

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

COMMUNICATIONS

PART II - CODE OF ORDINANCES
Chapter 1 GENERAL PROVISIONS

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances contained in this chapter and in the chapters following shall constitute and be designated as the "Code of Ordinances, City of Newburyport, Massachusetts," and may be so cited. Such ordinances may also be cited as the Newburyport Code.

(Code 1971, § 1-1)

Charter reference(s)—Publication of codification of ordinances, § 23.

Sec. 1-2. Rules of construction and definitions.

In the construction of this Code and of all other ordinances, the following rules of construction shall be observed, unless such construction would be inconsistent with the manifest intent of the city council or the context of the Code or ordinance:

Charter. Whenever the word Charter is used in this Code of Ordinances, it shall mean and refer to the Charter of the City of Newburyport printed as Part I of this volume.

City. The word city shall mean the City of Newburyport, Massachusetts.

City council. The words city council or council shall mean the duly elected city council of the City of Newburyport, Massachusetts.

Code. Whenever the word Code is used in this Part II, it shall mean and refer to this Code of Ordinances, City of Newburyport, Massachusetts printed as Part II of this volume.

Commonwealth. The word commonwealth shall mean the Commonwealth of Massachusetts.

Computation of time. In computing any period of time prescribed or allowed by this Code, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

State law reference(s)—Similar provisions, Mass. R. Civ. P. Rule 6, 43A, M.G.L.~~A~~

County. The word county shall mean the County of Essex, Massachusetts.

Tense. Words used in the past or present tense include the future as well as the past and present.

~~*Gender.* A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.~~

~~*M.G.L.A.* The abbreviation M.G.L.A. means the latest edition or supplement of the Massachusetts General Laws Annotated.~~

Month. The word month shall mean a calendar month.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one (1) person and thing.

Officers, departments, commissions, etc. Whenever the title of an officer, department, board, commission, committee or other agency is given it shall be construed as though the words "of the City of Newburyport, Massachusetts" were added.

Person. The word person shall extend and be applied to associations, firms, partnerships and bodies politic and corporate as well as to individuals.

Preceding, following. The words preceding and following mean next before and next after, respectively.

Statute references. Whenever reference is made to M.G.L. c. _____, § _____, it shall mean the latest edition or supplement of the Massachusetts General Laws ~~Annotated~~.

(Code 1971, § 1-3)

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type which were not part of the 1937 ordinance compilation (which is cited herein as Revised Ordinances, 1937), are intended as mere catchwords to indicate the contents of the sections, and shall not be deemed to be taken to be titles of such sections, nor as any part thereof.

(Code 1971, § 1-4)

Sec. 1-4. History notes.

The history notes appearing in parentheses after sections of this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section.

Sec. 1-5. References and editor's notes.

The references and editor's notes appearing throughout the Code are not intended to have any legal effect but are merely intended to assist the users of the Code.

Sec. 1-6. Additions and amendments deemed incorporated in Code.

Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the city council to make the same a part hereof, shall be deemed to be incorporated herein so that reference to the Code shall be understood and intended to include such additions and amendments.

Sec. 1-7. Effect of Code; repeal of ordinances.

- (a) Insofar as the provisions of this Code are the same in effect as those of previously existing ordinances, they shall be construed as a continuation of such ordinances.
- (b) The adopted Code and the repeal of any ordinance, shall not affect any act done, or any right accruing or accrued or established, or any suit or proceeding had or commenced in any civil case before the time when such repeal shall take effect, nor any offense committed, nor any penalty or forfeiture incurred, nor any suit or prosecution pending at the time of such repeal for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the provisions so repealed; and all persons who, at the time when the repeal shall take effect, shall hold any office under any of the ordinances so repealed, shall continue to hold the same according to the tenure thereof, except those offices which may have been abolished, and those as to which a different provision shall have been made by the following ordinances; and no ordinances

or part of an ordinance, which have been repealed, shall be revived by the repeal of any ordinance. When any ordinance repealing a former ordinance, clause or provision shall itself be repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be therein so expressly provided.

(Code 1971, § 1-2)

Sec. 1-8. Effect of repeal of an ordinance.

- (a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.
- (b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Sec. 1-9. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

- (1) Ordinance accepting or adopting the provisions of any statute of the commonwealth;
- (2) Ordinance promising or guaranteeing the payment of money for the city or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city;
- (3) Administrative order of the city council not in conflict or inconsistent with the provisions of this Code;
- (4) Any ordinance vacating any street, alley or other public way in the city;
- (5) Right or franchise conferred by any ordinance or resolution of the city council to any person or corporation;
- (6) Zoning ordinance or any ordinance establishing or making changes in the zoning map;
- (7) Any rezoning ordinance.

(Code 1971, § 1-2)

Sec. 1-10. Amendments or additions to Code.

- (a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the city council.
- (b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "Section _____ of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows:" The new provisions shall then be set out in full as desired.

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- (c) If a new section not heretofore existing in the Code is to be added, the following language shall be used: "The Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended by adding a section, to be numbered _____, which section reads as follows: ..." The new section shall then be set out in full as desired.
 - (d) All sections, divisions, articles, chapters or provisions desired to be repealed should be specifically repealed by section, division, article or chapter number, as the case may be.

Sec. 1-11. Bylaws termed ordinances; enacting style.

All bylaws passed by the city council shall be termed ordinances, and the enacting clause shall read, "Be it ordained by the City Council of the City of Newburyport as follows."

(Code 1971, § 1-5)

Sec. 1-12. Ordinance to be recorded; ordinance book to be kept.

All ordinances shall be recorded by the city clerk in the order in which they shall be passed, in a book to be kept for that purpose, to be lettered "Record of Ordinances of the City of Newburyport," which book shall be preserved in the office of the city clerk subject to the inspection of the citizens.

(Code 1971, § 1-6)

Sec. 1-13. Supplementation of Code.

- (a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code, by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
 - (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

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- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-14. Severability.

It is hereby declared to be the intention of the city council that the chapters, sections, paragraphs, sentences, clauses and phrases of this ~~volume code~~ are severable, and if any phrase, clause, sentence, paragraph or section of this ~~volume code~~ shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ~~volume code~~, since the same would have been enacted by the city council without the incorporation in this ~~volume code~~ of any such unconstitutional phrase, clause, sentence, paragraph or section.

Sec. 1-15. General penalty.

Any person who violates any provision of this Code or of any ordinance of the city, whether included in this Code or any hereafter enacted, whereby any act or thing is enjoined or prohibited or required, shall unless other provision is expressly made, upon conviction, be liable for a penalty not exceeding three hundred dollars (\$300.00) for each offense. Fines application to violations of this code may be found in section 1-18 of this chapter. This section shall not preclude the city from proceedings to restrain the violation of any provision of this Code or other ordinance of the city by injunction where such proceeding is more appropriate. Each day a violation continues shall constitute a separate offense.

Cross reference(s)—Miscellaneous offenses, ch. 10Cross reference(s)—.

State law reference(s)—Penalty authorized, M.G.L. ~~A~~ c. 40, § 21; noncriminal disposition of ordinance by law or rule or regulation, M.G.L. ~~A~~ c. 40, § 21D.

Sec. 1-16. Prosecution of city ordinances to be performed in district court; disposition of fines and penalties.

All fines and penalties provided for in the ordinances of the city or this Code shall be recoverable by prosecution in the District Court for Newburyport, except as provided in section 1-17, and except in cases otherwise specifically provided for, shall be for the use and benefit of the city.

(Code 1971, § 1-7; Ord. of 12-11-89)

Sec. 1-17. Noncriminal disposition of ordinance violations.

Any ordinance of the city or rule or regulation of its boards, commissioners and committees, the violation of which is subject to a specific penalty, may, in the discretion of the city official who is the appropriate enforcing person, be enforced by way of the method provided in M.G.L. ~~A~~ c. 40, § 21D. "Enforcing person," as used in this section, shall mean any police officer of the city with respect to any offense, ~~and building inspector and his designees, the members of the conservation commission and its designees, the dog officer and his designees, the board of health and its designees,~~ and such other officials as the city council may, from time to time, designate, each with respect to violation of ordinances and rules and regulations within their respective jurisdictions. If more than one (1) official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto. Each day that any violation exists constitutes a separate offense.

(Ord. of 12-11-89)

Sec. 1-18. - Fines Schedule

The following table identifies the fines established in this Code.

<u>Code Ref.</u>	<u>Description</u>	<u>Fine</u>	<u>Enforcement Agent</u>
<u>Chapter 3 - Animals</u>			
<u>3-2</u>	<u>Disposal of animal waste</u>	<u>\$50, first offense</u> <u>\$75, second offense</u> <u>\$100, third and</u> <u>subsequent offense</u>	<u>Health Dept. or</u> <u>designee, Animal</u> <u>Control Officer or</u> <u>Police Dept.</u>
<u>3-26 (b)</u>	<u>Leash required</u>	<u>\$50, first offense</u> <u>\$75, second offense</u> <u>\$100, third and</u> <u>subsequent offense</u>	<u>Police Dept.</u>
<u>3-27 (c)</u>	<u>Licensing of dogs and kennels (by April 1</u> <u>of each year)</u>	<u>Fines if unlicensed,</u> <u>\$10, after sept. 1</u> <u>\$20, after oct. 1</u> <u>\$30, after nov. 1</u>	<u>Police Dept.</u>
<u>3-28</u>	<u>Nuisances-Complaint; investigation; order</u> <u>to muzzle or restrain</u>	<u>\$25</u> <u>\$50</u> <u>\$100</u>	<u>Animal Control</u> <u>Officer, Police Dept.</u>
<u>3-30</u>	<u>Penalty for violation of muzzling order</u>	<u>\$15</u>	<u>Police Dept.</u>
<u>3-101</u>	<u>Enforcement, Article III – Feeding or</u> <u>Baiting Wild Birds</u>	<u>\$25</u>	<u>Health Dept., Animal</u> <u>Control Officer or</u> <u>Police Dept.</u>
<u>Chapter 4 - Boats, Docks & Waterways</u>			
<u>4-74</u>	<u>Fines and penalties</u>	<u>\$50-300</u>	<u>Police Dept.</u>
<u>4-100B (11)</u>	<u>Harborwalk area – Specific use regulations</u>	<u>\$100</u>	<u>Police Dept.</u>
<u>4-101 (a)</u>	<u>Trash on beach</u>	<u>\$25</u>	<u>Police Dept.</u>
<u>4-101 (b)</u>	<u>Open fire, camp, tent sleep on beach</u>	<u>\$50</u>	<u>Police Dept.</u>
<u>4-101 (c)</u>	<u>Use of motor vehicle or motorized bicycle</u> <u>on beach</u>	<u>\$50</u>	<u>Police Dept.</u>
<u>4-101 (d)</u>	<u>Any sporting activities or games</u> <u>endangering public safety</u>	<u>\$50</u>	<u>Police Dept.</u>
<u>4-101 (e)</u>	<u>No dogs/animals from May through</u> <u>September</u>	<u>\$50</u>	<u>Police Dept.</u>
<u>4-209</u>	<u>Shellfishing in designated areas</u>	<u>\$100, first offense</u> <u>\$200, second offense</u> <u>\$250, third offense</u> <u>\$300, subsequent offense</u>	<u>Police Dept.</u>
<u>Chapter 5 – Buildings and Building Regulations</u>			
<u>5-235</u>	<u>Penalty, Article IV. Soil Removal</u>	<u>\$50, first offense</u> <u>\$100, second offense</u> <u>\$200, third and</u> <u>subsequent offense</u>	<u>Police Dept.</u>
<u>Chapter 6.5 - Environment</u>			
<u>6.5-38</u>	<u>Enforcement, Inspection and fines, Article II</u> <u>Wetlands Protection</u>	<u>\$300</u>	<u>Municipal boards,</u> <u>Police Dept.</u>
<u>6.5-47</u>	<u>Enforcement, Article III Plastic Bags</u>	<u>\$100</u> <u>\$200</u> <u>\$300</u>	<u>Police Officer</u>
<u>Chapter 8 – Health and Sanitations</u>			
<u>8-1</u>	<u>No smoking at certain municipal outdoor</u> <u>facilities</u>	<u>\$100</u>	<u>Health Dept., Police</u> <u>Dept.</u>

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<u>Code Ref.</u>	<u>Description</u>	<u>Fine</u>	<u>Enforcement Agent</u>
8-3	<u>Regulation of the use of glyphosate</u>	<u>\$500</u> <u>\$1000</u>	<u>Health Director or</u> <u>designee</u>
8-83 (a)	<u>No trash put out of collection prior to 5:00 p.m. the day before collection</u>	<u>\$25</u>	<u>Health Dept., DPS,</u> <u>Police Dept.</u>
8-83 (b)	<u>All trash must be in closed containers and if loose, securely tied.</u>	<u>\$25</u>	<u>Health Dept., DPS,</u> <u>Police Dept.</u>
8-83 (c)	<u>Removal of trash receptacle from sidewalks/streets after collection</u>	<u>\$25</u>	<u>Health Dept., DPS,</u> <u>Police Dept.</u>
8-83 (d)	<u>No disposal of trash from commercial, institutions and residents into city receptacles intended for pedestrians</u>	<u>\$25</u>	<u>Health Dept., DPS,</u> <u>Police Dept.</u>
8-83 (e)	<u>All trash will be placed so as to not interfere with motorists and pedestrian travel.</u>	<u>\$25</u>	<u>Health Dept., DPS,</u> <u>Police Dept.</u>
8-83 (g)	<u>No dumpster pickup in residential areas between 10p.m. and 7a.m.</u>	<u>Warning, first offense</u> <u>\$300, second and</u> <u>subsequent offenses</u>	<u>Health Dept., DPS,</u> <u>Police Dept.</u>
8-84	<u>Litter in public places</u>	<u>\$50</u>	<u>Police Officer</u>
8-90	<u>No recycle materials pickup in residential areas between 10p.m. and 7a.m.</u>	<u>Warning, first offense</u> <u>\$300, second and</u> <u>subsequent offenses</u>	<u>Health Dept., DPS,</u> <u>Police Dept.</u>
8-93	<u>Enforcement and penalties, Division 2 Recycling</u>	<u>\$50, first offense</u> <u>\$75, second offense</u> <u>\$100, third offense</u>	<u>Health Dept.</u>
<u>Chapter 9 – Licenses, Permits and Business Regulations</u>			
9-2	<u>Yard Sales, unlawful without license</u>	<u>\$50</u>	<u>Police Dept.</u>
9-16	<u>Penalty for violations regarding banners</u>	<u>\$50</u>	<u>Police Dept.</u>
9-139	<u>Penalties regarding transient vendors</u>	<u>\$300</u>	<u>Police Dept.</u>
9-165	<u>Same—Penalty for possession, use of unsealed or false weighing or measuring device.</u>	<u>\$50, condemned device</u> <u>\$20, unsealed device</u>	<u>Police Dept.</u>
9-171	<u>Enforcement, door to door sales</u>	<u>\$250</u>	<u>Police Dept.</u>
9-222	<u>Penalty, alcoholic beverages</u>	<u>\$100, first offense</u>	<u>Police Dept.</u>
<u>Chapter 10 – Miscellaneous Offenses</u>			
10-1	<u>Operation of bicycles, mopeds, roller skates and skateboards, in certain areas</u>	<u>\$20</u>	<u>Police Dept.</u>
10-5	<u>Obstructing passage in public places</u>	<u>Warning, first offense</u> <u>\$50, second and</u> <u>subsequent offense</u>	<u>Police Dept.</u>
10-8	<u>Use or consumption of alcoholic beverage upon public ways</u>	<u>\$50</u>	<u>Police Dept.</u>
<u>Chapter 12 – Street, Sidewalks and Public Places</u>			
12-1	<u>Obstructing streets, sidewalks generally</u>	<u>\$100</u>	<u>Police Dept.</u>
12-1.5	<u>Signage, merchandising and beautification on public ways.</u>	<u>\$100</u>	<u>Police Dept.</u>
12-3	<u>Encroachment on streets, rights-of-way and public ground</u>	<u>\$300</u>	<u>Police Dept.</u>
12-7	<u>Throwing snow and ice into streets</u>	<u>\$50</u>	<u>DPS, Police Dept.</u>
12-33	<u>Display of street address number on buildings: use in enhanced 911 service</u>	<u>\$10</u>	
12-52	<u>Removal of snow on sidewalks</u>	<u>\$50</u>	<u>Police Dept.</u>
12-178	<u>Enforcement of Protection of Public Trees</u>	<u>\$300</u>	<u>DPS</u>
12-190	<u>Topping of Trees</u>	<u>Maximum allowable by</u> <u>state law</u>	<u>DPS</u>
12-195	<u>Damage, removal and replacement of city-owned trees</u>	<u>Maximum allowable by</u> <u>state law or value of tree</u>	<u>DPS</u>
<u>Chapter 13 – Traffic and Motor Vehicles</u>			

<u>Code Ref.</u>	<u>Description</u>	<u>Fine</u>	<u>Enforcement Agent</u>
<u>13-97 (e) (4)</u>	<u>Road races, walkathons, bicycle and other multidisciplined events.</u>	<u>\$100, first offense</u> <u>\$250, second and subsequent offense</u>	<u>Police Dept.</u>
<u>13-171.1</u>	<u>Pick-up and drop-off areas</u>	<u>\$25</u>	<u>Police Dept.</u>
<u>13-183(a)</u>	<u>Plum Island parking violation</u>	<u>\$50</u>	<u>Police Dept.</u>
<u>13-184</u>	<u>Handicapped parking regulations.</u>	<u>\$100, first offense</u> <u>\$200, second and subsequent offense</u>	<u>Police Dept.</u>
<u>13-186</u>	<u>Twenty-five miles per hour.</u>	<u>\$100</u>	<u>Police Dept.</u>
<u>Chapter 14 - Utilities</u>			
<u>14-20</u>	<u>Water use restriction.</u>	<u>\$50, first offense</u> <u>\$100, second and subsequent offense</u>	<u>Health Department,</u> <u>DPS</u>
<u>14-33</u>	<u>Penalties, Sanitary Sewer System</u>	<u>\$1000-\$5000, civil penalty</u> <u>\$50 per day, noncriminal</u>	<u>DPS</u>
<u>Chapter 15 – Vehicles for Hire</u>			
<u>15-47</u>	<u>Penalty</u>	<u>\$250</u>	<u>Police Dept.</u>
<u>Chapter 16 – Local Historic District</u>			
<u>16-11 (c.)</u>	<u>Enforcement and penalties, entire chapter</u>	<u>\$300</u>	<u>Building Commissioner</u>
<u>Chapter 17 – Stormwater Management</u>			
<u>17-7 (3)</u>	<u>Enforcement and penalty: criminal disposition</u>	<u>\$300</u>	<u>DPS</u>
<u>17-7 (4)</u>	<u>Enforcement and penalty: noncriminal disposition</u>	<u>\$100, first offense</u> <u>\$200, second offense</u> <u>\$300, third and subsequent offense</u>	<u>DPS</u>

Chapter 2 ADMINISTRATION¹

ARTICLE I. IN GENERAL

Sec. 2-1. City coat of arms described.

The coat of arms of the city shall be the following, to wit:

Quarterly, first, two lighthouses, in the distance a ship under full sail; second, a steam mill; third, ship on the stocks; and fourth (the seal of Newbury in England) on a mount, three domed towers, on each a penon; crest, a mural coronet, surmounted by two hands conjoined; supporters, two female figures, that on the dexter side representing America, and that of the sinister Massachusetts; scroll, Terra Marique.

(Code 1971, § 2-1)

Sec. 2-2. City seal.

The seal of the city shall bear as a device the shield, crest and scroll of the coat of arms of the city; with the legend, "City of Newburyport, A.D. MDCCCLI"

¹Charter reference(s)—Legislative power of city to be vested in city council, M.G.L. c. 43, § 59; council meetings to be open to the public and the press, M.G.L. c. 43, § 18(2); every matter coming before council to be put to a vote, M.G.L. c. 43, § 18(2); members of council to vote on questions before it, M.G.L. c. 43, § 18(1); majority vote of majority of council members necessary for adoption of motion, resolution, ordinance, M.G.L. c. 43, § 18(1); passage of ordinances, M.G.L. c. 43, § 20 et seq.; full and accurate journal of council proceedings to be kept, to be open to the public, M.G.L. c. 43, § 18(2); authority of council to establish rules for proceedings, M.G.L. c. 43, § 18(2).

Cross reference(s)—Animals, ch. 3Cross reference(s)—; civil defense and disaster relief, ch. 6Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; licenses, permits and business regulations, ch. 9Cross reference(s)—; parks and recreation, ch. 11Cross reference(s)—; utilities, ch. 14Cross reference(s)—; administration of the subdivision regulations, app. B, § VI.

State law reference(s)—City government, M.G.L. c. 39; powers and duties of cities and towns, M.G.L. c. 40; officers and employees, M.G.L. c. 41; boundaries, M.G.L. c. 42; city charter, M.G.L. c. 43, §§ 1—55.



City Seal

*Seal of the
City of Newburyport, Massachusetts*

(Code 1971, § 2-2)

State law reference(s)—Duty to establish city seal, M.G.L. c. 40, § 47; custodian of city seal, M.G.L. c. 40, § 47; unauthorized use of city seal, M.G.L. c. 268, § 35.

Sec. 2-3. Execution, sealing and delivery of deeds, instruments by mayor.

The mayor is hereby authorized and empowered to affix the seal of the city unto, and to execute and deliver in behalf of the same, all deeds and other legal instruments required by any order of the city council.

(Code 1971, § 2-3)

Sec. 2-4. Depository for bonds of city officials.

The bonds furnished by city officials shall be deposited with the city clerk for safekeeping.

(Code 1971, § 2-4)

Cross reference(s)—City council, § 2-26Cross reference(s)— et seq.; officers and employees, § 2-126Cross reference(s)— et seq.

State law reference(s)—Fidelity bonds, payment of premiums, M.G.L. c. 41, § 109A.

Sec. 2-5. Flying flag at half-staff on municipal buildings—Upon veteran's death.

The American flag shall be displayed at half-staff on all municipal buildings in the city upon the death of any war-time veteran who was a resident of the city at the time of ~~his~~their death, and shall remain at half-staff until burial.

(Code 1971, § 2-12)

Sec. 2-6. Same—Upon death of a gold star mother's or father's deathparent.

The flag on municipal buildings of the city shall fly at half=mast on the death of a gold star ~~mother or father~~parent.

(Code 1971, § 2-13)

Secs. 2-7—2-25. Reserved.

ARTICLE II. CITY COUNCIL²

Sec. 2-26. Appointments.

All appointments shall be made by the mayor with the consent of the city council unless otherwise provided in the Charter or Code.

(Code 1971, § 2-15)

Sec. 2-27. Time and place of meetings.

- (a) All meetings of the city council shall be held at the council chamber in city hall in the city at 7:30 p.m., except as hereinafter provided.
- (b) In case it shall be impracticable to hold any meeting at the place provided in this section, it shall be held at such other convenient place in the city as the president of the city council shall direct.

(Code 1971, § 2-45; Ord. of 3-6-72; Ord. of 1-27-97)

Charter reference(s)—Time and place of regular and special meetings of council to be fixed by ordinance, M.G.L.~~A~~ c. 43, § 18(2).

State law reference(s)—Open meetings, notice, etc., M.G.L.~~A~~ c. 39, § 23B.

Sec. 2-28. When regular meetings are held.

Regular meetings of the city council shall be held on the second and last Monday of each month, except when otherwise ordered by the city council. For the months of July and August, combined, the council shall schedule no fewer than a total of three (3) regular meetings, each to occur on any Monday.

²Charter reference(s)—Number of members of city council, M.G.L.~~A~~ c. 43, § 59; salaries of mayor and members of city council to be set by ordinance; to receive no other compensation from the city, M.G.L.~~A~~ c. 43, § 17A; authority of council to request information of mayor, M.G.L.~~A~~ c. 43, § 19; conflicts of interest, M.G.L.~~A~~ c. 43, § 27; public contracts, M.G.L.~~A~~ c. 43, § 28 et seq.

Cross reference(s)—Depository for bonds of city officials, § 2-4; salary of the mayor, president of the city council and city councillors, § 2-126Cross reference(s)—; officers and employees, § 2-126Cross reference(s)— et seq.; assessor, § 2-151Cross reference(s)— et seq.; city auditor, § 2-171Cross reference(s)— et seq.; city treasurer/collector, § 2-271Cross reference(s)— et seq.; sealer of weights and measures, § 2-296Cross reference(s)— et seq.

(Code 1971, § 2-46; Ord. of 3-12-18)

Charter reference(s)—Majority of members of council to constitute a quorum, M.G.L. ~~A~~ c. 43, § 18(1).

Sec. 2-29. Special meetings.

- (a) Special meetings of the city council shall be held at the call of the president or at the call of any six (6) or more members, for any purpose, by causing a notice of the meeting to be delivered in hand or to the place of business or residence of each member of the city council or as established by the rules of the city council. This notice shall, except in an emergency of which the president shall be the sole judge, be delivered at least forty-eight (48) hours in advance of the time set and shall specify the purpose or purposes for which the meeting is to be held. A copy of each such notice shall immediately be posted in accordance with applicable laws.
- (b) The mayor may at any time call special meetings of the city council, for any purpose, by causing a notice of the meeting to be delivered in hand or to the place of business or residence of each member of the city council or as established by the rules of the city council. This notice shall, except in an emergency of which the mayor shall be the sole judge, be delivered at least forty-eight (48) hours in advance of the time set and shall specify the purpose or purposes for which the meeting is to be held. A copy of each such notice shall immediately be posted in accordance with applicable laws.

