, solely at its expense, at its needs may from time to time dictate, or upon reasonable request by Landlord;

Comment [A9]: Note this responsibility.

(5) To comply with reasonable and non-discriminatory rules and regulations hereafter made by Landlord (but only after copies thereof have been delivered to Tenant) for the care and use of the Building and Lot and their facilities and approaches, it being expressly understood, however, that Landlord shall not be liable to Tenant for the failure of other tenants of the Building to conform to such rules and regulations;

(6) To keep the demised premises equipped with any additional safety appliances required by law or ordinance or any other regulation of any public authority and/or any insurance inspection or rating bureau having jurisdiction, and to procure all licenses and permits required for the Permitted Use and for any use made by Tenant and, if requested by Landlord, to do any work required because of such use, it being understood that the foregoing provisions shall not be construed to broaden in any way the Permitted Use;

(7) Not without the prior written consent of Landlord to assign, hypothecate, pledge or otherwise encumber this lease, to make any sublease or to permit occupancy of the demised premises or any part thereof by anyone other than Tenant voluntarily or by operation of law, and as additional rent, to reimburse Landlord promptly upon demand for reasonable legal and other expenses incurred by Landlord in connection with any request by Tenant for consent to assignment or subletting. Landlord's consent to a proposed assignment or sublease shall not be unreasonably withheld, conditioned or delayed. If Landlord shall consent to any assignment of this lease by Tenant or a subletting of the whole of the demised premises by Tenant at a rent which exceeds the rent payable hereunder by Tenant, or if Landlord shall consent to a subletting of a portion of the demised premises by Tenant at a rent in excess of the subleased portion's pro rata share of the rent payable hereunder by Tenant, then such excess shall be used first to reimburse Tenant for costs incurred in connection with such assignment or sublease (e.g., brokerage commissions, attorney's fees, improvement costs and the like), and, thereafter, Tenant

shall pay to Landlord, as additional rent, forthwith upon Tenant's receipt of each installment of any such excess rent, 50% of any such excess rent. Each request by Tenant for permission to assign this lease or to sublet the whole or any part of the demised premises shall be accompanied by a representation and warranty by Tenant as to the amount of rent to be paid to Tenant by the proposed assignee or sublessee. For purposes of this Section (6), the term "rent" shall mean all fixed rent, additional rent or other payments and/or consideration payable by one party to another for the use and occupancy of premises. Tenant agrees, however, that neither it nor anyone claiming under it shall enter into any sublease, license, concession or other agreement for use, occupancy or utilization of space in the demised premises which provides for rental or other payment for such use, occupancy or utilization based, in whole or in part, on the net income or profits derived by any person or entity from the space leased, used, occupied or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and Tenant agrees that any such purported sublease, license, concession or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy, or utilization of any part of the demised premises. Tenant further agrees that any sublease, license, concession or agreement for use, occupancy or utilization of space in the demised premises entered into by it or by anyone claiming under it shall contain the provisions set forth in the immediately preceding sentence. Tenant further agrees that if a sublease is entered into, neither the rent payable thereunder nor the amount thereof passed on to any person or entity shall have deducted therefrom ~~any~~ expenses or costs related in any way to the subleasing of such space. If there shall be any assignment or subletting by Tenant pursuant to the provisions of this Section (6), Tenant shall remain primarily liable for the performance and observance of the covenants and agreements herein contained on the part of Tenant to be performed and observed, such liability to be (in the case of any assignment) joint and several with that of such assignee. It is expressly understood and agreed that no assignment of Tenant's interest in this lease shall be effective until such time as Tenant shall deliver to Landlord an agreement from the assignee, which agreement shall be reasonably satisfactory to Landlord in form and substance and shall provide that the assignee agrees with Landlord to be primarily liable for the performance and observance of the covenants and agreements herein contained on the part of Tenant to be performed and observed, such liability to be joint and several with that of Tenant. Notwithstanding the foregoing, Tenant's merger into or with another entity under common control with, controlled by, or controlling Tenant is permissible hereunder without Landlord's prior consent provided that Tenant shall remain liable under this lease and the transferee, if an assignment, shall expressly assume Tenant's obligations under this lease. The foregoing sentence shall be deemed to include the right of the Tenant to the use of the premises by any department, board, commission or other City body.

(8) To the extent permitted by law, ~~T~~to defend Landlord, with counsel acceptable to Landlord, save Landlord harmless from, and indemnify Landlord against any cost or liability for injury, loss, accident or damage to any person or property (including, without limitation, the property of Landlord) and from any claims, actions, proceedings and expenses and costs in connection therewith (including, without implied limitation, reasonable counsel's fees): (i) arising from the omission, fault, willful act, negligence or other misconduct of Tenant or anyone claiming under Tenant, or (ii) resulting from the failure of Tenant to perform and discharge its covenants and obligations under this lease. Similarly, Landlord shall defend Tenant, with counsel acceptable to Tenant, save Tenant harmless from, and indemnify Tenant against any cost or liability for injury, loss, accident or damage to any person or property (including, without

limitation, the property of Tenant) and from any claims, actions, proceedings and expenses and costs in connection therewith (including, without implied limitation, reasonable counsel's fees): (i) arising from the omission, fault, willful act, negligence or other misconduct of Landlord or anyone claiming under Landlord, or (ii) resulting from the failure of Landlord to perform and discharge its covenants and obligations under this lease;

(9) To maintain public liability insurance upon the demised premises in amounts which shall, at the beginning of the term, be at least equal to \$2,000,000.00 per occurrence for bodily injury or death to one or more individuals and \$1,000,000.00 for damage to property, and from time to time during the term, shall be for such higher limits, if any, as are customarily carried in the area in which the demised premises are located upon property similar in type and use to the demised premises. Such insurance shall name Landlord as an additional insured. Tenant shall deliver to Landlord the policies of such insurance, or certificates thereof at least fifteen (15) days prior to the Commencement Date, and each renewal policy or certificate thereof, at least fifteen (15) days prior to the expiration of the policy it renews. Each such policy shall be written by a responsible insurance company authorized to do business in the Commonwealth of Massachusetts and shall provide that the same shall not be modified or terminated without at least twenty (20) days' prior written notice to each named insured;

(10) To keep all employees working in the demised premises adequately covered by workmen's worker's compensation insurance in amounts no less than that required by law, and, upon request, to furnish Landlord with certificates thereof;

(11) Upon 48 hours written notice to Tenant (except in an emergency for which Landlord shall give Tenant oral or written notice as is reasonably practicable given the emergency) to permit Landlord and its agents entry: to examine the demised premises at reasonable times and, if Landlord shall so elect, to make repairs, alterations and replacements; to remove, at Tenant's expense, any changes, additions, signs, curtains, blinds, shades, awnings, aeriels, flagpoles, or the like not consented to in writing; and to show the demised premises to prospective tenants during the one hundred twenty (120) days preceding the expiration of the term of this lease and to prospective purchasers and mortgagees at all reasonable times;

(12) Not to place a load upon any part of the floor of the demised premises exceeding that for which said floor was designed or in violation of what is allowed by law; and not to move any safe, vault or other heavy equipment in, about or out of the demised premises except in such manner and at such times as Landlord shall approve in writing in each instance. Tenant's business machines and mechanical equipment which cause vibration or noise that may be transmitted to the Building structure or to any other space in the Building shall be placed and maintained by Tenant in settings of cork, rubber, spring, or other types of vibration eliminators sufficient to confine such vibration or noise to the demised premises;

(13) All furnishings, fixtures, equipment, effects and property of every kind, nature, and description of Tenant and all persons claiming by, through or under Tenant which may be in the demised premises or elsewhere in the Building shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes or other pipes, by theft, or from any other

cause, no part of said loss or damage is to be charged to or borne by Landlord, subject, however, to the provisions of Subsection (8), above.

(14) To pay promptly when due the entire cost of any work done on the demised premises by Tenant and those claiming under Tenant; not to cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the demised premises; and immediately to discharge any such liens which may so attach;

(15) Not to make any exterior or structural alterations, improvements, changes or additions (nor any interior non-structural alterations, improvements, changes or additions which would affect any common utility or mechanical system in the Building) to the demised premises without Landlord's prior written consent;

(16) To pay to Landlord ~~one and one half (1.5) times~~ the Fixed Rent then applicable for each month or portion thereof that Tenant shall retain possession of the demised premises or any part thereof after the termination of this lease, whether by lapse of time or otherwise, and also to pay all reasonable, direct damages sustained by Landlord on account thereof; however, the provisions of this subsection shall not operate as a waiver by Landlord of any right of re-entry provided in this lease or as a matter of law; and

~~(17) If either party engages in legal proceedings for the purpose of enforcing its rights under this Lease, the prevailing party in such proceedings shall be reimbursed by the other party for all costs and expenses (including, without limitation, attorney's fees) incurred by the prevailing party in connection therewith. The parties shall request that the trier of fact determine which is the prevailing party, and the parties shall be bound by such determination; and~~

~~(17)~~ To obtain and maintain in full force and effect a heating and air conditioning equipment service contract which shall provide for the periodic inspection and maintenance of the heating and air conditioning equipment servicing the demised premises. Said contract shall be made with a reputable contractor and shall be subject to Landlord's approval, which approval Landlord agrees not unreasonably to withhold. Copies of said contract and any renewals and/or replacements thereof shall be delivered to Landlord.

