

CITY COUNCIL MEETING AGENDA

REMOTE

February 22, 2021

7:30PM

City Council Meeting

Zoom Meeting Details:

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82476176911>

Or iPhone one-tap :

US: +19292056099,,82476176911# or +13017158592,,82476176911#

Or Telephone:

US: +1 929 205 6099 7799

Webinar ID: 824 7617 6911

1. CALL TO ORDER

2. LATE FILE ITEMS

- COMM306_02_22_2021 LATE FILE Memo for Market Landing Appropriation
- COMM307_02_22_2021 LATE FILE Ltr. from Jane Snow 57 Low St.
- COMM308_02_22_2021 LATE FILE Ltr. From Patricia Temple 57 Low St.
- COMM309_02_22_2021 LATE FILE Ltrs. Plum Island Ordinances

3. PUBLIC COMMENT

4. MAYOR'S COMMENT

**CONSENT
AGENDA**

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

5. APPROVAL OF MINUTES

- February 8, 2021

(Approve)

6. COMMUNICATIONS

- COMM300_02_22_2021 Ltr from Bette Lischke re: Plum Island (R&F)
- COMM301_02_22_2021 NBPT Ret. Board FY2022 Appropriation Ltr. (R&F)
- COMM303_02_22_2021 Ltr. From Craig Douglas (P&D)
- COMM305_02_22_2021 Artichoke River Memo and Aerial Photo (P&D)
- APPL021_02_22_2021 Newburyport Sunoco 2nd Hand MV License (L&P)

7. TRANSFERS

8. APPOINTMENTS

- APPT233_02_22_2021 Joe Carper 8 Fruit St. Fruit St. Hist. 03/31/2024
Cmte.
- APPT234_02_22_2021 Cheryl H. Amey 24 Milk St. NBPT Housing 03/31/2026
Auth.

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

Budget and Finance

- ORDR214_10_13_2020 Low Street Purchase w/ P&D & COTW
- ORDR229_12_14_2020 Disposition and Funding for Rehabilitation former Brown School COTW
- COMM281_12_14_2020 Information Request for 57 Low Street COTW
- ORDR235_01_27_2021 Gift from Saltbox Financial \$1K for Trees
- COMM291_02_08_2021 FY2021 Mid-Year Budget Report
- COMM298_02_08_2021 Plum Is Fiscal Implications of Sea Level Rise

General Government

- COMM241_05_11_2020 Charter Review Final Report
- COMM242_05_11_2020 Confirmatory Legal Opinion from KP Law re: Charter Changes
- ORDR240_02_08_2021 Late File COVID-19 Victims and Survivors Memorial Day Resolution

- APPT229_02_08_2021 KP Law 101 Arch St. City Solicitor 02/01/2022
Boston

Planning and Development

- APPT226_02_08_2021 Andrew R. 61 Water Dir. Planning & 01/31/2022
Port Street Dev.
- APPT230_02_08_2021 *Joseph C. 44 Hale Conservation 02/28/2024
Teixeira Street Comm.
- APPT231_02_08_2021 *Walter 43 Lime ZBA 03/31/2026
Chagnon Street
- COMM214_01_13_2020 Ltr from Central Cong Church re: CPA Funding, Historic Pres
- COMM270_10_13_2020 Ltr To DCAM _Jeigerman

**END OF CONSENT AGENDA
REGULAR AGENDA**

9. MAYOR'S UPDATE

10. COMMUNICATIONS

- COMM302_02_22_2021 KP LAW Engagement Ltr
- COMM304_2_22_2021 57 Low St. Site Assessment
- COMM306_02_22_2021 LATE FILE UPDATED Memo for Market Landing Appropriation
- COMM307_02_22_2021 LATE FILE Ltr. from Jane Snow 57 Low St.
- COMM308_02_22_2021 LATE FILE Ltr. From Patricia Temple 57 Low St.
- COMM309_02_22_2021 LATE FILE Ltrs. Plum Island Ordinances

11. SECOND READING APPOINTMENTS

- APPT232_03_01_2024 Keith Hogan 3 Bartlett Trust Fund 03/01/2024
Drive Comm.

12. ORDERS

- ORDR241_02_22_2021 Market Landing Appropriation 150K

13. ORDINANCES

- ODNC069_02_22_2021 Chapter 6.5 Barrier Beach Development definitions
- ODNC070_02_22_2021 Amend to Home Rule Charter
- ODNC071_02_22_2021 Zoning-Amendment-PIOD-2021-2-16 ***Withdrawn**

14. COMMITTEE ITEMS

Ad Hoc Committee on Economic Development

In Committee:

- COMM262_08_31_2020 Gasbarro Ltr re: Awareness

Ad Hoc Committee on Market Landing Park and COTW

In Committee:

- COMM261_08_31_2020 Proposed Timeline, Waterfront
- ORDR227_12_14_2020 Appropriate NRA funds for RFP award

Budget & Finance

In Committee:

- ORDR132_07_15_19 CPC FY2020 Recommended Appropriations (COTW)
Project No. 9 held in committee.
- ORDR136_08_19_19 Fuller Track Phase II Loan Order
- COMM189_09_09_19 CPC Revised Recommendation for FY2020 Appropriations
- ODNC063_09_29_2020 Bond and Transfer Limit
- **ORDR214 10 13 2020 Low Street Purchase w/ P&D & COTW**
- ORDR216_10_13_2020 Supplemental Budget Charter Sec. 2-4 42K
- **ORDR229 12 14 2020 Disposition and Funding for Rehabilitation former Brown School COTW**
- **COMM281 12 14 2020 Information Request for 57 Low Street COTW**
- COMM284_01_27_2021 Ltr. from Susanne Gallagher
- **ORDR235 01 27 2021 Gift from Saltbox Financial \$1K for Trees**
- **COMM291 02 08 2021 FY2021 Mid-Year Budget Report**
- **COMM298 02 08 2021 Plum Is Fiscal Implications of Sea Level Rise**

Education

In Committee:

- COMM240_04_27_2020 Memo re: SOI Submission Info
- COMM273_10_13_2020 Ltr of Non-Support from Mayor on Acts of 1987
- COMM293_02_08_2021 Ltr. From Jane Snow

General Government

In Committee:

- **APPT229 02 08 2021** **KP Law** **101 Arch St.** **City Solicitor** **02/01/2022**
Boston
- **ORDR240 02 08 2021** **Late File COVID-19 Victims and Survivors Memorial Day Resolution**
- **COMM241 05 11 2020** **Charter Review Final Report**
- **COMM242 05 11 2020** **Confirmatory Legal Opinion from KP Law re: Charter Changes**
- **COMM289_02_08_2021** **Newburyport Litigation Status Report for February, 2021 (CONFIDENTIAL)**
COTW

License & Permits

In Committee:

- **ODNC047_1_27_20** **General Ordinance - Short Term Rental Units Rules**
- **COMM229_02_24_2020** **Ltr re: Implementation of Short-Term Rental Ordinance**
- **ODNC067_1_27_2021** **License to Occupy Outdoor Property Ch. 12-1**

Neighborhoods & City Services

In Committee:

- **COMM234_03_30_2020** **Ltr from Newburyport Livable Streets March 11, 2020**
- **COMM285_01_27_2021** **Memorandum from Councillor Christine Wallace**
- **COMM299_02_08_2021** **LATE FILE** **Phillips Dr. Neighborhood Committee Ltr.**

Planning & Development

In Committee:

- **COMM214 01 13 2020** **Ltr from Central Cong Church re: CPA Funding, Historic Pres**
- **COMM215_01_13_2020** **Ltr re: Colby Farm Open Space Beautification**
- **ODNC046_01_27_20** **Zoning Amendment - Short Term Rental Units Definition**
- **COMM231_03_09_2020** **Ltr re: Short-Term Rental Ordinance**
- **ORDR196_07_13_2020** **Open Space and Recreation Plan 2020 (COTW)**
- **ORDR214_10_13_2020** **Low Street Purchase w/ P&D (COTW)**
- **COMM270 10 13 2020** **Ltr To DCAM Jeigerman**
- **ORDR229_12_14_2020** **Disposition and Funding for Rehabilitation former Brown School COTW**
- **COMM281_12_14_2020** **Information Request for 57 Low Street COTW**
- **ODNC068_01_27_2021** **Late File Zoning Amend Sec VI-C re: the # of residential structures per lot**
- **APPT226 02 08 2021** **Andrew R.** **61 Water** **Dir. Planning &** **01/31/2022**
Port **Street** **Dev.**
- **APPT230 02 08 2021** ***Joseph C.** **44 Hale** **Conservation** **02/28/2024**
Teixeira **Street** **Comm.**
- **APPT231 02 08 2021** ***Walter** **43 Lime** **ZBA** **03/31/2026**
Chagnon **Street**
- **COMM297_02_08_2021** **Land Vest Appraisal Property Off Middle St, W.Newbury & Nbpt**
- **ORDR238_02_8_2021** **Conservation Restriction and Easements, ECGB**

Public Safety

In Committee:

- **COMM216_01_13_2020** **Ltr re: Ban the Use of Glyphosate**
- **COMM243_05_11_2020** **Ltr from Jane Rascal re: NMMCD**
- **APPT165_04_13_2020** **Dr. Robin Blair** **18 Market St.** **Board of Health** **4/30/2023**

- ORDR200_07_30_2020 List of Crosswalks Amended
- COMM282_01_27_2021 Ltr from Jim McCarthy re: Sign Proposal
- COMM283_01_27_2021 Ltr from Jim McCarthy-speed limit

Public Utilities

In Committee:

- ORDR230_01_11_2021 Water and Sewer fees
- COMM290_02_08_2021 Falmouth Broadband Feasibility Study (full text in Clerk's office)
- COMM295_02_08_2021 Best Best & Krieger Small Cells Order Annual Meeting
- COMM296_02_08_2021 Natoa FCC Small Wireless Facilities Rules Compliance Guide
- COMM292_02_08_2021 Memo - Electricity Aggregation Program

Rules

In Committee:

- COMM220_01_27_2020 Proposed City Council Rule 9F
- ORDR170_02_24_2020 Amendment Council Rules 2020 (COTW)
- ORDR171_02_24_2020 Amendment to Rule 17B (COTW)
- ORDR239_02_8_2021 Council Rule 7 and 10B

15. EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING STRATEGY WITH RESPECT TO LITIGATION PUSUANT TO G.L. 30A S. 21 (3)

16. GOOD OF THE ORDER

17. ADJOURNMENT

CONSENT AGENDA

MEETING MINUTES

**For Remote
February 8, 2021
7:30PM
City Council Meeting**

Zoom Meeting Details:

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/89752421490>

Or iPhone one-tap :

US: +13017158592,,89752421490# or +13126266799,,89752421490#

Or Telephone:

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

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833

Webinar ID: 897 5242 1490

1. CALL TO ORDER

The City Council President, Jared J. Eigerman called the meeting to order at 7:30 pm and asked the City Clerk, Richard B. Jones to call the roll. The following Councillors answered present, Khan, Lane, McCauley, Connell, Shand, Tontar, Vogel, Wallace, Zeid, and Eigerman. Ten present using Zoom as a platform. Councillor Devlin was absent.(7:51pm)

2. LATE FILE ITEMS

- COMM298_02_08_2021 Plum Is Fiscal Implications of Sea Level Rise
- COMM299_02_08_2021 Phillips Drive Neighborhood Committee Ltr.
- ORDR240_02_08_2021 COVID-19 Victims and Survivors Memorial Day Resolution
Motion to waive the rules and accept the Late Filesby Councillor Zeid, seconded by Councillor Connell.
Roll call vote. 10 yes, 1 absent (Devlin). Motion passes.