(Code 1971, §§ 2-47, 2-48; Ord. of 10-15-13(1); Ord. of 3-12-18)

Sec. 2-30. Performance of duties of mayor upon absence, disability.

Whenever, by reason of sickness, disability, absence from the city or other cause, the mayor shall be unable to perform the duties of the office, the president of the city council shall be the acting mayor and perform said duties, in accordance with section 3-8 of the Charter.

(Code 1971, § 2-49; Ord. of 9-30-13(2))

Charter reference(s)—Filling vacancies in office of mayor and city council, M.G.L. ~~A~~ c. 43, § 59A; duties of city council with respect to vacancies, M.G.L. ~~A~~ c. 43, § 26.

Sec. 2-31. Committees designated; membership.

There shall be nine (9) standing committees of the city council: committee on budget and finance; committee on education; committee on general government; committee on licenses and permits; committee on neighborhoods and city service; committee on planning and development; committee on public safety; ~~and~~ committee on public utilities; and committee on rules. Each such standing committee shall consist of three (3) members of the city council. The president of the city council shall serve on the committee on general government, as its chair, and the mayor may serve as a fourth, ex officio, non-voting member of such committee.

(Code 1971, § 2-55; Ord. of 6-11-73; Ord. of 2-13-78; Ord. of 2-11-80; Ord. of 4-10-89; Ord. of 2-23-04(1); Ord. of 3-12-18)

Sec. 2-32. Responsibilities of committee on general government.

The committee on general government shall be concerned with supervision of city properties whose custody has not been assigned to a specific municipal department, and the following municipal departments: city clerk; city

solicitor; registrars of voters, information technology; and human resources. The committee shall have charge of and supervision over the city council chambers.

(Code 1971, § 2-59; Ord. of 4-10-89; Ord. of 3-12-18)

Cross reference(s)—Departments, § 2-316Cross reference(s)— et seq.; planning and development, § 2-326Cross reference(s)— et seq.; police, § 2-346Cross reference(s)— et seq.; finance, § 2-371Cross reference(s)— et seq.

Sec. 2-33. Responsibilities of committee on public safety.

The committee on public safety shall be concerned with all the activities in the police, fire, and health departments, the harbor commission and harbormaster, the animal control officer, the parking clerk, and public parking and traffic needs and regulations.

(Code 1971, § 2-56; Ord. of 3-12-18)

Cross reference(s)—Police department, § 2-346Cross reference(s)— et seq.; fire department, § 2-361Cross reference(s)— et seq.; stopping, standing and parking, § 13-266 et seq.

Sec. 2-34. Responsibilities of committee on neighborhoods and city service.

The committee on neighborhoods and city service shall be concerned with all the activities: in the department of public services with the exceptions of public parking and traffic, and of water and sewer services, including, without limitation, municipal lighting, street sweeping, and city cemeteries; and regarding youth services, the public library, the veterans agent, the parks commission and department, and the council on aging.

(Code 1971, § 2-57; Ord. of 2-23-04(1); Ord. of 3-12-18)

Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—; cemeteries, § 12-101Cross reference(s)— et seq.

Sec. 2-35. Responsibilities of committee on licenses and permits.

The committee on licenses and permits shall evaluate and make recommendations on all applications for licenses and permits that come under the jurisdiction of the city council.

(Code 1971, § 2-58; Ord. of 3-12-18)

Cross reference(s)—Licenses, permits and business regulations, ch. 9Cross reference(s)—; committee on licenses and permits shall inspect all proposed taxing vehicles, § 15-31Cross reference(s)—.

Sec. 2-36. Responsibilities of the committee on planning and development.

The committee on planning and development shall be concerned with all the activities and jurisdictions of the office of planning and development and its director; the affordable housing trust; the conservation commission and its conservation agent; the planning board; the zoning board of appeals; the historical commission and any local historic district commissions; and the commission on disabilities.

(Ord. of 3-12-18)

Cross reference(s)—Planning and development department, § 2-326Cross reference(s)— et seq.; zoning, app. A.

Sec. 2-37. Responsibilities of the committee on education.

The committee on education shall be concerned with the proper use of school properties, and the activities and policies of the school committee and act as a liaison between the school committee and the city council on issues of education and school finances.

(Ord. of 3-12-18)

Sec. 2-37.1. Responsibilities of committee on budget and finance.

The committee on budget and finance shall be concerned with all issues of city finances including issues relating to city revenues and the city budget, including, without limitation, all the activities and jurisdictions of the city auditor, city treasurer, tax assessor, and tax collector.

(Ord. of 4-10-89; Ord. of 3-12-18)

Sec. 2-37.2. Responsibilities of committee on public utilities.

The committee on public utilities shall be concerned with all issues including activities and policies of the water and sewer commission, and requests from public utilities.

(Ord. of 8-30-99; Ord. of 3-12-18)

Sec. 2-37.3. Responsibilities of committee on rules.

The committee on rules shall be concerned with keeping the rules of the city council.

(Ord. of 3-12-18)

Sec. 2-38. No executive duties to be performed; nature of duties; access to information.

None of the committees of the city council shall perform any executive duty except as ordered by the city council, but shall perform the duties usually performed by committees of deliberative bodies. In the performance of such duties, each committee on the affairs of the department relating to which it is constituted shall at all proper times be afforded by the head of the department such information and access to books, files and records as it may reasonably require to enable it to become acquainted and keep itself familiar with the condition and workings of the various departments of the city government.

(Code 1971, § 2-60)

Sec. 2-39. Reserved.

Editor's note(s)—An ordinance adopted Mar. 12, 2018, repealed § 2-39Editor's note(s)—, which pertained to approval of certain bills and derived from Code 1971, § 2-61Editor's note(s)—.

Sec. 2-40. Expenditure of money.

None of the committees of the city council shall have the expenditure of any money except by special order of the city council.

(Code 1971, § 2-62)

Secs. 2-41—2-43. Reserved.

Editor's note(s)—An ordinance adopted Mar. 12, 2018, repealed §§ 2-41—2-43, which pertained to clerk of committees—appointment, term of office, compensation; and duties and derived from Code 1971, §§ 2-63Editor's note(s)——2-65.

Sec. 2-44. Filing of grant applications.

- (a) Any application for a grant filed with any other government agency or its subdivisions, private entity, not-for-profit entity, trust or individual submitted by or on behalf of the city shall simultaneous with said application, also be filed by the person or body submitting said application with the city clerk as a public record.
- (b) For purpose of this section, a grant shall be any request for funds, goods, services, information services or analysis and/or anything of value.
- (c) Within three (3) business days of receiving such an application, the city clerk shall inform each present city councillor of the existence of the filing. The communication shall include but not [be] limited to, the entity with which the application is filed, the person or body making the application on behalf of the city and a brief description of the nature of the application.
- (d) This section shall apply to all appointed and elected officials and employees of the city and all boards, commissions and authorities operating within and on behalf of the city.

(Ord. of 1-25-99)

Secs. 2-45—2-60. Reserved.

ARTICLE III. BOARDS, COMMITTEES, COMMISSIONS³

DIVISION 1. GENERALLY

Sec. 2-61. School committee meeting records.

The school committee of the city shall keep and maintain a record of all actions taken by the committee at all meetings thereof. Such records shall include an account of all discussions held at such meetings.

(Code 1971, § 2-11)

Charter reference(s)—School committee, §§ 31—36.

³Charter reference(s)—School committee, §§ 31—36; appointment of certain board members by mayor, § 60; removal by mayor, § 61.

Cross reference(s)—Harbor commission, § 4-41Cross reference(s)— et seq.; soil removal board created, § 5-227Cross reference(s)—; civil defense advisory council, § 6-10Cross reference(s)— et seq.; board of health, § 8-41Cross reference(s)— et seq.; board of appeals, app. A, § X-H.

Sec. 2-62. Residency requirement.

Unless otherwise allowed by law, regulation, ordinance, or by this charter, all members of multiple member bodies must be residents of the city at all times during their entire term of office. If a member of a multiple member body moves from the city during the term for which appointed, such seat shall immediately be deemed vacant and filled in the manner provided for in section 3-3 of the Charter.

(Ord. of 2-27-95; Ord. of 9-30-13(3))

Sec. 2-63. Member holding adjudicatory hearing.

~~Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for~~ For one (1) or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that ~~he~~ he they has have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace or otherwise supersede applicable quorum requirements.

(Ord. of 2-26-07(1))

Editor's note(s)—An ordinance adopted February 26, 2007, did not specifically amend the Code. Therefore, such ordinance has been added as § 2-63Editor's note(s)— at the editor's discretion.

Sec. 2-64. Annual report to be made.

City boards, committees, commissions, and authorities that are established by ordinance or whose members are confirmed by city council shall make an annual report to the council of all matters coming under its jurisdiction.

(Ord. of 10-15-13(2))

Sec. 2-65. Recording of planning board and zoning board of appeals meetings.

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

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

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

~~This requirement shall become effective for all planning board and zoning board of appeals meetings dated on or after 1/1/2020.~~

(Ord. of 8-19-19(2))

Secs. 2-66—2-80. Reserved.

DIVISION 2. COUNCIL ON AGING⁴

Sec. 2-81. Establishment; membership.

There is hereby established a council on aging consisting of an eleven (11) member boards, a majority of which must be at least sixty (60) years of age. Members must be residents and registered voters of the city. Members shall be appointed by the mayor, subject to the consent of the city council. All members currently serving on the board shall remain, subject to terms designated by the mayor in section 2-82.

(Code 1971, § 2-228; Ord. of 6-8-92)

Sec. 2-82. Terms of appointees.

Initially, members shall be appointed to terms in the following manner:

Two (2) members shall be appointed for a one-year term.

Two (2) members shall be appointed for two-year terms.

Two (2) members shall be appointed for three-year terms.

Two (2) members shall be appointed for four-year terms.

Three (3) members shall be appointed for five-year terms.

As the term of each member expires, ~~his~~ their successor shall be appointed for a term of five (5) years. Terms shall expire on the last day of May. A member may be reappointed for successive terms.

(Code 1971, § 2-229; Ord. of 6-8-92)

Sec. 2-83. Designation of chair~~man~~.

The chair~~man~~ of the council on aging shall be elected by the membership at the annual meeting.

(Code 1971, § 2-230; Ord. of 6-8-92)

Sec. 2-84. Appointment of clerks, etc.

The council on aging may appoint such clerks and other employees as it may require, subject to appropriation by the city council.

(Code 1971, § 2-231)

⁴State law reference(s)—Council on aging, M.G.L. ~~A.~~ c. 40, § 8B.

Sec. 2-85. Coordinating, carrying out programs.

It shall be the duty of the council on aging to coordinate or carry out programs designed to meet problems of the aging in coordination with programs of the council on aging established under M.G.L. ~~A.~~ c. 6, § 73.

(Code 1971, § 2-232)

Sec. 2-86. Senior citizen property tax work-off program.

Pursuant to the provisions of M.G.L. ~~A., ch.~~ 59 § 5K, homeowners who are age sixty (60) or over are provided the opportunity to participate in the senior citizen property tax work-off program. Under the program, participating taxpayers volunteer their services to the city in exchange for a reduction in their tax bills. Participants in the program are compensated for services at an hourly rate equal to the current minimum wage of the commonwealth. The maximum amount of the abatement shall be one thousand five hundred dollars (\$1,500.00) per fiscal year. This program is administered by the mayor's office, in conjunction with the director of council on aging.

(Ord. of 10-29-07; Ord. of 11-8-10(1); Ord. of 12-14-20(1))

Editor's note(s)—Ord. of 12-14-20(1) amended § 2-86Editor's note(s)— and in doing so changed the title of said section from "Senior citizen tax incentive program" to "Senior citizen property tax work-off program," as set out herein.

Editor's note(s)—An ordinance adopted October 29, 2007, did not specifically amend the Code. Therefore, such ordinance has been added as § 2-86Editor's note(s)— at the editor's discretion.

Secs. 2-87—2-99. Reserved.

DIVISION 3. NEWBURYPORT HISTORICAL COMMISSION⁵

Sec. 2-100. Powers and duties.

The city shall have a commission known as the Newburyport Historical Commission, which shall have all the powers and duties of (i) an historical commission as provided in M.G.L. ~~A.~~ c. 40, § 8D, as amended, as well as of (ii) a local historic district commission established pursuant to M.G.L. ~~A.~~ c. 40C, § 4, as amended, to the extent provided in this Code.

(Ord. of 6-29-20(1))

Sec. 2-101. Membership.

The commission shall consist of seven (7) members and two (2) alternate members, all appointed by the mayor and subject to confirmation by the city council. All members and alternate members shall serve without compensation. The mayor shall appoint all members and alternate members of the commission to serve a term of

⁵Editor's note(s)—Ord. of 6-29-20(1) amended div. 3 in its entirety to read as herein set out. Former div. 3, §§ 2-106Editor's note(s)——2-109, pertained to similar subject matter, and derived from Ord. of 9-7-71, §§ 1—4.

State law reference(s)—Historic district commission, M.G.L. ~~A.~~ c. 40, § 8(d).

three (3) years each. Each member and alternate member shall continue in office after the expiration date of their term ~~his or her term~~ until a successor is duly appointed by the mayor and also confirmed by the city council. A vacancy occurring other than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment.

(Ord. of 6-29-20(1))

Sec. 2-102. Governance.

- (a) *Election of officers.* At its first meeting each calendar year, the commission shall nominate and elect a chair and a vice chair, from its own membership, to serve as officers of the commission. After such public bearing, the commission shall forthwith file notice of the names of the elected officers with the office of the city clerk.
- (b) *Meeting schedule.* Meetings of the commission shall be held monthly at the call of the chair, or in such other manner as the commission shall determine in its procedural rules.
- (c) *Quorum.* Four (4) members of the commission, which is a simple majority of its members, shall constitute a quorum. Any approval, approval with provisos, disapproval, or disapproval with recommendations shall require a positive vote of a quorum.
- (d) *Alternate members.* Both alternate members may attend all public meetings of the commission, and may participate in its deliberations. However, unless an alternate member is deemed to be a member of the commission pursuant to this subsection, an alternate member may not make motions or vote regarding any application before the commission. In the case of the absence, inability to act or unwillingness to act because of self-interest on the part of a member of the commission, ~~his or her~~ their place shall be taken by an alternate member designated by the chair, in which case such alternate member shall be deemed to be a member of the commission for purposes of that application, including, without limitation, to establish a quorum and for all commission procedures and votes. In the event of a continued hearing on a particular application, the alternate member who was designated as a member previously for such application shall be permitted to continue to be deemed a member regarding such application until its final disposition.

(Ord. of 6-29-20(1))

Sec. 2-103. Demolition delay.

Pursuant to article X of chapter 5, the commission is empowered and mandated to advise the building commissioner with respect to the issuance of permits for demolition.

(Ord. of 6-29-20(1))

Sec. 2-104. Historical reports to planning board and zoning board of appeal.

Pursuant to the Newburyport Zoning Ordinance, the commission shall prepare and submit historical reports to the planning board and the zoning board of appeal with respect to the Downtown Overlay District and the Demolition Control Overlay District.

(Ord. of 6-29-20(1))

Sec. 2-105. Annual report.

The commission shall encourage the submission of written comments by applicants regarding this chapter, including any procedural rules and guidelines adopted by the commission, as well as the processing and disposition

of applications by the commission or its designees. Prior to April 1 of each year, the director of planning and development, or ~~his or her~~ their designee, shall prepare and issue a report that provides a summary of written comments by applicants as well as a summary of all applications submitted to, deemed approved, approved, approved with provisos, disapproved, disapproved with recommendations, or otherwise processed by the commission or its designees during the previous calendar year. The office of planning and development shall issue and distribute a copy of such report to the mayor, the president of the city council, the chair of the commission, and the office of the city clerk.

(Ord. of 6-29-20(1))

Sec. 2-106. Use of city seal; indebtedness.

The use of the city seal is authorized as maybe necessary to effectuate the intent of this division. The historical commission shall neither incur nor purport to incur indebtedness on the city's behalf.

(Ord. of 6-29-20(1))

Secs. 2-107—2-115. Reserved.

DIVISION 4. PLANNING BOARD

Sec. 2-116. Established; membership; appointment.

The planning board for the city is hereby established under the provisions of M.G.L. ~~A~~ c. 41, §§ 81A—81J inclusive. Such board shall consist of nine (9) members. The members shall be appointed by the mayor and confirmed by the city council.

(Code 1971, § 19-1)

Sec. 2-117. Terms of office; filling vacancies.

When the first appointment is made to the planning board, three (3) members shall be appointed for the term of one (1) year, three (3) for the term of two (2) years, one (1) for the term of three (3) years, one (1) for the term of four (4) years, and one (1) for the term of five (5) years, from the date of their appointment. As the term of each member expires, ~~his~~ their successor shall be appointed for the term of five (5) years. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as in the case of an original appointment.

(Code 1971, § 19-2)

Sec. 2-118. Election of ~~chairman~~ chairman, clerk.

The planning board shall, as soon as practicable, after the appointments of the members have become operative, and annually thereafter, elect a ~~chairman~~ chairman and clerk from its own membership.

(Code 1971, § 19-3)

Sec. 2-119. Members to serve without pay; powers and duties.

The members of the planning board shall serve without pay and shall have the powers and authority to perform the duties set forth in M.G.L. ~~A~~ c. 41, §§ 81A—81J inclusive, relative to local planning boards.

(Code 1971, § 19-4)

DIVISION 5. COMMUNITY PRESERVATION COMMITTEE

Sec. 2-120. Established.

There is hereby established a community preservation committee, in accordance with the Chapter 267 of the Acts of 2000, Massachusetts Community Preservation Act, consisting of nine (9) voting members pursuant to M.G.L. ~~A~~ c. 44B. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

(Ord. of 2-24-03)

Sec. 2-121. Membership and terms.

The composition of the committee, the appointment authority and the term of office for the committee members shall be as follows:

- (1) One (1) member of the conservation commission for a term of three (3) years.
- (2) One (1) member of the historical commission for an initial term of two (2) years, and thereafter for a term of three (3) years.
- (3) One (1) member of the planning board for an initial term of one (1) year, and thereafter for a term of three (3) years.
- (4) One (1) member of the parks commission for an initial term of one (1) year and thereafter for a term of three (3) years.
- (5) One (1) member of the housing authority for an initial term of two (2) years and thereafter for a term of three (3) years.
- (6) One (1) member of the open space committee for an initial term of one (1) year and thereafter for a term of three (3) years.
- (7) Three (3) members of the general public to be appointed by the mayor, one (1) member to be appointed for a term of one (1) year and thereafter for a term of two (2) years and one (1) member to be appointed for a term of two (2) years and thereafter for a term of three (3) years.

The appointments to the community preservation committee shall be made in accordance with the provisions of the City Charter.

(Ord. of 2-24-03)

Sec. 2-122. Powers and duties.

- (a) The community preservation committee shall study the needs, possibilities and resources of the city regarding community preservation. The committee shall consult with existing municipal boards, including the city council, conservation commission, the historical commission, the planning board, the park commission,

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and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one (1) or more public informational hearings on the needs, possibilities and resources of the ~~town-city~~ regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two (2) weeks preceding a hearing in a newspaper of general circulation in the ~~town-city~~.

- (b) The community preservation committee shall make recommendations to the city council for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
- (c) The community preservation committee may include in its recommendation to the city council a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the community preservation fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(Ord. of 2-24-03)

Sec. 2-123. Rules and regulations.

- (a) By majority vote of the members of the committee, the committee may adopt and promulgate rules and regulations for the conduct of its business on any matter within the committee's jurisdiction under the Massachusetts Constitution, Massachusetts General or Special Laws, the Code of Massachusetts Regulations (CMR), ordinance, or other legal right or authority granted to or conferred upon the commission.
- (b) The proposed rule or regulation shall be submitted to all committee members at least forty-eight (48) hours prior to any vote to adopt the same; provided, however, the committee may make such amendments to the proposed rules or regulations as it deems appropriate at the said meeting.
- (c) Upon approval of any rule or regulation by the committee, a copy of the same shall be filed with the city clerk and become effective as of the date of filing thereof unless the specific vote of the committee establishes a later effective date.
- (d) To enhance communication, minutes of each meeting shall be sent to the city clerk for distribution to the city council.

(Ord. of 2-24-03)

Sec. 2-124. Amendments.

This ~~chapter (division)~~ division may be amended from time to time by a majority vote of the city council, provided that the amendments would not cause a conflict to occur with M.G.L. ~~A.~~ c. 44B.

(Ord. of 2-24-03)

Sec. 2-125. Newburyport Housing Trust Fund.

- (a) There shall be a board of trustees of the Newburyport Housing Trust Fund, which shall include five trustees, including the mayor, with the remaining members to be appointed by the mayor, subject to confirmation by

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

- (b) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in M.G.L. ~~A~~ c. 44, § 55C, shall include the following:
- (1) To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or any general or special law or any other source, including ~~money~~ Community Preservation Act funds from pursuant to M.G.L. ~~A~~ c. 44B;
 - (2) To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
 - (3) To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;
 - (4) To execute, acknowledge, and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;
 - (5) To employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;
 - (6) To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;
 - (7) To apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
 - (8) To participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
 - (9) To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
 - (10) To carry property for accounting purposes other than acquisition date values;
 - (11) To borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;
 - (12) To make distributions or divisions of principal in kind;

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- (13) To comprise, attribute, defend, enforce, release, settle, or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this Act, to continue to hold the same for such period of time as the board may deem appropriate;
 - (14) To manage or improve real property; and to abandon any property which the board determined not to be worth retaining;
 - (15) To hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
 - (16) To extend the time for payment of any obligation to the trust.
- (c) The trust is a board of the city for purposes of M.G.L. ~~A~~ c. 30B and c. ~~450~~, § 15A; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city shall be exempt from said chapter 30B.

(Ord. of 5-26-09(2))

Editor's note(s)—An ordinance adopted May 26, 2009, did not specifically amend the Code. Therefore, such ordinance has been added as § 2-125Editor's note(s)— at the editor's discretion.

DIVISION 6. HUMAN RIGHTS COMMISSION⁶

Sec. 2-125a. Policy of the City of Newburyport.

It is the policy of the City of Newburyport to uphold the human rights of all persons in Newburyport and the free exercise and enjoyment of any rights and privileges secured by the Constitution and laws of the United States and the Commonwealth of Massachusetts. This policy shall promote and support equal opportunity for each person regardless of race, color, religious creed, national origin, immigration status, sex, age, ancestry, sexual orientation, gender identity and expression, marital, family or military status, and source of income or disability with respect to housing, employment, education, public accommodations, city services, insurance, banking, credit and healthcare.

Further, city employees shall not ask for information about immigration status in the performance of daily tasks unless required to do so by federal or state statute, regulation or court decision.

City department heads shall use tools at their disposal, including meetings and trainings, to direct their staff to comply with the city's policies described above. A communication shall be issued by city department heads to their staff upon adoption of this ordinance [from which this section derived].

(Ord. of 8-22-05, § 1; Ord. of 12-14-15(2); Ord. of 3-26-18)

Sec. 2-125b. Establishment of human rights commission, membership, term, officers, administration.

In furtherance of policy espoused above there is hereby established in the City of Newburyport a municipal board to be known as the Human Rights Commission of the City of Newburyport (hereinafter referred to as the "commission"). Membership of the commission shall not exceed nine (9) members who shall serve for terms of not

⁶Editor's note(s)—An ordinance adopted April 25, 2016, amended the title of Div. 6 to read as herein set out. Former Div. 6 was titled, "Commission on Diversity and Tolerance."

more than three (3) years. The members shall be appointed by the mayor, all subject to confirmation by the city council. Each member of the commission shall reside in Newburyport and shall, so far as practical, be selected to provide culturally diverse representation from fields including, but not limited to, education, religion, law, law enforcement, social services, industry, commerce, and labor.

For the initial appointments to the commission, the first three (3) appointments shall serve for a term of three (3) years; the next three appointments shall serve for a term of two (2) years; and any additional appointments shall serve for a term of one (1) year.

Thereafter, the mayor shall appoint each successor to ~~his/her~~their initial appointment to a term of three (3) years. No members of the commission may serve for more than two (2) consecutive terms. A member having served two (2) consecutive terms must remain off the commission for at least one (1) year before becoming eligible for re-appointment. Appointments to un-expired terms or initial appointments for less than three (3) years shall not be counted as a term for the person appointed. The mayor shall also appoint on an annual basis one or middle - or high school students(s) to serve as non-voting member(s) on the commission. The members of the commission shall serve without compensation.

The commission shall meet each January to elect one of its voting members as chairperson and one of its voting members as secretary/clerk, and may elect other officers from its voting membership, as it may deem necessary. In addition to this January meeting, the commission shall meet at least four (4) times a year at regular intervals. A majority of the voting members of the commission shall constitute a quorum. Any member who fails to attend three (3) consecutive regular meetings shall be considered removed from the commission.