Comment [A10]: Note this responsibility.

ARTICLE VII DEFAULT

7. (A) EVENTS OF DEFAULT

(1) If Tenant shall default in the payment of Fixed Rent, additional rent or other payments required of Tenant, and if Tenant shall fail to cure said default within seven (7) days after receipt of written notice of said default from Landlord, or (2) if Tenant shall default in the performance or observance of any other agreement or condition on its part to be performed or observed and if Tenant shall fail to cure said default within fifteen (15) days after receipt of written notice of said default from Landlord (but if longer than fifteen days shall be reasonably required to cure said default, then if Tenant shall fail to commence the curing of such default within fifteen days after receipt of said written notice and diligently prosecute the curing thereof to completion), or (3) if any person shall levy upon, or take this leasehold interest or any part thereof upon execution, attachment or other process of law, or (4) if Tenant shall make an

assignment or its property for the benefit of creditors, or (5) if Tenant shall be declared bankrupt or insolvent according to law, or (6) if any bankruptcy or insolvency proceedings shall be commenced by or against Tenant, or (7) if a receiver, trustee or assignee shall be appointed for the whole or any part of Tenant's property, or (8) if Tenant shall vacate the demised premises, then in any of said cases, Landlord lawfully may immediately, or at any time thereafter, and without any further notice or demand, enter into and upon the demised premises or any part thereof in the name of the whole, by force or otherwise, and hold the demised premises as if this lease had not been made, and expel Tenant and those claiming under it and remove its or their property (forcibly, if necessary) without being taken or deemed to be guilty of any manner of trespass, or Landlord may send written notice to Tenant of the termination of this lease, and upon entry as aforesaid (or in the event that Landlord shall send Tenant written notice of termination and on the tenth (10th) day next following the date of the sending of the notice, the term of this lease shall terminate. Notwithstanding the provisions of clauses (1) and (2) of the immediately preceding sentence, if Landlord shall have rightfully given Tenant notice of default pursuant to either or both of said clauses twice during the preceding twelve (12) month period, and if Tenant shall default in the payment of Fixed Rent, additional rent or other payments and/or the performance or observance of any other agreement or condition required of Tenant, then the applicable grace period referred to above shall commence immediately upon the occurrence of such default, without the requirement of notice from Landlord. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event Landlord terminates this lease as provided in this Article.

(B) OBLIGATIONS THEREAFTER

(1) In case of any such termination or repossession as provided in this Article VII, Tenant covenants to pay punctually to Landlord the Fixed Rent, all additional rent and all other sums for which Tenant is obligated in this Lease to pay and in the same manner and to the same extent and at the same time as if this Lease had not been terminated or the demised premises had not been repossessed by Landlord. In calculating the amounts to be paid by Tenant hereunder, Tenant shall be credited with any amount paid to Landlord for any reletting of the demised premises, as described below, after deducting all Landlord's reasonable expenses in connection with such reletting, including, without limitation, all repossession costs, removal and warehousing costs, brokerage commissions, attorneys' fees, and expenses of preparing the demised premises for such reletting.

(2) Landlord may elect to (i) relet the demised premises, or any part or parts thereof, for a term or terms which may be equal to or less than or exceed the periods which would otherwise constitute the balance of the term and may grant such concessions ~~and (excluding free rent)~~ as Landlord in its sole judgment considers advisable or necessary; and/or (ii) make such alterations, repairs and decorations in the demised premises as Landlord in its sole judgment considers advisable or necessary to relet the same, and no action of Landlord in accordance with the foregoing or failure to relet or to collect rent under such reletting shall operate or be construed to release or reduce Tenant's liability whatsoever. However, Landlord shall use reasonable efforts to relet the demised premises after Tenant vacates the demised premises once this Lease is terminated on account of a default by Tenant. However, Landlord shall bear no liability if, notwithstanding such reasonable efforts, it is unable to relet the demised premises,

and Tenant shall remain fully liable for its obligations hereunder, subject to application of rent from any replacement tenant as provided in the remainder of this paragraph. Marketing of the demised premises in a manner similar to the way Landlord markets its other premises in the Building shall be deemed to satisfy Landlord's obligation to use such "reasonable efforts." It is understood and agreed that in connection with any such reletting, that Tenant shall be liable for any expenses incurred by Landlord in connection with obtaining possession of the demised premises, with removing from the demised premises property of Tenant and persons claiming under it (including warehouse charges), with putting the demised premises into good condition for reletting, and with any reletting, including, but without limitation, reasonable attorneys' fees and brokers fees, and that any monies collected from any reletting shall be applied first to the foregoing expenses and then to the payment of Fixed Rent, additional rent and all other payments due from Tenant to Landlord.

(3) — In lieu of full recovery by Landlord of the sums payable as set forth above (except for the amount of any rent of any kind accrued and unpaid at the time of termination or repossession), Landlord may by written notice to Tenant elect to recover, and Tenant shall thereupon pay forthwith to Landlord, as compensation, an amount equal to the present value (as determined by Landlord) of the amount by which the payments of Fixed Rent, additional rent, and any other sums payable by Tenant to Landlord for the balance of the term (including, but not limited to, any costs and charges incurred by Landlord in reletting the demised premises, reasonable attorneys' fees, and expenses of preparing the demised premises for any reletting) would exceed the fair rental value of the demised premises for the balance of the term.

(43) Nothing contained in this Lease shall, however, limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by and statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to, or less than the amount of the loss or damages referred to above.

ARTICLE VIII CASUALTY AND TAKING

8. (A) CASUALTY AND TAKING

In case during the term of this lease all or any substantial part of the demised premises, the Building, or Lot or any one or more of them, are damaged by fire or any other casualty or by action of public or other authority or are taken by eminent domain (substantial damage being damage which cannot be substantially restored by Landlord within 180 days after the occurrence of the casualty, etc.), this lease shall terminate at either Lessee's or Landlord's election (but only if, simultaneously therewith, Landlord terminates the leases of all other tenants, to the extent that Landlord has the right to terminate such leases by reason of such occurrence), which may be made notwithstanding Landlord's entire interest may have been divested, by written notice given to Tenant or Landlord, as applicable, within thirty (30) days after the occurrence of the event giving rise to the election to terminate. Said notice shall, in the case of damage as aforesaid, specify the effective date of termination which shall be not less than thirty (30) nor more than sixty (60) days after the date of written notice of such termination. In the case of any such taking

by eminent domain, the effective date of the termination shall be the day on which the taking authority shall take possession of the taken property. Fixed Rent and additional rent shall be apportioned and adjusted as of the elective date of any such termination. If in any such case (whether or not the damage is "substantial," as defined above) the demised premises (or any portion thereof) is rendered unfit for use and occupation and this lease is not so terminated, Landlord shall use due diligence to put the demised premises, or, in the case of a taking, what may remain thereof (excluding any items which Tenant may be required or permitted to remove from the demised premises at the expiration of the term of this lease) into proper condition for use and occupation, but Landlord shall not be required to spend more than the net proceeds of insurance or award of damages it receives therefor, and a just proportion of the Fixed Rent and additional rent according to the nature and extent of the injury to the demised premises shall be abated until the demised premises or such remainder shall have been put by Landlord in such condition; and in case of a taking which permanently reduces the area of the demised premises, a just proportion of the Fixed Rent shall be abated for the remainder of the term. If Landlord's restoration is not substantially completed within 180 days after the occurrence of the casualty or taking, Tenant shall have the right to terminate this lease, by notice to Landlord.

(B) RESERVATION OF AWARD

Landlord reserves to itself any and all rights to receive awards made for damage to the demised premises, Building or Lot and the leasehold hereby created, or any one or more of them, accruing by reason of any exercise of the right of eminent domain or by reason of anything done in pursuance of public or other authority. Tenant hereby releases and assigns to Landlord all of Tenant's rights to such awards, and covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request, hereby irrevocably designating and appointing Landlord as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof. It is agreed and understood, however, that Landlord does not reserve to itself, and Tenant does not assign to Landlord, any damages payable for (i) fixtures, property or movable equipment installed by Tenant or anybody claiming under Tenant at its own expense or (ii) damages attributable to Lessee's loss of use of the leased premises or relocation expenses, but in each case only if and to the extent that such damages are recoverable by Tenant from such authority in a separate action and without reducing Landlord's award of damages.