3. PUBLIC COMMENT

Molly Ettenborough, 35 Toppans Lane
Michael Strauss, 56 Federal Street
Colin Sarff, 23 Charter Street
Jennie Donahue, 18 Cherry Street

4. MAYOR'S COMMENT

**CONSENT
AGENDA**

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5. APPROVAL OF MINUTES

- January 23, 2021 (Approve)
- January 27, 2021 (Approve)

6. COMMUNICATIONS

- COMM290_02_08_2021 Falmouth Broadband Feasibility Study (full text in Clerk's office) (PU)
Councillor Tontor requested COMM290_02_08_2021 be removed from Consent Agenda

- COMM291_02_08_2021 FY2021 Mid-Year Budget Report (B&F)
- COMM292_02_08_2021 Memo - Electricity Aggregation Program (PU)
- COMM293_02_08_2021 Ltr. From Jane Snow (EC)
- COMM295_02_08_2021 Best Best & Krieger Small Cells Order Annual Meeting (PU)
- Councillor Tontor requested COMM295_02_08_2021 be removed from Consent Agenda
- COMM296_02_08_2021 Natoa FCC Small Wireless Facilities Rules Compliance Guide (PU)
- Councillor Tontor requested COMM296_02_08_2021 be removed from Consent Agenda

7. TRANSFERS

none

8. APPOINTMENTS

Confirmatory Appointment

- APPT226_02_08_2021 Andrew R. Port 61 Water Street Dir. Planning & Dev. 01/31/2022

1st Reading

- APPT229_02_08_2021 KP Law 101 Arch St. Boston City Solicitor 02/01/2022

Councillor Zeid requested APPT226_02_08_2021 and APPT229_02_08_2021 be removed from Consent Agenda

Re-Appointment

**Planning & Development*

- APPT230_02_08_2021 *Joseph C. Teixeira 44 Hale Street Conservation Comm. 02/28/2024
- APPT231_02_08_2021 *Walter Chagnon 43 Lime Street ZBA 03/31/2026
- APPT232_03_01_2024 Keith Hogan 3 Bartlett Drive Trust Fund Comm. 03/01/2024

Councillor Eigerman requested APPT231_02_08_2021 be removed from Consent Agenda

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

Budget and Finance

- ORDR228_01_11_2021 Central Cong Church Amended Award to 50K
- COMM264_09_29_2020 Colleen Turner Letter

General Government

- ORDR237_01_25_2021 Amended Resolution re: January 6, 2021

Planning and Development

- APPT201_12_14_2020 Jennifer Blanchet 4 Island Ln., Newbury Zoning Admin. 12/31/2022
- APPT208_01_11_2021 Marc Cendron 91 High St. Historical Comm. 01/31/2023
- APPT210_01_11_2021 Michael Sullivan 41 Summit Pl. Waterfront Trust 01/01/2025
- APPT216_01/11/2021 Carole Wagan 9 Olive St. Conservation Comm. 01/31/2023
- APPT215_01_11_2021 Robert Ciampitti 552 Merrimac St. ZBA 02/01/2026
- APPT217_01_11_2021 Cornelia Walsh 102 Water St. Conservation Comm. 01/31/2023
- APPT220_01_27_2021 * Daniel Warchol 47 Plummer Ave Conservation Comm. 2/28/2024
- ORDR234_01_27_2021 Preservation Restriction 190 High Street

END OF CONSENT AGENDA

Councillor Devlin present 7:51 pm

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

REGULAR AGENDA

9. MAYOR'S UPDATE

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

10. Presentation on Bartlett Mall (water quality) by Kim Turner, Parks Commission
Sponsored by Councillor Shand

11. COMMUNICATIONS

- COMM286_02_08_2021 Parliamentary Procedure -- Britannica Online Encyclopedia
- COMM287_02_08_2021 Deliberative assembly - Wikipedia
- COMM288_02_08_2021 State Library of Massachusetts Parliamentary Procedure
Motion receive and file collectively by Councillor Zeid, seconded by Councillor Vogel. Roll call vote. 11 yes. Motion passes.
- COMM289_02_08_2021 Newburyport Litigation Status Report for February, 2021 (**CONFIDENTIAL**)
Councillor Devlin recused. Motion to receive and file by Councillor Connell, seconded by Councillor Vogel. Motion withdrawn by Councillors Connell and Vogel. Motion to refer to General Government and COTW by Councillor Khan, seconded by Councillor Connell. Roll call vote. 10 yes, 1 recused (Devlin). Motion passes.
Councillor Devlin returned.
- COMM294_02_08_2021 Open Meeting Rules Opinion
Motion to receive and file by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.
- COMM297_02_08_2021 Land Vest Appraisal Property Off Middle St, W.Newbury & Nbpt
Motion to refer to Planning & Development by Councillor SHand, seconded by Councillor Zeid. Roll call vote. 11 yes. Motion passes.
- COMM298_02_08_2021LATE FILE Plum Is Fiscal Implications of Sea Level Rise
Motion to refer to Budget & Finance by Councillor Zeid, seconded by Councillor Vogel. Roll call vote. 11 yes. Motion passes.
- COMM299_02_08_2021Late File Phillips Drive Neighborhood Committee Ltr.
Motion to refer to Neighborhood & City Services by Councillor Zeid, seconded by Councillor Vogel. Roll call vote. 11 yes. Motion passes.

12. FIRST READING APPOINTMENTS

- APPT231_02_08_2021 Walter Chagnon 43 Lime St. ZBA 03/31/2026
Councillors Devlin and Lane recused. Motion to approve on 1st reading by Councillor Zeid, seconded by Councillor Shand. Roll call vote. 9 yes, 2 recused (Devlin, Lane). Motion passes.
- APPT226_02_08_2021 Andrew R. Port 61 Water St. Dir. P&D 01/31/2021
Councillors Devlin and Lane recused. Motion to approve on 1st reading by Councillor Zeid, seconded by Councillor Shand. Roll call vote. 9 yes, 2 recused (Devlin, Lane). Motion passes.
Councillor Devlin and Lane returned.
- APPT229_02_08_2021 KP Law 101 Arch St. City Solicitor 02/01/2022
Boston

Motion to refer to General Government and COTW by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

13. SECOND READING APPOINTMENTS

- APPT218_01_27_2021 Colin Sarff 23 Charter Street Comm. On Disabilities 02/28/2024
 - APPT219_01_27_2021 Charles Griffin 3 Vernon Street CPC 02/01/2024
 - APPT227_01_27_2021 Glenn Richards 6 Kent Street CPC 02/01/2022
 - APPT221_01_27_2021 Paula Burke 23 Blueberry Lane Council on Aging 02/28/2024
Topsfield
- Re-Appointment**
- APPT224_01_27_2021 Mark Rosen 20 Fair Street CPC 02/01/2024
 - APPT225_01_27_2021 Michael Dissette 44 Jefferson Street CPC 03/01/2024

Motion to approve 2nd reading appointments collectively by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

14. ORDERS

- ORDR238_02_8_2021 Conservation Restriction and Easements, ECGB
Motion to refer Planning & Development by Councillor Shand, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.
- ORDR239_02_8_2021 Council Rule 7 and 10B
Motion to refer to Rules by Councillor Khan, seconded by Councillor Vogel. Roll call vote. 11 yes, motion passes.
- ORDR240_02_08_2021 Late File COVID-19 Victims and Survivors Memorial Day Resolution
Motion to refer to General Government by Councillor Connell, seconded by Councillor Devlin. Roll call vote. 11 yes, Motion passes.

15. ORDINANCES

16. COMMITTEE ITEMS

Ad Hoc Committee on Economic Development

In Committee:

- COMM262_08_31_2020 Gasbarro Ltr re: Awareness

Ad Hoc Committee on Waterfront and COTW

In Committee:

- COMM261_08_31_2020 Proposed Timeline, Waterfront
- ORDR227_12_14_2020 Appropriate NRA funds for RFP award

Budget & Finance

In Committee:

- ORDR132_07_15_19 CPC FY2020 Recommended Appropriations (COTW)
Project No. 9 held in committee.
- ORDR136_08_19_19 Fuller Track Phase II Loan Order
- COMM189_09_09_19 CPC Revised Recommendation for FY2020 Appropriations
- **COMM264 09 29 2020 Colleen Turner Letter**
Motion to receive and file by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.
- ODNC063_09_29_2020 Bond and Transfer Limit
- ORDR214_10_13_2020 Low Street Purchase w/ P&D & COTW
- ORDR216_10_13_2020 Supplemental Budget Charter Sec. 2-4 42K

- ORDR229_12_14_2020 Disposition and Funding for Rehabilitation former Brown School COTW
- COMM281_12_14_2020 Information Request for 57 Low Street COTW
- **ORDR228 01 11 2021 Central Cong Church Amended Award to 50K**
Motion to approve by Councillor Zeid, seconded by Councillor Khan. Roll call vote. 10 yes, 1 no (Connell). Motion passes.
- COMM284_01_27_2021 Ltr. from Susanne Gallagher
- ORDR235_01_27_2021 Gift from Saltbox Financial \$1K for Trees

Education

In Committee:

- COMM240_04_27_2020 Memo re: SOI Submission Info
- COMM273_10_13_2020 Ltr of Non-Support from Mayor on Acts of 1987

General Government

In Committee:

- COMM241_05_11_2020 Charter Review Final Report
- COMM242_05_11_2020 Confirmatory Legal Opinion from KP Law re: Charter Changes
- **ORDR237 01 25 2021 Resolution re: January 6, 2021 (COTW)**
Motion to approve as amended by Councillor Devlin, seconded by Councillor McCauley . Roll call vote. 11 yes. Motion passes.

License & Permits

In Committee:

- ODNC047_1_27_20 General Ordinance - Short Term Rental Units Rules
- COMM229_02_24_2020 Ltr re: Implementation of Short-Term Rental Ordinance
- ODNC067_1_27_2021 License to Occupy Outdoor Property Ch. 12-1

Neighborhoods & City Services

In Committee:

- COMM234_03_30_2020 Ltr from Newburyport Livable Streets March 11, 2020
- COMM285_01_27_2021 Memorandum from Councillor Christine Wallace

Planning & Development

In Committee:

- COMM214_01_13_2020 Ltr from Central Cong Church re: CPA Funding, Historic Pres
- COMM215_01_13_2020 Ltr re: Colby Farm Open Space Beautification
- ODNC046_1_27_20 Zoning Amendment - Short Term Rental Units Definition
- COMM231_03_09_2020 Ltr re: Short-Term Rental Ordinance
- ORDR196_07_13_2020 Open Space and Recreation Plan 2020 (COTW)
- ORDR214_10_13_2020 Low Street Purchase w/ P&D (COTW)
- COMM270_10_13_2020 Ltr To DCAM _Jeigerman
- ORDR229_12_14_2020 Disposition and Funding for Rehabilitation former Brown School COTW
- **APPT201 12 14 2020 Jennifer Blanchet 4 Island Ln., Newbury Zoning Admin. 12/31/2022**
- COMM281_12_14_2020 Information Request for 57 Low Street COTW
- **APPT210 01 11 2021 Michael Sullivan 41 Summit Pl. Waterfront Trust 01/01/2025**
- **APPT216 01 11 2021 Carole Wagan 9 Olive St. Conservation Comm. 01/31/2023**
- **APPT217 01 11 2021 Cornelia Walsh 102 Water St. Conservation Comm. 01/31/2023**
- **APPT215 01 11 2021 Robert Ciampitti 552 Merrimac St. ZBA 02/01/2026**
- **APPT208 01 11 2021 Marc Cendron 91 High St. Historical Comm. 01/31/2023**
- **APPT220 01 27 2021 * Daniel Warchol 47 Plummer Ave Conservation Comm. 2/28/2024**
- **APPT222 01 27 2021 * Gregory Benik 15 Woodland St. ZBA 2/28/2026**
- **APPT228 01 27 2021 * Ken Swanton 10 Tremont St. ZBA 2/28/2026**

- APPT223 01 27 2021 *Stephen DeLisle 195 High St. ZBA 5/31/2025

Motion to receive and file APPT217_01_11_2021 by Councillor Shand, seconded by Councillor Zeid. Roll call vote. 11 yes. Motion passes.