With permission of the mayor, the city solicitor shall serve as counsel of the commission, unless a conflict of interest requires outside legal assistance. The mayor shall authorize and assign a member of ~~his/her or~~ a municipal agency or department's staff to serve as liaison between the commission and the mayor and to act as the communication's coordinator for the commission.

(Ord. of 4-25-16(2))

Editor's note(s)—An ordinance adopted April 25, 2016, amended § 2-125bEditor's note(s)— in its entirety to read as herein set out. Former § 2-125bEditor's note(s)— pertained to establishment of diversity and tolerance commission, membership, terms, officers, administration, and derived from § 2 of an ordinance adopted Aug. 22, 2005.

Sec. 2-125c. Function, duties, powers.

In furtherance of its policy, the commission shall be guided by these functions, duties, and powers:

- (1) To enlist the cooperation of racial, religious, ethnic, civic, fraternal, benevolent, and private and public agencies in eliminating discrimination and intolerance by cultivating an atmosphere of mutual understanding and harmonious inter-group relationships;
- (2) To provide resources and referral information to any person or group seeking same regarding discriminatory or intolerant acts;
- (3) To issue such publications and pronouncements, and confer such prizes and awards, as in the commission's judgment, will tend to promote good will and to minimize or eliminate discrimination and intolerance;
- (4) To support municipal departments and agencies in their response to discriminatory or intolerant acts;
- (5) To promote understanding of diverse cultures and the nature of discriminatory or intolerant acts through education and community action;

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- (6) To establish standing and ad hoc subcommittees composed of commission members and, to the extent the commission may deem appropriate for ad hoc subcommittees, non-members as well;
 - (7) To keep the mayor, city council, police department, and the school committee informed of commission action, by periodic report upon request, and by means of an annual written summary of its work;
 - (8) The funding for the commission may be by appropriation of the city council upon recommendation of the mayor or from any other appropriate source including fundraising;
 - (9) The commission shall file with the city clerk notice stating its procedural policies and rules; and
 - (10) With the permission of the mayor, to obtain and utilize the services of municipal departments and agencies, unless prohibited by law. With the permission of the school committee, to similarly obtain and utilize the services of the school department, unless prohibited by law.

(Ord. of 8-22-05, § 3)

ARTICLE IV. OFFICERS AND EMPLOYEES⁷

DIVISION 1. GENERALLY

Sec. 2-126. Salary of elected officials.

- (a) Commencing in January 2020, and continuing thereafter, the annual salary of the mayor shall be one hundred and two thousand, seven hundred and fifty dollars (\$102,750.00), plus three thousand dollars (\$3,000.00) annual expense allowance.
- (b) The annual salary of each city councilor shall be five thousand dollars (\$5,000.00) and the salary of the president of the city council shall be six thousand dollars (\$6,000.00).
- (c) Commencing on January 1, 2020, and continuing thereafter, the annual salary of each school committee member, except the mayor and the vice-chair, shall be three thousand dollars (\$3,000.00). Commencing on January 1, 2020 the annual salary of the vice-chair shall be three thousand, six hundred dollars (\$3,600.00).

(Code 1971, §§ 2-26, 2-27; Ord. of 10-30-74; Ord. of 6-30-86, § 3; Ord. of 5-9-94, § 2; Ord. of 2-12-01(1); Ord. of 6-28-10; Ord. of 9-30-13(1); Ord. of 9-30-19)

Cross reference(s)—City council, § 2-26Cross reference(s)— et seq.

⁷Charter reference(s)—Term of office of mayor, M.G.L.~~A~~ c. 43, § 58; mayor to be chief executive officer of city, M.G.L.~~A~~ c. 43, § 58; civil service laws not applicable to employees in mayor's office, M.G.L.~~A~~ c. 43, § 25; approval or veto by mayor of measures, etc.; overriding veto, M.G.L.~~A~~ c. 43, § 55; appointments by mayor subject to confirmation, M.G.L.~~A~~ c. 43, § 60; appointment, removal of city solicitor by mayor, M.G.L.~~A~~ c. 43, § 60; removal by mayor of certain officers, board members, M.G.L.~~A~~ c. 43, § 61.

Cross reference(s)—Depository for bonds of city officials, § 2-4; appointments shall be made by the mayor with the consent of the city council, § 2-26Cross reference(s)—; director of planning and development, § 2-328Cross reference(s)—; harbor master, § 4-66Cross reference(s)— et seq.; inspector of buildings, § 5-41Cross reference(s)— et seq.; inspector of gas piping and gas appliances appointed, § 5-96Cross reference(s)— et seq.; inspector of wires appointed, § 5-146Cross reference(s)— et seq.; director of civil defense, § 6-4.

State law reference(s)—Officers and employees of cities, towns and districts, M.G.L.~~A~~ c. 41.

State law reference(s)—Salaries of mayor and members of council, M.G.L. ~~A~~ c. 39, § 6A.

Sec. 2-127. Salaries of other officers, department heads, employees.

Unless otherwise specified in the Charter or in this Code, the salaries of all city employees shall be determined by the mayor in the budget subject to approval or amendment by the city council.

(Code 1971, § 2-39)

Sec. 2-128. Departmental records to be kept; employee records.

The head of each department of the city shall keep an accurate record of the affairs of the city coming under ~~his~~ their jurisdiction, either by ~~himself~~ themselves or by a person in ~~his~~ their department to be designated by ~~him~~ them. ~~He~~ They shall make a record of the number of employees coming under ~~his~~ their supervision, the days and hours of their employment, record of injuries sustained while in the employ of the city and all other matters pertaining to ~~his~~ their particular department.

Such records kept by a department head under this section shall be consistent with those maintained by the director of human resources as specified in the City Charter. Notwithstanding the provisions of this section, the official personnel records of all city employees shall be considered to be those compiled and maintained by the director of human resources.

(Code 1971, § 2-5; Ord. of 10-15-13(4))

Sec. 2-129. Annual departmental report to be made.

Each department head shall make a report to the city council on or before September thirtieth of each year of all matters coming under ~~his~~ their jurisdiction.

(Code 1971, § 2-6)

Sec. 2-130. Constables.

The mayor shall appoint subject to confirmation by the city council such constables for the service of civil processes as ~~he~~ they shall deem proper, who shall be qualified by giving bonds according to law, which constables shall be entitled to all fees received by them for the service of civil processes, provided, however, that no such constable shall be appointed until ~~he~~ they shall have complied with the provisions of M.G.L. ~~A~~ c. 41, § 91B and of such other statutes of this commonwealth which relate to the appointment of constables.

(Code 1971, § 2-7)

State law reference(s)—Constables, M.G.L. ~~A~~ c. 41, § 91B.

DIVISION 2. PERSONNEL

Sec. 2-131. Application.

All city departments and positions shall be subject to the provisions of this division and any regulations adopted pursuant to this division, except elected officers and employees of the school department. To the extent that any collective bargaining agreement conflicts with any provision of this division, the provisions of the

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collective bargaining agreement shall prevail. This division is adopted pursuant to the authority granted by Article LXXXIX of the Constitution of the Commonwealth and M.G.L. c. 41, §§ 108A and 108C.

(Ord. of 1-11-93)

Sec. 2-132. Purpose and intent.

The purpose of the personnel provisions in this division is to establish fair and equitable personnel policies and to establish a system of personnel administration based on merit principles that ensures a uniform, fair and efficient application of personnel policies. The intent of this division is to provide a method of recruitment, selection, and development of a work force that is skilled and effective in accomplishing the service delivery missions of the city. Personnel actions are to be made without regard to sex, sexual orientation, religion, religious creed, color, national origin, age (unless pursuant to any special or general law), ancestry, handicap, political affiliation or other non-job related factor unless based on a bona fide occupational qualification, and shall be based on merit and fitness.

(Ord. of 1-11-93)

Sec. 2-133. Responsibility of the mayor.

The mayor shall be responsible for establishment and maintenance of a personnel system based on merit principles. The mayor shall formulate, adopt and administer personnel policies in the form of personnel rules and regulations, pursuant to section 2-134 of this division. The mayor may delegate responsibilities as deemed necessary or appropriate.

(Ord. of 1-11-93)

Sec. 2-134. Adoption of personnel rules and regulations.

The mayor is empowered and authorized by this division to adopt personnel rules and regulations establishing a personnel system and defining the rights, benefits and obligations of employees subject to this division. Any rules and regulations adopted by the mayor shall be effective immediately, unless some other date is specified in such rules and regulations. The personnel system established by such rules and regulations shall make use of sound concepts of personnel management and shall include but not be limited to the following elements: A system of administration; a position classification plan; a compensation plan; a recruitment, employment, review, promotion, and transfer policy; a centralized record keeping system; a series of personnel policies which establishes the rights, benefits and obligations of employees; and other elements of a personnel system as deemed appropriate.

(Ord. of 1-11-93)

Secs. 2-135—2-150. Reserved.

DIVISION 3. ASSESSOR⁸

Sec. 2-151. Office of assessor.

- (a) The office of assessor shall consist of one (1) person who shall be appointed in the month of January by the mayor, subject to confirmation by the city council. A suitable person shall be appointed assessor of taxes for a term of three (3) years or until ~~his~~their successor is duly appointed and qualified. Vacancies occurring in the office of assessor may be filled in the same manner, but only for the unexpired term.
- (b) The office of assessor shall exercise the powers and be subject to the liabilities and duties prescribed by the laws of the commonwealth and ordinances of the city.

(Code 1971, §§ 24-5—24-9; Ord. of 8-13-84(2), §§ 24-5, 24-9)

Secs. 2-152—2-170. Reserved.

DIVISION 4. CITY AUDITOR⁹

Sec. 2-171. Appointment.

Once every three (3) years in the month of February, the mayor shall appoint, subject to confirmation by the city council, a competent person to be city auditor.

(Code 1971, § 2-90)

Sec. 2-172. Term of office.

The city auditor shall hold office for three (3) years from the first day of March succeeding ~~his~~their appointment or until ~~his~~their successor is chosen and qualified in like manner.

(Code 1971, § 2-91)

Sec. 2-173. Removal for cause.

The city auditor may be removed for cause at any time by the mayor with the approval of the city council.

⁸Cross reference(s)—Appointments shall be made by the mayor with the consent of the city council, § 2-26Cross reference(s)—.

State law reference(s)—Assessors generally, M.G.L. c. 41, § 24.

⁹Cross reference(s)—Appointments shall be made by the mayor with the consent of the city council, § 2-26Cross reference(s)—; finance, § 2-371Cross reference(s)— et seq.

State law reference(s)—City auditor, M.G.L. c. 41, § 48 et seq.

(Code 1971, § 2-92)

Sec. 2-174. Oath, affirmation.

The city auditor shall be qualified by oath or affirmation.

(Code 1971, § 2-93)

Sec. 2-175. General duties and powers.

It shall be the duty of the city auditor to examine and audit the accounts of the city treasurer/collector and see that they are correctly cast and properly vouched for. ~~He~~They shall have access to:

- (1) Records of financial legislation by the city council;
- (2) Contracts made between the city and any other party;
- (3) Agreements involving the disbursement of funds from the ~~public city~~city treasury;
- (4) The books and accounts of the commissioners of any sinking fund established for the reduction of any city debt;
- (5) The accounts of any committee having authority to spend money;
- (6) The books and vouchers of the city treasurer/collector, the city clerk, and any other officers of the city; and
- (7) Each and every source of information in regard to the financial affairs of the city, whether herein set forth or not, to the end that ~~he~~they may have full and accurate information thereon.

(Code 1971, § 2-95)

State law reference(s)—Powers and duties, M.G.L. ~~A~~ c 41, § 50.

Sec. 2-176. Responsibility to mayor and council; reporting irregularities; monthly and annual statements; contents thereof.

The city auditor shall be directly responsible to the mayor and city council for the faithful discharge of ~~his~~their duties, and shall report to them any irregularities or errors in the books or accounts of the city treasurer/collector or other city officer, and when requested shall submit for their examination, monthly, a written statement of the financial condition of the city treasury, and annually, in the month of June, prepare and lay before them a full and accurate report of the receipts and expenditures of the preceding financial year. A schedule of the property, real and personal, belonging to the city, and the value thereof, and a statement of the city debt, shall accompany said report. ~~He~~They shall also ascertain whether all moneys due the city have been collected and accounted for, and shall examine all notes and securities in the hands of the city treasurer/collector belonging to the city and report the result of ~~his~~their investigations to the mayor and city council.

(Code 1971, § 2-96)

Secs. 2-177—2-195. Reserved.

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PART II - CODE OF ORDINANCES
Chapter 2 - ADMINISTRATION
ARTICLE IV. - OFFICERS AND EMPLOYEES
DIVISION 5. CITY CLERK

DIVISION 5. CITY CLERK¹⁰

Sec. 2-196. Bond.

The city clerk shall give bond in the sum established by state law for the faithful performance of all the duties of ~~his~~their office as prescribed in the laws of the commonwealth and the ordinances of the city, and the delivery to ~~his~~their successor of all books, papers, and property pertaining to ~~his~~their office and under ~~his~~their charge which belongs to the city.

(Code 1971, § 2-76)

Sec. 2-197. Compensation.

The city clerk shall receive such remuneration for ~~his~~their services as the city council shall from time to time determine.

(Code 1971, § 2-77)

Sec. 2-198. Attendance, record keeping at council meetings.

The city clerk shall attend and keep the records of all meetings of the city council.

(Code 1971, § 2-78)

Sec. 2-199. Care and custody of documents, records, maps, etc., not otherwise provided for.

The city clerk, under the direction and control of the city council, shall have the care and custody of the city records and all documents, maps, plans and papers respecting the care and custody of which no other provision is made.

(Code 1971, § 2-79)

Sec. 2-200. Assistant city clerk—Appointed by city clerk.

The city clerk shall annually in the month of January, appoint a person qualified by training and experience to be assistant city clerk. The assistant city clerk shall hold office at the pleasure of the city clerk.

(Ord. of 6-12-78, § 2-80)

¹⁰Charter reference(s)—City clerk to keep records of council meetings, M.G.L. ~~A~~ c. 43, § 18(3); council to elect by majority vote a city clerk, M.G.L. ~~A~~ c. 43, § 18(3); city clerk to hold office for three (3) years, M.G.L. ~~A~~ c. 43, § 18(3); powers and duties of city clerk, M.G.L. ~~A~~ c. 43, § 18(3).

State law reference(s)—Duties of city clerk, M.G.L. ~~A~~ c. 41, § 12State law reference(s)— et seq.

Sec. 2-201. Same—Powers.

The assistant city clerk shall have all the powers of city clerks under the statutes of the commonwealth and the ordinances of the city.

(Ord. of 6-12-78, § 2-81)

Sec. 2-202. Same—Compensation.

The assistant city clerk shall receive such compensation for services as shall be determined by the city council.

(Ord. of 6-12-78, § 2-82)

Sec. 2-203. Same—Filling vacancy in office of city clerk, etc.

In case of vacancy in the office of city clerk or any disability of the city clerk to perform the duties required by law or ordinance, the assistant city clerk shall perform such duties. In the absence of both the city clerk and the assistant city clerk, the city council may appoint a city clerk pro tempore who shall be sworn and shall perform such duties, but shall hold the office only until such vacancy is filled by the city council or until such disability ceases to exist.

(Ord. of 6-12-78, § 2-83)

Sec. 2-204. Same—Bond and duties.

The assistant city clerk shall be bonded and sworn to the faithful discharge of ~~his~~ their duties in the same manner as the city clerk.

(Ord. of 6-12-78, § 2-84)

Secs. 2-205—2-225. Reserved.

DIVISION 6. RESERVED¹¹

Secs. 2-226—2-245. Reserved.

DIVISION 7. CITY SOLICITOR¹²

¹¹Editor's note(s)—An ordinance adopted March 27, 2006, repealed §§ 2-226—2-230, which pertained to city messenger and derived from §§ 2-164—2-169 of the 1971 Code.

¹²Charter reference(s)—City solicitor, § 60.

State law reference(s)—City solicitor defined, M.G.L. ~~A.~~ c. 4, § 7.

Sec. 2-246. Appointment; qualifications; term; removal.

Annually in the month of January, the mayor shall appoint an attorney and counselor-at-law of the courts of the commonwealth to serve in the office of city solicitor, the legal department of the city, which appointment shall be confirmed by the city council pursuant to section 2-10 of the ~~Newburyport~~ Charter. Once so appointed and confirmed, such attorney and counselor-at law shall hold office until ~~his or her~~their successor is appointed and confirmed, and ~~he or she~~they may be removed at any time by the mayor pursuant to subsection (a) of section 3-4 of the ~~Newburyport~~ Charter.

(Code 1971, § 2-148; Ord. of 4-25-88(1); Ord. of 10-15-19(3))

Sec. 2-247. Holding other city offices during term.

The city solicitor shall not hold any other office under the city government or be a member of the city council during ~~his~~their term of office as city solicitor.

(Code 1971, § 2-149)

Sec. 2-248. Compensation; travel expense.

The city solicitor shall receive compensation, which shall be in full for all services ~~he~~they may be called upon to perform under the provisions of this Code, except for services rendered in courts of record and before the general court or any committee thereof, or for services not herein specified; and for the services so excepted, ~~he~~they shall be allowed an additional and reasonable compensation if the mayor and city council so approve. In all cases where ~~his~~their attendance is required out of the city, ~~he~~they shall be allowed ~~his~~ reasonable traveling expenses.

(Code 1971, § 2-150)

Sec. 2-249. General duties.

It shall be the duty of the city solicitor to:

- (1) Commence and prosecute all actions and suits to be commenced by the city;
- (2) Defend all actions and suits brought against the city;
- (3) Appear as counsel in any other action, suit or prosecution which may involve the rights and interests of the city if requested to do so by the mayor or city council;
- (4) Defend the officers of the city, in any suit or prosecution against them, for any act or omission in the discharge of their official duties, wherein any estate, right, privilege, ordinance, or act of the city government, or any breach of any ordinance may be brought in question;
- (5) Take such steps and incur such expense, to be charged to the proper appropriations, in prosecuting and defending suits, as ~~he~~they may deem necessary;
- (6) Settle any suit against the city solely upon approval of the terms of such settlement proposed by the mayor and/or the city solicitor by order of the city council, after receiving the recommendation regarding such terms by its committee on general government, and subject to veto by the mayor under section 3-7 of the Newburyport Charter;

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- (7) Appear before the general court of the commonwealth, or before any committee thereof, whenever the interests or welfare of the city may be directly or indirectly affected, if requested to do so by the mayor or city council;
 - (8) Perform all other professional duties incident to ~~his~~their office which may be required by the mayor or the city council;
 - (9) When requested solely by the mayor, furnish the mayor, the school committee, or any board or officer in charge of a department of the city government, ~~his~~their legal opinion on any subject or question relating to the discharge of their official duties; provided, however, that if such opinion is desired in writing, the question submitted for ~~his~~their consideration shall also be stated in writing. The city solicitor shall also furnish the city council with ~~his~~their legal opinion, either verbally or, if specifically requested, in writing, on any matter which the city council deems to be in its jurisdiction.
 - (10) Examine all claims presented to ~~him~~them by the mayor or city council, and if a settlement thereof seems to ~~him~~them advantageous for the city, shall approve the same.

(Code 1971, § 2-151; Ord. of 7-13-94; Ord. of 10-15-19(3))

Sec. 2-250. Drafting legal instruments.

It shall be the duty of the city solicitor to draft all legal instruments, of whatever nature, which may be required of ~~him~~them by the mayor, or by the city council, or by any person authorized to represent the city, in all cases where-by usage or agreement the expense of drawing should be paid by the city.

(Code 1971, § 2-152)

Sec. 2-251. Annual report.

On the first day of February in each year, the city solicitor shall make a report in writing to the mayor and city council, concerning all suits or legal proceedings in which the city is interested, which are pending or have been determined during the preceding year and such other information as in ~~his~~their opinion the interests of the city may require.

(Code 1971, § 2-153)

Secs. 2-252—2-270. Reserved.

DIVISION 8. CITY TREASURER/ COLLECTOR¹³

¹³Cross reference(s)—Appointments shall be made by the mayor with the consent of the city council, § 2-26Cross reference(s)—.

State law reference(s)—Treasurer generally, M.G.L. ~~A~~ c. 41, § 35 et seq.

Sec. 2-271. Appointment.

The mayor shall, subject to confirmation by the city council, appoint a city treasurer/collector for a term of three (3) years.

(Code 1971, § 2-107; Ord. of 8-26-85(5))

Sec. 2-272. Collector of taxes.

The city treasurer/collector shall be the collector of taxes.

(Code 1971, § 24-1)

State law reference(s)—Taxation, M.G.L.A. c. 58 et seq.

Sec. 2-273. Removal for cause.

The city treasurer/collector may be removed for cause by the mayor with the approval of a majority of the city council.

(Code 1971, § 2-109)

~~State law reference(s)—Removal, M.G.L.A. c. 41, § 39B.~~

Sec. 2-274. Custody of funds; signing evidence of indebtedness; payment of drafts.

The city treasurer/collector shall have the following duties:

- (1) Receive, receipt for and have the custody of the funds of the city;
- (2) Sign all bonds, scrip, notes and certificates of indebtedness issued for loans to the city and authorized by the mayor and city council;
- (3) Pay all drafts directed to ~~him~~ them for the payment of accounts and claims against the city.

(Code 1971, § 2-110)

Sec. 2-275. To keep books and accounts.

The city treasurer/collector shall keep, in books provided for that purpose, an accurate and true account of all ~~his~~ their receipts and payments, making the same conform as nearly as may be with the accounts kept by the city auditor. ~~He~~ They shall credit each department or account with all sums received on its account, and shall charge to each all sums paid out on such accounts.

(Code 1971, § 2-111)

Sec. 2-276. Monthly statement to auditor of receipts and disbursements.

The city treasurer/collector shall, on the first day of every month, report to the city auditor a written statement of all ~~his~~ their receipts and disbursements during the preceding month, stating the aggregate amount for each department or account.

(Code 1971, § 2-112)

Sec. 2-277. Paying out money.

The city treasurer/collector shall not pay out any money out of the treasury except upon order of the mayor, and except as is otherwise provided by statute or ordinance.

(Code 1971, § 2-113)

Sec. 2-278. Collection of rents and sums.

The city treasurer/collector shall be the collector of all rents and sums payable to the city not otherwise specially provided for.

(Code 1971, § 2-114)

Sec. 2-279. Assistant city treasurer/collector.

- (a) *Appointment.* The mayor shall, subject to confirmation by the city council, appoint an assistant city treasurer/collector for a term of three (3) years.
- (b) *Removal for cause.* The assistant city treasurer/collector may be removed for cause by the mayor by approval of a majority of the city council.
- (c) *Duties.* The assistant city treasurer/collector shall:
 - (1) Act in the capacity of the treasurer or collector with all rights and duties in the event the treasurer or collector is unavailable or unable to so act;
 - (2) Prepare all cash sheets with respect to the funds received by the city for review by the city auditor;
 - (3) Account for and balance any and all bank statements received by the treasurer/collector.

(Ord. of 8-26-85(4))

Secs. 2-280—2-295. Reserved.

DIVISION 9. SEALER OF WEIGHTS AND MEASURES¹⁴

Sec. 2-296. Appointment; powers and duties.

The mayor, subject to confirmation by the city council, shall appoint a sealer of weights and measures who shall have all the powers and perform all the duties prescribed by law relative to the sealing of weights and measures.

(Code 1971, § 2-183)

¹⁴Cross reference(s)—Appointments shall be made by the mayor with the consent of the city council, § 2-26Cross reference(s)—.

State law reference(s)—Appointment, powers and duties of sealer of weights and measures, M.G.L. c. 98, § 34.

~~Editor's note(s)—The sealer of weights and measures is now under civil service and the provision requiring his annual appointment has been deleted.~~

~~State law reference(s)—Sealer of weights and measures, M.G.L.A. c. 28, § 34.~~

Sec. 2-297. Paying over fees monthly; reporting fees in annual report.

The sealer of weights and measures shall pay to the city treasurer the first of each month all fees received by ~~him~~ them during the previous month, and shall in ~~his~~ their annual report set forth all sums so received by ~~him~~ them during the period covered in such report.

(Code 1971, § 2-186)

State law reference(s)—Similar provisions, M.G.L.A. c. 98, § 34.

Sec. 2-298. Annual report and inventory.

The sealer of weights and measures shall annually on the first day of September make a full report to the mayor of ~~his~~ their activities during the preceding fiscal year, together with an inventory of all the city and state property in ~~his~~ their charge.

(Code 1971, § 2-187)

Secs. 2-299—2-315. Reserved.

ARTICLE V. DEPARTMENTS¹⁵

DIVISION 1. GENERALLY

Sec. 2-316. Appointment of city marshal and fire chief.

Notwithstanding any provisions to the contrary, this section shall apply to the selection of a candidate to fill the position of city marshal or fire chief. A city marshal or fire chief appointed by the mayor and confirmed by the city council, pursuant to this section shall meet the minimum entrance requirements set forth in a job description as established by the mayor.

(a) *Procedure.*

- (1) Within six (6) months from the time when it is known that the position of city marshal or fire chief shall become vacant, the mayor may initiate the selection process. In the event that less than six (6) months notice is provided to the mayor that the position of city marshal or fire chief shall become vacant, the selection process shall begin forthwith after receipt of said notice.
- (2) The mayor shall initiate the selection process by giving notice of their ~~his/her~~ intention to establish a screening committee to review applications for the position of city marshal or fire chief and shall send a copy of such notice to the city council.