**ARTICLE IX
MORTGAGEE**

9. (A) SUBORDINATION TO MORTGAGES

It is agreed that the rights and interest of Tenant under this lease shall be: (i) subject and subordinate to the lien of any present or future first mortgage and to any and all advances to be made thereunder, and to the interest thereon, upon the demised premises or any property of which the demised premises are a part, if the holder of such mortgage shall elect, by written notice to Tenant, to subject and subordinate the rights and interest of Tenant under this lease to the lien of its mortgage; or (ii) prior to the lien of any present or future first mortgage, if the holder of such mortgage shall elect, by written notice to Tenant, to give the rights and interest of Tenant under (this lease priority to the lien of its mortgage. It is understood and agreed that the holder of such mortgage may also elect, by written notice to Tenant, to make some provisions

hereof subject and subordinate to the lien of its mortgage while granting other provisions hereof priority to the lien of its mortgage. In the event of any of such elections, and upon notification by the holder of such mortgage to that effect, the rights and interest of Tenant under this lease shall be deemed to be subordinate to, or to have priority over, as the case may be, the lien of said mortgage, irrespective of the time of execution or time of recording of any such mortgage. Tenant agrees that it will, upon request of Landlord, execute, acknowledge and deliver any and all instruments deemed by Landlord necessary or desirable to evidence or to give notice of such subordination or priority. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof. Whether the lien of any mortgage upon the demised premises or any property of which the demised premises are a part shall be superior or subordinate to this lease and the lien hereof, Tenant agrees that it will, upon request, attorn to the holder of such mortgage or anyone claiming under such holder and their respective successors and assigns in the event of foreclosure of or similar action taken under such mortgage. Tenant further agrees that it shall not subordinate its interest in this lease to the lien of any junior mortgage, security agreement or lease affecting the demised premises, unless the holder of the first mortgage upon the demised premises or property which includes the demised premises shall consent thereto. Tenant's foregoing agreements with respect to any future mortgage are conditioned upon the execution by the holder of such mortgage of a subordination, non-disturbance and attornment agreement ("SNDA", in commercially reasonable form, in favor of Tenant; whereby the mortgagee agrees that upon a foreclosure of a mortgage or acceptance of a deed in lieu thereof, the mortgagee shall recognize this lease and not disturb Lessee's rights hereunder, so long as Lessee is not in default of this lease beyond any applicable cure period. As a condition to Lessee's entry into this Lease, Landlord shall obtain an SNDA from any mortgagee existing as of the date of this Lease.

(B) LIMITATION ON MORTGAGEE'S LIABILITY

Upon entry and taking possession of the mortgaged premises for any purpose, the holder of a mortgage shall have all rights of Landlord, and during the period of such possession Landlord, not such mortgage holder, shall have the duty to perform all of Landlord's obligations hereunder. No such holder shall be liable, either as a mortgagee or as holder of a collateral assignment of this lease, to perform, or be liable in damages for failure to perform, any of the obligations of Landlord unless and until such holder shall succeed to Landlord's interest herein through foreclosure of its mortgage or the taking of a deed in lieu of foreclosure, and thereafter such mortgage holder shall not be liable for the performance of any of Landlord's obligations hereunder, except for the performance of those obligations which arise during the period of time that such mortgage holder holds Landlord's right, title and interest in this lease, such liability to be limited to the same extent as Landlord's liability is limited pursuant to Section 10(E) hereof.

(C) NO RELEASE OR TERMINATION

No act or failure to act on the part of Landlord which would entitle Tenant under the terms of this lease, or by law, to be relieved of any of Tenant's obligations hereunder or to terminate this lease, shall result in a release or termination of such obligations or a termination of this lease unless (i) Tenant shall have first given written notice of Landlord's act or failure to act to Landlord's mortgagees of record, if any, specifying the act or failure to act on the part of

Landlord which could or would be the basis of Tenant's rights, and (ii) such mortgagees, after receipt of such notice, have failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this Section (C) shall be deemed to impose any obligation on any such mortgagee to correct or cure any such condition. "Reasonable time" as used above means and includes a reasonable time to obtain possession of the mortgaged premises, if the mortgagee elects to do so, and a reasonable time to correct or cure the condition. Finally, Tenant agrees that so long as any present or future mortgage shall remain in effect Tenant shall not alter, modify, amend, change, surrender or cancel this lease nor pay the rent due hereunder in advance for more than thirty (30) days, except as may be required herein, without the prior written consent of the holder thereof, and Tenant will not seek to be made an adverse or defendant party in any action or proceeding brought to enforce or foreclose such mortgage.

ARTICLE X GENERAL PROVISIONS

10. (A) CAPTIONS

The captions of the Articles are for convenience and are not to be considered in construing this lease.

(B) SHORT FORM LEASE

Upon request of either party both parties shall execute and deliver a short form of this lease in form appropriate for recording, and if this lease is terminated before the term of this lease expires, an instrument in such form acknowledging the date of termination. No such short form lease shall contain any indication of the amount of the rentals payable hereunder by Tenant.

(C) NOTICES

All notices and other communications authorized or required hereunder shall be in writing and shall be given by mailing the same by certified or registered mail, return receipt requested, postage prepaid, by mailing the same by Express Mail or by having the same delivered by a commercial delivery service such as Federal Express, UPS, and the like. If given to Tenant the same shall be directed to Tenant at Tenant's Address or to such other person or at such other address as Tenant may hereafter designate by notice to Landlord; and if given to Landlord the same shall be directed to Landlord at Landlord's Address, or to such other person or at such other address as Landlord may hereafter designate by notice to Tenant. In the event the notice directed as above provided shall not be received upon attempted delivery thereof to the proper address and shall be returned by the Postal Service or delivery service to the sender because of a refusal of receipt, the absence of a person to receive it, or otherwise, the time of the giving of such notice shall be the first business day on which delivery was so attempted.

After receiving notice from Landlord or from any person, firm or other entity that such person, firm or other entity holds a mortgage which includes the demised premises as part of the mortgaged premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given by certified or registered mail to such holder, and the curing of any of Landlord's defaults by such holder shall be treated as performance by Landlord, it being

understood and agreed that such holder shall be afforded a reasonable period of time after the receipt of such notice in which to effect such cure.

(D) SUCCESSORS AND ASSIGNS

The obligations of this lease shall run with the land, and this lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns, except that the Landlord named herein and each successive owner of Landlord's interest in this lease shall be liable only for the obligations of Landlord accruing during the period of its ownership. Whenever Landlord's interest in this lease is owned by a trustee or trustees, the obligations of Landlord shall be binding upon Landlord's trust estate, but not upon any trustee, beneficiary or shareholder of the trust individually. Without limiting the generality of the foregoing, and whether or not Landlord's interest in this lease is owned by a trustee or trustees, Tenant specifically agrees to look solely to Landlord's interest in the Building and Lot for recovery of any judgment from Landlord, it being specifically agreed that neither Landlord, any trustee, beneficiary or shareholder of any trust estate for which Landlord acts nor any person or entity claiming by, through or under Landlord shall ever otherwise be personally liable for any such judgment.

(E) NO SURRENDER

The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not operate as a termination of this lease or a surrender of the demised premises.

(F) WAIVERS AND REMEDIES

The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease, or, with respect to such failure of Landlord, any of the rules and regulations referred to in Section 6(5) hereafter adopted by Landlord, shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation, nor shall the failure of Landlord to enforce any of said rules and regulations against any other tenant in the Building be deemed a waiver of any such rules or regulations as far as Tenant is concerned. The receipt by Landlord of Fixed Rent or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach by Landlord unless such waiver be in writing signed by Landlord. No consent or waiver express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty. No acceptance by Landlord of a lesser sum than the Fixed Rent and additional rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed as accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy available to it. The specific remedies to which Landlord or Tenant may resort under the terms of this lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach

by Landlord or Tenant of any provisions of this lease. In addition to the other remedies provided in this lease, Landlord and Tenant shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this lease or to a decree compelling specific performance of any such covenants, conditions or provisions. If any term of this lease, or the application thereof to any person or circumstances shall be held, to any extent, to be invalid or unenforceable, the remainder of this lease, or the application of such term to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall not be affected thereby, and each term of this lease shall be valid and enforceable to the fullest extent permitted by law. If any interest to be paid by Tenant hereunder shall exceed the highest lawful rate which Landlord may recover from Tenant, such interest shall be reduced to such highest lawful rate of interest.

(G) SELF-HELP

If Tenant shall at any time default in the performance of any obligation under this lease, Landlord shall have the right, but shall not be obligated, to enter upon the demised premises and to perform such obligation, notwithstanding the fact that no specific provision for such performance by Landlord is made in this lease with respect to such default. In performing such obligation, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest, from the time paid by Landlord until the time Tenant repays the same to Landlord, at the rate of twelve percent (12%) per annum, compounded monthly), shall be deemed to be additional rent and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing right without waiving any other of its rights or releasing Tenant from any of its obligations under this lease.