Councillors Devlin and Lane recused.

Motion to remove APPT201_02_08_2021, APPT215_01_11_2021, APPT222_01_27_2021, APPT223_01_27_2021, and APPT228_01_27_2021 collectively by Councillor Shand, seconded by Councillor Zeid. Roll call vote. 9 yes, 2 recused (Devlin, Lane). Motion passes.

Councillors Devlin and Lane returned.

Motion to approve APPT210_01_11_2021 by Councillor Shand, seconded by Councillor Vogel. Roll call vote. 11 yes. Motion passes.

Motion to approve 216_01_11_2021 by Councillor Shand, seconded by Councillor Vogel. Roll call vote. 11 yes. Motion passes.

Motion to approve 208_01_11_2021 by Councillor Shand, seconded by Councillor Zeid. Roll call vote. 11 yes. Motion passes.

Motion to approve 220_01_27_2021 by Councillor Shand, seconded by Councillor Wallace. Roll call vote. 11 yes. Motion passes.

- ORDR234 01 27 2021 Preservation Restriction 190 High Street

Motion to approve by Councillor Shand, seconded by Councillor Zeid. Roll call vote. 11 yes. Motion Passes.

- ODNC068_1_27_2021 Late File Zoning Amend Sec VI-C re: the # of residential structures per lot

Public Safety

In Committee:

- COMM216_01_13_2020 Ltr re: Ban the Use of Glyphosate
- COMM243_05_11_2020 Ltr from Jane Rascal re: NMMCD
- APPT165_04_13_2020 Dr. Robin Blair 18 Market St. Board of Health 4/30/2023
- ORDR200_07_30_2020 List of Crosswalks Amended
- COMM282_01_27_2021 Ltr from Jim McCarthy re: Sign Proposal
- COMM283_01_27_2021 Ltr from Jim McCarthy-speed limit

Public Utilities

In Committee:

- ORDR230_1_11_2021 Water and Sewer fees

Rules

In Committee:

- COMM220_01_27_2020 Proposed City Council Rule 9F
- ORDR170_02_24_2020 Amendment Council Rules 2020 (COTW)
- ORDR171_02_24_2020 Amendment to Rule 17B (COTW)

17. GOOD OF THE ORDER

Councillor Connell would like to address the Post Office drop box that was relocated from Green Street to Pleasant Street. Councillor Tontar was appointment to the MMA Fiscal Committee.

18. ADJOURNMENT

Motion to adjourn by Councillor Tontar, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.
9:10pm

COMMUNICATIONS

Bette Lischke
187 High Street
Newburyport, MA 01950

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2021 FEB -9 PM 1:10

February 9, 2021

Mayor Donna Holaday
Members of the Newburyport City Council
City Hall
Newburyport, MA 01950

Dear Mayor Holladay,

Both of my daughters own houses on the north end of Plum Island, Kirsten on the Basin, and Lela, as you know from current events, where the river meets the hungry sea at Reservation Terrace.

After the blizzard of 1978, a protective wall of two thousand pound cement blocks was laid across the dunes adjacent to Reservation Terrace. That wall was breeched last March. In October, the Newburyport DPW placed five hundred plastic bags of sand against the cement blocks. Unfortunately, tidal water pooled around the bags, dislodging the decades old blocks. By December eighteenth, the previously seaworthy cement blocks looked like crooked teeth. Today, the blocks are cockeyed points poking out of the sand, and there is nothing between the houses and the waves. Nothing. Not even a hill. Flat as can be.

As Lela's mother, I am very aware that high tide is lapping at Lela's and Mark's door, twice daily. Twice daily! Constantly threatening, intermittently inundating with sand and detritus, while they continue with full-time jobs, paying taxes and mortgage, insurance and utilities, buying their groceries, and walking their dogs (when not flooded)... all the time striving to keep a house under their feet.

Half of the road width has collapsed, putting Plum Island's fairly recent water and sewer systems at risk.

I beg of you, Mayor, please, install a wall of steel pilings such as we have at Newburyport's Waterfront Park.

I thank you for your concern and immediate attention to this matter.

Very truly yours,
Bette Lischke

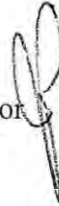
MEMORANDUM

TO: Newburyport Retirement Board

FROM: John W. Parsons, Esq., Executive Director

RE: Appropriation for Fiscal Year 2022

DATE: February 8, 2021



Required Fiscal Year 2022 Appropriation: **\$5,656,937**

This Commission is hereby furnishing you with the amount to be appropriated for your retirement system for Fiscal Year 2022 which commences July 1, 2021.

Attached please find summary information based on the present funding schedule for your system and the portion of the Fiscal Year 2022 appropriation to be paid by each of the governmental units within your system.

The current schedule is due to be updated by Fiscal Year 2023.

If you have any questions, please contact PERAC's Actuary, John Boorack, at (617) 666-4446 Extension 935.

JWP/jfb
Attachments

cc: Office of the Mayor
City Council
c/o City Clerk

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Newburyport Retirement Board

Projected Appropriations

Fiscal Year 2022 - July 1, 2021 to June 30, 2022

Aggregate amount of appropriation: **\$5,656,937**

Fiscal Year	Estimated Cost of Benefits	Funding Schedule (Excluding ERI)	ERI	Total Appropriation	Pension Fund Allocation	Pension Reserve Fund Allocation	Transfer From PRF to PF
FY 2022	\$6,483,971	\$5,656,937	\$0	\$5,656,937	\$5,656,937	\$0	\$827,034
FY 2023	\$6,769,781	\$5,939,784	\$0	\$5,939,784	\$5,939,784	\$0	\$829,997
FY 2024	\$7,068,374	\$6,236,773	\$0	\$6,236,773	\$6,236,773	\$0	\$831,601
FY 2025	\$7,380,320	\$6,548,612	\$0	\$6,548,612	\$6,548,612	\$0	\$831,708
FY 2026	\$7,706,217	\$6,876,042	\$0	\$6,876,042	\$6,876,042	\$0	\$830,175

The Total Appropriation column shown above is in accordance with your current funding schedule and the scheduled payment date(s) in that schedule. Whenever payments are made after the scheduled date(s), the total appropriation should be revised to reflect interest at the rate assumed in the most recent actuarial valuation. Payments should be made before the end of the fiscal year.

For illustration, we have shown the amount to be transferred from the Pension Reserve Fund to the Pension Fund to meet the estimated Cost of Benefits for each year. If there are sufficient assets in the Pension Fund to meet the Cost of Benefits, this transfer is optional.

Newburyport Retirement Board
Appropriation by Governmental Unit

Fiscal Year 2022 - July 1, 2021 to June 30, 2022

Aggregate amount of appropriation: **\$5,656,937**

UNIT	Percent of Aggregate Amount	Funding Schedule (excluding ERI)	ERI	Total Appropriation
City of Newburyport	97.32%	\$5,505,331	\$0	\$5,505,331
Newburyport Housing Authority	2.68%	\$151,606	\$0	\$151,606
UNIT TOTAL	100%	\$5,656,937	\$ 0	\$5,656,937

The Total Appropriation column shown above is in accordance with your current funding schedule and the scheduled payment date(s) in that schedule. Whenever payments are made after the scheduled date(s), the total appropriation should be revised to reflect interest at the rate assumed in the most recent actuarial valuation. Payments should be made before the end of the fiscal year.

From: Craig Douglas [cdouglas.architects@gmail.com]
Sent: Thursday, February 11, 2021 4:38 PM
To: Heather Shand
Subject: [Ext]Environmental Restrictions Statement

external e-mail use caution opening

Dear Councillor Shand,

It is important to clarify a few items related to environmental restrictions as they pertain to 57 Low Street.

Article 97 is not a vehicle to initiate environmental restrictions – it is an Article of MA Law to mandate protection of vehicles of conservation. It is Intended to be a legislative ‘check’ to ensure that lands acquired for conservation purposes are not converted to other inconsistent uses.

One of these vehicles is a Conservation Restriction (CR) Acquisition. In the MA Conservation Restriction Handbook it is defined as follows: a conservation restriction...is a means...to limit the use of land in order to protect...the natural, scenic or open condition of the land. It is not intended to be initiated to protect wetlands. It is a permanent restriction. It is initiated by the City Council.

The restriction to protect wetlands is call a “Wetlands Restriction” (WR) and is defined as follows: “The restriction orders provide added protection for selected wetlands by prohibiting certain activities in advance of any work being proposed.” It is also a permanent restriction. It is initiated by the Conservation Commission (Con Com). It is rarely used because Con Com is already legally obligated under The Wetlands Protection Act to oversee work with 100 feet of any wetlands. Work within these areas require permitting through Con Com and review at both the state and local level.

As the many people who have developed properties containing wetlands over the years can attest, Con Com’s permitting process is rigorous and robust. It often takes months to complete permitting and years to achieve final certification. Most importantly, Con Com’s permitting process is very technical and not in any way controversial. It is also exceedingly common in MA.

I ask that the Councillors leave the process of wetland conservation and protection to the experts at the Conservation Commission and instead listen and let their opinion inform the City Council’s work at hand – Should City Council appropriate \$220k for the purchase of 57 Low Street?

Regards,
Craig Douglas

2 Moseley Ave
Ward 4



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

DONNA D. HOLADAY
 MAYOR

MEMORANDUM

TO: NEWBURYPORT CITY COUNCIL

FROM: TOM CUSICK, WATER TREATMENT SUPERINTENDENT, & GEORDIE VINING, SENIOR PROJECT MANAGER

CC: DONNA HOLADAY, MATT COOGAN, ANDY PORT, KATELYN SULLIVAN

SUBJECT: ARTICHOKE RIVER WOODS WATERSHED PROTECTION PROJECT: CPA FUNDED CONSERVATION RESTRICTION

DATE: 2/16/2021

We are writing to request the City Council's approval of the Conservation Restriction that will permanently protect 38 acres of woodland and watershed land adjacent to Newburyport's Artichoke Reservoir from development. The closing on the property must occur by the end of March, 2021.