¹⁵Cross reference(s)—The committee on general government shall be concerned with municipal departments, § 2-34
Cross reference(s)—; department of civil defense, § 6-2.

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- (3) For the position of city marshal or fire chief, a screening committee shall consist of nine (9) voting members. Members of the screening committee shall be appointed by the mayor and confirmed by the city council. A screening committee shall be appointed each time the city marshal or fire chief position is vacated. Composition of the screening committee may include individuals employed by the city, residents of the city and/or business community, and others who may have expertise in the field.
 - (4) Not more than thirty (30) days following the appointment of the screening committee by the mayor and approved by the council, the persons chosen shall meet to organize and plan a process for solicitation by advertisement, including without limitation, in appropriate professional journals, and by other means, to receive applications for the position of city marshal or fire chief. The screening committee shall conduct its work in an expeditious manner; employees of the city shall provide all reasonable assistance to the committee in the conduct of its work.
 - (5) The screening committee shall review all applications received and shall provide for interviews to be conducted with such number of candidates for the position as it may decide.
 - (6) Candidates selected for interview shall be evaluated using an assessment center specifically designed to examine their knowledge, skills and abilities, including, without limitation, their technical, tactical, professional, managerial and strategic skills. The assessment center shall be designed and conducted by a consultant specifically hired for this purpose by the city. Said consultant shall be selected by the city through competitive procurement in accordance with applicable law and procedures and shall have significant experience conducting assessment centers in the relevant public safety department.
 - (7) The results of the assessment center conducted pursuant to paragraph (6) shall be made available to the screening committee and the mayor prior to its interview of candidates for the position of city marshal or fire chief.
 - (8) Not more than one hundred eighty (180) days following the date the screening committee meets to organize, the screening committee shall submit to the Mayor the names of not less than three (3) but not more than five (5) candidates whom it believes to be best suited to perform the duties of city marshal or fire chief.
 - (9) If the screening committee determines that there are not at least three (3) candidates qualified to perform the duties of the city marshal or fire chief, the screening committee shall report to the mayor that it is unable to complete its assigned task. In that event, the mayor shall direct the screening committee to reopen the search process and the foregoing procedure shall apply.
 - (10) Within sixty (60) days following the date that a list of nominees is submitted, the mayor shall:
 - a. Interview candidates referred to them by the screening committee, and
 - b. Determine if they will select one (1) of the candidates to serve as city marshal or fire chief, and
 - c. Choose a nominee to be appointed as city marshal or fire chief which must be confirmed by city council or
 - d. If the mayor decides not to appoint any of the nominees as city marshal or fire chief, it shall direct the screening committee to reopen the search process, and the foregoing procedure shall apply.
 - (11) Upon the appointment of the city marshal or fire chief, the screening committee established pursuant to this article shall be considered discharged.

(b) *Appointment, review, other activities.*

- (1) *Appointment, term.* The mayor shall appoint the city marshal or fire chief to serve for a term of five (5) years, provided, however, that the first six (6) months of any individual's first appointment to the office shall be considered a probationary period. The city marshal or fire chief shall be appointed solely on the basis of ~~their~~^{his or her} technical, tactical, professional, managerial and executive qualifications and shall be especially fitted by previous experience, training and education to perform the duties of the position.
- (2) *Review of performance.* The mayor shall annually provide to the city council a review of the job performance of the city marshal or fire chief which shall, at least in summary form, be a public record.
- (3) *Restriction on other activities.* The city marshal or fire chief shall devote ~~their~~^{his or her} full time to the duties of the position of city marshal or fire chief and shall not hold any other public office, elective or appointive, nor shall ~~they~~^{he or she} engage in other business, occupation or profession during ~~their~~^{his or her} term, unless such action or appointment is approved, in advance, in writing, by the mayor.

(Ord. of 11-29-10(2))

Secs. 2-317—2-325. Reserved.

DIVISION 2. PLANNING AND DEVELOPMENT¹⁶

Sec. 2-326. Office established.

There is hereby established an office of planning and development. ~~All employees of the office of community development shall be employees of the office of planning and development.~~

(Ord. of 4-13-87, § 19-6)

Sec. 2-327. Jurisdiction.

The jurisdiction of the office of planning and development shall include the duties and responsibilities of the director of planning and development, the planning board, the zoning board of appeals, conservation commission, the historical commission and, with the concurrence of the mayor, such other boards, committees commissions, agencies or departments as may from time to time be authorized under city, state or federal law to undertake planning and development activities.

(Ord. of 4-13-87, § 19-7; Ord. of 11-14-88(1))

Sec. 2-328. Office of director established; powers, etc.

- (a) There is hereby established the position of director of planning and development.

¹⁶Cross reference(s)—The committee on general government shall be concerned with city finances and municipal departments, § 2-34Cross reference(s)—; responsibilities of the committee on planning and development, § 2-35Cross reference(s)—.

-
- (b) The department of planning and development shall act in an advisory capacity to the following city boards and/or commissions: Planning board, zoning board of appeals, conservation commission, ~~economic development commission~~, and any other board or commission that the mayor authorizes the department to assist.
- (c) The director of planning and development shall be appointed by the mayor and confirmed by the city council. The term of the director shall officially end on January thirty-first following each biennial city election or until a successor is appointed.

(Ord. of 4-13-87, §§ 19-8—19-10; Ord. of 11-14-88(1))

Cross reference(s)—Officers and employees, § 2-126Cross reference(s)— et seq.

Secs. 2-329—2-345. Reserved.

DIVISION 3. POLICE¹⁷

Sec. 2-346. Composition of regular police department.

The police department of the city shall consist of the following:

- (1) City marshal;
- (2) Senior lieutenant, administrative assistant to the marshal;
- (3) Lieutenant;
- (4) Five (5) sergeants;
- (5) Twenty-nine (29) police officers.

(Code 1971, § 21-1; Ord. of 7-13-87(1); Ord. of 9-12-88(1); Ord. of 7-14-97)

Sec. 2-347. Membership of reserve police force.

In addition to the regular police force, the police department shall include a reserve force of ten (10) members.

(Code 1971, § 21-2; Ord. of 2-13-78)

¹⁷Editor's note(s)—The current collective bargaining agreements made between the city and the police department should be consulted for specific information.

Cross reference(s)—The committee on general government shall be concerned with city finances and municipal departments, § 2-34Cross reference(s)—; responsibilities of committee on public safety, § 2-36Cross reference(s)—; board of health may call upon the police department for aid, § 8-44Cross reference(s)—.

State law reference(s)—Police generally, M.G.L. ~~A~~ c. 147; powers and duties of police officers in cities, M.G.L. ~~A~~ c. 41, § 96 et seq.

Sec. 2-348. Appointment; manner of holding office.

All of the regular members of the police department as well as the reserve force shall be appointed and shall hold office in the manner provided by the laws of this commonwealth.

(Code 1971, § 21-3)

Sec. 2-349. Promotion procedure.

No officer of the regular or reserve police force shall be promoted without first being appointed by the mayor and confirmed by the city council.

(Code 1971, § 21-4)

Sec. 2-350. Promotions of reserve police officers to the regular force.

- (a) No reserve police officer will be promoted to the regular force until the mayor has made such an appointment and the city council has confirmed such appointment.
- (b) All selection of the reserve police to be appointed to regular force shall be in accordance to seniority in service.

(Code 1971, § 21-5)

Sec. 2-351. Compensation.

Members of the police department shall receive such compensation as the mayor and city council shall from time to time determine in accordance with applicable federal and state law.

(Code 1971, § 21-6)

Sec. 2-352. Powers and duties of city marshal.

- (a) The city marshal shall be the head of the police department and have entire control thereof and assign all police officers or constables when engaged in the service of the city to duty. It shall also be ~~his~~their duty to designate the patrols, hours of service and the vacation period of all members. ~~He~~They shall supervise the keeping of a record with a suitable index of every person arrested, including the name of the arresting officer, the offense charged, the place of birth, the age, height and complexion of the accused and such other description as may be useful for identification purposes. ~~He~~They also shall keep a record of all complaints made by members of the department and the record of the disposition of each case with the circumstances thereof. ~~He~~They shall keep open the records of the department to the inspection of the mayor and city council. ~~He~~They shall annually on the first day of September report in writing to the city council as to the condition of the department with whatever recommendations ~~he~~they deems advisable. Records shall be kept by ~~him~~them of duties performed by the members of the department, of all absences from duty and shall prepare the payroll of the department for presentation to the city auditor.
- (b) The city marshal shall see to it that the orders of the city council shall be respected and obeyed by all members of the department and ~~he~~they shall be responsible for the discipline and efficiency thereof. ~~He~~They may establish rules and regulations for the government of the department, such regulations to be subject to the approval of the mayor and city council. ~~He~~They shall be charged with the enforcement and execution of the laws of the commonwealth, city ordinances ~~code~~ and the orders of the mayor ~~and city~~.

~~council~~. At the request of the mayor or city council, ~~he~~ they shall cause any claim against the city to be investigated and a report of the findings returned to the city clerk. All defects in the streets of the city coming to ~~his~~ their attention shall be forthwith reported to the superintendent of public works and all water leakage to the superintendent of the water department. ~~He~~ They shall render service to the various city departments whenever requested by any department head and shall perform whatever other duties are requested of ~~him~~ them by the mayor or city council. ~~He~~ They shall have charge of all property of the department and cause the same to be kept in good order and in condition for use. ~~He~~ They shall cause the police station to be kept in a clean, neat condition and properly lighted and heated.

(Code 1971, § 21-9)

Sec. 2-353. Reserved.

Editor's note(s)—Former § 2-353 Editor's note(s)—, relative to duties of the deputy marshal, was deleted pursuant to an ordinance adopted Sept. 11, 1989. The deleted provisions derived from Code 1971, § 21-10.

Sec. 2-354. Duties of lieutenants and sergeants.

The lieutenants and sergeants of the police department shall perform their duties in accordance with the regulations of the department.

(Code 1971, § 21-11)

Sec. 2-355. Duties of police officers.

The police officers in the police department shall have such powers and perform such duties enacted in reference to such office by the laws of this commonwealth. They shall pass from time to time through the streets of the city with a view to remove by prosecution or otherwise, all nuisances, obstructions or impediments therein, and shall perform such other police duties as the mayor and city council shall from time to time determine.

(Code 1971, § 21-12)

Sec. 2-356. Qualification of special police officers.

Before council confirmation of a special police officer, uniformed duty, a candidate must meet the following requirements:

- (1) Complete physical examination stating candidate's condition with doctor's certificate.
- (2) Have no criminal record excepting minor traffic violations.
- (3) Must sign a release of records.
- (4) Must have recommendation of city marshal prior to confirmation.

(Ord. of 6-28-76(2))

Sec. 2-357. Mutual aid program for police department.

The ~~City city council Council~~ of the City of Newburyport accepts M.G.L. ~~A.A.~~ c. 40, § 8G, authorizing the city marshal to enter into a mutual aid program which states as follows:

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A city or town which accepts this section may enter into an agreement with another city or town, or other cities and towns, to provide mutual aid programs for police departments to increase the capability of such departments to protect the lives, safety, and property of the people in the area designated in the agreement. Said agreement may include the furnishing of personal services, supplies, materials, contractual services, and equipment when the resources normally available to any municipality in the agreement are not sufficient to cope with a situation which requires police action.

(Ord. of 3-26-07)

Editor's note(s)—An ordinance adopted March 26, 2007, did not specifically amend the Code. Therefore, such ordinance has been added as § 2-357Editor's note(s)— at the editor's discretion.

Secs. 2-358—2-360. Reserved.

DIVISION 4. FIRE¹⁸

Sec. 2-361. Composition.

The fire department shall consist of:

- (1) A permanent fire chief;
- (2) A deputy chief;
- (3) Four (4) permanent lieutenants;
- (4) Twenty-eight (28) permanent firefighters and as many call firefighters as the mayor and city council may from time to time determine.

(Code 1971, § 10-15; Ord. of 7-13-87(2))

Sec. 2-362. Fire alarm system.

Among ~~his~~their other duties, the fire chief shall have the control of and responsibility for the operation, maintenance, and repair of the fire alarm system of the city.

(Ord. of 8-3-70(2), § 2)

Sec. 2-363. Mutual aid system; approval.

The fire chief is hereby authorized to enter into a mutual aid system with such cities and towns contiguous to the city as ~~he~~they may deem advisable. The agreement shall be subject to the approval of the mayor and city council. In order to comply with this provision, the fire chief is authorized to send city fire apparatus and firefighters to such cities and towns who enter into such mutual aid agreements.

(Code 1971, § 10-22)

¹⁸Cross reference(s)—Responsibilities of committee on public safety, § 2-36Cross reference(s)—.

Sec. 2-364. [RESERVED]

~~**Effect of article on rules, orders, ordinances relating to department.**~~

~~The provisions of this article shall not repeal, affect or change any rule or order in force on January 1, 1989, relating to the fire department, or the officers or members thereof, except as herein specified.~~

~~(Code 1971, § 10-23)~~

DIVISION 5. DEPARTMENT OF PUBLIC SERVICES

Sec 2-365. Established.

There shall be established in the City of Newburyport a department of public services consisting of the water department, the sewer department and the department of public works. The department of public services shall be under the direction of department of public services director. There shall also be established a deputy director/~~director of operations.~~

(Ord. of 5-21-05, § 1)

Sec. 2-366. Appointment of director.

The mayor shall appoint a director of public services subject to confirmation by the city council. The director of public services shall have such responsibilities and duties as determined by the mayor, and shall have full charge and authority over the employees, equipment, and facilities within the department of public services, ordinance, regulations, and such direction and such policies. During their ~~his/her~~ tenure, the director shall hold no other elective or appointive office, nor shall the director engage in any other business or occupation.

(Ord. of 5-21-05, § 2)

Sec. 2-367. Duties of director.

The director of public services shall supervise employees of the department of public services in accordance with the city's personnel ordinances and any applicable collective bargaining agreements. The director shall supervise, direct and be responsible for the efficient administration of all departments and offices within the department of public services.

The director shall keep full and complete records of the department of public services. Such director shall render to the mayor, as often as may be required by said mayor but at least quarterly, a full report of all operations under their ~~his/her~~ control during the period reported upon, and annually shall render to the mayor a report of all the operations under their ~~his/her~~ control, including but not limited to: a full financial report of all accounts, funds and grants, a work plan with related finance plan for the subsequent fiscal year, and a report on the accomplishments and progress made under the work plan from the preceding fiscal year. Such director from time to time, as required by said mayor, shall make a synopsis of such reports for publication. The director shall have access to all city books, records and documents necessary for the proper performance of the assigned duties and responsibilities.

The director and boards of water and sewer commissioners shall report to the mayor concerning the needs of the city within the scope of their ~~his/her~~ duties, and shall annually, in conformity with the requirements established by ~~said~~ the mayor, furnish to the mayor a carefully prepared and detailed budget and work plan in

writing, including estimates of the appropriations and revenue for department of public services enterprise funds established under M.G.L. c. 44, § 53F1/2 required during the next fiscal year for the proper exercise and performance of all said rights and duties.

The director shall be responsible for the preparation of plans and the supervision of work on all department of public services construction, reconstruction, alterations, improvements, and other such projects authorized by the mayor. The director shall be available to offer professional engineering services to other city boards, committees and offices as may be requested. The mayor must authorize any such professional services provided by the director.

The director shall, be responsible for reviewing and approving payment warrants. The director, when any payroll, bill, or other claim against the city is presented, if the same is deemed by the director to be of doubtful validity, excessive in amount, or otherwise contrary to the interests of the city, refer it to the mayor who shall immediately investigate and determine what, if any, payment should be made. Pending such investigation and determination by the mayor, any payment ~~will~~ shall be withheld.

The director shall perform such other duties consistent with the office as may be required by the ordinances of the city, by the mayor, or by the majority vote of the city council.

(Ord. of 5-21-05, § 3)

Sec. 2-368. Board of water and sewer commissioners.

The board of water and sewer commissioners shall be a part of the department of public services. Pursuant to Section 1 of Chapter 66 of the Acts of 2014, powers and duties granted to and imposed upon the City of Newburyport by Chapter 403 of the Acts of 1908, and Chapter 261 of the Acts of 1963, shall, except the power of borrowing money, be exercised by a board of water and sewer commissioners, hereinafter called the board, consisting of five (5) regular and two (2) alternate members of the city, to be appointed by the mayor, subject to confirmation by the city council, for three-year rotating terms.

Members of the board shall hold office, unless sooner removed, until their successors are appointed and qualified. Vacancies shall be filled for the remainder of the term in the same manner as the original appointment. A person shall not be appointed to the board who holds any elected city office at the time. A member of the board, after notice and opportunity for a hearing may be removed by the mayor.

The board shall have all the powers and duties provided in Chapter 403 of the Acts of 1908, as well as those powers and duties provided in Chapter 261 of the Acts of 1963. The board shall annually choose a chairman and a secretary; provided, however, that the board may reorganize at any time at its discretion. The board members shall not receive compensation for their services unless an appropriation is made therefor by a two-thirds vote of the city council. The board shall annually, and as often as the city council shall require, render an account of its official acts; and the board's books and accounts shall be open to the inspection of the finance director at any time.

The board of water and sewer commissioners shall, subject to the advice and consent of the mayor, set all policies relative to the water supply of the City of Newburyport, and to the construction and operation of a system or systems of sewerage and sewage disposal for the City of Newburyport, while the director shall be responsible for the day to day operations of the department. The board of water and sewer commissioners shall, with respect to the director, unless otherwise specifically provided for in this legislation, act in an advisory capacity.

The board of water and sewer commissioners shall keep the mayor fully advised as to the needs of the city within the scope of its duties, and shall annually, in conformity with the requirements established by said mayor, and in conjunction with the director of public services, furnish to the mayor a carefully prepared and detailed budget and work plan in writing, including estimates of the appropriations and revenue for the board of water and

sewer commissioners enterprise funds established under M.G.L. c. 44, § 53F1/2 required during the next fiscal year for the proper excise and performance and all said rights and duties.

The board of water and sewer commissioners may in its discretion prescribe for the users of said water and sewer system or systems such prices, rates, annual rentals or charges based on the benefits derived therefrom as it may deem proper, subject, however, to such rules and regulations as may be fixed by the vote of the city council, whose affirmative vote shall be required for any change in such prices, rates annual rentals or charges proposed by the board. The board of water and sewer commissioners may grant such abatements from water and sewer rates or charges as may be lawful and necessary.

(Ord. of 5-21-05, §§ 4, 5; Ord. of 5-30-17(1))

Editor's note(s)—An ordinance adopted May, 30, 2017, changed the title of § 2-368 Editor's note(s)— from "Board of water commissioners" to read as herein set out.

~~Sec. 2-369. Appointment date of director.~~

~~Within sixty (60) days from the effective date of this act, the mayor shall appoint a director of public services.~~
(Ord. of 5-21-05, § 6)

Sec. 2-369~~70~~. Integration of water works department and sewer department.

The employees of the water ~~works department~~ and sewer department are integrated into the department of public services. The city shall recognize the years of service of all employees integrated into the department of public services and provide to such employees' rights, compensation and benefits as allowed under the city personnel ordinance or appropriate collective bargaining agreement at levels equivalent to those provided to such employees on the date of this transfer.

(Ord. of 5-21-05, § 7)

DIVISION 6. DEPARTMENT OF FINANCE¹⁹

Sec. 2-370.1. Established.

There shall be established a department of finance consisting of the offices of the city auditor, city treasurer/collector, assessor, and purchasing. The department of finance shall be under the direction of the finance director.

(Ord. of 2-25-13(1))

Sec. 2-370.2. Appointment of director.

~~Within sixty (60) days from the effective date of this Act, the~~ The mayor shall appoint a director of the department of finance. ~~Said appointment shall be for a term of three (3) years and is subject to city council confirmation. The finance director may also serve as either city auditor or treasurer/collector, but not both. The~~

¹⁹Editor's note(s)—An ordinance adopted February 25, 2013, set out provisions intended for use as §§ 2-316 Editor's note(s)——2-318. For purposes of clarity, and at the editor's discretion, these provisions have been included as §§ 2-370.1 Editor's note(s)——2-370.3.

~~positions of city auditor and treasurer/collector currently exist and the city charter does not require the hiring of additional personnel.~~ The hiring of the director of the department of finance shall be based on merit and fitness demonstrated by education, training, performance, or some other evidence of competence and suitability.

(Ord. of 2-25-13(1))

Sec. 2-370.3. Duties of director.

The director of the department of finance shall oversee the efficient administration of the offices of the city auditor, treasurer/collector, assessor, and purchasing agent. In addition, the director shall successfully carry-out and be responsible for day-to-day functions within the city auditor's office or the city treasurer/collector's office, in accordance with the existing provisions contained in the city charter and personnel ordinance.

The director of the department of finance shall supervise employees of the department in accordance with the city's personnel ordinances and any applicable collective bargaining agreements.

The director shall keep full and complete records of finance department activities and render to the mayor, as often as may be required by said mayor but at least quarterly, a full report of all operations under ~~their~~ his/her control during the period reported upon, and annually shall render to the mayor and city council a report of all the operations under ~~the director's~~ his/her control, including but not limited to: a full financial report of all accounts, funds and grants, a work plan with related finance plan for the subsequent fiscal year, and a report on the accomplishments and progress made under the work plan from the preceding fiscal year. Said director, from time to time, as required by the mayor, shall make a synopsis of such reports for publication. The director shall have access to all city books, records and documents necessary for the proper performance of the assigned duties and responsibilities.

The director shall perform such other duties consistent with the office as may be required by the ~~ordinances~~ city code of the city, by the mayor, or by a majority vote of the city council.

(Ord. of 2-25-13(1))

DIVISION 7. DEPARTMENT OF HUMAN RESOURCES²⁰

Sec. 2-370.4. Established.

There shall be established a department of human resources. Said department shall develop and implement city personnel policies and carry-out personnel functions relative to the administration of health insurance, other employee benefits, new hires, employee terminations, and managing and maintaining personnel data for all city employees and retirees as required.

(Ord. of 2-25-13(1))

Sec. 2-370.5. Appointment of human resources director.

~~Within sixty (60) days from the effective date of this act, the~~ The mayor shall appoint a human resources director. ~~Said appointment shall be for a term of three (3) years and subject to city council confirmation. The~~

²⁰Editor's note(s)—An ordinance adopted February 25, 2013, set out provisions intended for use as §§ 2-319—2-321. For purposes of clarity, and at the editor's discretion, these provisions have been included as §§ 2-370.4Editor's note(s)——2-370.6.

~~position of human resources director currently exists and the city charter does not require the hiring of additional personnel.~~ The hiring of the human resources director shall be based on merit and fitness demonstrated by education, training, performance, or some other evidence of competence and suitability.

(Ord. of 2-25-13(1))

Sec. 2-370.6. Duties of director.

The human resources director shall oversee the efficient administration of city personnel and benefit management functions in accordance with the city personnel ordinance, and local, state, and federal laws and regulations. In addition, the human resources director shall keep full and complete records of all personnel related activities and actions and render to the mayor, as often as may be required by the mayor, but at least quarterly, a full report of all operations under ~~their~~his/her control during the period reported upon, and annually shall render to the mayor and city council a report of all the operations under ~~their~~his/her control, including but not limited to: a report on the accomplishments and progress made under a work plan from the preceding fiscal year. Said director, from time to time, as required by the mayor, shall make a synopsis of such reports for publication. The director shall have access to all city books, records and documents necessary for the proper performance of the assigned duties and responsibilities.

The director shall perform such other duties consistent with the office as may be required by the city code~~the ordinances of the city~~, by the mayor, or by a majority vote of the city council.

(Ord. of 2-25-13(1))

ARTICLE VI. FINANCE²¹

Sec. 2-371. Accounts, inspection; arrangement; forms.

All accounts rendered to or kept in the departments of the city shall be subject to the inspection and revision of the city auditor, and shall be rendered and kept in such form as prescribed in state law. All necessary forms to properly carry out the system of accounts required by the auditing department shall be furnished by that department.

(Code 1971, § 2-125)

State law reference(s)—Uniform accounting system, M.G.L. ~~A~~ c. 44, § 38.

Sec. 2-372. Keeping account books.

The auditor shall keep suitable and proper books of accounts wherein ~~he~~they shall record the date and amount of every account and claim against the city, as finally corrected and allowed, designating the fund or appropriation from which the same shall be paid. ~~He~~The auditor shall credit each city account with its appropriation for the financial year, and charge against the same the expenditures, as they shall from time to time

²¹Cross reference(s)—The committee on general government shall be concerned with city finances and municipal departments, § 2-34Cross reference(s)—; city auditor, § 2-171Cross reference(s)— et seq.; permit and inspection fees, § 5-111Cross reference(s)— et seq.; licenses, permits and business regulations, ch. 9Cross reference(s)—.

State law reference(s)—Municipal finance, M.G.L. ~~A~~ c. 44.

be allowed. Whenever an appropriation for any account is expended, ~~he~~they shall immediately give notice thereof to the mayor and city council, and ~~he~~they shall not pass or allow any claim or account chargeable against such appropriation, until the city council shall provide the means of paying the same.