(H) ESTOPPEL CERTIFICATE

Tenant agrees from time to time after the Commencement Date, upon not less than ten (10) days' prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this lease is unmodified and in full force and effect; that Tenant has no defenses, offsets or counterclaims against its obligations to pay the Fixed Rent and additional rent and to perform its other covenants under this lease; that there are no uncured defaults of Landlord or Tenant under this lease (or, if there have been any modifications, that this lease is in full force and effect as modified and stating the modifications, and, if there are any defenses, offsets, counterclaims, or defaults, setting them forth in reasonable detail); and the dates to which the Fixed Rent, additional rent and other charges have been paid. Any such statement delivered pursuant to this Section (H) may be relied upon by any prospective purchaser or mortgagee of premises which include the demised premises or any prospective assignee of any such mortgagee.

(I) WAIVER OF SUBROGATION

Any insurance carried by either Landlord or Tenant with respect to the Premises or personal property on the Premises shall include an endorsement denying to the insurer rights of subrogation against the other party. Without limiting any other provisions of this lease, each party hereby waives any rights of recovery against the other for injury or loss due to hazards covered by such insurance, to the extent of the insurance proceeds received thereunder.

(J) BROKERS

Tenant hereby represents and warrants to Landlord that it has dealt with no broker in connection with this Lease other than Coldwell Banker Commercial NRT (the "Broker") and there are no brokerage commissions or other finders' fees payable in connection herewith other than to the Broker. To the extent permitted by law, Tenant hereby agrees to hold Landlord harmless from, and indemnified against, all loss or damage (including without limitation, the cost of defending the same) arising from any claim by any broker, other than the Broker, claiming to have dealt with Tenant. Landlord shall pay any commission or other fees due to the Broker.

Comment [A11]: City to confirm.

(K) LANDLORD'S DEFAULTS

Landlord shall not be deemed to have committed a breach of any obligation to make repairs or alterations or perform any other act unless: (1) it shall have made such repairs or alterations or performed such other act negligently; or (2) it shall have received notice from Tenant designating the particular repairs or alterations needed or the other act of which there has been failure of performance and shall have failed to make such repairs or alterations or performed such other act within a reasonable time after the receipt of such notice (not exceeding 30 days in any event); and in the latter event Landlord's liability shall be limited to the cost of making such repairs or alterations or performing such other act. (However, if the repair or alteration is such that the same may not reasonably be expected to be completed within 30 days following notice from Tenant, then no breach shall have occurred so long as Landlord (i) commences the making of such repair or alteration within 30 days following notice from Tenant and (ii) prosecutes such repair or alteration diligently to completion.) ~~Landlord shall not be liable in any event for incidental or consequential damages to Tenant by reason of Landlord's default. Tenant shall have no right to terminate this Lease for any default by Landlord hereunder and no right, for any such default, to offset or counterclaim against any rent due hereunder.~~

(L) EFFECTIVENESS OF LEASE

The submission of this lease for examination does not constitute a reservation of or option for, the demised premises, and this lease becomes effective as a lease only upon execution and unconditional delivery thereof by both Landlord and Tenant.

(M) HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Lot any such materials or substances without the written approval of Landlord after written notice is given to Landlord of the identity of such substances or materials and further provided that such use complies in all respects with all laws and regulations applicable thereto. Without limitation, hazardous substances and materials shall include those described in the (i) Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (42 U.S.C. Section 9601 et seq.); (ii) Resource Conservation and Recovery Act, as amended, (42 U.S.C. Section 6901 et

seq.); (iii) Toxic Substances Control Act (15 U.S.C. Section 2061 et. seq.); (iv) Clean Water Act (33 U.S.C. Section 1251 et. seq.); (v) Clean Air Act (42 U.S.C. Section 7401 et. seq.); (vi) Massachusetts Oil and Hazardous Material Release Prevention and Response Act (M.G.L. c. 21E); (vii) Massachusetts Hazardous Waste Management Act (M.G.L. c. 21C) and any applicable state or local laws and the regulations adopted under these acts. ~~If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional rent if such requirement applies to the demised premises.~~ In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials in or on the demised premises. In all events, to the extent permitted by law, Tenant shall indemnify Landlord in the manner elsewhere provided in this lease from any release of hazardous materials on the demised premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the term of this lease.

(N) AUTHORITY

Each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that (a) Tenant is duly authorized and have received all required municipal approvals to execute this lease; and (b) each person signing on behalf of Tenant is authorized to do so. Tenant shall deliver to Landlord certified municipal resolutions authorizing Tenant to execute this Lease and authorizing the persons who sign below on behalf of Tenant to execute this Lease.

(O) APPLICABLE LAW AND CONSTRUCTION

This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and, if any provisions of this Lease shall to any extent not be valid, the remainder of this Lease shall not be affected thereby. There are no oral or written agreements between Landlord and Tenant affecting this Lease. This Lease may be amended, and the provisions hereof may be waived or modified, only by instruments in writing executed by Landlord and Tenant. The titles of the several Articles and Sections contained herein are for convenience only and shall not be considered in construing this Lease. Unless repugnant to the context, the words "Landlord" and "Tenant" appearing in this Lease shall be construed to mean those name above and their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them respectively. The obligations imposed by this Lease upon Tenant shall be joint and several.

ARTICLE XI SECURITY DEPOSIT

11. Landlord acknowledges that it has received from Tenant the Security Deposit as security for the payment of rents and the performance and observance of the agreements and conditions in this lease contained on the part of Tenant to be performed and observed. In the event of any default or defaults in such payment, performance or observance Landlord may apply said sums or any part thereof toward the curing of any such default or defaults and/or toward compensating Landlord for any loss or damage arising from any such default or defaults. Upon the yielding up

of the demised premises at the expiration or other termination of the term of this lease, if Tenant shall not then be in default or otherwise liable to Landlord, the Security Deposit or the unapplied balance thereof shall be returned to Tenant. It is understood and agreed that Landlord shall always have the right to apply said sums, or any part thereof, as aforesaid in the event of any such default or defaults, without prejudice to any other remedy or remedies which Landlord may have, or Landlord may pursue any other such remedy or remedies in lieu of applying said sum or any part thereof. No interest shall be payable on said sums or any part thereof. If Landlord shall apply said sums or any part thereof as aforesaid, Tenant shall upon demand pay to Landlord the amount so applied by Landlord, to restore the security to the original amounts. Whenever the holder of Landlord's interest in this lease, whether it be the Landlord named in this lease or any transferee of said Landlord, immediate or remote, shall transfer its interest in this lease, said holder shall turn over to its transferee said sums or the unapplied balance thereof, and thereafter such holder shall be released from any and all liability to Tenant with respect to said sums or its application or return, it being understood that Tenant shall thereafter look only to such transferee with respect to said sums, its application and return, provided however, that such transferee shall have acknowledged the receipt of said sums and its obligations under this lease as transferee. The holder of any mortgage upon property which includes the demised premises shall never be responsible to Tenant for said sums or the application or return unless said sums shall actually have been received in hand by such holder.

ARTICLE XII MODIFICATION

12. In the event that any holder or prospective holder of any mortgage which includes the demised premises as part of the mortgaged premises, shall request any minor modification of any of the provisions of this lease, other than a provision directly related to the rents payable hereunder, the duration of the term hereof, or the size, use or location of the demised premises, Tenant agrees that Tenant will enter into an amendment of this lease containing each such modification so requested.

[SEE NEXT PAGE FOR SIGNATURES]

EXECUTED as a sealed instrument in two or more counterparts as of the day and year first above written.

LANDLORD:

230-232 EAST 49TH STREET ASSOCIATES

By: _____
Its: _____
Hereunto duly authorized

TENANT:

CITY OF NEWBURYPORT

By: _____
Name: _____
Title: _____
Hereunto duly authorized

EXHIBIT A
PLAN SHOWING TENANT'S SPACE

EXHIBIT B

PLAN SHOWING OUTSIDE STORAGE LOCATION

EXHIBIT C

LEGAL DESCRIPTION OF LOT

Beginning at the Southeasterly corner thereof at granite Land Court bound on the Northerly Side of Parker Street; thence

SOUTHWESTERLY	by the County Lay-out of Parker Street, 346.44 feet to all iron pipe bound; thence
N 16° 06' 29" E	by Lot 3 as shown on a plan hereinafter referred to, 338.30 feet to an iron pipe bound at Lot 2 as shown on said plan; thence
S 73° 50' 11" E	by said Lot 2, 334.00 feet to land of Owens-Illinois Co., thence
S 16° 16' 29" W	by said land of Owens-Illinois Co., Inc., 284.5 feet to Parker Street and the point of beginning.

Containing 2.5 acres more or less.

Being Lot 3A as shown on a "Plan Showing Division of Land of N.A.I.D., Parker Street, Newburyport, Mass. Scale 1"=40', June 25, 1972", H.F. MacWilliams, Mass. Reg. No. 13242, 150 Brisette Avenue, Newburyport, Mass., recorded in Plan Book 123, Plan 64.

The premises are conveyed subject to the following insofar as they may be in force and effect: (i) Protective Covenants for Lord Timothy Dexter Industrial Green, Newburyport, Mass., dated September 11, 1969, and recorded with said Deeds in Book 5638, Page 428, (h) sixty (60) foot easement reserved by Newburyport Area Industrial Development Corp. in deed dated July 26, 1972, recorded with said Deeds in Book 5895, Page 1149, (iii) real estate taxes which are not yet due and payable, or any other matter of record to the extent the same may be in force and applicable.