The City Council approved CPA funding of \$225,000 on 6/29/20 in support of this project along with a \$300,000 reimbursable state Drinking Water Supply Protection Grant. The Artichoke River Woods property is located directly adjacent to other watershed land owned by the City of Newburyport. The City's interconnected surface water reservoirs provide 86% of Newburyport's drinking water, and over 1,000 feet of this property is adjacent to the Artichoke Reservoir. The majority of the property is within MassDEP's Surface Water Supply Protection Zone A and the rest is in Zone B. The property is across from the intake that pumps all the water from the interconnected surface reservoirs to the City's Water Treatment Plant.

The City has negotiated the language and terms of the Conservation Restriction during the past few months with multiple stakeholders including the MA Department of Environmental Protection, the MA Department of Conservation and Recreation (DCR), the MA Executive Office of Environmental Affairs Division of Conservation Services (EEA), the Town of West Newbury, and the Essex County Greenbelt Association. All Conservation Restrictions in Massachusetts must be approved by the Commonwealth and structured in a typical format, including a listing of goals and purposes, blanket prohibitions against development, and then the reserved rights. The City's Water & Sewer Commission will be the primary grantee of the Conservation Restriction, which will also be co-held with the Town of West Newbury and DCR. The restricted fee simple interest will be owned by Greenbelt who will manage the property for open space, watershed protection, habitat, and passive public recreation. The Town of West Newbury is providing \$175,000 toward the CR acquisition, DCR is contributing \$175,000 toward the CR acquisition, and Greenbelt is providing \$110,000 toward the fee simple acquisition plus covering all transaction and due diligence costs. This is a bargain (below fair market value) sale based on appraised value. Please note that the Conservation Restriction has been reviewed and approved by the City Solicitor Kopelman & Paige. The Water & Sewer Commission is voting on the Conservation Restriction at their 2/17/21 meeting. The CR is currently in final review by EEA, and approval to proceed with signatures is expected imminently.

Materials previously submitted to the City Council at the 2/8/21 meeting include:

- The Conservation Restriction for the property;
- The Plan of Land for the property by Donohoe Survey, Inc., dated 1/22/21;
- Supplemental Letter Updating Appraisal as of 12/4/20;
- Drinking Water Supply Protection grant information; and
- Locus and watershed maps.

Thank you for your support of this important public project.



RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

THE COMMONWEALTH OF MASSACHUSETTS

OF

**APPLICATION FOR A LICENSE TO BUY, SELL, EXCHANGE
OR ASSEMBLE SECOND HAND MOTOR VEHICLES
OR PARTS THEREOF**

I, the undersigned, duly authorized by the concern herein mentioned, hereby apply for a _____ class license, to Buy, Sell, Exchange or Assemble second hand motor vehicles or parts thereof, in accordance with the provisions of Chapter 140 of the General Laws.

1. What is the name of the concern? GNFD inc DBA Newburyport
Sunoco

Business address of concern. No. 59 Storey Avenue St.
Newburyport, MA. City — Town.

2. Is the above concern an individual, co-partnership, an association or a corporation? _____
Corporation

3. If an individual, state full name and residential address.

4. If a co-partnership, state full names and residential addresses of the persons composing it.

5. If an association or a corporation, state full names and residential addresses of the principal officers.

President George Daaboul 44 Clipper Way, Newburyport MA

Secretary Joseph Fares 30 Fletcher Rd, Windham NH 03087

Treasurer Joseph Fares 30 Fletcher Rd, Windham NH 03087

6. Are you engaged principally in the business of buying, selling or exchanging motor vehicles? NO

If so, is your principal business the sale of new motor vehicles? NO

Is your principal business the buying and selling of second hand motor vehicles? NO

Is your principal business that of a motor vehicle junk dealer? NO

7. Give a complete description of all the premises to be used for the purpose of carrying on the business.

Gas station, Car Repairs, state Inspection

8. Are you a recognized agent of a motor vehicle manufacturer? No
(Yes or No)

If so, state name of manufacturer _____

9. Have you a signed contract as required by Section 58, Class 1? _____
(Yes or No)

10. Have you ever applied for a license to deal in second hand motor vehicles or parts thereof? yes
(Yes or No)

If so, in what city — town Newburyport

Did you receive a license? yes For what year? More than 10 years
(Yes or No)

11. Has any license issued to you in Massachusetts or any other state to deal in motor vehicles or parts thereof ever been suspended or revoked? No
(Yes or No)

Sign your name in full Joseph Lane
(Duly authorized to represent the concern herein mentioned)

Residence 30 Fletcher Rd
WINDHAM, NH 03087

IMPORTANT

EVERY QUESTION MUST BE ANSWERED WITH FULL INFORMATION, AND FALSE STATEMENTS HEREIN MAY RESULT IN THE REJECTION OF YOUR APPLICATION OR THE SUBSEQUENT REVOCATION OF YOUR LICENSE IF ISSUED.

NOTE: If the applicant has not held a license in the year prior to this application, he must file a duplicate of the application with the registrar. (See Sec. 59)

APPLICANT WILL NOT FILL THE FOLLOWING BLANKS

Application after investigation _____
(Approved or Disapproved)

License No. _____ granted _____ Fee \$ _____

Signed _____

CHAPTER 140 OF THE GENERAL LAWS, TER. ED., WITH AMENDMENTS THERETO (EXTRACT)

SECTION 57. No person, except one whose principal business is the manufacture and sale of new motor vehicles but who incidentally acquires and sells second hand vehicles, or a person whose principal business is financing the purchase of or insuring motor vehicles but who incidentally acquires and sells second hand vehicles, shall engage in the business of buying, selling, exchanging or assembling second hand motor vehicles or parts thereof without securing a license as provided in section fifty-nine. This section shall apply to any person engaged in the business of conducting auctions for the sale of motor vehicles.

SECTION 58. Licenses granted under the following section shall be classified as follows:

Class 1. Any person who is a recognized agent of a motor vehicle manufacturer or a seller of motor vehicles made by such manufacturer whose authority to sell the same is created by a written contract with such manufacturer or with some person authorized in writing by such manufacturer to enter into such contract, and whose principal business is the sale of new motor vehicles, the purchase and sale of second hand motor vehicles being incidental or secondary thereto, may be granted an agent's or a seller's license; provided, that with respect to second hand motor vehicles purchased for the purpose of sale or exchange and not taken in trade for new motor vehicles, such dealer shall be subject to all provisions of this chapter and of rules and regulations made in accordance therewith applicable to holders of licenses of class 2.

Class 2. Any person whose principal business is the buying or selling of second hand motor vehicles may be granted a used car dealer's license.

Class 3. Any person whose principal business is the buying of second hand motor vehicles for the purpose of remodeling, taking apart or rebuilding the same, or the buying or selling of parts of second hand motor vehicles or tires, or the assembling of second hand motor vehicle parts, may be granted a motor vehicle junk license.

SECTION 59. The police commissioner in Boston and the licensing authorities in other cities and towns may grant licenses under this section which will expire on January first following the date of issue unless sooner revoked. The fees for the licenses shall be fixed by the licensing board or officer, but in no case shall exceed \$100. dollars. Application for license shall be made in such form as shall be approved by the registrar of motor vehicles, in sections fifty-nine to sixty-six, inclusive, called the registrar, and if the applicant has not held a license in the year prior to such application, such application shall be made in duplicate, which duplicate shall be filed with the registrar. No such license shall be granted unless the licensing board or officer is satisfied from an investigation of the facts stated in the application and any other information which they may require of the applicant, that he is a proper person to engage in the business specified in section fifty-eight in the classifications for which he has applied, that said business is or will be his principal business, and that he has available a place of business suitable for the purpose. The license shall specify all the premises to be occupied by the licensee for the purpose of carrying on the licensed business. Permits for a change of situation of the licensed premises or for addition thereto may be granted at any time by the licensing board or officer in writing, a copy of which shall be attached to the license. Cities and towns by ordinance or by-law may regulate the situation of the premises of licensees within class 3 as defined in section fifty-eight, and all licenses and permits issued hereunder to persons within said class 3 shall be subject to the provisions of ordinances and by-laws which are hereby authorized to be made. No license or permit shall be issued hereunder to a person within said class 3 until after a hearing, of which seven days' notice shall have been given to the owners of property abutting on the premises where such license or permit is proposed to be exercised. All licenses granted under this section shall be revoked by the licensing board or officer if it appears, after hearing, that the licensee is not complying with sections fifty-seven to sixty-nine, inclusive, or the rules and regulations made thereunder; and no new license shall be granted to such person thereafter, nor to any person for use on the same premises, without the approval of the registrar. The hearing may be dispensed with if the registrar notifies the licensing board or officer that a licensee is not so complying. Any person aggrieved by any action of the licensing board or officer refusing to grant, or revoking a license for any cause may, within ten days after such action, appeal therefrom to any justice of the superior court in the county in which the premises sought to be occupied under the license or permit applied for are located. The justice shall, after such notice to the parties as he deems reasonable, give a summary hearing on such appeal, and shall have jurisdiction in equity to review all questions of fact or law and may affirm or reverse the decision of the board or officer and may make any appropriate decree. The decision of the justice shall be final.

APPLICATION FOR A LICENSE TO BUY, SELL,
EXCHANGE OR ASSEMBLE SECOND HAND
MOTOR VEHICLES OR PARTS THEREOF.

APPLICANT WILL NOT FILL THE FOLLOWING BLANKS

Application No. _____

Class _____ License No. _____

Name _____

St. and No. _____

City — Town _____

Date Issued _____

Remarks _____

SELECTMEN

MAY 16 2004

R
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Memorandum

To: Municipal Licensing Authorities of Motor Vehicle Dealers
From: William E. McVey, Deputy General Counsel
Date: May 2004
Re: Issues Relating to Class 2 Dealers under G.L. 140, Section 58

1. Purpose

The primary purpose of this Memorandum is to provide information to Cities and Towns about the amendments relative to Class 2 dealers that were made to G.L. c. 140, §58 by Chapter 422 of the Acts of 2002 (a copy of which is enclosed). The Legislature amended Section 58 to require Class 2 dealers to post and maintain a bond (or, if permitted, equivalent proof of financial responsibility, e.g., certificate of deposit or letter of credit) with the municipal licensing authority in the amount of \$25,000. The amendments also authorize the licensing of two additional types of businesses engaged in used vehicle sales. The amendment became effective almost a year ago, on March 24, 2003, but some municipalities may be unaware of it and some other issues remain to be clarified.

2. Bond Requirement

The bond requirement is only applicable to Class 2 dealers. It is not applicable to a Class 1 dealer who buys and sells used vehicles and it is not applicable to a Class 3 dealer who sells used vehicles. The bond is for the benefit of a person who purchases a vehicle from the Class 2 licensee and suffers a financial loss. The list of intended beneficiaries is contained within the Act. The bonding requirement modifies the municipal licensing process for Class 2 dealers (and affects the dealer's ability to retain the license). It also affects the RMV, since the agency is prohibited from knowingly issuing or renewing Dealer Plates if it becomes aware that a Class 2 dealer lacks the legally required bond. The RMV will revoke the General Registration and Dealer Plates when it becomes aware the dealer does not have a bond or when it is informed by a municipality that it has revoked a Class 2 license. The RMV has become aware that some municipalities are not enforcing the bond requirement and have been licensing Class 2 dealers without a bond. **A municipality that fails to enforce the bond requirement faces potential liability from claimants under the bond.**

3. Dealers Subject to Bond Requirement

All Class 2 dealer-licensees (no exceptions) renewing or obtaining a new license in 2004 (and in future years) are subject to the bonding requirement of \$25,000. This is true even if the dealer is not selling vehicles covered by the warranty requirements of G.L. c.90, §7N ¼. G.L. c.140, §58 (c)(1) states:

The person shall obtain a bond, or equivalent proof of financial responsibility as described in paragraph (5), and continue in effect a surety bond or other equivalent proof of financial responsibility satisfactory to the municipal licensing authority in the amount of \$25,000 executed by a surety company authorized by the insurance department to transact business in the commonwealth.