(Code 1971, § 2-126)

Sec. 2-373. Procedure for paying out moneys.

~~Before money is paid out of the city treasury, a requisition therefor in writing, with a detailed account attached, specifying the amount to be paid, and the party or parties to whom the payment is due, together with a proper classification of such expenditure, shall be made upon the auditor by the committee, board or head of department incurring the expenditure. In case of any error or informality, the auditor shall make note of the fact, and return such bill or demand, with the objections, to the officer or board presenting the same; and when the auditor has any doubt concerning the propriety, or correctness of such bill, payroll, or account, if it be not satisfactorily explained, he shall refer the same to the city council for consideration. When the bills due from the city for supplies furnished and services rendered shall have been examined and recorded by the auditor, the draft or order upon the treasurer for the payment of the aggregate amount of such bills and payrolls shall be signed by the mayor and countersigned by the auditor, and delivered to the city treasurer/collector. Provided, however, that in the event of the failure or refusal of the mayor to sign such draft or order, the city council may by a two-thirds vote of its members instruct its president to sign such draft or order. When such draft or order shall have been signed by the president of the city council in compliance with such a vote, such signature shall have the same force and effect as if the signature of the mayor had been affixed thereto.~~ the approval and payout of bills is conducted in a manner as prescribed pursuant to M.G.L. c. 41, § 52.

(Code 1971, § 2-127)

Sec. 2-374. Contracts; countersigning bonds, notes and certificates; annual report of expenditures, receipts and loans.

No contract shall be made on behalf of the city until the auditor has certified that an appropriation therefor has been duly passed; that sufficient funds are unapplied and available to pay the cost of carrying out the contract, as such cost is certified by the official making the contract; and the auditor shall retain funds sufficient for this purpose until the contract is fully completed. The auditor shall countersign all the bonds, notes and certificates of indebtedness issued for loans to the city authorized by the city council. ~~He~~The auditor shall report to the city council, during the month of June in each year, in detail the amount of appropriations and expenditures, the expenditures and receipts during the preceding financial year, also receipts from each source of income and ~~He~~ shall include in such report a statement of the funded and temporary loans.

(Code 1971, § 2-128)

Sec. 2-375. Drawing money out of treasury.

No money shall be drawn out of the city treasury, except on the written order of the mayor, addressed to the treasurer/collector and countersigned by the city auditor, except as provided in section 2-373.

(Code 1971, § 2-129)

Sec. 2-376. Mayor, council president to draw orders on treasury.

The mayor, or in case of ~~his~~their failure or refusal, the president of the city council if authorized as provided in section 2-373, is hereby authorized to draw orders on the treasurer/collector for the payment of any amount or claim against the city allowed and certified. For no account or claim not so certified ~~shall they shall he~~ draw an order on the treasurer/collector for the payment thereof; nor shall ~~he~~they draw an order in payment for any class of expenditures beyond the sum specifically appropriated therefor by the city council.

(Code 1971, § 2-130)

Sec. 2-377. Paying out special appropriations, advances on contracts—Generally.

Any sum of money which shall have been specially appropriated for the payment of principal or interest due on any note or other security of the city may be drawn from the treasury and paid by the treasurer/collector for the purpose for which it was appropriated, and whenever it shall be necessary to pay money in advance, on contract made for work begun but not completed, the mayor, or in case of ~~his~~their failure or refusal to act, the president of the city council if authorized as provided in section 2-373, upon being satisfied of such necessity, may draw ~~his~~an order on the treasurer/collector for any sum of money for the payment of any account or the application of it to the purpose for which it may generally or specially be appropriated.

(Code 1971, § 2-131)

Sec. 2-378. Same—Auditor's charge of expenditure.

Whenever any money shall be drawn from the treasury for any of the purposes specified and named in section 2-377, the city auditor shall charge the same under the appropriate head of expenditure.

(Code 1971, § 2-132)

Sec. 2-379. Monthly rendition of moneys.

All officers of the city who shall in their official capacity receive any money in its behalf shall pay to the treasurer/collector the amount in their hands within the month received and oftener if required. All other persons who shall have in their hands money belonging to the city shall forthwith pay the same to the treasurer/collector.

(Code 1971, § 2-133)

Sec. 2-380. Monthly report of moneys.

All officers and agents of the city receiving money in its behalf, shall once in each month deliver to the city auditor a report in detail of the amount received and of the disposition made thereof, except in cases otherwise provided.

(Code 1971, § 2-134)

Sec. 2-381. City treasurer's/collector's book of receipts and payments; semiannual statement.

The city treasurer/collector shall keep in a book provided for the purpose, an accurate and true account of all ~~his~~their receipts and payments ~~in~~on behalf of the city, making the same conform in the mode of entry, as nearly

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as may be, with the accounts kept by the city auditor. ~~He~~ The city treasurer/collector shall not pay any money out of the treasury except upon orders of the mayor, or as otherwise provided in this article.

(Code 1971, § 2-135)

Sec. 2-382. Annual makeup of accounts; end of financial year.

The city treasurer/collector shall make up ~~his~~ their accounts to June 30 and the financial year shall end on that day in each year.

(Code 1971, § 2-136)

State law reference(s)—Fiscal year, M.G.L. ~~A~~ c. 44, § 56A.

Sec. 2-383. Bond of city treasurer/collector and assistant treasurer/collector.

The city treasurer/collector and assistant treasurer/collector shall give bonds, with sufficient sureties and, in such sum as required by the commissioner of revenue for the faithful performance of the duties of the offices of treasurer/collector and assistant treasurer/collector and accountability for all moneys which may come into their hands as treasurer/collector and assistant treasurer/collector by virtue of the offices.

(Code 1971, § 2-137)

Sec. 2-384. Cutter Fund—Custody of moneys; use of income.

The moneys and funds from the estates of Henry T. Cutter and A. Gertrude Cutter, late of New York, deceased, now in the hands of the Trustees of Newburyport Trust Funds, for investment, and all further moneys, securities or assets which may come from such estates, shall be and remain in the hands of the trustees and by them kept invested. The income thereof only shall be used for the purposes of beautifying the city, as ordered from time to time by the city council.

(Code 1971, § 11-1)

Sec. 2-385. Same—Repeal, annulment, etc.

Sections 2-384 through 2-386 shall not be repealed, annulled, amended or superseded except by unanimous vote of the city council, with the approval of the mayor.

(Code 1971, § 11-2)

Sec. 2-386. Same—Effective date.

Sections 2-384 and 2-385 shall take effect according to the Charter.

(Code 1971, § 11-3)

Sec. 2-387. William Horton Fund—Established.

There is hereby established a fund known as the William Horton Fund.

(Code 1971, § 11-4)

Sec. 2-388. Same—Corpus.

The William Horton Fund shall consist of the proceeds from the sale of the property located at the corner of North Atkinson and Low Streets known as the Horton Home Property.

(Code 1971, § 11-5)

Sec. 2-389. Same—Administration.

The William Horton Fund shall be administered by the mayor and city council.

(Code 1971, § 11-6)

Sec. 2-390. Same—Moneys to be placed on deposit in custody of treasurer/collector.

All moneys in the William Horton Fund shall be placed in the custody of the treasurer/collector who shall deposit the same in interest bearing accounts in savings banks within the city.

(Code 1971, § 11-7)

Sec. 2-391. Same—Use of income.

The income only of the William Horton Fund shall be expended to aid the aged and needy of the city in such manner as the mayor and city council shall from time to time direct. The terms of the fund would be governed pursuant to M.G.L. c. 44, § 53A.

(Code 1971, § 11-8)

Sec. 2-392. Interest on water and sewer bills.

An interest charge of fourteen percent (14%) per annum shall be made on water and sewer bills remaining unpaid thirty-one (31) days after the issue date as specified on the quarterly bill. A demand charge of five dollars (\$5.00) shall be added to any water and sewer account that remains unpaid and delinquent after the final bill is issued in that fiscal year.

(Ord. of 10-15-13(3))

Sec. 2-393. Establishment of the Plum Island Utility Fund.

- (a) There is hereby established a trust fund known as the Plum Island Water/Sewer Utility Fund ("Plum Island Utility Fund").
- (b) The Plum Island Utility Fund shall consist of the City of Newburyport's share of proceeds from the settlement agreement between the Commonwealth of Massachusetts and ~~CDEM~~ Smith Inc.
- (c) The city hereby establishes this Plum Island Utility Fund under the provisions of paragraph 2 of section III of the ~~CDEM~~ Smith Inc. Settlement Agreement. Accordingly, the Plum Island Utility Fund shall ~~be ONLY~~ only be used to pay costs and expenses arising from or related to the Plum Island Water/Sewer Utility Project ("project"), including but not limited to the repair, modification, improvements, or optimization of the

project, and reimbursement of the City of Newburyport's insurers, including the MIIA Property & Casualty Group, Inc. ("MIIA") on terms arranged by the City of Newburyport.

- (d) Appropriations from this fund shall be made at the recommendation of both the mayor and the water/sewer commission with the approval of a two-thirds vote of the city council.
- (e) This section is adopted pursuant to the establishment of stabilization funds in accordance with M.G.L. ~~A~~ c. 40, § 5B.

(Ord. of 12-12-16(2))

Sec. 2-394. Departmental revolving funds.

- (a) *Purpose.* This section establishes and authorizes revolving funds for use by city departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by M.G.L. ~~A~~ c. 44, § 53E½.
- (b) *Expenditure limitations.* A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this section without appropriation subject to the following limitations:
 - (1) Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
 - (2) No liability shall be incurred in excess of the available balance of the fund.
 - (3) The total amount spent during a fiscal year shall not exceed the amount authorized by city council on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the city council and mayor.
 - (4) Any capital expenditure from the fund shall be made upon the recommendation of the mayor and approval of the city council. A capital expenditure is defined as a fixed asset costing fifteen thousand dollars (\$15,000.00) or more with an expected useful life of five (5) years or more.
- (c) *Interest.* Interest earned on monies credited to a revolving fund established by this section shall be credited to the general fund.
- (d) *Procedures and reports.* Except as provided in M.G.L. ~~A~~ c. 44, § 53E½ and this section, the laws, charter provisions, ordinances, rules, regulations, policies or procedures that govern the receipt and custody of city monies and the expenditure and payment of city funds shall apply to the use of a revolving fund established and authorized by this section. The city auditor shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the city auditor provides the department, board, committee, agency or officer on appropriations made for its use.
- (e) *Authorized revolving funds.* The table establishes:
 - (1) Each revolving fund authorized for use by a city department, board, committee, agency or officer;
 - (2) The department or agency head, board, committee or officer authorized to spend from each fund;
 - (3) The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the city auditor;
 - (4) The expenses of the program or activity for which each fund may be used; and

(5) The fiscal years each fund shall operate under this section.

A Revolving fund	B Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	C Fees, Charges or Other Receipts Credited to Fund	D Program or Activity Expenses Payable from Fund	E Fiscal Years
Council on aging	Director of council on aging	Program fees	Senior citizen programs	Fiscal year 2019 and subsequent years
Recreational services	Director of youth services	Program fees	Funds recreational services in the city including program supplies, materials and equipment, class instructor fees, fees for reservations and tickets related to trips and functions, and other costs related to the provisions of recreational services	Fiscal year 2019 and subsequent years
Historical commission	Director of planning and development	Application fees	Administration of the historical commission operations, including office supplies and technical assistance	Fiscal year 2019 and subsequent years
Electrical inspector	Building commissioner	Electrical permit fees	Electrical inspector's salary and related expenses	Fiscal year 2019 and subsequent years
Plumbing inspector	Building commissioner	Plumbing permit fees	Plumbing inspector's salary and related expenses	Fiscal year 2019 and subsequent years
Gas inspector	Building commissioner	Gas permit fees	Gas inspector's salary and related expenses	Fiscal year 2019 and subsequent years

Disabilities commission	ADA coordinator	Handicapped parking fines	Assist the commission on disabilities in their efforts to advise, assist, research, coordinate, review and make policy recommendations, provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability; and to coordinate activities of other local groups organized for similar purposes	Fiscal year 2019 and subsequent years
Emma Andrews Library	Director of public services	Income received from the rental of the apartment located on the second floor of the South End Branch Library, commonly known as the Emma Andrews Library	Expenses associated with building maintenance, repairs, renovations, upkeep and security	Fiscal year 2019 and subsequent years
Transient vendors	Director of public health	License fees	Maintain city streets, ways, parks, walkways and other public areas throughout the city, as well as, city expenses associated with carrying out holiday celebrations, special activities and other public events	Fiscal year 2019 and subsequent years
Planning and zoning	Director of planning and development	Planning and zoning service and application fees	Planning and zoning related purposes including consultant's fees, legal expenses and other costs associated with project reviews and planning activities	Fiscal year 2019 and subsequent years
Animal control	Director of public health	Fees and charges associated with animal control and animal shelter activities	Offset city expenses associated with carrying out animal control and animal shelter operations	Fiscal year 2019 and subsequent years

Tree commission	Newburyport Tree Warden	Fines, voluntary payments, fees, charges, contributions, donations, grants, insurance settlements, and other payments received from private individuals, businesses, government entities, and persons or business making payment to the city for damage caused to trees located on city property	Plant, maintain, protect, and preserve public trees throughout the city in order to: contribute to the distinct character of the city; improve air quality; create habitats for wildlife, including various rare and protected species; reduce noise; provide privacy; protect soil from erosion; provide glare and heat protection; provide an aesthetic appeal that enhances property values; provides natural privacy to neighbors; and promotes civic pride and enjoyment	Fiscal year 2019 and subsequent years
Medicare/Medicaid	Director of public health	Reimbursements charged to the state or federal Medicare/Medicaid programs	Maintain emergency planning programs and allow response to emergencies, as well as, offset city expenses associated with carrying out health department activities	Fiscal year 2019 and subsequent years
Veterans benefits	Director of veteran's services	Sale of grave markers, donations, gifts and grants received from the general public, government entities, private corporations, and charitable foundations	Expenses associated with goods and services benefiting veterans residing in the city and their families	Fiscal year 2019 and subsequent years
City hall maintenance	Director of public services	Fees and charges paid to the city for the use and rental of city hall facilities by outside groups, organizations and individuals	Expenses associated with city hall maintenance, repairs, renovations, upkeep and security	Fiscal year 2019 and subsequent years
Senior community center maintenance	Director of public services	Fees and charges paid to the city for	Expenses associated with maintenance,	Fiscal year 2019 and

		the use and rental of the senior community center	repairs, renovations, upkeep and security at the senior community center	subsequent years
Parks maintenance	Parks director	Fees and charges paid to the city for the use and rental of parks by outside groups, organizations and individuals	Expenses associated with parks maintenance, repairs, renovations, upkeep and security	Fiscal year 2019 and subsequent years
Solid waste	Recycling/energy manager	Fees collected for use of the yard waste facility, charges for disposal of household hazardous waste, bulk item/mattress disposal fees and recycling fees	Expenses associated with operating the yard waste facility and recycling center on Colby Farm Lane, chipper service, disposal of hazardous waste, as well as, disposal of bulk items/mattresses	Fiscal year 2019 and subsequent years
Assessor's office	Assessor	Fees charged by the assessor's office for records requests and abutters lists	Office supplies and equipment	Fiscal year 2019 and subsequent years

(Ord. of 6-11-2018(1))

Sec. 2-395 Establishment of the Plum Island Beach Fund.

- (a) There is hereby established a trust fund known as the Plum Island Beach Stabilization Fund ("Plum Island Fund").
- (b) The Plum Island Fund shall consist of the City of Newburyport's share of continued proceeds from fees collected at the Plum Island Parking Lot, located at the northern point, in accordance with any validly approved city council order.
- (c) The city council may establish additional sources for proceeds in the future, amending this section accordingly.
- (d) The Plum Island Fund shall only be used to pay costs and expenses arising from or related to the beach, including, but not limited to, the maintenance of the beach, river, including, but not limited to, beach nourishments, beach planting, the construction of soft or hard structures, dredging operations and sand placement, maintaining and cleaning the beach.
- (e) Appropriations from this fund shall be made at the recommendation of the mayor with the approval of a two-thirds vote of the city council.
- ~~(f) This section is adopted pursuant to M.G.L.A. c. 40, § 5B.~~

(Ord. of 5-26-20(1))

Chapter 3 ANIMALS²²

ARTICLE I. IN GENERAL

Sec. 3-1. Animals running at large.

No owner or person having the charge of any horse, cow, swine, goat or other grazing animal shall permit the animal to run at large on any ~~sidewalk, gutter, street or other public area, or on upon any private or public property neither owned nor lawfully possessed by such person, within the city,~~ and no unbridled horse shall be fed in any street.

(Code 1971, §§ 4-1, 16-35)

Cross reference(s)—Streets, sidewalks and other public places, ch. 12

Sec. 3-2. Disposal of animal waste.

All persons owning or in custody of an animal shall be responsible for the removal and disposal of that animal's waste. No person shall appear with a dog in ~~his or her~~ their custody on any sidewalk, gutter, street or other public area, or on any private property neither owned nor ~~occupied~~ lawfully possessed by such person, without the means of removal of any feces left by such dog. The fine for violation of this provision ~~for is defined in chapter 1, section 1-18. the first offense shall be fifty dollars (\$50.00) and the second shall be seventy five dollars (\$75.00) and third and subsequent offenses shall be one hundred dollars (\$100.00).~~ This provision shall not apply to an animal accompanying any handicapped person who, by reason of ~~his or her~~ their handicap, is physically unable to comply with the requirements of this provision.

For the purpose of enforcing this provision, notices of violation may be issued pursuant to M.G.L. ~~A~~ c. 40, § 21D, by the board of health acting through its director or ~~their~~ his or her designee, by any animal control officer, or by any police officer.

All notices of violation shall be returnable to the clerk of the Newburyport Division, District Court Department of the Trial Court, Essex County. Unless the person named on said notice of violation appears before said clerk within twenty-one (21) days of said violation either personally or through an agent duly authorized in writing, or by mailing to such clerk, with the notice, the fine provided therein, a complaint will be sought against the person named in said notice.

(Ord. of 11-14-84; Ord. of 8-30-10; Ord. of 6-26-17(4))

²²Cross reference(s)— General provision, ch. 1 fines schedule § 1-18; Administration, ch. 2Cross reference(s)—; buildings and building regulations, ch. 5Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; licenses, permits and business regulations, ch. 9Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; zoning, app. A.

State law reference(s)—Dogs generally, M.G.L. ~~A~~ c. 140, §§ 136A—175; authority of city to enact ordinances licensing or restraining dogs, M.G.L. ~~A~~ c. 140, § 173; dog licensing, c. 140, § 137; disposition of vicious, barking dogs, M.G.L. ~~A~~ c. 140, §§ 157, 159; animals, M.G.L. ~~A~~ c. 129; infirm animals, M.G.L. ~~A~~ c. 133; cruelty to animals, M.G.L. ~~A~~ c. 272, § 77 et seq.

Sec. 3-3. Animals prohibited from sidewalk.

No person shall drive nor permit any horse or other draught animal or any cow on any sidewalk of the city while under ~~his~~ their care.

(Code 1971, § 16-34)

Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—; sidewalks, § 12-51Cross reference(s)— et seq.

Secs. 3-4—3-25. Reserved.

ARTICLE II. DOGS²³

Sec. 3-26. Leash required.

- (a) No person shall own or keep in the city, outside the confines of the owner's or keeper's property, any dog which is not held firmly on a leash.
- (b) Failure to comply with subsection (a) shall be punishable by a schedule of fines as established in chapter 1, section 1-18, ~~the following schedule of fines:~~
 - ~~(1) First offense \$50.00~~
 - ~~(2) Second offense 75.00~~
 - ~~(3) Third and each subsequent offense 100.00~~
- (c) Reserved.
- (d) Notwithstanding the provisions of subsection (a), dogs are allowed off leash at Cashman Park, Moseley Woods, and March's Hill, subject to the exclusions and restrictions, off leash hours, and seasonal restrictions set forth in the following Table of Designated Off Leash Areas and subject to the rules set forth in subsection (e), respectively, below.

Table of Designated Off Leash Areas			
Designated off leash area	Exclusions and restrictions	Off leash hours	Seasonal restrictions
Cashman Park	Excluding: playground, basketball court, tennis court, baseball field, soccer field & walkways	7:30 a.m. - 9:00 a.m. and 4:00 p.m. - 7:00 p.m.	Year round
Moseley Woods	Excluding: playground, pavilion & picnic areas	Dawn - Dusk	Year round
March's Hill	Excluding: basketball court	Dawn - Dusk	No off-leash dogs allowed at times when children are sledding

- (e) The following rules apply to the use of designated off leash areas: Owners, per the below rules, are defined as persons with direct care, custody, and control of a dog while in a designated off-leash area.

²³State law reference(s)—Dogs, M.G.L. c. 140, §§ 136A—174; authority to regulate dogs, M.G.L. c. 140, § 173.

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- (1) Dogs must be licensed and vaccinated as required by applicable law and ordinance (this is the case for both leashed and off-leash dogs) and have no contagious conditions, diseases or parasites.
 - (2) Dogs must be leashed when entering and when exiting a designated off-leash area.
 - (3) Dogs with a history of dangerous or aggressive behavior, e.g. history of dog fights or aggression toward people as determined by the animal control officer, are prohibited from designated off leash areas during designated off leash times.
 - (4) Dogs younger than four (4) months of age are not allowed off leash as all inoculations are incomplete at this age.
 - (5) Intact and unleashed male dogs must be supervised closely and immediately removed or leashed if interfering with other dogs.
 - (6) Female dogs in season/heat are not allowed off leash in designated off-leash areas.
 - (7) Owners must immediately remove from designated off-leash areas their dogs ~~who that~~ are exhibiting aggressive behavior towards people, other dogs or wildlife.
 - (8) While in designated off-leash areas, owners must remain with and monitor their dogs.
 - (9) Owners must carry ~~a leash,~~ one leash per each of their dogs ~~is required.~~
 - (10) Owners must have in their possession an adequate number of bags, or other appropriate device, e.g. a pooper scooper, ~~in their possession~~ for removal of their dogs' waste.
 - (11) Owners must clean up after their dogs, owners who fail to do so are subject to a fine in accordance with applicable law and ordinances. This is the case for both leashed and off-leash dogs.
 - (12) No digging is allowed. Owners must fill in any holes dug by their dogs.
 - (13) No owner shall have more than two (2) unleashed dogs in a designated off-leash area at any one time.
 - (14) Off-leash dogs are not allowed in playgrounds, tennis courts, basketball courts and/or athletic fields.
 - (15) Owners in violation of ~~above these~~ rules shall be subject to a fine ~~of fifty dollars (\$50.00), as defined in chapter 1, section 1-18.~~
 - (16) Owners must leash their dog(s) upon any direction or command of a police officer or animal control officer; and any refusal by such owners shall constitute ~~a fifty dollar~~ a violation penalty per rule (15).
 - (17) Owners must muzzle dogs that exhibit dangerous or aggressive behavior; biting, fighting, and excessive barking are not allowed.
 - (18) Unattended dogs are not allowed in the off-leash areas.

(Code 1971, §§ 4-6, 4-7; Ord. of 2-11-74; Ord. of 4-24-78; Ord. of 2-24-92; Ord. of 6-28-04(1); Ord. of 8-8-11(1); Ord. of 4-25-11(1); 10-17-11(1); Ord. of 8-11-14(1); Ord. of 8-11-14(2))

Cross reference(s)—General provision, ch. 1 fines schedule § 1-18

Sec. 3-27. Licensing of dogs and kennels.

- (a) All dogs six (6) months old or older must be licensed and tagged. Licensing will be done ~~in by~~ the office of the city clerk. The owner or keeper of any dog in the city shall obtain a license for such dog by April first of each year. The license fees for dogs shall be as ~~follows~~ established in appendix B.
 - ~~(1) Neutered males and spayed females \$10.00~~
 - ~~(2) Unneutered males and unspayed females 15.00~~

Senior citizens (aged 65 and over) who show proof of age shall be entitled to a license without paying said fees for their dogs, provided, however, that any applicable late fees shall still apply.

Any blind, deaf or mobility-impaired person who is the owner or keeper of a dog trained to guide and assist ~~him/her/them~~ shall may receive a license for such dog from the office of the city clerk, for which ~~and~~ no fee shall be charged. Also, dogs between six (6) months and one (1) year of age, placed for training as guide dogs, shall may also receive a license from the office of the city clerk at no fee, provided that satisfactory evidence is presented ~~that~~ by its owner or keeper that such ~~the~~ dog was placed by an organization which supplies such guide dogs.

(b) Kennel license fees shall be as ~~follows~~ established in appendix B.

~~(1) Four (4) dogs \$ 30.00~~

~~(2) Five (5) to ten (10) dogs 50.00~~

~~(3) Ten (10) or more dogs 100.00~~

(c) The owner or keeper of an unlicensed dog ~~after September first shall be fined ten dollars (\$10.00) per dog in addition to the license fee. The owner or keeper of an unlicensed dog after October first shall be fined twenty dollars (20.00) per dog in addition to the license fee. The owner or keeper of an unlicensed dog after November first shall be fined thirty dollars (30.00) per dog in addition to the license fee.~~ shall be subject to fines as established in chapter 1, section 1-18. All monies collected for licenses and fines shall be retained by the city.