**Committee Items-
August 09, 2021
Planning & Development**

In Committee:

- ODNC076_05_10_2021 Proposed Zoning Amendment Mini-Reform (COTW)

CITY OF NEWBURYPORT



 IN CITY COUNCIL

ORDERED:

AN ORDINANCE TO AMEND CERTAIN PROVISIONS OF THE NEWBURYPORT ZONING ORDINANCE, INCLUDING DEFINITIONS, YARD REGULATIONS, AND REQUIREMENTS OF THE DEMOLITION CONTROL OVERLAY DISTRICT (DCOD) AND THE DOWNTOWN OVERLAY DISTRICT (DOD).

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

WHEREAS, a Zoning Advisory Committee was formed in 2014 by Mayor Donna D. Holaday and then-City Council President Thomas F. O'Brien to consider revisions to the Zoning Ordinance of the City of Newburyport, Massachusetts (the "Zoning Ordinance"); and

WHEREAS, the Zoning Advisory Committee convened irregularly from 2014 to 2019, and suggested amendments to the Zoning Ordinance; and

WHEREAS, the position of Zoning Administrator became effective in 2018, and such official has suggested amendments to the Zoning Ordinance;

THEREFORE, LET IT BE ORDAINED THAT subsections 5, 8, 10, 11, 19, 21, 24, 25, 26, 27, 33, 36, 41, 46, 50, and 54 of Section II-B of the Zoning Ordinance entitled "Definitions" be amended, and new subsection 55 of Section II-B of the Zoning Ordinance be added, pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

5. *Building*. A combination of any materials, whether portable or fixed, having a roof, enclosed within exterior walls or fire walls, built to form a structure for the shelter of persons, animals or property. For purposes of this Ordinance definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature, and exterior walls shall include columns supporting a roof and screened enclosures.
8. *Building area*. The aggregate "footprint" of the areas of all ~~enclosed and~~ roofed spaces of all buildings located at a lot including without limitation roofed porches or decks, regardless of the height of such buildings, including both the principal building and all accessory buildings; all such and areas shall be computed by using maximum outside building dimensions measured on a horizontal plane, excepting roof overhang.

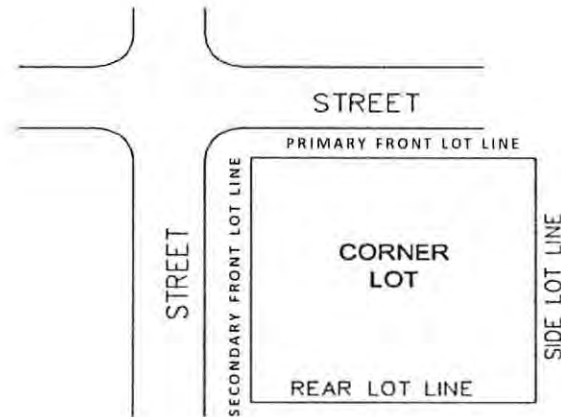
10. *Building height.* Building height is measured from the mean grade elevation (average grade around perimeter of building) to the mean elevation of the highest roof elevation line (one-half the vertical distance from eave to ridge) not including architectural features explicitly exempted from the height requirements of this Ordinance.
11. *Building line.* A line formed by the intersection of a horizontal plane at average outside grade level and a vertical plane at ground surface that coincides with the exterior surface of the building on any side. All yard requirements are to be measured to the building line except where otherwise expressly provided in this Ordinance.

In case of a cantilevered section of a building, or projected roof greater than two (2) feet, or porch, the vertical plane will coincide with the most projected surface, ~~but an entrance way, or~~ permanently installed canopy and similar projections measuring less than one-third ($\frac{1}{3}$) of the length of the elevation from which they are projected, and also projecting less than one-half ($\frac{1}{2}$) of the required setback, are is excluded from the setback requirements of this Ordinance.

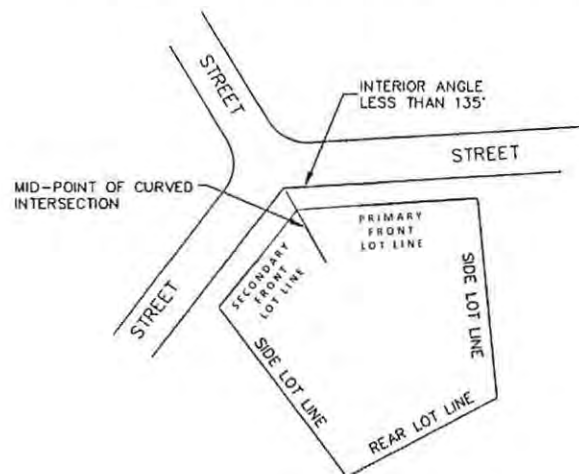
19. *Floor area, total.* The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for occupancy or the conduct of business (i.e. with a minimum ceiling height of six (6) feet), and shall be measured between the inside face of exterior walls, or from the centerline of walls separating two (2) uses, but unfinished garage space, accessory building space, or cellar space is excluded, ~~except if these~~ All finished areas are utilized by the principal use occupying or conducted within the lot and/or building shall be included.
21. *Inspector of buildings.* The person appointed and confirmed to serve in such office under Section 5-41 of the Newburyport Code ~~officially established zoning and building enforcement officer for the City of Newburyport.~~
24. *Lot, corner.* A lot at the point of intersection of and abutting on two (2) or more intersecting streets, the interior angle of intersection of the street lot lines, or extended lot lines in the case of a curved street being not more than one-hundred and thirty-five degrees (135°). For purposes of this Ordinance chapter, the yard adjacent to each street shall be considered a front yard; provided, however, this will not affect designation of the front lot line.

Corner Lot Diagrams: A corner lot ~~shall have~~ has two front lot lines. The front lot line of greater length shall be known as the primary front lot line, and the front lot line of lesser length shall be known as the secondary front lot line. When an

unbuilt corner lot has front lot lines of equal length, the owner shall designate a single front lot line as the primary front lot line, on the applicable plan and/or application. This shall be known as the primary front lot line.



Where the interior angle of intersecting streets is less than one hundred thirty-five degrees (135°) ~~degrees~~, the lot shall be considered a corner lot.



25. *Lot coverage.* That percentage of the lot area which is devoted to building area (i.e. building "footprints").
26. *Lot line, front.* The property line dividing a lot from the adjacent a single street right-of-way. In the case of a corner lot the front lot line of greater length shall be known as the "primary front lot line," and the front lot line of lesser length shall be known as the "secondary front lot line." ~~When a corner lot has front lot lines of equal length, the owner shall designate a single front lot line as the primary front lot line, on the applicable plan and/or application.~~

27. *Lot line, rear.* The property line most nearly opposite and furthest from the front lot line, or the primary front lot line in the case of corner lots. In a wedge- or pie-shaped lot, the rear lot line is assumed to be where a line parallel to the front lot line can be drawn with a ten (10) foot offset from the rear-most point intersecting two (2) adjacent side lot lines.
33. *Open space.* The space on a lot unoccupied by buildings, ~~unobstructed to the sky,~~ not devoted to streets, driveways or off-street parking or loading spaces, and expressed as a percentage of total lot area. Open space areas shall be used for landscape areas and for active or passive recreation including but not limited to non-roofed decks (one level only), patios, pools or athletic tennis courts.
36. *Parking space.* An delineated area, whether interior or exterior, that is intended or used for occupancy by a motor vehicle in compliance with this Ordinance.
41. *Setback.* ~~Setback is~~ The horizontal distance measured perpendicularly from the property lot line to the nearest building line wall.
46. *Structure.* A combination of materials, which may or may not constitute a building, requiring a permit to that is erected, placed, or constructed to form a configuration and includes, but is. Structures include, but are not limited to, unroofed stadiums, platforms, radio towers, sheds, storage bins (lidded or unlidded), mechanical equipment, signs, swimming pools, and fences.
50. *Yard.* ~~An open space unobstructed from the ground up, on the same lot with a principal~~ The area within a lot extending along a lot line and inward to the building line. The size of a required yard setback shall be measured as the shortest distance between the building line and the lot line. Those portions of buildings or structures that Structures which are below the finished lot grade, including, but not limited to, basements, shall not be deemed to occupy required yards setbacks.
54. Zoning Administrator. The zoning code enforcement officer for the City of Newburyport, Massachusetts, duly appointed and confirmed under Section X-B of this Ordinance Zoning board of appeals. The Zoning Board of Appeals of the City of Newburyport, Massachusetts.
- 54-55. Zoning board of appeals. The Zoning Board of Appeals of the City of Newburyport, Massachusetts.