The law prohibits a city or town licensing authority from issuing or renewing a Class 2 license unless it is satisfied that a bond or the equivalent meeting the requirements of the law is in effect during the term under which the license shall be issued or renewed. Note also that if a dealer has more than one location in a City or Town and goes by a different name at the other location(s), the dealer needs a separate bond for each location

at which it uses a different name. If a dealer has locations in more than one City or Town, separate bonds must be obtained for each municipality.

4. **Bond Issue Clarifications**

Two issues needing clarification have recently been raised as to the bond/equivalent requirement.

(a) **Certificates of Deposit and Letters of Credit:** The first has to do with the place where certificates of deposit or irrevocable letters of credit may be deposited. Section 58 (c)(1) states, in part:

In lieu of the bond required by this section, the municipal licensing authority may allow the dealer to deposit collateral in the form of a certificate of deposit or irrevocable letter of credit, as authorized by the banking laws of the commonwealth.... The collateral may be deposited with or executed through any authorized state depository designated by the commissioner....

The statute does not define "authorized state depository" but the Massachusetts Commissioner of Banks has issued an opinion to the Registrar, dated March 5, 2004, stating that "the definition covers any state or federally chartered bank or credit union with a banking office in the Commonwealth which has federal deposit insurance." The Commissioner has recommended that if a "Certificate of Deposit" is used, it should be titled:

"Commonwealth of Massachusetts, name of municipality, In Trust for (dealer) under Massachusetts General Laws chapter 140, section 58"

The Commissioner also recommends that an assignment should be executed, and that a municipality wishing to do so should contact the State Treasurer's Office to discuss the mechanics of that option. The Treasurer's Office is familiar with Certificates of Deposit and other alternative collateral since that office holds such collateral for certain licensees of the Commissioner of Banks.

(b) **Filing the Bond with Licensing Authorities:** The second issue relates to the manner in which the bond should be filed and filled out. The original of the bond needs to be filed with the City or Town when an initial Class 2 license is issued. On renewal, the licensing authority should insist on either a new original bond with power of attorney attached or an original continuation certificate showing that the existing bond is valid through the end of the next license period. Bonds may be written for more than one year so a municipality should be sure the bond covers the whole period during which the Class 2 license will be in effect. The amended statute does not specify the manner in which the bond should be filled out. However, a bond should clearly identify the parties and the purpose of the bond. For example:

Town of Willingboro, as obligee for the benefit of a person who purchases a vehicle from (name of dealer) and suffers a loss as defined by G.L. 140, Section 58.

5. **Class 2 Licensee Definition Expanded**

The definition of a Class 2 dealer was expanded to include two additional categories of used vehicle sellers that were not previously required to obtain a Class 2 license. A Class 2 licensee had always been defined as a person whose principal business is the buying or selling of second hand motor vehicles. The amended law allows a license to be issued even though it is not the applicant's principal business or he/she is not actually a seller. G.L. c. 140, §58 (c) now reads, in part:

(c) Class 2. A person whose principal business is the buying or selling of second hand motor vehicles, a person who purchases and displays second hand motor vehicles for resale in retail transactions, and any other person who displays second hand motor vehicles not owned by him pursuant to an agreement in which he receives compensation, whether solely for displaying the vehicles, upon the sale of each vehicle, or otherwise, may be granted a used car dealer's license

6. **Comment on the Expanded Definition of Class 2 Licensee**

(i) "... a person who purchases and displays second hand motor vehicles for resale in retail transactions."

This seller is a dealer of motor vehicles at retail even though it may not be his/her principal business and buys vehicles in order to sell them at retail to make a profit. A person who is selling or negotiating the casual sale of his/her own vehicle (one registered to him/her or to a spouse, another relative, a friend, etc.) is not required to obtain a Class 2 license, in the view of the RMV. Nor is a company that leases

vehicles for the use of its employees and then allows the employee to purchase the vehicle at the expiration of the lease. This provision may be applicable to a local garage or other business that purchases vehicles at auction (or from other sources) and repairs or reconditions them and offers them for sale. Any vehicles this licensee sells to a consumer will be subject to the state-mandated warranty protection of G.L. c.90, §7N¼, and the dealer must maintain or demonstrate access to repair facilities sufficient to enable him/her to satisfy the warranty repair obligations imposed by that section. The licensee must comply with the Consumer Protection Act, G.L. 93A and the Regulations of the Attorney General, and must post the required warranty notices on vehicles offered for sale. As a Class 2 licensee, this dealer is also required to maintain a Used Vehicle Record Book pursuant to G.L. 140, §62. The "authorized officers" identified in G.L. c.140, §66 (State Police, Attorney General, Chief of Police, Police Commissioner in Boston, the Selectmen of a Town, or police officers authorized by said officials) "may at any time enter upon any premises used by any person licensed under section fifty-nine for the purpose of carrying on his licensed business, ascertain how he conducts the same and examine all second hand motor vehicles or parts thereof kept or stored in or upon the premises, and all books, papers and inventories relating thereto."

(ii) "...any other person who displays second hand motor vehicles not owned by him pursuant to an agreement in which he receives compensation, whether solely for displaying the vehicles, upon the sale of each vehicle, or otherwise." This is a person who does not own the vehicles he displays on his property but he receives compensation for the display or the sale from the vehicle's owner. These are usually consignment sales and they should only involve privately owned vehicles. RMV regulations prohibit the holder of a dealer plate from offering vehicles for sale anywhere other than the licensed premises of the dealer (except for sales at recognized automobile auction facilities or at combined-dealer special sale events). Therefore, a dealer who has been issued Dealer Plates may not display other dealer's vehicles on his/her own lot or display his own vehicles on other dealers' lots. However, any licensed Class 2 dealer who has received Dealer Plates from the RMV may display vehicles for sale on the dealer's lot that are owned by a private party and held for consignment, but the vehicle must be entered in the dealer's Used Vehicle Record Book as a consignment vehicle. (The dealer cannot, however, attach its own Dealer Plate to allow a test drive of the consigned vehicle because the dealer does not own the vehicle. If a test drive is contemplated, the vehicle's owner may opt to leave his/her own valid registration plates on the vehicle if the owner's liability insurance will cover a test drive). The record keeping and inspection requirements as contained in 6.(i) (above) are applicable here also.

7. **Local Review Needed** Municipalities are urged to review the Class 2 licenses they have issued in 2004 to ensure that the bond requirement has been met for each license.

8. **A Note About Licensees Working From Home**

The RMV is aware that some municipalities have been issuing Class 2 licenses even though the applicant is doing business from his/her home. Class 2 licensees almost always apply to the RMV for Dealer Plates. The process is that the RMV asks the State Police to perform a site visit to determine if the dealer has a facility that is appropriate for the issuance of such plates. After the visit, the Trooper makes a report and recommendation to the RMV. If the licensed premises do not comply with the relevant provisions of G.L. c.90 and the Regulations of the Registrar at 540 CMR 18.00, the application for plates will be denied.

Definition of "Dealer." M.G.L. c. 90, 1, defines a "dealer" as: "any person who is engaged principally and substantially in the business of buying, selling or exchanging motor vehicles or trailers or motor vehicle bodies who maintains a facility dedicated to carrying out said business..." (Emphasis added). An applicant for General Registration Dealer Plates must be principally and substantially engaged in the business and have the required dedicated facility. Even a dealer who sells solely on a "wholesale basis" (although no such Class 2 license category exists) must have the required dedicated facility. The RMV ~~will not~~ issue Dealer Plates to an applicant if his/her business is located within the personal living

quarters of a residential building, whether or not the dealer or someone else actually resides there or whether no one resides there. The law regarding the issuance of dealer plates is clear and plates will not be issued even if the municipality has issued a dealer's license for that location.

Further, the regulations at 540 CMR 18.02(2)(a) were adopted under the Registrar's authority and contain the requirements that a dealer must meet to receive or retain Dealer Plates. These requirements indicate the nature of the required "facility." Generally, the following are relevant to a used vehicle dealer:

- > The dealer's business is situated within a permanent building or permanently affixed structure, including an office trailer, owned or leased by the dealer for his exclusive use and located at the address of record noted on the dealer's license issued under the provisions of M.G.L. 140, §59. Except for a dealer who exchanges vehicles or trailers solely on a wholesale basis, the dealer shall be open to the public.
- > The building, structure or office trailer must have adequate office space to conduct the business.
- > If more than one business is located within the same building or structure, the dealer shall maintain a separate and exclusive entrance, unless the multiple businesses are owned or controlled by the same principals.
- > Subject to local law, and except for a dealer who exchanges vehicles or trailers solely on a wholesale basis, the dealer shall display a permanently affixed exterior sign of sufficient size and design, to give the general public notice of the name and nature of the business.
- > The dealer must have a display area/lot to display the vehicles being offered for sale unless the dealer exchanges vehicles or trailers solely on a wholesale basis.

9. Summary

Personal living quarters cannot be the site of a Class 2 dealer's business because the law requires a dealer to maintain a facility dedicated to carrying out that business and that facility must be used exclusively for the dealer's business. It is possible that a dealer may have premises either attached to or detached from a residential building that could be deemed suitable by the RMV. The State Police site inspection may help to determine suitability. The premises would have to be separate and distinct from any personal living quarters (e.g., it would have to be a secure facility with solid floor-to-ceiling walls, adequate office space to conduct the business, direct access from the outside of the building, not be used or shared with any other person or with any portion of personal living quarters and be licensed by the municipality at that location). The licensee must post and maintain reasonable business hours so that State and local police can accomplish the required facility and record book checks when required.

10. New License Application in Draft Stage G.L. 140, §59 states, in part: ...“application for license shall be made in such form as shall be approved by the registrar of motor vehicles...” The RMV is drafting a proposed new version of an *Application for a License as a Motor Vehicle Dealer*. The purpose is to update and standardize the *Application* to include significantly more information about the applicant (including background information on all principals) so that licensing authorities are better informed before issuing or renewing a license. The RMV is willing to receive and discuss suggestions for the proposed new *Application* that local licensing officials may wish to provide. Please email me with your suggestions at: william.mcvey@state.ma.us or write to me at the above address.

Thank you. If you have any questions about this Memorandum you may email or write. You may also call me at: 617-351-9950.