(Ord. of 3-9-87; Ord. of 2-8-88; Ord. of 2-24-92; Ord. of 6-28-04(1); Ord. of 9-13-10; Ord. of 1-25-16(2); Ord. of 12-10-18; Ord. of 5-26-20(2))

Cross reference(s)—General provision, ch. 1 fines schedule § 1-18; Licenses, permits and business regulations, ch. 9; Fees schedule, appendix B.

Sec. 3-28. Nuisances—Complaint; investigation; order to muzzle or restrain.

(a) If any person shall make a complaint in writing to the ~~dog-animal control~~ officer of the city that any dog owned or ~~harbored~~ kept within ~~his~~ their jurisdiction is a nuisance by reason of vicious disposition or excessive barking or other disturbance, the ~~dog-animal control~~ officer shall investigate such complaint, which may include an examination on oath of the complainant, and may order such dog to be restrained or muzzled.

(b) Animal behavior ~~which that~~ constitutes a nuisance includes, but is not limited to the following: ~~vicious disposition; molesting passersbys or passing vehicles (including bicycles, etc.); attacking persons people or domestic animals; damaging public or private property; barking, whining, or howling in an excessive or continuous fashion.~~ Animal behavior that constitutes a nuisance shall be subject to the following fine schedule as established in chapter 1, section 1-18, ~~upon investigation of the animal control officer or a police officer.~~

~~(1) First offense \$ 25.00~~

~~(2) Second offense 50.00~~

~~(3) Third and subsequent offenses 100.00~~

(Code 1971, § 4-8; Ord. of 11-14-94; Ord. of 12-12-16(1))

Cross reference(s)—General provision, ch. 1 fines schedule § 1-18; Nuisances, § 8-101Cross reference(s)— et seq.

Sec. 3-29. Same—Grounds for muzzling or restraining.

The ~~dog officer or inspector of animals~~ animal control officer may restrain or order to be restrained or muzzled any dog for any of the following reasons:

- (1) If found at large, ~~as the case may be,~~ while an order of the ~~dog~~ animal control officer for the restraint or muzzling of such dog is in effect.
- (2) If found in a school, schoolyard or public recreational area.
- (3) For having killed or maimed or otherwise damaged any other domesticated animal.
- (4) For chasing any vehicle upon any public way or way open to public travel in the city.

(Code 1971, § 4-9)

Sec. 3-30. ~~Certain dogs to be muzzled;~~ Penalty for violation of muzzling order.

The city marshal ~~or~~ the ~~dog~~ animal control officer ~~or the inspector of animals~~, may order that any dog ~~who~~ that has bitten or wounded any person or livestock, shall not go at large without an adequate muzzle. The owner or keeper of any such dog shall forfeit and pay a ~~fine the sum of fifteen dollars (\$15.00)~~ fine in the amount noted in chapter 1, section 1-18. in accordance with M.G.L. ~~A.~~ c. 140, § 173 in the amount noted in chapter 1, section 1-18.

(Code 1971, § 4-10)

Cross reference(s)— General provision, ch. 1 fines schedule § 1-18;

Secs. 3-31—3-50. Reserved.

ARTICLE III. FEEDING OR BAITING WILD BIRDS

Sec. 3-51. Purpose and intent.

The presence of migratory shorebirds such as ducks, swans, geese as well as seagulls are part of the fabric of a coastal and riverfront community. These birds in essence bring to Newburyport's public and private waterfront and parks a connection with the Merrimack River and the Atlantic Ocean. An unfortunate by-product of these birds' presence is the inappropriate and harmful practice of human feeding of these birds. This feeding contributes to ~~this such~~ wildlife becoming dependent on human intervention. It exposes them to predators and leaves behind bird waste that negatively affects the ecosystem. Therefore, the intent of this article is to minimize the exposure of migratory waterfowl and seabirds exposure to human feeding, and in the to reduce reduction of animal waste within the City of Newburyport.

(Ord. of 6-29-15)

Sec. 3-52. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director means the Director of Massachusetts Division of Fisheries and Wildlife, agents or designees as authorized pursuant to M.G.L. ~~A.~~ ch. 131.

Feeding or baiting shall mean the placing, exposing, depositing, distribution, or scattering, directly or indirectly of shelled, shucked, or unshucked corn, wheat, other grain, bread, salt, or any other feed or nutritive substance in any manner of form so as to constitute feeding or baiting within the City of Newburyport.

Migratory waterfowl means ducks, geese, swans, and other birds of the Anatidae family and any subspecies of said family.

Seabirds means seagulls and any subspecies of seagulls.

(Ord. of 6-29-15)

Sec. 3-53. Limitations.

- (a) No person, except the director, as defined in section 3-52 of this article shall feed or bait any migratory waterfowl at any location within the ~~city~~ City of Newburyport including all water bodies therein.
- (b) Nothing in this section shall be constituted to limit: (1) the feeding of domesticated waterfowl as defined by the Division of Fisheries and Wildlife, by a farmer as defined in M.G.L. ~~ch.~~ 128, § 1A on property owned or leased by ~~such farmer~~ him; (2) ~~or~~ the feeding of waterfowl or other birds by propagators licensed under M.G.L. ~~ch.~~ 131, § 23 when such waterfowl or other birds are confined in such a manner as may be required to said Section 23 and /or by rules and regulations issued under authority thereof; or (3) the feeding by any person or ~~his~~ their agents, invitees or licensees of waterfowl lawfully kept as a pet by that person.
- (c) Notwithstanding ~~any of the above~~ anything in this section 3-52 to the contrary, the director may authorize the emergency feeding of waterfowl and other birds when, in ~~his~~ their opinion, such action is necessary in order to alleviate undue losses and suffering of birds due to unusual weather conditions and /or other circumstances. The director may authorize such action by such means as ~~they~~ he deems necessary and expedient, but such means shall include the immediate notification of the ~~Newburyport City~~ city clerk ~~Clerk~~ by first-class mail.

(Ord. of 6-29-15)

Secs. 3-54—3-100. Reserved.

Sec. 3-101. Enforcement.

- (a) *Enforcement agents.* ~~Article III This section may be enforced by the City of Newburyport Animal Control Officer, agents of the Newburyport Board of Health, and Newburyport Police Officers, Code Enforcement Officers.~~
- (b) *Violation.* ~~Any Fines applicable to violations of Article III may be found in chapter 1, section 1-18. person who violates any provision of this section shall be subject to a warning for the first offense and a fine of \$25.00 for each subsequent offense thereafter. In lieu of enforcement through criminal proceedings, an enforcing agent may enforce this section by non-criminal disposition in accordance with M.G.L. ch. 40, § 21D.~~
- (c) *Signage not required for enforcement.* While the posting of signage citing ~~delineating~~ this article is encouraged in areas where both people and migratory waterfowl gather, signs need not be present to enforce this article.

(Ord. of 6-29-15)

Cross reference(s)— General provision, ch. 1 fines schedule § 1-18:

Chapter 4 BOATS, DOCKS AND WATERWAYS²⁴

ARTICLE I. IN GENERAL

Sec. 4-1. Reserved.

Editor's note(s)—The provisions of § 4-1 were deleted in their entirety by an ordinance adopted Mar. 13, 1989. The deleted section pertained to boat speed and wake restrictions in certain waters and derived from Code 1971, §§ 5-1, 5-2.

Secs. 4-2—4-25. Reserved.

ARTICLE II. HARBOR²⁵

DIVISION 1. GENERALLY

Secs. 4-26—4-40. Reserved.

DIVISION 2. HARBOR COMMISSION²⁶

Sec. 4-41. Composition, appointment.

The mayor shall appoint, subject to the confirmation of the city council, a harbor commission which shall consist of seven (7) members who must be electors and residents of the city. In addition, there shall be appointed two (2) alternate members if necessary. The harbor master shall serve as an ex officio member of the commission without vote.

²⁴Cross reference(s)—Buildings and building regulations, ch. 5Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; licenses, permits and business regulations, ch. 9Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; zoning, app. A; waterfront zoning districts, app. A, § XVIII.

State law reference(s)—Motorboats and other vessels, M.G.L. ~~A~~ c. 90B; authority of city to regulate activities of vessels, other than numbering, M.G.L. ~~A~~ c. 90B, § 15State law reference(s)—; operation of boats while under the influence of intoxicating liquor or narcotics; negligent operation, night operation, etc., M.G.L. ~~A~~ c. 90B, § 8; cities on tidal water required to have common landing place, and requirement that cities make rules and regulations for such landing place, M.G.L. ~~A~~ c. 88, §§ 14, 19.

²⁵Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—; public places, § 12-91 et seq.

²⁶Cross reference(s)—Boards, committees, commissions, § 2-61Cross reference(s)— et seq.

(Ord. of 7-14-86(2), § 1)

Sec. 4-42. Compensation.

No regular member of the harbor commission shall receive compensation for service but may be reimbursed for any necessary expenses. The harbor master or deputy harbor master may receive compensation for any prescribed duties.

(Ord. of 7-14-86(2), § 1)

Sec. 4-43. Terms.

The term of all members shall run for three (3) years, except that the initial term shall be staggered so that the terms of not more than three (3) members shall terminate in any single year. Alternate members shall be appointed for two (2) years except that the initial term of one (1) alternate shall be for one (1) year. If a member resigns or is removed for any reason before ~~his~~their term expires, a replacement shall be appointed within one (1) month of termination by the mayor, in accordance with section 4-41, to complete that term.

(Ord. of 7-14-86(2), § 2)

Sec. 4-44. Officers.

The harbor commission shall elect a chairperson and secretary. The commission may form subcommittees to address specific duties of the commission.

(Ord. of 7-14-86(2), § 2)

Sec. 4-45. Jurisdiction.

The harbor commission shall have jurisdiction within the area located in the waters of the city and bounded by the projection of the boundary line of neighboring towns.

(Ord. of 7-14-86(2), § 3)

Sec. 4-46. Power, duties, and responsibilities.

The purpose of the harbor commission shall be to prepare a proposed harbor management plan and to provide for the annual review of the plan. In addition, the commission may exercise any of the following powers, duties and responsibilities:

- (1) Recommend ordinances for adoption by the city council consistent with any harbor management plan ultimately adopted;
- (2) Direct the harbor master in the assignment of moorings and placement of floats or rafts held by bottom moorings, the management of mooring and anchorage areas and the collection of mooring fees after a local mooring fee system is established;
- (3) Review an operating budget for the harbor master using funds from sources which may include, but are not limited to, local appropriation, mooring fees, violation fines or a harbor management fund established by city ordinance and to make fiscal recommendations to the mayor;

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- (4) Review and make recommendations to the mayor and city council on proposed water use activities contiguous to the waterfront and within the waters delineated in section 4-45 that are received for review by other municipal agencies;
 - (5) Review for consistency with any harbor management plan any public notice of an application for a local, state or federal permit for an activity taking place within the commission's jurisdiction as described in section 4-45 and to respond in a timely fashion with recommendations to the regulating agencies; and
 - (6) Conduct or cause to be conducted, studies of the conditions and operations in and adjacent to the city's waters and to present to the office of the mayor proposals for the harbor's efficient operation.

(Ord. of 7-14-86(2), § 4)

Secs. 4-47—4-65. Reserved.

DIVISION 3. HARBOR MASTER²⁷

Sec. 4-66. Election; term.

The harbor master shall be appointed by the mayor and confirmed by the city council and shall serve for a period of three (3) years.

(Code 1971, § 2-10)

Sec. 4-67. Assistant harbor master.

The assistant harbor master shall be appointed by the mayor and confirmed by the city council and shall serve for three (3) years expiring on December 31.

(Ord. of 5-8-06)

Secs. 4-68—4-70. Reserved.

DIVISION 4. USE REGULATIONS²⁸

Subdivision A. Generally

²⁷Cross reference(s)—Officers and employees, § 2-126Cross reference(s)— et seq.

State law reference(s)—Harbor master, M.G.L. c. 102, § 19 et seq.

²⁸Editor's note(s)—An ordinance adopted Mar. 13, 1989, repealed the provisions of former § 4-1 and enacted, in lieu thereof, provisions included herein or a new Div. 4 by the editor. The provisions of former Div. 4, "Mooring," were deleted as being superseded by the ordinance of Mar. 13, 1989. Former Div. 4 contained §§ 4-81Editor's note(s)—4-83, which derived from an ordinance adopted April 9, 1984, §§ 1—8.

Sec. 4-71. Purpose; applicability.

- (a) It is the intent of this division to establish regulations for marine activities within harbors, waterways and tidal waters of the city in order to ensure safety to persons and property, to promote availability and use of a valuable, public resource, and to provide for safe navigation.
- (b) Regulations governing the safe operation of vessels in the harbor and regulations protecting the environment are also contained herein.
- (c) These regulations apply in all parts of Newburyport Harbor which are under the jurisdiction of the Newburyport harbor master as defined M.G.L. ~~A~~ c. 90B and in section 4-78(a) below.
- (d) The regulations promulgated herein are in addition to the requirements of state and federal law.

(Ord. of 3-13-89, § 5-1)

Sec. 4-72. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bulkhead shall mean a steel retaining structure used for shore protection and ~~the harbor walk area works.~~

Central waterfront bulkhead shall mean the bulkhead on the water side of the ~~harbor boardwalk~~; more specifically, that bulkhead located on property conveyed to the Newburyport Waterfront Trust as shown on a plan entitled "Plan of land in Newburyport Redevelopment Authority July 1983 rev'd November 19, 1987." Said plan was recorded with the Essex South District Registry of Deeds in plan book 239, plan 62.

Central waterfront embayment shall mean that portion of the central waterfront bulkhead that forms an embayment.

Channel. See "navigable channel."

Commercial fish pier or "*fish pier*" shall mean that property fronting on the Merrimack River improved with a Coastal Facilities Improvement Grant abutting the Newburyport Waterfront Trust property, recorded as book 239, plan 62 to the East. See City Assessor's map # 12, lot # 9.

Commercial fishing vessel shall mean a vessel holding a National Marine Fisheries permit in any of the following permit categories: Atlantic Blue Fin Tuna, Northeast Multispecies, Atlantic Squid, Mackerel Butterfish, Surf Clam, Quahog, Sea Scallop, American Lobster, or Winter Flounder.

Commercial mooring shall mean any mooring placed in the Newburyport waters for which a rental or service fee may be charged.

Embayment shall mean that portion of a bulkhead which encloses an area of water on two (2) or three (3) sides, thereby protecting and sheltering that area from the flow of the river.

Fairway shall mean locally designated channels shown on the official Newburyport Harbor map as adopted by the harbor commission and city council.

Full time commercial fishing vessel shall mean a commercial fishing vessel engaged exclusively, in a National Marine Fisheries permitted commercial fishery. Vessels operating under National Marine Fisheries Charter/Party Permits for a portion of the year will not be considered fulltime commercial fishing vessels.

Harbor master shall be considered to be the harbor master, assistant harbor master or any authorized agent.

Harborwalk shall mean that portion of public recreational walkway along the Merrimack River which has its westerly terminus at Cashman Park and has an easterly terminus at the property of the existing Michael's Harborside Restaurant, including the Route 1 underpass and its waterfront intersection with the Clipper City Rail Trail.

Individual mooring shall mean any mooring placed in Newburyport waters for the owners' private use.

Length overall (LOA) shall mean the length of a vessel inclusive of bowsprits, booms and boomkins, pulpist, swim platforms, engines or extensions.

Mooring shall mean any structure or apparatus including floats and rafts held by anchors or bottom moorings.

Navigable channel shall mean that area of water in the Merrimack River buoyed by the U.S. Coast Guard.

Newburyport Harbor shall be all tidal waters under the jurisdiction of the Newburyport harbor master and lying within the corporate boundaries of the city.

Operator shall mean any person engaged in the operation, and navigation of a vessel.

Person shall include individuals, corporations, clubs, associations, partnerships, including their agents.

Stand-up paddleboard shall mean a surfboard like device used while standing and propelled with a paddle or oar.

Tender/dinghy dock shall mean a floatation tie up facility for tenders and dinghies to provide access to vessels on moorings. Tenders using this dock shall be less than ten (10) feet in length and are limited to seventy-two (72) hours maximum continuous tie up, unless holding a seasonal permit. These docks are the only location for tie up of tenders or dinghies.

Vessel shall include any ship, boat or any other type of watercraft including personal watercraft being used as a means of transportation on the water and other floating structures such as barges and rafts.

(Ord. of 3-13-89, § 5-2; Ord. of 7-14-92; Ord. of 4-8-96; Ord. of 6-29-09(1); Ord. of 4-28-14(2))

Sec. 4-73. Fees.

- (a) *Establishment.* The harbor commission shall establish fees and may amend them, from time to time, for all the facilities governed by this division. The commission shall establish fees subject to the approval of the city council. The fee schedule shall be published and available to the public upon request.
- (b) *Accounts and appropriations.* All of the fees collected under (a) above and any money generated through this division shall be deposited into accounts designated by the city council for the sole purpose of returning the fees to the management and operation of the harbor. Revenues shall not be appropriated from these accounts for any expense except harbor operation, maintenance to the harbor, capital improvements to the harbor and for matching state and local grants for harbor related projects. Approval of the mayor and city council shall be necessary to appropriate the funds for harbor-related operations.
- (c) *Fees and permits for commercial fish pier.*
 - (1) Berth permits shall be issued annually for fulltime commercial fishing vessels in any licensed fishery. This facility is not intended for wet storage. If the harbor master determines that a vessel has remained idle for a period of thirty (30) days, that vessel shall be considered in wet storage and the harbor master shall direct the removal of the vessel at the vessel owner's expense. Upon review of the harbor master and the harbor commission the vessel shall forfeit its berthing fee and berthing privileges. Berth permits shall be renewed on October 1 and shall be valid for the period of one (1) year (October 1 to September 30). Applications shall be made available at city hall in the office of planning and

development. All vessels must have a minimum of one hundred thousand dollars (\$100,000.00) liability insurance and property damage insurance as a condition of issuance of a berthing permit. Said insurance must name the city as an insured party.

- (2) Pier usage permits shall be renewed on May 1 and shall be valid for the period of one (1) year (May 1 to April 30). Applications shall be made available at city hall in the office of planning and development. All fishing vessels, businesses, corporations and individuals operating on the "fish pier" must have a minimum of one hundred thousand dollars (\$100,000.00) ~~liability~~ liability insurance and property damage as a condition of issuance of a pier use permit. Fish dealers and fuel dealers shall be required to carry additional insurance or post a bond if deemed necessary by the harbor commission. Said insurance. must name the city as an insured party. Vessels holding a pier usage permit are allowed to load and unload their trucks on the pier and unload up to twenty thousand (20,000) pounds of fish per day. A fee per pound in excess of ~~A fee of five cents (\$0.05) per pound for each pound in excess of~~ twenty thousand (20,000) pounds shall be assessed by the harbor master as noted in appendix B.
- (3) The fee for transient berthing shall be for a twenty-four-hour period starting from the time of tie-up.
- (4) A fee for transient loading and unloading shall be established by order of the city council. Time limits for loading and unloading shall be set by the harbor master.
- (5) All fees collected at the "fish pier" shall be deposited into an account known as the "fish pier account." This is in accordance with a land use agreement to be executed with the state grant to construct the fish pier. Said revenues deposited in the "fish pier account" shall not be appropriated from this account for any expenses except improvements, repairs, maintenance, and administration of the fish pier.

(d) *Fees and permits for the central waterfront embayment and bulkheads.*

- (1) Permits for the berthing of fulltime commercial fishing vessels in the central waterfront embayment shall be issued for the season. The season shall be from October 15 to May 15. This facility is not intended for wet storage. If the harbor master determines that a vessel has remained idle for a period of thirty (30) days that vessel shall be considered in wet storage and the harbor master shall direct the removal of the vessel at the vessel owner's expense. Upon review by the harbor master and the harbor commission the vessel shall forfeit its berthing fee and berthing privileges. The berthing permit allows for the berthing of the vessel and the loading and unloading of crew members and their personal gear, etc., at the central waterfront embayment. No fueling or the loading of fish, bait, nets, gear, etc., shall be allowed at the central waterfront embayment. All vessels must have a minimum of one hundred thousand dollars (\$100,000.00) liability insurance and property damage insurance a condition of issuance of a berthing permit. Said insurance shall name the city as an insured party. The berthing fee includes pier usage at the "fish pier" and parking privileges on the pier. Berth permits shall be renewed on October 1 and shall be valid for the season. Applications shall be made available at city hall in the office of planning and development.
- (2) The fee for transient berthing shall be for a twenty-four-hour period starting from the time of tie-up.
- (3) Central Waterfront Transient docking and mooring permit fees are calculated based the length of stay and upon the linear length of the vessel being berthed. The linear by foot rate for transient berthing is reviewed and set on an annual basis by the Newburyport Harbor Commission. When modified the fee is to be reviewed and approved by both the harbor commission and the city council.

(e) *Waterways fee.*

- (1) Waterway and mooring permits are based upon the footage appearing on your registration or documentation. For all boats seventeen (17) feet and greater waterway and mooring permit fees are calculated based upon the linear length of the vessel being permitted. The linear by foot rate for waterway and mooring permits is reviewed and set on an annual basis by the Newburyport Harbor

Commission. When modified the fee is to be reviewed and approved by both the harbor commission and the city council.

- (2) Boats sixteen (16) feet and under are charged a flat rate. The fee is reviewed and set on an annual basis by the ~~Newburyport Harbor Commission~~. When modified the fee is to be reviewed and approved by both the harbor commission and the city council.
 - (3) Boats twenty (20) feet or greater will also be charged a clean water surcharge. The fee is reviewed and set on an annual basis by the ~~Newburyport Harbor Commission~~. When modified the fee is to be reviewed and approved by both the harbor commission and the city council.
 - (4) All vessels in rack storage or stored on trailers in Newburyport Marinas must procure and display a waterways permit sticker. However, any vessel that will not be used during the current boating season may apply for an exemption from the harbormaster with written proof on non-usage.
- (f) *Cashman Park boat ramp.*
- (1) The fee for launching a vessel at the Cashman Park boat ramp shall be established by the harbor commission with city council approval.
 - (2) In lieu of single use payment a season pass may be purchased through the harbormaster.

(Ord. of 3-13-89, § 5-6; Ord. of 7-14-92; Ord. of 5-8-06; Ord. of 2-26-07(2); Ord. of 5-9-11; Ord. of 10-29-18(2))

Sec. 4-74. Fines and penalties.

- (a) Violations of the foregoing sections shall be punished by a fine ~~of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00) per violation~~ established in chapter 1, section 1-18. Specific fines for violations shall be established by the harbor commission subject to approval of the city council.
- (b) Prosecution shall be under M.G.L. c. 102, § 25.
- (c) Any fees which are not paid may be converted to a civil assessment payable to the city.
- (d) Nonpayment of berthing fee and/or removal of vessels for nonpayment of same shall result in loss of permanently assigned berthing for a minimum of one (1) twelve-month period.

(Ord. of 3-13-89, § 5-7; Ord. of 4-8-96)

General provision, ch. 1 fines schedule § 1-18

Secs. 4-75—4-77. Reserved

Subdivision B. Operation of Vessels in Newburyport Harbor

Sec. 4-78. Speed.

- (a) *Generally.* It shall be unlawful to operate or suffer or permit the operation of any motor boat or other vessel propelled by machinery at a speed exceeding five (5) miles per hour and no disturbing wake shall be made in any waters of the Merrimack River lying within city limits.
- (b) *Wake and speed.* Notwithstanding the speed limit established in (a) above, no vessel shall create a wake or operate at a speed which endangers life, safety or property of any person in Newburyport Harbor. In narrow channels, designated mooring areas, or where posted, the speed of all vessels shall be reduced to the minimum speed required for safe steerage of the vessel.

(Ord. of 3-13-89, § 5-3(A), (B))

Sec. 4-79. Unlawful pollution and discharges.

No oil, petroleum products, untreated sewage, rubbish, debris garbage shall be disposed of within Newburyport Harbor. No cleaning of fish is permitted on city facilities except where designated by the harbor master.

(Ord. of 3-13-89, § 5-3(C))

Cross reference(s)—Solid waste, § 8-81Cross reference(s)— et seq.; sewers, § 14-26Cross reference(s)— et seq.

Sec. 4-80. Windsurfing, waterskiing.

- (a) Windsurfers, waterskiers and stand-up paddleboards are not to operate in the navigable channel of the river or in mooring areas from the Ice Breaker to west of Carr Island.
- (b) Personal watercraft may operate in the channel at a speed not to exceed twelve (12) miles per hour. Operators of personal watercraft must be in a seated or kneeling position and must proceed in a direct route without switching back and forth in the channel.
- (c) If a windsurfer or waterskier is obligated to cross the marked channel ~~he~~they shall do so at right angles and with due care to the traffic flow in the marked channel so as not to create a hazard to river traffic.
- (d) All stand-up paddleboard users shall wear a USCG approved personal floatation device (PFD) of type I, II, III or type V.

(Ord. of 3-13-89, § 5-3(D); Ord. of 4-28-14(3))

Sec. 4-81. Safety regulations.

- (a) No person shall operate a vessel in Newburyport Harbor so as to endanger the lives, safety or property of others.
- (b) No person shall operate a vessel in Newburyport Harbor while under the influence of intoxicating liquors or drugs.
- (c) No person shall operate a vessel in a mooring area or within three hundred (300) feet of any beach or swimming area while towing waterskiers, aquaplanes or similar devices.