AND FURTHER, THAT Section VI-B of the Zoning Ordinance entitled “Lot areas” be amended pursuant to Section XII-B (Adoption and Amendment) by inserting the following new provision, with additions double-underlined and in bold:

D. To ensure the long-term preservation of local farming and agricultural properties of sufficient size to maintain viable and sustainable businesses and operations related thereto, and notwithstanding any provisions of this Ordinance to the contrary, the minimum Lot Area within the Agricultural/Conservation (Ag/C) District, regardless of use, shall be as indicated.

AND FURTHER, THAT Section VI-F of the Zoning Ordinance entitled “Yard requirements (setbacks)” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

VI-F - Yard requirements (setbacks).

- (1) Except for fences, walls, ~~and~~ accessory structures, and specific features as described below or elsewhere in this Ordinance, no building or ~~sub-surface~~ structure, nor any above-grade or portion thereof, including, without limitation, decks extending upward by more than thirty (30) inches above existing grade, shall be permitted within the required front, side, or rear setback areas. Unroofed decks extending up to to thirty (30) inches above existing grade may project into applicable yard setbacks to the extent of up to fifty percent (50%) of the required lateral dimension.
- (2) Where a side or rear yard is adjacent to a street, the side or rear yard requirement shall be the same as the distance specified for front yard setback.
- (3) Where a side or rear yard of a structure is adjacent to a park, cemetery, or other permanently ~~protected public~~ open space, all but ten (10) feet of the required yard may be measured from the center of said open space.
- (4) *Mechanical equipment appurtenant to the property shall be permitted within the required, side, or rear yard. If greater than four (4) feet in height such equipment shall be screened from adjacent lots and/or public view with fencing and/or landscaping.*
- (5) *Except as otherwise provided for in this Ordinance, no advertising display or other type of sign, merchandise, vending machine, or charitable donation collection box shall be located within any required front, side, or rear yard. ~~Business structures or uses shall not display or advertise goods for sale purposes or display coin-operated~~*

~~vending machines of any type in any location which would infringe upon the required yard areas specified in this ordinance.~~

- (6) Fences and landscape walls may be located within required side and rear yards provided that they do not exceed seven (7) feet in height. Corner lots and locations adjacent to driveways shall comply with the requirements of Section VI-J and VI-K. In all other instances fences, landscape walls, and other hardscape features may be located within required front yards provided they do not exceed four (4) feet in height above existing grade. Structures of any kind such as, without limitation, sheds, swimming pools, and mechanical equipment shall be prohibited in the front yard setback.
- (7) Porches, porticos, stoops, exterior stairways or steps attached to a principal structure, whether roofed or unroofed, may extend into up to fifty percent (50%) of the required front yard setback, provided, however, that no such projection shall exceed more than thirty percent (30%) of the width of that façade of the principal structure to which such feature is attached.
- (8) Any accessory structure not requiring a building permit under the State Building Code shall be eligible for a determination of legality by the Zoning Administrator under Section X-C provided such accessory structure complies with applicable provisions of this Ordinance including, without limitation, setbacks, height, and lot-coverage requirements.
- (9) An accessory building attached to a principal building shall comply in all respects with the yard requirements of this ~~an~~ Ordinance for the principal building, and shall not interfere in any way with access to parking spaces in off street parking areas.
- (10) A detached accessory building or structure within the side or rear-yard setbacks shall conform to the following provisions, in addition to any other provisions of this Ordinance. It shall ~~be~~:
- a. be set back from all streets by the public way ~~the~~ the required front yard distance for the district in which it is located;
 - b. be set back at least six (6) feet from any side and rear lot line ~~or~~ and also at least ten (10) feet from any lawfully existing principal building or structure located on an abutting lot ~~property~~;
 - c. be separated from the principal building or structure on the subject lot a minimum of three (3) feet; and
 - d. cover no more than a building area measuring 528 square feet and have no wall length exceeding more than ~~not exceed twenty-two (22) feet by~~

twenty-four (24) feet ~~in dimension~~, nor shall it exceed fifteen (15) feet in height.

- e. Garages or other such accessory structures, whether attached or detached, that exceed the above dimensions shall conform to the height, front, side and rear yard setback requirements both as provided under Section VI-I and in addition to any other requirements applicable to ~~accessory~~ buildings or structures in the zoning district where located.
- f. In-ground and above-ground pools shall be located in the side or rear yard only, and not in the front setback, and are subject ~~only~~ to the six (6) foot lot-line setback restrictions as herein stated but need not be located at least ten (10) feet from any lawfully existing principal building or structure located on an abutting lot.

AND FURTHER, THAT Section VI-I of the Zoning Ordinance entitled “Exceptions to maximum height regulations” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

The height limitations as set forth in the table of dimensional controls shall not apply to chimneys, ventilators, skylights, water tanks, bulkheads, elevators, parapet walls not greater than four (4) feet in height, and other accessory additions which are required or are customarily carried above the roofs of buildings, nor to towers, spires, domes, cupolas, and similar additions to buildings if such additions are not used for living purposes, and if such structures cumulatively occupy not more than ten (10) percent of the ground floor of the building. ~~Additionally, all farm accessory structures are exempt from the height requirements of this ordinance.~~ In no instance shall any such structure extend more than ten (10) feet above the highest point of the structure on which it is proposed to be attached unless required by building and safety codes.

Accessory buildings or structures used for accessory purposes in all residential (R) districts other than those permitted within setbacks under Section VI-F shall not exceed a height of twenty (20) feet.

Additionally, all farm accessory structures are exempt from the height requirements of this ordinance.

AND FURTHER, THAT Section VI-J of the Zoning Ordinance entitled “Traffic visibility across corners” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

Between the property lines of intersecting streets and a line joining points on such lines twenty (20) feet distant from their point of intersection, or in the case of a rounded corner, the point of intersection of their tangents, no building or structure in any district may be erected and no vegetation other than shade trees may be maintained between a height of three (3) feet and seven (7) feet above the plane created by street pavement through their curb grades. For work on properties within zoning districts providing for zero lot line setbacks, this requirement may be waived upon written approval of the Zoning Administrator after consultation with the City Engineer.

AND FURTHER, THAT Section VI-M of the Zoning Ordinance entitled “Awnings for business or industry” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

Solely outside of the Downtown Overlay District (DOD), where awnings require review and approval as provided under Section XXVII of this Ordinance, awnings for business or industry ~~will be~~ shall be allowed in any district. They may extend from the building a maximum of five (5) feet and the lowest point of the awning or supporting structure must be at least seven (7) feet, six (6) inches above the average finished grade of the area which the awning is intended to shelter. The awning may contain the name of the business or industry, but no other advertising.

AND FURTHER, THAT Section X-B of the Zoning Ordinance entitled “Administrative officials” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

The duties of administering and enforcing the provisions of this ~~an~~ Ordinance are hereby conferred upon ~~the inspector of buildings and a city employee to be known as the Zoning Administrator~~ zoning administrator, who shall have such powers as are conferred upon them by this Ordinance zoning ordinance, and as reasonably may be implied. ~~At the first regular meeting of the city council in January, the mayor shall appoint and the city council~~ Pursuant to the City of Newburyport Home Rule Charter, the Mayor shall appoint and the City Council may confirm someone to hold office as the Zoning Administrator, for a term of two (2) years zoning administrator for the City of Newburyport. The zoning administrator shall hold office from January 1, 2018, through December 31, 2018, and for two-year terms thereafter, unless sooner removed by the Mayor and City Council ~~mayor and city council~~. Among ~~their~~ his or her

other duties, the ~~Zoning Administrator~~zoning administrator shall assist the ~~City Council~~city council in all matters pertaining to the purpose and intent of this ~~Ordinance~~zoning ordinance.

AND FURTHER, THAT Section X-C of the Zoning Ordinance entitled “Duties of the inspector of buildings and of the zoning administrator” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

1. Generally. It shall be the duty of the ~~Inspector of Buildings~~inspector of buildings, or ~~their~~his duly authorized agents, to cause any plans, buildings, or premises to be examined or inspected to determine that they are not in violation of provisions of this ~~Ordinance~~ordinance. The ~~Zoning Administrator~~zoning administrator shall have the independent authority and duty to cause any plans, buildings, or premises to be examined and determine compliance with any and all provisions of this Ordinance. In the case of any disagreement between the ~~Inspector of Buildings~~inspector of buildings and the ~~Zoning Administrator~~zoning administrator regarding an interpretation of this ~~Ordinance~~ordinance, the ~~Zoning Administrator~~zoning administrator's decision shall control.
 2. *Violations.* Where the ~~Inspector of Buildings~~inspector of buildings, in the course of ~~his~~their duties, determines that any plans, buildings, or premises are in violation of the provisions of this ~~Ordinance~~ordinance, ~~they~~ shall so inform the ~~Zoning Administrator~~zoning administrator. In such case, or if the ~~Zoning Administrator~~zoning administrator in the course of ~~their~~his or her duties determines that any plans, buildings, or premises are in violation of the provisions of this ~~Ordinance~~ordinance, the ~~Zoning Administrator~~zoning administrator shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such action, and the penalties and remedies which may be invoked by the ~~City~~city, and the violator's right of appeal; all as provided for by this ~~Section X-C~~Section.
- ~~On the serving of notice by the zoning administrator to the owner for any violation of any provisions of this ordinance, a new certificate of occupancy shall be required for any further use of such building or premises.~~
3. *Records.* The ~~Inspector of Buildings and Zoning Administrator~~inspector of buildings shall maintain ~~a~~a permanent public records of all matters considered and all actions taken by ~~their respective~~his or her offices, ~~or by the zoning administrator~~. All such records, as well as the permanent public record of all matters considered and all action taken pursuant to this ~~Zoning~~ordinance, or chapters 5, 12 or 16 of the Newburyport Code, by any city official, board, commission, or department and

maintained by it, shall be deemed to form a part of the records of the Inspector of Buildings and Zoning Administrator~~inspector of buildings~~.