UTICA MUTUAL INSURANCE COMPANY
 NEW HARTFORD, NEW YORK
EXECUTION REPORT FOR BOND

U/W Code

CODING SOURCE 0# Acct Number:		EFFECTIVE DATE 12/19/2020
POLICY NUMBER SU4490005		EXPIRATION DATE 12/19/2021
<input type="checkbox"/> NEW <input checked="" type="checkbox"/> RENEWAL <input type="checkbox"/> ENDORSEMENT		TRANS. EFFECTIVE DATE
INSURED		BOND AMOUNT \$25,000.00
GNFD, Inc. dba Newburyport Sunoco		TOTAL PREMIUM \$250.00
ADDRESS		CSP/POLICY TYPE
59 Storey Avenue		TRANS. 2111 POLICY CT 1 UND. 4
Newburyport, MA 01950		SIC # 55211 BILL CODE 1
OBLIGEE (FULL ADDRESS REQUIRED)		LINE 2273
Commonwealth of MA, Registry of Motor Vehicles		STATE OR FOREIGN COUNTRY 20
One Copley Place		TAX TOWN (Required for AL, FL, GA, KY, LA, SC)
Boston, MA 02119		PLAN 01
NATURE OF RISK Dealer Bond		PLAN WITH SURCHARGE (Required for KY)
SERIES X COMPANY CODE 1	COMMISSION 30%	
REG. OFF. 04 AGENT NO. 70135	CLASS CODE 927	
AGENT		FIDELITY FORM (Col. 48)
MACDONALD & PANGIONE		SURETY TYPE OF CONTRACT (Col. 50)
ADDRESS		GROSS LIMIT 000 TREATY LIMIT
104 MAIN ST		ENDORSEMENT
NORTH ANDOVER MA 01845		
RENEWAL METHOD: <input checked="" type="checkbox"/> COLLECTION OF PREMIUM <input type="checkbox"/> CONTINUATION CERTIFICATE <input type="checkbox"/> NEW BOND		
BOND APPROVED BY:		BOND SIGNED BY: DATE
		Lauri A. Emmerich (Attorney-in-Fact) 10/16/2020
REMARKS:		

**APPOINTMENTS
FIRST READING**



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

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2021 FEB 16 PM 4:02

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: February 16, 2021

Subject: Appointment

I hereby appoint, subject to your approval, the following named individual as a member of the Fruit Street Local Historic District Study Committee. This term will expire on March 31, 2024.

Joe Carper
8 Fruit Street
Newburyport, MA 01950

Bio Statement - Joe Carper

Since moving to Newburyport in 2013 following his retirement, Joe has volunteered for several local organizations, including:

- Pennies for Poverty (board member)
- Belleville Roots Music Series (board member)
- Newburyport Parks Department Hiking Club (trip planner and hikes leader)
- Americana Rhythm and Roots Festival (social media and event management)
- Nourishing the North Shore (school food recovery and summer VegOut food pantry distribution)
- First Newbury Parish food pantry (food delivery to clients)

Prior to retirement, Joe enjoyed a successful career overseeing the operations of several not-for-profit organizations, in the environmental, educational and recreational, cultural, and mental health fields. These include Earthwatch Institute (vp of operations and finance); the Smithsonian Institution (director of membership programming, director of business development, director of retail operations); Parks and History Association (executive director); International Spy Museum (chief administrative officer); and the Appalachian Mountain Club (director of operations).

Joe graduated from Harvard College, earned a MBA in public and non-profit management from Boston University, and holds Masters degrees in mental health counseling from Boston University and Lesley University.

Joe is married to Susan McKittrick, and they have 2 grown children. In addition to his volunteer work, Joe enjoys playing music (guitar, uke, banjo), canoeing, cycling, and hiking locally and abroad. For the past 35 years, he has organized and guided hiking trips throughout the British Isles; in the Swiss, Italian, Austrian and French Alps; in Spain; and in Canada and New Zealand.



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

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA
2021 FEB 16 PM 4:02

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: February 16, 2021
Subject: Re-Appointment

A handwritten signature in cursive script that reads "Donna D. Holaday".

I hereby re-appoint, subject to your approval, the following named individual as a member of the Newburyport Housing Authority. This term will expire on March 31, 2026.

Cheryl Amey
24 Milk Street
Newburyport, MA 01950

CHERYL H. AMEY

24 Milk Street, Newburyport, MA 01950 • (781) 801-6128 • cherylamey@verizon.net

KEY SKILLS

Strategic Planning • Quality Assurance and Compliance • Budgeting and Financial Management • Grants Management • Team Building • Training • Program Development and Implementation • Partnership and Coalition Building • Policy Development • Grant Writing • Government Relations • Communications • Research and Evaluation • Data Analysis

PROFESSIONAL EXPERIENCE

JEANNE GEIGER CRISIS CENTER, NEWBURYPORT, MA

Grants Specialist, 2019 -

- Ensure staff/program compliance with all funder conditions
- Develop and provide routine reports to program staff
- Invoice and provide regular financial reports to funders
- Support staff knowledge/understanding regarding funder requirements/budgets
- Act as liaison with funders, as needed

EARLY LEARNING POLICY GROUP, BURKE, VA

Consultant, 2015 – 2020

- Provide statistical and analytical expertise to policy analysis
- Collaborate on development of analytical strategies
- Ensure policy documents are accurate and clearly presented for a range of audiences

COMMUNITY TEAMWORK, LOWELL, MA

Chief Planning Office, 2013 – 2015

Overall responsibility for the growth and administration of the department of planning including:

- Development, implementation, and oversight of the planning department including the strategic planning process working across stakeholder groups to ensure input and buy in
- Collaboration with program staff to sustain and establish new and existing programming including grant development
- Compliance with federal and state funders including accurate and timely submission of reports
- Development of outcomes-based performance management system
- Implementation and oversight of integration and management of all agency databases
- Development and implementation of government relations strategy

Associate Executive Director, Workforce Development, 2007 – 2013

Overall creation and administration of the new division including all specific programs and projects, including:

- Planning, development, preparation and submission of proposals and work plans for new/existing projects
- Overseeing all technical operations, coordination, monitoring and control of all relevant budgets within the division
- Developing strategic community partnerships and coalitions
- Evaluating program and staff effectiveness and recommending improvements in divisional operations
- Hiring and supervision of all staff within the division

NATIONAL CENTER ON FAMILY HOMELESSNESS, NEWTON, MA

Director of Research and Evaluation, 2004 – 2007

Participate as a Senior Manager in the direction of the overall organization and manage all aspects of the Research and Evaluation department including:

- Development and implementation of research agenda
- Project management and report preparation
- Staff supervision and professional development
- External client relations

- Training and technical assistance to national grantees
- Budget development, financial tracking, and grant writing

UNIVERSITY OF FLORIDA, DEPARTMENT OF HEALTH POLICY AND EPIDEMIOLOGY, GAINESVILLE, FL
Independent Consultant, 2001-2003

Collaborated with faculty and staff to:

- Design data collection instruments for household surveys and focus groups and analyze data
- Design and administer community needs assessment
- Report preparation for state and local policy initiatives

Research Scientist, 2000-2001

- Prepare and publish research on a number of health policy issues including lack of health insurance, health disparities, access to care, and health behavior
- Manage and analyze complex datasets
- Develop grant proposals
- Develop and represent the department in community collaborations and coalitions

CHILDREN'S DEFENSE FUND, WASHINGTON, DC

Director, National Community Monitoring Project, 1997-2000

Created the framework and oversaw the implementation of a national community-based research project examining the impact of welfare-to-work policies, including:

- Develop and lead a national coalition of providers and advocates
- Support local advocacy efforts in 15 states
- Produce research reports
- Provide both local and national trainings in community-based research

PROFESSIONAL AND COMMUNITY INVOLVEMENT

- Newburyport Housing Authority Commission, Chairperson, 2011-present
- Northeast Institute for Quality Community Action, Peer Evaluator, 2013-present
- Greater Lowell Chamber of Commerce, Board Member, 2013-2015
- Data Integration & Visualization Project, Team Lead, 2013-2015
- Massachusetts Association for Community Action
 - Data Quality Subcommittee, Member, 2014-2015
 - Organizational Standards Committee, Member, 2014-2015
 - Planning Committee, Member, 2013-2015
 - Workforce Development Committee, Member, 2007-2013
- Massachusetts Community Banking Commission, Alternate, 2012-2015
- Greater Newburyport YWCA Racial Justice Committee, Member, 2013-2014
- MA Interagency Council On Homeless, Subcommittee on Workforce Development, Committee Member, 2011-2012
- Governor's Task Force for Asset Development, Commission Member, 2008-2009
- Westborough Democratic Town Committee, Elected Member, 2007-2010
- Westborough Hunger Task Force, Member, 2008-2010
- Westborough Youth Commission, Appointed Member, 2007-2009

EDUCATION

UNIVERSITY OF FLORIDA, GAINESVILLE, FL

Doctor of Philosophy in Sociology, 1997

Master of Arts in Sociology, 1994

UNIVERSITY OF NORTH CAROLINA AT WILMINGTON, WILMINGTON, NC

Bachelor of Art in Mathematics, Magna Cum Laude, 1992

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

COMMUNICATIONS



The Leader in Public Sector Law

101 Arch Street, Boston, MA 02110
Tel: 617.556.0007 | Fax: 617.654.1735
www.k-plaw.com

February 10, 2021

Mark R. Reich
mreich@k-plaw.com

Hon. Donna D. Holaday
Mayor of Newburyport
and
Hon. Jared J. Eigerman and
Members of the City Council
Newburyport City Hall
60 Pleasant Street
Newburyport, MA 01950

Re: Reappointment of City Solicitor – Engagement Letter

Dear Mayor Holaday and Members of the City Council:

On behalf of KP Law, P.C., I am pleased to forward this engagement letter for the provision of legal services to the City of Newburyport. It has been the firm's honor to serve as long-time legal counsel to the City, providing the City with advice and assistance on a wide range of matters of municipal law.

As you are aware, I serve as the City's primary attorney, working with you and the City's department heads to address the City's legal representation and provide accurate and timely legal advice and information. Attorney Darren R. Klein will continue to advise the City on labor and employment matters. Attorney Klein will also serve as my back-up attorney for those times when I am not immediately available to you. Attorney Jonathan D. Eichman will be available to provide advice regarding land use and development matters, as well as attending to the City's real estate needs. Please visit our website at www.k-plaw.com for additional information regarding our Firm and our attorneys.

As City Solicitor, KP Law represents the interest of the City of Newburyport as a whole. We recognize and respect the authorities of both the executive branch, being the Office of the Mayor, and the legislative branch, being the City Council. In that manner, we strive to present legal opinions that are free from political and policy directives, instead providing advice based upon the provisions and requirements of the City Charter and Ordinances, as well as federal and state law and regulations. In that manner that we can best serve all of the interests of the City.

The rules of conduct applicable to attorneys in Massachusetts require that the Firm provide you with written notification as to the fees and expenses the Firm will charge you for the provision of legal services. We provide professional services on an hourly rate basis with time billed in increments of one-tenth hour minimum. Our current hourly rate for the City is \$190.00 per hour. That rate shall increase to \$200.00 per hour as of July 1, 2021. Paralegals and paraprofessionals are billed at one-half of the attorney rate. We bill our time and disbursements on a monthly basis, and

Hon. Donna D. Holaday
Hon. Jared J. Eigerman
February 10, 2021
Page 2

bills are due and payable within thirty (30) days. We do not charge for work by clerical staff, or other non-attorney staff, except as noted above.

When services are rendered outside our office, you will be charged on a portal-to-portal basis, at the mileage rate set under the Internal Revenue Code. We also bill for out-of-pocket disbursements incurred on your behalf, at cost, with no mark-up, including, but not limited to: title examiners costs; recording fees; travel expenses; courier charges; charges for photocopies; telephone, cell phone and long distance charges; and other incidental expenses. We will obtain your permission prior to expending any funds towards any single cost or expense in excess of \$500.00. We may require you to make direct payment to any third party for expenses incurred on your behalf. We are required by the Rules of Professional Conduct to notify you of any changes to either the basis or rate of the fees and expenses charged, in writing.