(Ord. of 3-13-89, § 5-3(E))

Sec. 4-82. Obstructions.

Obstructions including, but not limited to, derelict and/or abandoned vessels to safe navigation of the Merrimack River shall be subject to removal by the harbor master without notice. Obstructions removed and stored by the harbor master shall be at the expense of the owner.

(Ord. of 3-13-89, § 5-3(F))

Sec. 4-83. Races and regattas.

- (a) No boat race or regatta shall be held in the Newburyport Harbor without first obtaining an U.S. Coast Guard Permit and notifying the harbor commission and the harbor master; and providing the harbor commission and harbor master with a copy of the Coast Guard permit for the race or regatta.
- (b) All races and regattas in Newburyport Harbor must be operated under the supervision of a race or regatta committee. All such committees shall, prior to their activity, file a written statement with the harbor commission two (2) months prior to the event, containing the following information:
 - (1) The identity address and telephone number of the group or organization sponsoring the activity.
 - (2) A brief description of the activity, time of commencement, an estimate of hours and/or days, location specifying the course to be run, date of the activity and any alternative dates in the event of a weather postponement, and a listing of the fees to be charged.
 - (3) A roster of the names and addresses and phone numbers of the members of the committee responsible for the organization and conduct of the activity.
 - (4) A brief statement of the efforts by the committee to publicize the activity sufficiently such as will give reasonable notice to the boating public of the time, date, place and nature of the activity and thereby warn the public of courses to be run by participants and areas to be closed to the public during the activity. Warning the public can be accomplished through no-tice to marinas. All races and regattas shall be accompanied by at least one (1) motor-powered committee vessel. Committee boats must keep a constant monitor on VHF channel 13 and have the ability to monitor on VHF channel 16 for the duration of a race.

(Ord. of 3-13-89, § 5-3(G))

Sec. 4-84. Fueling.

Fueling is permitted only at licensed fuel docks in accordance with State Fire Marshal Code 527 CMR 1-50.

(Ord. of 3-13-89, § 5-3(H))

Sec. 4-85. City liability.

The city assumes no responsibility on account of fire, theft or damage of any nature to any vessel or property connected therewith, nor for personal injury to any person arising out of the use of waterways under the jurisdiction of the city or any facility in or related to the waterways. Any person using any city facility for the conduct of a permitted activity shall file a statement with the harbor commission indemnifying and holding the city harmless from any lawsuit arising out of the conduct of the permitted activity by anyone.

(Ord. of 3-13-89, § 5-3(I))

Sec. 4-86. Excise tax and fees.

No waterways permits nor mooring space or slip shall be assigned to any person who is arrears on any boat excise tax, waterways permit mooring, slip or dockage fees, due and payable to the city, for any year present or previous. Proof of the payment shall be submitted with application for mooring/slip.

(Ord. of 3-13-89, § 5-3(J); Ord. of 5-8-06)

Sec. 4-87. Accidents.

- (a) The operator of a vessel involved in an accident shall render all practical and necessary assistance to persons affected by the accident to the extent possible without serious danger to life, crew, passengers, and vessel.
- (b) The harbor master shall be notified of all accidents which are required to be reported by M.G.L. ~~A~~ c. 90B, § 9, and shall also be notified of accidents which result in environmental damage, or navigational obstructions. The harbor master should be notified as soon as possible of the accident. A written report shall be submitted within five (5) days of the accident if the accident results in loss of life, injury requiring medical attention, loss of consciousness, property damage in excess of two hundred dollars (\$200.00) or disappearance of any person on-board under circumstances which suggest any possibility of injury or death. The operator and owner of the vessel are responsible for this report. A copy of the report required by M.G.L. ~~A~~ c. 90B, § 9, filed with the harbor master will satisfy the written report requirement.
- (c) No vessel, mooring or other object shall be abandoned, sunk or placed where it may constitute a hazard to navigation.
- (d) Any vessel, mooring or object constituting a hazard to navigation, and any vessel or object improperly secured, swamped, sunk, washed ashore or found in a restricted area, may be removed or relocated at the direction of the harbor master if corrective action is not taken by the owner immediately upon being notified by the harbor master.
- (e) The expense of such removal or relocation and liability therefor shall be the responsibility of the owner.
- (f) Nothing in these sections shall restrict earlier action by the harbor master or an assistant harbor master, with or without notifying the owner if, in their judgment, such action is necessary to protect life or property.

(Ord. of 3-13-89, § 5-3(K))

Secs. 4-88, 4-89. Reserved.

Subdivision C. Moorings, Floats and Other Structures

Sec. 4-90. Water sheet ordinance.

- (a) *Purpose.* It is the intent of this section to regulate the placement of moorings, floats piers and other docking mechanisms to ~~insure~~ensure safe navigation and to designate areas that differentiate the water uses and navigation areas on the waterways within the corporate boundaries of the City of Newburyport.
- (b) *Authority.* The authority of administering and enforcing the provisions of this section shall be conferred to the harbor master of the City of Newburyport and the harbor commission where specified herein.
- (c) *Enactment and federal turning basin.* Those areas of the ordinance which affect the area known as the federal turning basin as shown on the most recent Army Corps of Engineers maps shall be enacted upon receipt by the harbor commission of official notification that the said basin is abandoned by the United States Congress.
- (d) *Navigation and water use zones.*
 - (1) *Small craft navigation zone.* The small craft navigation zone area is composed of an area as so designated on the map titled Newburyport Water Sheet Zones, Newburyport Massachusetts, November 1991 and areas as described herein. Such area extends one-hundred fifty (150) feet from the southerly boundary for the entire distance of the federal channel as designated on the most recent

maps by the U.S. Army Corps of Engineers within the corporate boundaries of the City of Newburyport. The placement of floats, piers or other docking mechanism is not allowed in this area. The area is intended to provide space for mooring as defined herein and navigation of small craft outside the federal channel when necessary for their safety and for navigation of all other craft to and from the shore areas.

- (2) *Central waterfront parallel fairway.* The central waterfront fairway is comprised of an area so designated on the map titled Newburyport Water Sheet Zones, Newburyport Massachusetts, November 1991 and revised in April, 2005. Such area is as described below:

A fairway parallel to the shoreline of the Merrimack River one hundred (100) feet wide extending from the outermost line of floats, piers, bulkheads and other structures extending into the Merrimack River providing that the area forming the one hundred (100) foot extension shall not overlap into the small craft navigation zone as described above.

The fairway is comprised of an area that extends from a westerly point where a line extending from the centerline off Green Street would intersect at a right angle with the Merrimack River to the fish pier egress.

Such area is intended to provide clear and unobstructed boating access by not allowing the placement of floats, piers or other docking devices as specified herein. Moorings may be located in this area at the discretion of the harbor master in consultation with the harbor commission providing the one-hundred-foot lane is maintained.

- (3) *Central waterfront access and egress fairways.* The three (3) access and egress fairways are comprised of those areas within the corporate boundaries of Newburyport as so designated on the map titled Newburyport Water Sheet Zones, Newburyport Massachusetts, November 1991. Such areas are as described as follows: Three (3) fairways running perpendicular from the shoreline extending to the southerly boundary of the small craft navigation zone. The fairways located at the center and the westerly end of the of the central waterfront parallel fairway are one hundred (100) feet in width, the fairway located at the easterly end is two hundred (200) feet in width, as indicated on the map titled Newburyport Water Sheet Zones, Newburyport Massachusetts, November 1991.

Such area is intended to provide clear and unobstructed boating access by not allowing the placement of floats, moorings, piers or other docking devices as specified herein.

- (4) *Gillis Bridge staging area.* The Gillis Bridge staging area is comprised of those areas so designated on the map titled Newburyport Water Sheet Zones, Newburyport Massachusetts, November 1991. Such area is intended to provide clear and unobstructed boating access by not allowing the placement of floats, moorings, piers or other docking devices as specified herein.

- (e) *Pre-existing nonconforming floats, moorings and piers.* Except as herein provided this section shall not apply to floats, piers and other extensions fully permitted by all applicable local and state authorities prior to the adoption of this section.

- (1) *Extension alteration or reconstruction.* Extension alteration or reconstruction of pre-existing nonconforming floats, piers and other docking mechanisms shall not increase the nonconforming nature of such.
- (2) *Finding by the harbor commission.* Except as required by other laws pre-existing nonconforming floats, piers and other docking mechanisms may be extended as described herein provided that no such extension or alteration shall be permitted unless there is a finding by the harbor commission that such change, extension or alteration shall not be substantially more detrimental to navigation than the existing nonconforming use. Such finding shall follow the process of the harbor commission review.

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- (f) *Boundaries of zones.* Wherever any uncertainty exists regarding the location of the above zones, the location of such zones shall be determined by the harbor commission at a regular meeting. It shall be the responsibility of a petitioner to provide written evidence and request to the harbor commission to challenge the location of such areas in question.
- (g) *Harbor commission review.* Within the waters of Newburyport Harbor, all construction and/or extensions of floats, piers and other docking mechanisms shall require approval by the Newburyport Harbor Commission as described herein.
- (h) *Application for review.*
- (1) Application shall be made on the official Newburyport Harbor Commission Application Form, available in the Office of Planning and Development, City Hall, Newburyport. An application shall not be considered until filed on and in the manner as described on said form. No other communication shall be considered in lieu of the official application.
 - (2) It is recommended that application for permits under this section shall be made prior to application for any and all permitting authorities.
 - (3) The harbor commission shall within sixty-five (65) days of receipt of a complete application hold a public hearing as described herein. Failure to hold said hearing within sixty-five (65) days shall cause the permit to be approved.
 - (4) An application shall be considered received once it is filed complete in the office of planning and development during regular business hours. A complete application is one (1) that contains all information as described on the official application form.
- (i) *Hearings.* Public hearings shall be made public and held prior to a regular meeting. Special hearings may be called at the discretion of the chair with proper notice as described herein. The hearing shall proceed in the manner as described in the Newburyport Harbor Commission Rules of Order and Hearings.
- (j) *Notification.* It shall be the responsibility of the applicant to notify all property owners directly abutting the property for which the application is filed. Said notification shall be return receipt mail on the form titled "Harbor Commission Notification of a Hearing," and shall be postmarked at least fourteen (14) days prior to the hearing on the application. Proof of said notification shall be return receipt cards which shall be supplied by the applicant at the hearing. Notification shall also include a notice in the newspaper of general circulation to be published fourteen (14) days prior to the hearing date. Such notice shall be same form as used for abutter notification.
- (k) *Criteria for review* Before an approval for floats, piers and other docking mechanisms is granted, the harbor commission shall consider the following:
- (1) The construction and/or extension does not project into the areas as described herein as the federal channel, federal mooring area, any and all designated fairways, and any and all staging areas.
 - (2) The commission shall consider constraints posed by narrowness or shallowness of the waterways, severity of the current, and visual access to and from the location.
 - (3) The commission shall consider whether or not the application area will cause undue congestion or hazard on the waterway as it relates to safe navigation.
 - (4) That the construction and/or extension does not substantially inhibit navigation of vessels to and from neighboring properties.
- (l) *Conditions.* The harbor commission may impose the following conditions as it finds reasonably appropriate to ~~insure~~ensure safe navigation in Newburyport Harbor, or otherwise serve the purpose of this regulation, including but not limited to, the following:

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- (1) Dimensional setbacks greater than what is required herein.
 - (2) Limitations on the size and number of vessels.
 - (3) Limitation or exclusion of moorings in the application area.
 - (4) Recommendation of land side public access along the waterway.
 - (5) Requirement to provide for small craft navigation.
- (m) *Decision.* The harbor commission shall within ninety (90) days of the first hearing on the matter, render a decision to approve, approve with modifications or disapprove the application. Failure by the commission to act within ninety (90) days shall constitute a granting of approval by the commission. Providing a quorum of members are present a simple majority of those members in attendance is required for the approval or denial of an application.
- (n) *Filing of decision.* The harbor commission shall file the decision in the office of planning and development within fourteen (14) days of the date at which the decision was rendered. It shall be the responsibility of the applicant to forward a copy of the decision, as filed by the harbor commission, to all other agencies to which the applicant must apply to obtain approval. Proof of said filing shall be made on the harbor commission decision referral form.
- (Ord. of 12-9-91; Ord. of 5-9-05)

Sec. 4-91. Berthing permits generally.

- (a) *Terms and requirements.* Berthing permits for slips, floats, moorings or other docking mechanisms shall be issued by the harbor master according to the terms and requirements of the applications and available space and in accordance with section 4-86.
- (b) *Fees.* Fees for mooring permits issued by the harbor master shall be those authorized under section 4-73.
- (Ord. of 3-13-89, § 5-4(A), (B))

Sec. 4-92. Individual mooring permits.

- (a) *Annual permit; ~~required~~ applications.*
- (1) No person shall establish or maintain a mooring or float (including temporary floats) within the waters of Newburyport Harbor without first obtaining an annual mooring permit from the harbor master. Applications for mooring permits may be submitted to the harbor master from January 1 of any calendar year to June 1 and shall contain such information and shall be in such a form as prescribed by the harbor master. Applications may be obtained from the harbor master's office All mooring permit holders shall renew their mooring permits on or before May 1st of each year.
 - (2) Floats, rafts, and the mooring of boats held by anchors or bottom moorings installed without permission from the harbor master shall be considered a public nuisance and may be removed by the harbor master at the expense of the owner in the event ~~he/she~~he/she/they fails to remove same after notice from the harbor master. For the purpose of this section, temporary shall mean no longer than to the end of any given calendar year.
 - (3) No permit may be issued without prior payment of all appropriate fees by the applicant including, but not limited to, annual boat excise tax if applicable.

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- (4) Permit holders shall display their mooring permit number as legible visible numbers on the float for the mooring. This permit number shall match permit number issued by the harbor master. Failure to mark a buoy or a float shall result in a fine or a forfeiture of mooring.
 - (5) Use of mooring requirement. A boater with a permit to moor in Newburyport waters must moor the boat listed on the mooring permit on ~~their his or her~~ mooring each season or lose the annual option to renew the mooring permit. A request for an exemption (such as for vessel maintenance and repair, health considerations, and buying and selling vessels) must be presented to the harbor master in writing prior to May 1. A mooring permit holder who will be off ~~their his or her~~ mooring for longer than a two-week period during the boating season also must notify the harbor master in writing. The harbor master is authorized to assign any unused mooring on a temporary basis to the next person on the wait list. The temporarily assigned boat owner is responsible for any damage to the mooring. The mooring owner is responsible for maintenance and inspection of the mooring at all times.
- (b) *Issuance; waiting list.*
- (1) Permits will be denied if the harbor master determines that the mooring will constitute a hazard to navigation, will not conform to the requirements of these regulations, or will otherwise not conform to the requirements of law or rights of the public. Permits will be issued for one (1) calendar year only.
 - (2) Individual mooring permits are not transferable except for transfer to immediate family: Father, mother, brother, sister, son, or daughter.
 - (3) Upon issuance of a permit, the harbor master will assess a mooring location and specify the marking and number of the mooring. Moorings shall be installed prior to June 1 each season for permits issued prior to May 7. For permits issued after May 7, moorings shall be installed within fifteen (15) working days following issuance. Failure to comply with above may result in forfeiture of permit.
 - (4) The harbor master will keep a chart available for public inspection at Harbor master's office which clearly indicates the mooring/areas permitted.
 - (5) The harbor master shall keep a waiting list for available space and does not discriminate against any person based upon race, religion, sex, or other illegal distinction. Priority for the issue of permits to persons on the waiting list will be in this order: Date of application and assignment to the waiting list, and subject to the size and type of boat related to the space available. Allocation of space shall be made based on the date of application and subject to the size and type of boat related to the space available. Copies of the up-to-date waiting lists must be made available to the public by the harbor master upon request.
 - (6) Conditional city mooring permits. A boater who holds a mooring permit from the city does so with the understanding that ~~their his or her~~ mooring may be removed permanently at any time without immediate replacement. Prior to mooring removal, the mooring permit holder will be given a written explanation of the mooring-removal decision and will be offered an opportunity to appeal the mooring-removal decision to the harbor commission. A boater who has a mooring removed through this process will be placed at the top of the mooring waiting list.

(Ord. of 3-13-89, § 5-4(D), (E); Ord. of 4-8-96; Ord. of 6-28-99; Ord. of 5-8-06)

Sec. 4-93. Group mooring permits.

- (a) In lieu of obtaining individual permits, boating clubs or other organizations such as yacht clubs and marinas, may apply to the harbor master for a group mooring permit for a specified mooring area.

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- (b) Commercial and group permits may be transferred with the approval of the harbor master and such approval shall not be unreasonably withheld provided that the harbor master shall find that the transfer is in the public interest.
 - (c) The facilities of any marina located within the city shall be available for use by the general boating public, providing they abide by the marina's fee structure and all lawful regulations of the marina.
 - (d) The maximum term of any contract or agreement relating to slip facilities shall not extend beyond December 31 of any year of issue.
 - (e) The marina owner shall maintain a waiting list of people applying for mooring/slip/berthing space. Available space must be allocated without discrimination against any based upon race, religion, sex or other illegal distinction.
 - (f) Group permit/or slip/owners shall provide to the harbor master a list of the renters of moorings and/or slips to include: name, address and telephone number of owner, name of vessel, type of vessel, year and length of vessel, registration or documentation numbers, private and business address and phone numbers of renters by July 10 of each year. The harbor master shall send a copy of this list to the city assessors to ensure imposition of boat excise tax.
 - (g) Vessel owners at slips or moorings who have not paid their boat taxes or who have not obtained and displayed a current year mooring and slip permit shall be subject to fines as set forth in section 4-74.

(Ord. of 3-13-89, § 5-4(F); Ord. of 4-8-96)

Sec. 4-94. Guest moorings.

The harbor master will designate moorings to be used by transient guests. The length of stay shall be limited to seventy-two (72) hours. Extensions shall be at the discretion of the harbor master. The fee shall be as outlined in section 4-73.

(Ord. of 3-13-89, § 5-4(G))

Sec. 4-95. Forfeiture of permit; abandoned mooring, tackle.

- (a) A permittee may relinquish ~~his~~their permit at any time upon notification to the harbor master. Any mooring tackle not removed within ten (10) days after receipt of such notification shall be considered abandoned and may be removed pursuant to (c), below.
- (b) A permittee may be deemed to have forfeited ~~their~~his/her permit by reason of any of the following if not corrected within forty-eight (48) hours.
 - (1) Locating the mooring at a place other than that specified on the permits;
 - (2) Failure to pay annual mooring fee or excise tax when due;
 - (3) Failure to repair or replace a mooring within ten (10) days after being advised by the harbor master that the mooring is defective or within such lesser time as specified by the harbor master if circumstances should require;
 - (4) Failure to otherwise comply with the terms, conditions or restrictions placed on the permit by the harbor master. Upon written notification of forfeiture by the harbor master, the permittee shall remove or otherwise dispose of the mooring.
- (c) Any abandoned or forfeited mooring, or any mooring installed in the waters of Newburyport Harbor without the permission from the harbor master shall be considered a public nuisance, and may be removed by the

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harbor master at the expense of the owner in the event ~~he~~they fails to remove same within forty-eight (48) hours after notice in writing from the harbor master. The notice shall be secured to the mooring and mailed to the owner's address as given in the owner mooring permit application.

(Ord. of 3-13-89, § 5-4(H); Ord. of 4-8-96)

Cross reference(s)—Nuisances generally, § 8-101Cross reference(s)— et seq.

Sec. 4-96. Installation and inspections.

(a) *General regulations for placement of moorings, floats and other structures.*

- (1) *Setbacks.* All structures shall be set back a minimum of twenty-five (25) feet from the projected property line to provide a swing area unless a lesser setback is mutually agreed upon by the adjacent property owner and submitted in writing to the harbor commission for approval. All structures shall be set back a minimum of twenty (20) feet from federal channel, navigable channel, fairways and federal turning basins.
- (2) *Structures requiring Army Corps of Engineers general permit.* All structures requiring a general permit from the Army Corps of Engineers (including boats) shall project not more than two hundred (200) feet into the Merrimack River from the shore (to be measured perpendicular from the mean high water mark of the outermost portion of the property). In certain geographic locations, constraints posed by narrowness or shallowness of the channel and/or severity of the current may not allow the project to extend the full two hundred (200) feet into the river. The harbor commission shall review for approval all general permits on a case-by-case basis.
- (3) *Structures requiring individual permit from Army Corps of Engineers.* All structures requiring an individual permit from the Army Corps of Engineers will be reviewed for approval on a case-by-case basis by the harbor commission to determine maximum projection into the river. The setback between structures shall be as required in (a)(1), above.

(b) *Mooring/dockage specifications and inspections.*

- (1) *Mooring specifications.* All mooring tackle shall be subject to inspection and approval by the harbor master prior to installation. The suitability of mooring tackle for a particular installation will be judged on a case-by-case basis with reference to the standards set forth in the most recent edition of Chapman's "Piloting and Seamanship."
- (2) *Owner inspections.* Each permittee shall inspect or shall cause ~~their~~his/her mooring to be inspected each season. Winter logs or metal kegs shall not be used in the harbor.
- (3) *Harbor master inspections.* All moorings are subject to harbor master inspections at an time. No notice is required for underwater inspections. Notice of at least five (5) working days will be given if a mooring is to be hauled for inspection. Mooring installations found defective will be subject to loss of mooring permit if not corrected within the time specified by the harbor master. The maximum time allowed shall be forty-eight (48) hours.

(Ord. of 3-13-89, § 5-4(C), (I))

Cross reference(s)—Zoning, app. A.

Sec. 4-97. Removal of abandoned vessels.

- (a) The owner of an abandoned, adrift, or aground vessel must properly secure (dock, moor, or remove from the water) the vessel within twenty-four (24) hours after notification by the harbor master, unless other

arrangements are made with the harbormaster. If the vessel is not properly secured within twenty-four (24) hours or if the harbormaster is unable to contact the owner via the vessel registration number, hull identification number, and any personal effects on board the harbormaster shall contract to have the vessel towed (if necessary) and stored at a private marina. Within three (3) months from the time the harbormaster attempts to contact the owner, the harbormaster will advertise the vessel for sale in the local newspaper for fourteen (14) days, requesting sealed offers. At the end of the fourteen-day period, the vessel will be sold to the highest bidder; if no offers are received, the harbormaster may dispose of the vessel as appropriate. Any funds for the vessel will be used to pay towing and storage fees; surplus funds will go into the waterways account.

- (b) Any abandoned, adrift, or aground vessel that the harbormaster determines constitutes a navigational hazard or threatens the safety of persons or property may be towed (if necessary) and stored at a private marina at the harbormaster's discretion, without prior notification of the owner.
- (c) An owner who claims an abandoned, adrift, or aground vessel must pay all costs incurred in recovering and storing the vessel before taking possession of the vessel.

(Ord. of 6-28-99)

Subdivision D. Special Use Areas

Sec. 4-98. Commercial fish pier.

(a) *Generally.* The general operating policy of the municipal pier/embayment facility shall be that the property is intended primarily for the berthing and loading/unloading of the Newburyport commercial fishing fleet.

(b) *Specific use regulations.*

(1) *Embayment area dockage.*

- a. The embayment area dockage shall be designated for commercial fishing vessels only.
- b. The number of vessels permanently assigned berthing space in the embayment area shall be determined annually by the harbor commission.
- c. All vessels using the embayment area are required to pay the appropriate fee prior to accessing the facility (see section 4-73).
- d. The harbor master will maintain a waiting list for any additional vessels wishing to secure space at the embayment area should a space become available. The harbor master shall keep a waiting list for available space and does not discriminate against any person based upon race, religion, sex, or other illegal distinction.

Priority for the issue of permits to persons on the waiting list will be in this order: Date of application and assignment, to the waiting list, and subject to the size and type of boat related to the space available.

Allocation of space shall be made based on date of application and subject to the size and type of boat related to the space available. Copies of the up-to-date waiting lists must be made available to the public by the harbor master upon request.

(2) *Pier and bulkhead usage.*

- a. Only commercial fishing vessels shall be allowed to dock at the pier except as provided under (2)d., below.