~~An individual~~ Permanent files for each application by street address property for all permits provided for by this Ordinance~~ordinance~~ shall be established at the time the application is made. Said files shall contain at least one (1) copy of the application and all supporting documents, maps, and plans; notations regarding pertinent dates and fees, and the like,~~as appropriate;~~ at least one (1) copy of the written decisions (including any associated drawings and specifications) by any city official, board, commission, or department acting on the application; and the date the permit applied for was issued or denied by the Inspector of Buildings and/or Zoning Administrator, ~~respectively~~~~inspector of buildings~~.

4. *Enforcement and monthly reports.* If the Zoning Administrator~~zoning administrator~~ is requested in writing to enforce this Ordinance~~ordinance~~ against any person allegedly in violation of same, and the Zoning Administrator~~zoning administrator~~ declines to act, ~~the Zoning Administrator~~ he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen (14) days after such receipt.

The Zoning Administrator and Inspector of Buildings shall each prepare a monthly report for the City Council, which ~~inspector of buildings and the zoning administrator shall each prepare a monthly report for the city council~~. Said report shall cite all actions taken by such official, including all referrals made by them, all permits and certificates issued and denied; and all complaints of violations received, and all violations found by them, and the action taken by them consequent thereon. A copy of this monthly report shall also be transmitted by such officer to the Assessor, Planning Board, and Zoning Board of Appeals~~board of assessors, planning board, and board of appeals~~ at the same time it is transmitted to the City Council~~city council~~.

AND FURTHER, THAT Section X-D of the Zoning Ordinance entitled "Permits" be amended pursuant to Section XII-B (Adoption and Amendment) to insert a new third paragraph as follows with additions double-underlined and in bold:

No application for any permit or review by municipal officials under this Ordinance (whether by boards or staff) shall be considered complete or eligible for consideration unless submitted in its entirety, including the completion of related forms promulgated by the Office of Planning and Development (or Building Department, as applicable) and posted on the City website at the time of submission, as well as any required attachments or supporting documentation enumerated therein. Requests for waiver of any particular submission requirements, or listed attachments, must be

requested of and approved in writing by the applicable staff or board before the relevant application shall be considered complete or eligible for consideration.

AND FURTHER, THAT subsection (7)(C) of Section X.H of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

- C. *Time limitation on special permit.* Any special permit granted under this section shall lapse within ~~two (2)~~ three (3) years if a substantial use thereof has not sooner commenced except for good cause, in the case of permit for construction, if construction has not begun by such date except for good cause. Additionally, if construction or operations has not begun within six (6) months, or if construction is not continuing toward completion in as continuous or expeditious manner as is reasonable during the initial six (6) months, then the construction or operations shall conform to any amendment to this ~~Ordinance~~.

AND FURTHER, THAT Section XI-J of the Zoning Ordinance entitled "Conformance to performance standards" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

An application for a building permit and/or certificate of occupancy for any ~~industrial~~ use in any district ~~believed by the building inspector~~ determined by either the Inspector of Buildings or the Zoning Administrator to be potentially in conflict with the performance standards shall be accompanied by a plan in quadruplicate of the proposed construction or development, including a description of the proposed machinery operations and products and specifications for the mechanisms and techniques to be used in restricting the emission of dangerous and objectionable elements. One (1) copy of said plans and descriptions shall be filed with the ~~Inspector of Buildings~~ building inspector, one (1) with the ~~Zoning Administrator~~ zoning administrator, one (1) with the ~~Director of Planning and Development~~ planning board and one (1) with the ~~City Council~~ city council. ~~The fee for such applications shall include the cost of the special reports required herein.~~

The ~~City Council~~ city council, with the advice of the ~~Planning Board~~ planning board and the ~~Zoning Administrator~~ zoning administrator, when there is likelihood of reasonable doubt as to conformance, shall refer the application to one (1) or more expert consultants who shall return a report with their findings within thirty (30) days. A copy of such report will be furnished to the applicant.

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

This ~~Ordinance shall~~ zoning ordinance will be originally adopted and from time to time changed by amendment, addition, or repeal in the manner hereinafter provided.

The adoption or change of this ~~Ordinance~~ ordinance may be initiated by the submission to the ~~City Council~~ city council of the proposed ~~zoning~~ Ordinance or change ~~by the City Council~~ city council, ~~by the Zoning Board of Appeals~~ zoning board of appeals, by ~~a person an individual~~ owning land to be affected by the change or adoption, by ten (10) registered voters in the city, by the Planning Board planning board, by ~~two (2) members of~~ the regional planning agency, or by other methods provided by the City of Newburyport Home Rule Charter charter as it may be amended. The ~~City Council~~ city council shall, within fourteen (14) days of receipt of such zoning ~~Ordinance~~ Ordinance or change, submit it to the ~~Planning Board~~ planning board for review.

No ~~zoning~~ Ordinance or amendment thereto shall be adopted until after the ~~Planning Board and the City Council~~ planning board and the city council or a committee designated or appointed for the purpose by said council, has held a public hearing thereon at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five (65) days after the proposed ~~zoning~~ Ordinance or change is submitted to the ~~planning~~ board by the ~~City Council~~ city council. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing (not counting the day of the hearing) and by posting such notice in a conspicuous place in city hall for a period of not less than fourteen (14) days before the day of said hearing.

Notice of said hearing shall also be sent by mail, postage prepaid, to the Massachusetts Department of Housing and Community Development (DHCD) ~~commonwealth executive office of communities and development (EOCD)~~, the Merrimack Valley Planning Commission (MVPC), or to their respective successor agencies, and to the planning boards of all abutting cities and towns.

No vote to adopt any such ~~zoning~~ proposed Ordinance or amendment shall be taken until a report with recommendations by the ~~Planning Board~~ planning board has been submitted to the ~~City Council~~ city council, or twenty-one (21) days after said hearing have elapsed without submission of such report or recommendations. After

such notice, hearing and report, or after twenty-one (21) days shall have lapsed after such hearing without submission of such report, ~~the City Council~~ ~~a city council~~ may adopt, reject or amend any such proposed ~~e~~Ordinance. If the ~~City Council~~ ~~city council~~ fails to vote to adopt any proposed ~~e~~Ordinance or amendment within ninety (90) days after such hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as above provided.

Except as otherwise provided under Chapter 40A of the General Laws, n ~~No~~ ~~zoning e~~Ordinance shall be adopted or changed except by a two-thirds ($\frac{2}{3}$) vote of all the members of the ~~City Council~~ ~~city council~~ provided that, if there is filed with the ~~City Clerk~~ ~~city clerk~~ prior to final action by the ~~City Council~~ ~~council~~ a written protest against such change, stating the reasons duly signed by owners of twenty (20) percent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred (300) feet therefrom, no such change of any such ~~zoning e~~Ordinance shall be adopted except by a three-fourths ($\frac{3}{4}$) vote of all members.

No proposed ~~zoning e~~Ordinance or amendment which has been unfavorably acted upon by the ~~City Council~~ ~~city council~~ shall be considered by the ~~City Council~~ ~~city council~~ ~~council~~ within two (2) years after the date of such unfavorable action unless the adoption of such proposed ~~e~~Ordinance or amendment is recommended in the final report of the ~~Planning Board~~ ~~planning board~~.

The effective date of the adoption or amendment of this ~~Ordinance~~ ~~zoning ordinance~~ shall be the date on which such adoption or amendment was voted on by the ~~City Council~~ ~~city council~~, **except as otherwise expressly provided in the Ordinance or such amendment thereto.** ~~After adoption by the City Council~~ ~~city council~~ of the ~~zoning e~~Ordinance or amendments, the ~~City Clerk~~ ~~city clerk~~ shall send a copy of same to ~~DHCD, or to its successor agency~~ ~~the department of community affairs~~.

No claim of invalidity of this ~~Ordinance~~ ~~zoning ordinance~~ arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceeding and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless within ~~ninety (90) one hundred and twenty (120)~~ days after adoption of this ~~e~~Ordinance or amendment legal action is commenced and notice specifying the court, parties, invalidity claimed, and date of filing is filed, together with a copy of the petition with the ~~City Clerk~~ ~~city clerk~~ within seven (7) days after commencement of the actions.