While the City may terminate our services at any time, such action does not relieve the City from the obligation to pay any bills to the firm outstanding at the time of termination or for work subsequently requested by the City. In the event that a dispute arises between the parties to this agreement, then Massachusetts law and Massachusetts venue shall control.

We know from experience that our ability to work effectively on the City's behalf - and the City's satisfaction with our work - will be greatly enhanced by effective communication throughout the course of our relationship. You should feel free to contact me, as well as the firm's Managing Attorney, Lauren Goldberg, at any time, with any questions you may have about the work being performed on the City's behalf.

Please confirm the City of Newburyport's agreement to the terms set forth above by signing and returning an executed copy of this letter to me for our file. We look forward to continuing working with the Office of the Mayor and the City Council to provide effective and expedient legal advice and services, and we appreciate the confidence you have shown in our firm through this reappointment.

Very truly yours,



Mark R. Reich



Hon. Donna D. Holaday
Hon. Jared J. Eigerman
February 10, 2021
Page 3

Accepted:
CITY OF NEWBURYPORT

By: _____
750423/KPL

Dated: _____



SIMMONS ENVIRONMENTAL SERVICES, INC.
213 ELM STREET
SALISBURY, MA 01952

February 10, 2021
Ref.# 210201

Heather Shand, Chair
Planning and Development Committee
Newburyport City Council
60 Pleasant Street
Newburyport, MA 01950

Re: MassDEP Release Tracking Numbers 3-12659 and 3-14479
57 Low Street
Newburyport, MA

Dear Chairperson Shand;

Per your request I have reviewed a Phase I Environmental Site Assessment report concerning the above referenced property. That report was prepared by CREDERE Associates, Inc. on behalf of the Merrimack Valley Regional Planning Commission and the City of Newburyport's Office of Planning and Development for conveyance purposes. That report was dated May 5, 2020. In reviewing this report, my understanding of the City Council's concern is whether further remedial response actions and attendant cost as well as potential liability might be encountered were the city to purchase this property from the Massachusetts National Guard (the "Guard") through the Commonwealth's Division of Capital Asset Management and Maintenance. It is my further understanding that the City's interest in this property would be redeveloping it for its Youth Services program.

Based upon my review of publicly available documents including submittals to the Massachusetts Department of Environmental Protection (MassDEP), there are two former hazardous waste disposal sites associated with this property. The first is identified as Release Tracking Number (RTN) 3-12659 that was issued by MassDEP in 1995 for releases of oil (diesel fuel) at the location of a former 5000 gallon underground storage tank (UST). The original release from the UST at this location occurred in 1986 when a 5000 gallon, bare-metal, UST was removed. Enpro Services, Inc.(Enpro) removed the UST and excavated a small quantity of petroleum contaminated soil (approximately 13 tons) at that time. Subsequent to removing that UST, it was replaced in 1987 with a double wall UST in the same location. The replacement tank was equipped with cathodic protection to prevent corrosion.

In 1995, the Guard engaged Mason Environmental to remove this replacement 5000 gallon double wall tank that had been installed only eight years prior. The purpose of its removal was to

1 | Page
#210201



SIMMONS ENVIRONMENTAL SERVICES, INC.
213 ELM STREET
SALISBURY, MA 01952

minimize environmental risk at underutilized properties as determined by the Guard. During its removal, field screening of soils for petroleum vapors required notice to be given to MassDEP and additional remediation measures to be undertaken as an Immediate Response Action (IRA) consistent with MassDEP's regulations known as the Massachusetts Contingency Plan or MCP. Those regulations are codified at 310 CMR 40.0000 et seq. The source of the contamination that was discovered in 1995 was attributed to residual contamination in soil and groundwater that had not been remediated during the removal of the original UST in 1986.

MassDEP approved excavation and off-site recycling of up to 100 yd.³ (150 tons) of petroleum contaminated soil as part of that IRA. Petroleum contaminated soil up to that approved volume was stockpiled on site immediately following removal of the UST. Further excavation was halted when Mason Environmental estimated that a greater volume of petroleum contaminated soil would have to be removed to meet cleanup goals. In November 1995, the previous stockpiled soil (153 tons) was transported off-site to a thermal treatment facility in Loudon, NH.

No further action took place until 1997 when the Guard retained StoneHill Environmental to complete further assessment required to comply with a pending MassDEP filing deadline. That firm completed additional subsurface investigation and concluded that soil and groundwater conditions met MassDEP's risk based cleanup standards, but recommended further response actions including dewatering and additional soil excavation to reduce petroleum contaminant levels from a condition of No Significant Risk to background i.e. concentrations below the laboratory analytical method's limits of detection as if the disposal site had never existed. The Guard took no action concerning that recommendation.

In 1998, Simmons Environmental Services Inc. (Simmons) was engaged by the Guard to complete further response actions and to reach closure of this Release Tracking Number via submittal of a Response Action Outcome Statement to MassDEP. After further assessment, Simmons personnel excavated an additional 93 tons of petroleum contaminated soil and recycled this remedial waste off-site. An IRA Completion Statement and Class A-2 Response Action Outcome Statement were prepared and submitted to MassDEP in April 1999.

The Class A-2 Response Action Outcome designation meant that contaminant levels had been reduced to concentrations below risk based cleanup standards that posed a condition of No Significant Risk including future unrestricted future use. However, background conditions were not achieved or approached. A Feasibility Evaluation concluded that the potential benefits of achieving or approaching background conditions, although technically feasible, were not warranted based upon the incremental benefits in risk reduction to be realized. The estimated cost for dewatering and excavating until no petroleum hydrocarbons remained above the laboratory method's limits of detection exceeded more than 20% of the cost of assessment and remediation expended to date. That cost benefit analysis was a standard practice until July 2004



SIMMONS ENVIRONMENTAL SERVICES, INC.
213 ELM STREET
SALISBURY, MA 01952

when MassDEP published further guidance concerning feasibility evaluations under the MCP in Policy # WSC-04-160.

The current guidance for remediating beyond a condition of No Significant Risk to achieve or approach background establishes conditions of categorical feasibility and infeasibility based upon accessibility of soil and the persistence of the contaminants of concern within the environment. Petroleum contaminants in soil are considered to be non-persistent and therefore categorically infeasible to reduce to background in quantities greater than 20 yd.³ (30 tons).

Based upon the analysis presented above, residual petroleum contaminants in soil at this disposal site do not constitute a Recognized Environmental Condition (REC) because response actions reached a condition of No Significant Risk i.e. met risk based cleanup standards that are protective of unrestricted future use. The concurrent Feasibility Evaluation showed that achieving or approaching background was not warranted based on a cost benefit analysis.

With regard to RTN 3-14479, ballast from the MBTA was brought to the site with intention of using this material to improve stability in low-lying areas and to possibly provide for additional parking. However, this material contains several contaminants known as polycyclic aromatic hydrocarbons or PAHs that are normally found in urban environments and that would not be expected to be found in rural settings. The Guard engaged New England Environmental Technologies Corporation to test these stockpiles and develop a Release Abatement Measure Plan for off-site transport and disposal. Post excavation soil samples below the former stockpiles of the ballast showed trace concentrations of PAHs. Evaluation of the post excavation data set confirmed conditions that were consistent with background conditions and a Class A-1 Response Action Outcome statement was filed for that disposal site concurrent with RTN 3-12659 as discussed above.

My professional opinion is that should the City proceed with redevelopment of the site, residual petroleum contaminated soils may be encountered in the area to the east of the existing building where the USTs were previously located. Although these conditions do not require further response actions, as a practical matter I recommend that the City engage a Licensed Site Professional to review development plans and, where appropriate, develop a soils management strategy for instances where dermal contact or ingestion of soil could occur at surface grade such as a soccer field or playground. It may be possible to avoid offsite management of soils with residual contamination by capping with clean fill or paving these areas for future use as a basketball/tennis courts or for employee or general public parking. These measures would add an extra level of protection by eliminating the potential for contact. These actions would be voluntary to provide an extra measure of conservatism as opposed to any regulatory requirement.



SIMMONS ENVIRONMENTAL SERVICES, INC.
213 ELM STREET
SALISBURY, MA 01952

Also, there have been significant developments in the management of hazardous waste sites over the past 23 years since these Response Action Outcome Statements were filed. Some of these include evaluation of the potential for vapor intrusion at disposal sites involving contaminants that have significant vapor pressure such as petroleum and solvents. Partitioning of these contaminants from soil and groundwater can occur and result in vapor intrusion into occupied buildings. Again, these conditions can best be managed at the design stage with use of protective vapor barriers and/or passive or active venting systems to eliminate a potential vapor exposure pathway.

Please review my comments that are contained within this correspondence and contact me should you have any further questions at LSPESQ1@WASIMMONSLAW.com

Very truly yours,

A handwritten signature in cursive script that reads 'William A. Simmons'.

William A. Simmons Licensed Site Professional/Attorney at Law



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

MEMORANDUM

TO: Newburyport City Council

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

CC: Donna D. Holaday, Mayor

RE: Appropriation & Transfer of Funds – Design Contract – Market Landing Park Expansion

DATE: February 16th, 2021

As you know, the former Newburyport Redevelopment Authority (NRA) was dissolved by the state legislature in June 2020. All land and assets of the NRA have since been transferred to the City of Newburyport, including approximately \$570K available for design and construction of improvements associated with Market Landing Park Expansion.

On November 17, 2020 a Request for Proposals (RFP) was issued by the Office of Planning & Development for the purposes of soliciting responses from interested design firms. The Council's Ad Hoc Committee on Market Landing Park Expansion reviewed Price and Non-Price Proposals from fourteen (14) prospective design firms, and ultimately selected Sasaki Associates, Inc. as the preferred bidder. The Ad Hoc Committee, Mayor and Office of Planning & Development now recommend that the City Council appropriate funds in the amount of \$134K, plus \$16K in contingency funding (\$150K total), to implement schematic phase design work and cost estimates for park expansion during 2021. This work is encompassed by Tasks 1-6 in the RFP. The City can, following completion of schematic design later this year, solicit a Fee Proposal from Sasaki to complete RFP Tasks 7-9 (*final design, permitting, bidding and construction administration*). Alternatively, the City can decide to continue work with another design firm at that time if desired.

Price proposals from firms for schematic design (Tasks 1-6) ranged from \$94,800 to \$352,300. Sasaki was the highest ranked firm in review of Non-Price Proposals (*i.e. approach to the project, relevant experience and qualifications, etc.*). As such, the price proposal from Sasaki Associates represents a very reasonable cost for the design work and services required at this time. Based on various factors including project size and scope, known project parameters and constraints, the City's cost to undertake all Tasks 1-9 (*schematic design through to construction administration*) will likely range between \$300-350,000. This includes permitting, additional site testing and DEP reporting on soil conditions, civil engineering work necessary to bring the landscape architect's design plans to a "shovel-ready" status and oversight of bid and construction work by prospective contractors. It is therefore likely that the City will have between \$220-270K remaining in NRA revenues upon final design to apply towards construction activities. This places the fee proposal of \$134K

entirely within the overall project budget available at this time with adequate latitude for additional design/consultant services that will be required after the current schematic design phase.

For any Councilors hesitant to appropriate design funds at this time for the long awaited Market Landing Park Expansion project, please consider the following:

1. The Council’s own Order and Resolution regarding the central waterfront, in conjunction with the Act that dissolved the NRA, call for final design and construction of the envisioned Market Landing Park Expansion. This initial contract with Sasaki Associates will refine the previously agreed upon “Framework” park plan with extensive base mapping, detailed information on park layout and site improvements and most importantly a detailed construction cost estimate for the desired site improvements as a basis for future steps.
2. There appears to be sufficient funding available from NRA dissolution to cover the full cost of design, permitting, bidding and construction oversight, with some funding still remaining for construction.
3. The contract terms with Sasaki will include a target construction budget of \$5M, even in advance of schematic design work and cost estimates generated from Tasks 1-6, to ensure that the final construction project remains financially viable for the City. While there are various sources of funding that can be used to supplement the construction budget, following is an outline of anticipated funding sources and potential amounts as of this time:

a. Remaining NRA Revenues (available after design work):	\$220K +/-
b. CPA Yearly Funding (pending FY’22, FY’23 requests):	\$500K +/-
c. CPA Bonding (FY’23) (flagship central waterfront park project): ++	\$3M +/-
d. State “PARC” Grant (pending schematic design work, detailed cost estimate):	\$400K +/-
e. Herman Roy Trust Fund (“betterment of the Newburyport Waterfront”):	\$750K +/-
f. Parking Revenues from NRA East/West Lots (required by dissolution Act):	\$130K +/-

++ While the City may need to bond CPA revenues to cover all construction costs (item c. above) it is highly likely that the prominence and overall importance of this project will secure local support for that option, as has already been done for arguably less well known projects or initiatives such as High School Stadium renovations, City Hall Renovations and various Open Space acquisitions. CPA bonding is covered by the CPA surcharge and state matching funds and should not be confused with other bonding sources, options or limitations the Council may be considering for capital projects unrelated to Community Preservation.

For context, Finance Director Ethan Manning has confirmed that FY’19 parking receipts (pre-pandemic) for the former NRA East and West Lots (collectively) were \$195,499. Receipts for the Waterfront Trust parking lot were \$107,306. At this time, we would assume roughly \$250,000 in annual debt service for a \$3 million CPA bond (as noted above). For park improvements, the maximum borrowing term is 15 years. Assuming our design includes a small building for new public restrooms and visitor information (to replace the existing temporary trailers) that portion could be bonded out 25-30 years.

After decades of debate about the future of our central waterfront, years of negotiations necessary to confirm the “Framework” plan for Market Landing Park Expansion and obtain final dissolution of the NRA, it is time to seamlessly transition into design phase work with a reputable Landscape Architectural firm like Sasaki

Associates. I respectfully request approval of the associated transfer and appropriation at your earliest convenience so that our work with the design team can proceed forthwith. A series of meetings and communications, as well as a project webpage, will keep the Council and other interested parties informed of our progress and next steps in the months ahead.

Thank you for your time and support for this long awaited project!

**APPOINTMENTS
SECOND READING**

SECOND READING APPOINTMENTS

Re-Appointment

APPT232_03_01_2024	Keith Hogan	3 Bartlett Drive	Trust Fund Comm.	03/01/2024
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In City Council February 8, 2021:

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

ORDERS

CITY OF NEWBURYPORT



IN CITY COUNCIL

December 14, 2020

ORDERED:

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

THAT the City Council of the City of Newburyport hereby appropriates and transfers from the *Waterfront Park Paid Parking Fund* by majority vote the sum of One Hundred Fifty Thousand Dollars (\$150,000) to be used toward compensation of Sasaki Associates, Inc., the qualified consultant design team selected by the *Ad Hoc Committee on Market Landing Park Expansion* through the *Request for Proposals: Market Landing Park Expansion* (the "RFP") issued by the City's Office of Planning and Development on November 17, 2020, pursuant to City Council Order 197_07_13_2020 entitled "An Order Implementing Chapter 96 of the Acts of 2020 Dissolving the Newburyport Redevelopment Authority" ("Order 197"); and

FURTHER, THAT, the Mayor is hereby authorized to execute and enter into any contracts or agreements with the Selected Consultant Team (Sasaki Associates, Inc.), pursuant to Order 197, for the contract sum of \$134,000 consistent with the Price/Fee Proposal submitted by Sasaki Associates, Inc. The remaining \$16,000 included in the aforementioned appropriation shall be available to the Mayor and Director of Planning & Development as contingency funding should the Sasaki Associates, Inc. contract scope need to be modified for additional services, including but not limited to attendance at additional public meetings, obtaining additional deliverables, or undertaking additional soil testing at the project site to confirm existing conditions and site constraints for design and construction of the project. The signed contract with Sasaki Associates, Inc. for schematic design phase work (Tasks 1-6 of said RFP) approved and authorized herein shall include a target construction budget for *Market Landing Park Expansion* not to exceed \$5M.

Councillor Jared J. Eigerman

ORDINANCES

CITY OF NEWBURYPORT



 IN CITY COUNCIL

ORDERED:

February 22, 2021

AN ORDINANCE TO AMEND THE MUNICIPAL CODE UNDER SECTION 6.5 REGARDING DEFINITIONS FOR BARRIER BEACH REDEVELOPMENT

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

Amend Section 6.5 – 28, Section b, Item (1) “Specific Performance Standards for the Barrier Beach are:” as follows, with deletions ~~double-stricken through in bold~~, and additions double-underlined and in bold:

(b) Specific performance standards for the Barrier Beach are:

- (1) No development or redevelopment shall be permitted within a FEMA V-zone or AO-zone. Notwithstanding the foregoing, structures damaged or destroyed from fire, storm, or similar disaster may be redeveloped/repared only in accordance with current local, state and federal regulatory standards when damage to or loss of the structure is equal to or greater than fifty (50) percent of the market value of the building. When damage to or loss of the structure is less than fifty (50) percent of the market value of the building, redevelopment/repairs may be allowed to return the structure to pre-damaged conditions. In all instances, reconstruction, renovation or repairs to damaged structures may be authorized as stated herein, provided ~~that~~ there is no increase in floor area or total footprint of structures on site (including decks).

Amend Section 6.5 – 36. Definitions, for “Redevelopment” as follows and Note #1, Item (15) as follows, with deletions ~~double-stricken through in bold~~, and additions double-underlined and in bold:

Redevelopment: As used in section 6.5-28, shall include the following activities:

- (1) Any individual or cumulative increase in the footprint of a building or structure, including without limitation, a coastal engineering structure, a shear wall, vertical wall, a shed, a garage, and/or a solid fence, that would result in the sum of the footprints of all buildings or structures on the lot exceeding ~~the sum of a twenty (20) percent (individual or cumulative) increase in the footprints of the existing structures. (Any such individual or cumulative increase not exceeding this twenty (20) percent threshold shall continue to require Commission review and approval.)~~ the sum of a twenty (20) percent (individual or cumulative) increase in the footprints of the existing structures.
- (2) Conversion of porches, carports and decks to usable interior space below the first dwelling floor;

(See Note #1 below.)

Note #1: The terms "development" and "redevelopment", as used in section 6.5-28, shall not include the following activities:

- (15) Replacement of an existing building with a new building that is placed on open pilings and that is located as far landward of the existing building as possible given the requirements of the Plum Island Overlay District, provided that: (a) the sum of the footprints of all buildings or structures on the lot to not exceed ~~the sum of a twenty (20) percent maximum (individual or cumulative) increase in~~ the footprints of the existing structures; (b) the new building complies with all applicable federal, state, and local regulations, including without limitation, the Plum Island Overlay District and the performance standards set forth in the commission's regulations;

Councillor Afroz Khan

Councillor Heather Shand

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

February 22, 2021

AN ORDINANCE TO PROPOSE TO VOTERS CERTAIN MINOR AMENDMENTS THE CITY OF NEWBURYPORT HOME RULE CHARTER

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

The City Council of the City of Newburyport hereby approves the following question to be submitted to the voters of the city at the biennial municipal election scheduled to occur on November 2, 2021:

“Shall the City of Newburyport Home Rule Charter be amended as follows, with ~~deletions italicized and double stricken through~~, and additions italicized and double-underlined?:

Sec. 1-7. – Definitions.

Unless another meaning is clearly apparent from the manner in which the word or phrase is used, the following words and phrases as used in this charter shall have the following meanings:

...

- (4) “City office,” a position having charge of a city department, including, without limitation, the position of city solicitor.
- (5) “City officer,” when used without further qualification or description, shall mean a person having charge of an office or department of the city who in the exercise of the powers or duties of that position exercises some independent statutory authority, including, without limitation, the city solicitor.

...

Sec. 2-6. – Exercise of powers; quorum; rules.

...

- (c) *Rules of procedure.* The city council shall from time to time adopt rules regulating its procedures which shall be in addition to the following:

...

- (2) Special meetings of the city council shall be held at the call of the president or at the call of any six or more members, for any purpose, by causing a notice of the meeting to be delivered (i) in hand or to the place of business or residence of each member of the city council; or (ii) by email to each member of the city council with electronic confirmation of receipt...

...

Sec. 2-9. – Ordinances and other measures.

- (a) *Measures.* No measure that is an ordinance or an order shall be passed finally on the date on which it is introduced, except in the case of an emergency....

...

- (c) *Charter objection.* On the first occasion that the question on adoption of a measure that is an ordinance or an order is put to the city council, if a single member present objects to the taking of the vote, the vote shall be postponed until the next meeting of the city council whether regular or special....

Sec. 3-1. – Mayor: Qualifications; term of office; compensation; prohibitions.

...

- (d) *Prohibitions.* The mayor shall hold no other city office or city employment for which a salary or other emolument is payable from the city treasury. No former mayor shall hold any compensated appointed city office or city employment, nor shall they appear personally before any city agency as agent or attorney for anyone other than themselves, their spouse, their parents, their children, or their siblings. until one year following the date on which the former mayor's city service has terminated. This provision shall not prevent a city officer or other city employee who has vacated a position in order to serve as mayor from returning to the same office or other position of city employment held at the time the position was vacated, if such position exists, but no such person shall be eligible for any other municipal position until at least one year after the termination of service as mayor. This prohibition shall not apply to persons covered under the leave of absence provisions under the civil service law. Except as state law may otherwise expressly permit, a lawyer who has formerly served as mayor shall at no time represent a client in connection with a matter in which the lawyer participated personally and substantially while serving as mayor, unless the city council gives its informed consent, confirmed in writing, to the representation.

...

Sec. 6-5. – Capital improvement budget.

- (a) *Submission.* No later than ~~April~~ May 15 of each year, the mayor shall submit a capital improvement program to the city council....

...

- (c) *Adoption.* At any time after the public hearing but before ~~June~~ July 1 of each year, the city council shall by resolution adopt the capital improvements program with or without amendment, provided that each amendment must be voted separately and that any increase in the capital

improvements program as submitted must specifically identify the method of financing proposed to accomplish such increase....

...

Sec. 9-7. – Uniform procedures governing multiple-member bodies.

...

(b) *Meeting documents and submissions.* Each appointed multiple member body shall determine its own rules and order of business and shall provide for the keeping agendas, minutes and related submissions of its proceedings. All such documents shall be a public record, and certified copies shall be placed on file in the office of the city clerk and ~~in the city public library~~ on the website within fifteen days of their approval....

...

Councillor Jared J. Eigerman

Date: _____

Concurrence of the Mayor:

Mayor Donna D. Holaday

Date: _____