AND FURTHER, THAT Section XXII of the Zoning Ordinance entitled “Federal Street Overlay District (FSOD)” be amended pursuant to Section XII-B (Adoption and Amendment) by deleting said section in its entirety, and replacing it with the following text, with additions **double-underlined and in bold**.

XXII – RESERVED.

AND FURTHER, THAT Section XXV of the Zoning Ordinance entitled “Towle Complex Redevelopment Overlay District (TCROD)” be amended pursuant to Section XII-B (Adoption and Amendment) by deleting said section in its entirety, and replacing it with the following text, with additions **double-underlined and in bold**.

XXV – RESERVED.

AND FURTHER, THAT subsections 4(b) and 4(c) of Section XXVII-F of the Zoning Ordinance entitled “Procedure and criteria” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions **~~double-stricken-through-and-in-bold~~**, and additions **double-underlined and in bold**:

- b. *Demolition of historic buildings and structures:* The SPGA may approve demolition of an historic building or structure only if it makes written findings based upon substantial evidence in the record that such historic building or structure retains no substantial remaining market value or reasonable use, taking into account the cost of rehabilitation to meet the requirements of the State Building Code as it applies to historic buildings or structures, or of other applicable laws. Costs necessitated by any new construction, alteration, or demolition conducted in violation of this section shall not be included in the calculation of rehabilitation costs. **Notwithstanding the foregoing, the SPGA may approve the relocation of an historic building or structure from one (1) portion of a lot to another, or from one (1) lot to another, regardless of where the receiving lot is located.**

Advisory reports: Pursuant to M.G.L. c. 44, § 53G, and to aid the SPGA in its review, the **applicant owner** shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant **selected-deemed necessary** by the SPGA in its reasonable discretion to investigate and prepare a written report upon the existing condition and feasibility of preservation of the historic building or structure proposed for demolition (Conditions Report). The SPGA shall engage such architect, engineer, or specialist **no later than ten (10) calendar days by vote at any time** after ~~its having~~ **opened** the required public hearing on the matter. Said Conditions Report shall include an estimate of the reasonable cost to rehabilitate the relevant building or structure to meet the requirements of the State Building Code as it applies to historic buildings or structures. The Conditions Report required in connection with

the proposed demolition of an historic building or structure shall not be waived by any City board, commission, or officer, including, without limitation by variance.

No later than thirty (30) calendar days after the ~~Historical~~ Commission has received: (a) a complete application; or (b) new materials in the case of a further revised submission, the ~~Historical~~ Commission shall submit to the SPGA its written report (Historical Report) regarding: (x) the significance of the historic building or structure proposed for demolition; and (y) the relative importance of such historic building or structure to its setting within the DOD.

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

Before acting on a DOD-SP application to demolish an historic building or structure, the SPGA shall consider any and all advisory reports generated in relation to the subject application, including but not limited to: (a) both any the Conditions Report; (b) and any Historical Report(s) submitted by the Historical Commission; as well as and (c) any the Appraisal Report.

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

Advisory reports: Pursuant to M.G.L. c. 44, § 53G, and to aid the SPGA in its review, the applicant owner shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant ~~selected by the SPGA in its reasonable discretion~~ deemed necessary to investigate and prepare a written report upon the existing conditions and feasibility of preservation of the relevant historic exterior architectural features (Conditions Report). Said Conditions Report shall include an estimate of the reasonable cost of all work required to preserve, rehabilitate, or restore the relevant historic exterior architectural features. The SPGA shall engage such

architect, engineer, or specialist ~~no later than ten (10) calendar days~~ by vote at any time after ~~its having~~ opened the required public hearing on the matter, unless the Conditions Report required in connection with the proposed demolition of historic exterior architectural features is waived by unanimous vote of the SPGA.

No later than thirty (30) calendar days after the ~~H~~Historical ~~C~~Commission has received (a) a complete application, or (b) new materials in the case of a further revised submission, the ~~H~~Historical ~~C~~Commission shall submit to the SPGA a written report regarding application of the relevant criteria of this section to the proposed work (Historical Report).

Before acting on a DOD-SP application to demolish historic exterior architectural features, the SPGA shall consider both the Conditions Report, if any, and any Historical Report submitted by the ~~H~~Historical ~~C~~Commission.

AND FURTHER, THAT subsection (5)(e)(iii) of Section XXVII-F of the Zoning Ordinance entitled “Procedure and criteria” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

Parts of replacement windows, such as exterior sills, molding and/or casing, exterior frames, and exterior sash windows shall match exactly those of the historic windows whenever reasonably feasible. Otherwise, replacement shall match the historic windows in dimensions, configuration, ~~mode of operation~~, and other general characteristics, but materials need not be duplicated exactly. Proposed replacement windows may include new modes of operation, provided, however, that such modes and replacement windows shall be approved by the SPGA under a DOD-SP, notwithstanding the condition(s) of the existing window(s) as outlined in Section XXVII-F(5)(e).

AND FURTHER, THAT subsection 1 of Section XXVIII-D of the Zoning Ordinance entitled “Definitions” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

1. *Demolition, to demolish:* The act, whether partial or complete, of: (a) pulling or tearing down, razing, or otherwise destroying; or (b) ~~relocation~~moving from one (1) portion of a lot to another, or *from one (1) lot to another, regardless of where the receiving lot is located.* For the purposes of this Section XXVIII, demolition of exterior walls shall include removal and/or enclosure of the exterior walls of such structure.

AND FURTHER, THAT subsection 2 of Section XXVIII-D of the Zoning Ordinance entitled “Definitions” be amended pursuant to Section XII-B (Adoption and Amendment) to read as

follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

2. *Demolition of a building or structure:* Demolition of greater than twenty-five ~~(25)~~ percent (25%) of all ~~external~~exterior walls of a building or structure, with such demolition calculated on a cumulative basis since the initial adoption of this Section XXVIII on April 15, 2014, and measured based upon their total exterior surface area, regardless of the age or visibility of such walls from a street, way, or public body of water. The mere replacement of siding and/or sheathing, without removal of exterior-wall framing, shall not constitute demolition of an ~~external~~exterior wall for purposes of this Section XXVIII. Similarly, the mere replacement of existing windows and external~~exterior~~ doors, without alteration of their overall dimensions, shall not be considered demolition for purposes of this Section XXVIII. In accordance with subsection XXVIII-E.1, demolition of a building or structure shall not include the demolition of a single ~~external~~exterior wall in order to build an addition, presuming such wall does not constitute greater than twenty-five percent (25%) of all external~~exterior~~ walls of such building or structure. However, for the purposes of calculating the total area of external~~exterior~~ walls involved in proposed demolition such area shall include any elimination or relocation of any existing window openings (i.e. infilled with wall area) and any wall area which will be hidden from exterior view behind proposed additions. Removal of any non-historic addition which would expose a historic exterior wall shall receive credit for such newly exposed historic exterior wall area against the calculation of proposed demolition area. The Zoning Administrator and/or Office of Planning and Development may promulgate regulations, including, without limitation, illustrative diagrams, that further clarify what work constitute demolition under this Section XXVIII.

AND FURTHER, THAT subsection 2 of Section XXVIII-E of the Zoning Ordinance entitled "Procedure and criteria" be amended pursuant to Section XII-B (Adoption and Amendment) to add the following new sentence at the end of the existing provision:

To ensure compliance with this Section XXVIII, applicants for permits or approvals within the Demolition Control Overlay District (DCOD) shall provide the Zoning Administrator, Building Commissioner, and Zoning Board of Appeals (as applicable) clear, properly scaled drawing(s) and/or diagram(s), with labeled dimensions accurately depicting proposed demolition work, as defined and further clarified within subsections 1 and 2 of Section XXVIII-D.

AND FURTHER, THAT subsection 3 of Section XXVIII-E of the Zoning Ordinance entitled "Procedure and criteria" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

Required findings: The SPGA may approve a DCOD-SP application only if it makes written findings based upon substantial evidence in the record that such historic building or structure retains no substantial remaining market value or reasonable use, taking into account the cost of rehabilitation to meet the requirements of the State Building Code as it applies to historic buildings or structures, or of other applicable laws. Costs necessitated by any new construction, alteration or demolition conducted in violation of this section shall not be included in the calculation of rehabilitation costs.

Notwithstanding the foregoing, the SPGA may approve the relocation of an historic building or structure from one (1) portion of a lot to another, or from one (1) lot to another, regardless of where the receiving lot is located.

Councillor Jared J. Eigerman

Councillor Heather L. Shand

Councillor Christine E. Wallace

Committee Items-August 09 2021

Public Safety

In Committee:

APPT256_06_28_2021 Mark Murray Marshal Nbpt Police Dept. 06/30/2026
As Amended



CITY OF NEWBURYPORT RECEIVED
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60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
978-465-4402 FAX

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: January 23, 2021
Subject: Appointment

I hereby appoint, subject to your approval, the following named individual as Marshal, Newburyport Police Department. This term will expire on June 30, 2026.

Mark Murray