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- b. All vessels docked for use of pier services shall do so at designated areas only and shall be subject to time limitations set by the harbor commission.
 - c. Because of the limited amount of docking/berthing space available, tie-up space is limited to the amount of time it takes to load or unload a cargo plus a length of time as determined by the dock master. Vessels that are tied up at the pier after discharging or loading will be charged docking/berthing fee according to section 4-73.
 - d. No vessel shall be allowed to stay at the pier or bulkhead/float area while repairing the vessel or any of its power, machinery or fishing gear without prior express permission of the harbor master.
- (3) *Motor vehicles and use of parking areas.*
- a. Vehicles shall be permitted on the pier only with the approval of the harbor master.
 - b. No person shall drive other than a legally registered motor vehicle on any portion of the municipal pier/embayment facility.
 - c. The parking of trucks, trailer trucks or parts of trailer trucks is prohibited on any portion of the pier without permission to do so having been first obtained from the harbor master.
 - d. The parking of pleasure cars within the municipal pier/embayment facility confines is prohibited, except for those vehicles having temporary business.
 - e. Trucks transporting fish must be properly covered.
 - f. Trucks transporting fish must be watertight thereby preventing leakage onto the pier.
 - g. All persons shall obey any requests made by harbor master officials relative to matters of safety and orderliness.
 - h. All fuel trucks making deliveries will have the proper authorization i.e. in accordance with State Fire Marshal Code 527CMR 1-50, and will fuel vessels in accordance with proper U.S.C.G. procedures.
- (c) *Other regulations.*
- (1) No trash and/or waste oil shall be placed or stored on or about the pier.
 - (2) No material or spare gear shall be stored on or about the pier.
 - (3) No persons shall dive, swim, or fish from the pier, floats or bulkhead.
 - (4) No soliciting shall be permitted on the pier.
 - (5) All vessels shall reduce to headway speed when approaching or leaving the pier.
 - (6) The harbor master shall have the authority to accept or reject any application for pier usage and/or berthing which appears, in the opinion of the harbor master to expose the pier, waters adjacent to the pier, or other vessels to undue risk.
- (d) *Charter boats.*
- (1) The loading of passengers for charter boats will take place only at floats designated by the harbor commission.
 - (2) Schedule charter boats will arrive at the float within fifteen (15) minutes before loading time and will leave within fifteen (15) minutes after discharging passengers.
 - (3) Charter boats must comply with (b)(3)a. through c., (e) and (f) of this section.

(e) *Fees.*

- (1) Fees shall be as established in section 4-73 of this division.
- (2) The provision of this division shall be posted in plain view at the floats and along the bulkheads at "The Commercial Fish Pier."
- (3) Enforcement of the provisions of these regulations and collection of any and all docking fees created thereunder, shall be within the authority and responsibility of the harbor master and/or treasurer of the city.

(f) *Insurance and liability.*

- (1) When applying for a berthing permit, excepting daily transients, the applicant shall exhibit a certificate of insurance for review by the harbor master before permit approval or rejection. Minimum insurance requirements shall be set by the harbor commission. If accepted, a copy of the insurance certificate shall be filed with the harbor master.
- (2) The city assumes no responsibility on account of fire, theft or damage of any nature to any vessel or property connected therewith, nor for personal injury to any person arising out of the use of waterways under the jurisdiction of the city or any facilities in or related to such waterways. Any person using any city facility for the conduct of a permitted activity shall file a statement with the harbor commission indemnifying and holding the city harmless from any lawsuit arising out of the conduct of the permitted activity by anyone.

(Ord. of 3-13-89, § 5-51)

Sec. 4-99. Central waterfront docks.

(a) *Use regulations.* The use of floats at the central waterfront shall be limited and regulated as follows:

- (1) No vessel shall be "rafted," (secured to another vessel) which is secured at any such docking location.
- (2) No vessel shall dock at the floats without first notifying and obtaining permission from the dockmaster/wharfinger or harbor master if the dockmaster/wharfinger is unavailable.
- (3) No festival shall plan on the use of the floats and no person shall be given exclusive use of the floats without first getting approval for such use from the harbor commission.
- (4) No vessel shall remain secured at the floats in excess of seventy-two (72) consecutive hours per docking, after which, at least twenty-four (24) hours shall have elapsed before the vessel may be permitted to resecure except to load or unload.
- (5) Two (2) floats (fifty (50) feet of space) shall be designated by the dockmaster for loading and unloading, and shall be restricted to twenty-minute use at no cost.
- (6) No vessel may be docked or secured at any location other than the floats without permission from the harbor master.
- (7) No tender or dinghy shall be tied up to any city owned float or dock other than the specified dinghy or tender dock.

(b) *Fees.* The dockmaster shall inquire of the person in charge of any vessel to be secured to the floats, the intended length of stay and shall collect in advance the appropriate fee. Fees shall be as established in section 4-73.

(c) *Emergency docking.*

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- (1) "Emergency" is a sudden unexpected happening requiring immediate emergency medical attention to the operator or a passenger of the vessel.
 - (2) When necessary, due to any emergency, any vessel shall be permitted to secure to the bulkhead or floats, without charge, for up to four (4) hours, after which docking fees will be assessed.
- (d) *Other regulations.*
- (1) Fishing and swimming. No person shall fish or swim from the floats or the bulkheads.
 - (2) The provision of this section shall be posted in plain view at the floats and along the bulkheads at "Market Square Landing Docks," on the central waterfront.
 - (3) Enforcement of the provisions of this section and collection of any and all docking fees created thereunder, shall be within the authority and responsibility of a dockmaster, who shall be under the direction and control of the harbor master of the city.

(Ord. of 3-13-89, § 5-52; Ord. of 4-8-96)

Sec. 4-100. Cashman Park launching ramp, parking facility and pier.

- (a) *Generally.*
- (1) The usage of municipally owned and or controlled boat launching ramps shall be controlled, from time to time, by rules established by the harbor commission and approved by the city council. These rules may include control of temporary parking of boat trailers and motor vehicles at or near the approach to each ramp. Vehicles with boat trailers shall be parked in designated areas.
 - (2) With the exception of charter or commercial fishing vessels or a storm/repair emergency, persons using ramps for hauling of larger vessels requiring cradles shall do so only with permission, in advance, in writing, from the harbor master. Cradles and/or vessels shall not remain on the town ramps for more than one (1) hour.
 - (3) Swimming will not be allowed from the pier.
 - (4) All vessels, persons, and vehicles using the launch ramp shall abide by the rules and regulations contained herein and all other applicable laws, ordinances, rules and regulations concerning the operation of vessels and the use of the landing.
 - (5) All persons, vessels and vehicles using the landing shall be responsible for the security of their own property.
 - (6) The launch ramp shall be open to the general public from sunrise to sunset from April 1 to October 31 of each year.
 - (7) The use of the launch ramp is primarily for the benefit of the general public engaging in recreational boating.
- (b) *Fees.*
- (1) Fees shall be established by the harbor commission for the daily launching of vessels, seasonal launch of vessels, and the commercial launch of vessels pursuant to section 4-73.
 - (2) Commercial permits and seasonal passes shall be available through the harbormaster department.
 - (3) Payment for daily launching of vessels may be made through the attendant on duty or the pay and display kiosk located at the ramp.
 - (4) Vehicles parked in designated boat trailer parking spaces must display proof of payment on vehicle.

(Ord. of 3-13-89, § 5-53; Ord. of 5-9-11)

Sec. 4-100B. Harborwalk area.

(a) *Generally.*

- (1) The municipal Harborwalk is intended primarily for strolling, bicycling and sight-seeing by the general public.

(b) *Specific use regulations.*

- (1) The Harborwalk shall be available to the general public from dawn to dusk; night-time use is prohibited.
- (2) No person shall trespass on private marina and residential property.
- (3) No person shall fish swim or dive from the Harborwalk.
- (4) No persons fishing from a location near the Harborwalk shall cause fishing gear to interfere with the safety or enjoyment of the general public in the Harborwalk area.
- (5) No trash shall be placed or stored on or about the Harborwalk except in containers provided.
- (6) Unauthorized motorized vehicular use is prohibited.
- (7) No person shall apply graffiti or deface the Harborwalk in any other manner.
- (8) No fees shall be charged the general public for use of the Harborwalk.
- (9) No vessel operating near the Harborwalk shall operate in excess of headway speed and all vessels shall moderate speed as necessary to assure safety under existing conditions.
- (10) No vessel shall be secured to the Harborwalk.
- (11) Violations of this section shall be punished by a fine as established in chapter 1, section 1-18 ~~of one hundred dollars (\$100.00)~~ per person per incident, and/or by confiscation of illegally used fishing gear. In addition to criminal disposition, this section may be enforced by noncriminal disposition pursuant to M.G.L. Chapter 40 Section 21D. The enforcing officer for such purpose shall be any police officer of the city ~~City of Newburyport~~.

(Ord. of 6-29-09(1))

Cross reference - General provision, ch. 1 fines schedule § 1-18

ARTICLE III. BEACHES²⁹

Sec. 4-101. Regulations for the use of the beach at Plum Island.

- (a) No person shall discard trash, rubbish, garbage or any other litter on any part of the public beach. All trash or garbage shall be placed in a suitable metal container. ~~Each such offense shall be punishable by a fine of twenty five dollars (\$25.00).~~

²⁹Cross reference(s)—Fire prevention and protection, ch. 7Cross reference(s)—; parks and recreation, ch. 11Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; public places, § 12-91 et seq.; traffic and motor vehicles, ch. 13Cross reference(s)—.

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- (b) No person shall start or maintain an open fire without a suitable permit issued by the fire department. No person shall camp, tent or sleep on any part of the public beach. No trailers will be used for camping, tenting or a living quarters. ~~Each such offense shall be punishable by a fine of fifty dollars (\$50.00).~~
- (c) No person shall operate or use any motor vehicle or motorized bicycle on any part of the beach, with the following exception:
- (1) Emergency vehicles engaged in the protection of life and property and sanitation.
 - (2) Motorized equipment located at Plum Island Point for the placement of docking and boating equipment for the safety of passengers embarking or disembarking boats commercially operated for fishing parties.

~~Each such offense shall be punishable by a fine of fifty dollars (\$50.00).~~

- (d) All persons engaged in any sporting activities or games including fishing and surfing shall discontinue such activity for public safety if instructed by the lifeguard or a police officer.
- (e) The owner or person in control of a dog or any other animal shall not allow the dog or other animal to be on any part of the public beach between May 15 and September 15 of each year. ~~Each such offense shall be punishable by a fine of fifty dollars (\$50.00)~~

(f) Each such offense noted in section (a) through (e) shall be punishable by a fine as established in chapter 1, section 1-18.

(Ord. of 6-25-84(2), § 16-64; Ord. of 12-11-89; Ord. of 7-13-98; Ord. of 1-25-16(1))

Cross reference - General provision, ch. 1 fines schedule § 1-18

Secs. 4-102—4-200. Reserved.

ARTICLE IV. SHELLFISHING IN DESIGNATED AREAS

Sec. 4-201. Purpose and authority.

It is the intent of this article to establish regulations for commercial shellfishing activities in the city in certain designated areas and to effectuate the Newburyport Shellfish Management Plan approved by the Division of Marine Fisheries, as it may be amended from time to time. Further, this article is meant to ~~insure~~ensure adequate control of shellfish harvesting in the city in these areas. This article is adopted pursuant to Chapter 130 of the General Laws and the city's Home Rule Authority.

(Ord. of 11-25-13(1))

Sec. 4-202. Applicability.

This article shall apply to the area(s) designated as conditionally approved by the Division of Marine Fisheries pursuant to the Newburyport Shellfishing Management Plan and as identified on the map annexed thereto and as commonly referred to as Joppa Flats.

(Ord. of 11-25-13(1))

Sec. 4-203. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Master digger shall mean any individual authorized pursuant to 322 CMR 7.02 to engage in the harvest, possession, transportation and sale of moderately contaminate shellfish.

Purification plant or depuration plant shall mean the shellfish purification plant operated by the division located at Plum Island, Newburyport, Massachusetts, or such other plant as may be from time to time designated by the Division of Marine Fisheries.

Rack shall mean a bushel container which may be filled pursuant to 322 CMR 10.04 with moderately contaminated shellfish harvested by each subordinate digger on a given day as a condition of the permit.

Shellfish shall mean soft-shall clams (*Mya arenaria*).

Subordinate digger shall mean any individual authorized pursuant to 322 CMR 7.02 to harvest and possess at a landing site moderately contaminated shellfish for purposes of sale to a master digger only.

(Ord. of 11-25-13(1))

Sec. 4-204. Administration.

- (a) The mayor shall appoint a shellfish constable, subject to confirmation by the city council, who shall serve a term of three (3) years.
- (b) The mayor may appoint a deputy shellfish constable, subject to confirmation by the city council, who shall serve a term of three (3) years.
- (c) The shellfish constable and/or the deputy shellfish constable shall be the enforcing authority for this article.

(Ord. of 11-25-13(1))

Sec. 4-205. Commercial shellfishing in areas subject to this article prohibited unless licensed as set forth herein.

- (a) Commercial shellfishing is prohibited in the area(s) subject to this article unless a license to shellfish has been granted under the terms and conditions herein and said shellfishing is conducted in accordance with the terms and conditions of any license issued hereunder.
- (b) No racks shall be placed in service for commercial shellfishing in the area subject to this article unless pursuant to a license hereunder and in compliance with and conformity to the terms and conditions of that license.

(Ord. of 11-25-13(1))

Sec. 4-206. Licensing.

- (a) No digger, master or subordinate, shall shellfish in the area(s) subject to this article without applying for and obtaining a commercial shellfish license from the city clerk or designee who shall upon receipt of any such application shall provide a copy to the shellfish constable for comment and approval before any such license issues.

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- (b) Licenses shall be valid for one (1) year commencing January 1 and expiring December 31 of the same year.
 - (c) Proof of residence in a form satisfactory to the city clerk or designee must be provided with every application which shall include at least two (2) or more of the following instruments: driver's license, voter registration, real estate tax bill, utility bill, school enrollment and/or vehicle registration.
 - (d) All applicants must possess a valid master or subordinate digger permit issued by the Division of Marine Fisheries and must provide proof of same, to the satisfaction of the city clerk or designee, upon application.
 - (e) All applicants shall submit, on a form provided by the city clerk or designee, a statement signed under the pains and penalties of perjury that the applicant has read, is familiar with, and agrees to fully comply with the provisions of this article and the Newburyport Shellfish Management Plan.
 - (f) Licenses may be subject to daily rack limits and/or other conditions as deemed appropriate.

(Ord. of 11-25-13(1))

Sec. 4-207. Fees.

Licenses are subject to resident, non-resident and rack fees as defined in appendix B.

- ~~(a) Residents (Residents License) \$100.00~~
- ~~(b) Non-Residents (Non-Residents License) \$200.00~~
- ~~(c) Rack Fee \$2.00 per rack~~

(Ord. of 11-25-13(1))

Cross reference – Fee schedule, appendix B.

Sec. 4-208. Requirements for all license holders.

- (a) No digger, master or subordinate may have in ~~their his or her~~ possession during ~~their his or her~~ moderately contaminated shellfish activities a clean shellfish permit, a shellfish endorsement on ~~their his or her~~ commercial fishermen permit or a shellfish transaction card.
- (b) Master diggers so engaged in moderately contaminated shellfish activities must surrender any clean shellfish permit, shellfish endorsement on ~~their his or her~~ commercial fisherman permit or a shellfish transaction card other than a special master digger transaction card to the Division of Marine Fisheries.
- (c) Shellfish shall be thoroughly washed with water from the harvest area and dead or broken shellfish or foreign matter removed from the catch prior to loading onto the transport vehicle.
- (d) No digger, master or subordinate, shall contribute to the catch of another digger.
- (e) No digger, master or subordinate, shall exceed the daily limited specified in ~~their his or her~~ license or by the Division of Marine Fisheries.
- (f) No digger, master or subordinate, shall be in possession of seed clams.
- (g) Shellfishing shall only be conducted in areas identified as open to shellfishing by the shellfish constable.
- (h) Shellfish from areas open to harvest shall be transported to the Division of Marine Fisheries shellfish purification plant via prescribed routes designated by the Division. In a qualified emergency, the shellfish constable may make a temporary route change, within the city, with the approval of the Massachusetts Office of Environmental Law Enforcement.

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- (i) All shellfish harvested on any digging day shall be transported immediately to the shellfish purification plant. Shellfish may only be held overnight in an emergency.
 - (j) Only landing sites assigned by the shellfish constable may be used and include only Cashman Park boating ramp, Ring's Island town pier and Salisbury State Reservation boating ramp.
 - (k) All shellfishing in the area subject to this article shall comply with and conform to the requirements set forth in 322 CMR 10.00 which are hereby incorporated as if fully set forth herein.
- (Ord. of 11-25-13(1))

Sec. 4-209. Enforcement

- (a) Whoever violates any provision of this article may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be as set forth in chapter 1, section 1-15. Each day or portion thereof shall constitute a separate offense. If more than one (1), each condition violated shall constitute a separate offense.
- (b) Whoever violates any provision of this article may be penalized by a noncriminal disposition process as provided in G.L. c. 40, § 21D. If noncriminal disposition is elected, then any person who violates any provision of this article shall be subject to fines as follows defined in chapter 1, section 1-18.†

~~First offense: \$100.00~~

~~Second offense: \$200.00~~

~~Third offense: \$250.00~~

~~Subsequent offenses: \$300.00~~

Each day or portion thereof shall constitute a separate offense. If more than one (1) violation of this bylaw exists, each such violation shall constitute a separate offense.

- (c) In the alternative or in addition to the above, the city may employ any other means available at law or in equity to enforce this article.
- (d) Notwithstanding the above, violation of any of the provisions of this article may, subject to the laws of the commonwealth, result in:
 - (1) The seizure and forfeiture of all shellfish unlawfully taken, possessed or sold;
 - (2) The seizure and forfeiture of all shellfishing gear, equipment and the transport vehicle;
 - (3) Suspension or revocation of any license issued hereunder;
 - (4) Any combination of the above.

(Ord. of 11-25-13(1))

Cross reference – General provisions, ch. 1 fine schedule § 1-18.

~~**Sec 4-210 Severability**~~

~~If any paragraph or provision of this article is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.~~

~~(Ord. of 11-25-13(1))~~

Sec. 4-210~~4~~. Conflict.

Nothing in this article shall be deemed to amend or repeal applicable state statute or regulation and in the event of any conflict the provision(s) of said state statute or regulation shall govern.

(Ord. of 11-25-13(1))

Chapter 5 BUILDINGS AND BUILDING REGULATIONS³⁰

ARTICLE I. IN GENERAL

Sec. 5-1. ~~Fire limits designated.~~ Reserved.

Editor's note(s)—The provisions of § 5-1 were deleted in their entirety by an ordinance adopted June. XX, 2021. The deleted section pertained to outdated fire limits derived from Code 1971, §§ 6-32.

~~Cross reference(s)—Fire prevention and protection, ch. 7Cross reference(s)—~~

Sec. 5-2. Moving buildings through streets.

No person shall move, or assist in moving, any building whatever through any street or other public way of the city, unless by written permission of the ~~superintendent~~ director of public ~~works~~ services under such restrictions as ~~he~~ they may prescribe.

(Code 1971, § 16-30)

Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—; streets, § 12-26Cross reference(s)— et seq.

State law reference(s)—Moving buildings, M.G.L. ~~A~~ c. 85, § 18.

Secs. 5-3—5-25. Reserved.

ARTICLE II. ADMINISTRATION

DIVISION 1. GENERALLY

Secs. 5-26—5-40. Reserved.

³⁰Cross reference(s)—Condominium conversions, § 2-416 et seq.; animals, ch. 3Cross reference(s)—; boats, docks and waterways, ch. 4Cross reference(s)—; earth removal, § 5-226Cross reference(s)— et seq.; fire prevention code adopted, § 7-26Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; licenses, permits and business regulations, ch. 9Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; encroachments on streets, rights-of-way and public grounds prohibited, § 12-3Cross reference(s)—; numbering of buildings, § 12-33Cross reference(s)—; excavations, § 12-71Cross reference(s)— et seq.; traffic and motor vehicles, ch. 13Cross reference(s)—; utilities, ch. 14Cross reference(s)—; zoning, app. A; signs, app. A, § VIII; floodplain district regulations, app. A, § XIII; subdivision rules and regulations, app. B.

State law reference(s)—Inspection and regulation of buildings, M.G.L. ~~A~~ c. 143.

PART II - CODE OF ORDINANCES
Chapter 5 - BUILDINGS AND BUILDING REGULATIONS
ARTICLE II. - ADMINISTRATION
DIVISION 2. INSPECTOR OF BUILDINGS

DIVISION 2. INSPECTOR OF BUILDINGS³¹

Sec. 5-41. Appointment.

At the first regular meeting of the city council in January 2021, and every third January thereafter, the mayor shall ~~appoint~~ appoint, and the city council shall confirm someone to hold office as an inspector of buildings in the city.

(Code 1971, § 6-13)

Sec. 5-42. Term of office.

The inspector of buildings shall hold office for three (3) years unless sooner removed by the mayor and city council.

(Code 1971, § 6-14)

Sec. 5-43. Assistance to city council.

The building inspector shall assist the city council in all matters pertaining to the issuing of permits, the collection of all data, and with reference to, the location and material characteristics of all buildings and structures coming under the rules and regulations of the state building code and this chapter.

(Code 1971, § 6-16)

Sec. 5-44. To make inspections; records of work performed.

The building inspector shall make all inspections necessary or otherwise authorized under the state building code and this chapter, keeping a record of all work performed.

(Code 1971, § 6-17)

Sec. 5-45. Enforcement of chapter.

The building inspector shall, acting under the city council, see to the enforcement of the ~~regulations state building code and the regulations~~ of this chapter.

(Code 1971, § 6-18)

³¹Cross reference(s)—Officers and employees, § 2-126Cross reference(s)— et seq.; administrative official of the zoning ordinance is the inspector of buildings, app. A, § X-V et seq.

State law reference(s)—Inspector of buildings, M.G.L. c. 143, § 3; inspection of unsafe buildings, M.G.L. c. 143, § 6.

Sec. 5-46. Publication of annual report.

The building inspector shall transmit a report shall to the city council annually. ~~be published in the annual city report.~~

(Code 1971, § 6-19)

Sec. 5-47. Municipal building reports.

Each year in the month of February department heads responsible for maintenance of municipal buildings, except schools, shall submit a report on the physical conditions of each municipal building to the mayor with a copy filed in the city clerk's office. The city clerk shall distribute said report to city councillors. The report shall include but not limited to structural condition, ADA compliance and concerns, plumbing, heating, electrical, and personal and premise protection.

(Ord. of 8-28-00(1))

Secs. 5-48—5-60. Reserved.

ARTICLE III. BUILDING CONSTRUCTION STANDARDS³²

Sec. 5-61. State building code.

As provided under M.G.L. ~~A~~ c. 143, § 3A:

- (1) *State building code.* Unless otherwise provided by the state building code (title 780 of the Code of Massachusetts Regulations), the city's inspector of buildings shall enforce the state building code as to any building or structure within the city, including any building or structure owned by any authority established by the general court but not owned in whole or in part by the commonwealth, and the state building code shall be the code for all buildings and structures within the city.
- (2) *Historic preservation.* In the event of a conflict between the code and a statute, ordinance or by law regulating an historic district, regional historic district or architecturally controlled district, the statute, ordinance or bylaw regulating exterior architectural features within that district shall prevail.
- (3) *Commonwealth buildings or structures.* The city's inspector of buildings shall enforce the state building code as to any building or structure within any city that is owned in whole or in part by the commonwealth or any departments, commissions, agencies or authorities of the commonwealth.

(Code 1971, § 6-30; Ord. of 11-30-20(1))

Editor's note(s)—Ord. of 11-30-20(1) amended § 5-61Editor's note(s)— and in doing so changed the title of said section from "Adoption of BOCA Abridged Building Code" to "State building code," as set out herein.

³²State law reference(s)—State building code, M.G.L. ~~A~~ c. 143, §§ 3A, 95 et seq.; more stringent standards, approval, M.G.L. ~~A~~ c. 143, § 98; uniform building standards mandated, M.G.L. ~~A~~ c. 143, § 3A; inspector of buildings, M.G.L. ~~A~~ c. 143, § 3.

Sec. 5-62. Fees.

The following fees for building permits for buildings or structures pursuant to the state building code adopted in section 5-61 shall be pursuant to the schedule set forth in appendix B ~~this section~~, and shall be payable to the office of the city treasurer/collector by the owner before such a permit is issued. All religious societies, churches, hospitals, charitable institutions and persons building fall-out shelters for protection in the event of enemy attacks, shall be exempted from payment of all fees under this section.

~~(1) First one thousand dollars (\$1,000) of cost estimate: \$ 50.00~~

~~(2) Each additional one thousand dollars (\$1,000.00) of cost estimate or part thereof: 10.00~~

(Code 1971, § 6-31; Ord. of 6-28-04(2))

Cross reference(s) – Fee schedule, appendix. B.

Sec. 5-63. Conflicts between zoning ordinance and building code.

Notwithstanding anything to the contrary in the building code adopted by this article, all provisions of the zoning ordinance for the city shall remain in full force and effect, and any provision or provisions contained in the building code adopted by this article, which are inconsistent with the zoning ordinance are excepted from the adoption of the building code and shall be of no force and effect.

(Code 1971, § 6-33)

Sec. 5-64. Snow slide protection required for certain roofs and buildings.

The owner or agent having the care and control of any building with metallic or slated roofs, situated within five (5) feet of any street, lane, public place or square, shall erect or cause to be erected along the whole length of the lower edge of such roof next to the said street, lane, public place or square, a good and substantial balustrade or close railing not less than one (1) foot in height, and not more than three (3) feet from the lower edge of the roof, and shall have its lower side not more than two (2) inches above the roof.

(Code 1971, § 6-1)

Sec. 5-65. Stretch Energy Code.

5-65-1. Adoption. The City of Newburyport has adopted the provisions of 780 CMR 120.AA (i.e., Appendix 120.AA of the State Building Code or the "Stretch Energy Code"), as may be amended from time to time, in place of the provisions set forth under 780 CMR 13.00, 34.00, 61.00 and 93.00.

5-65-2. Purpose. The purpose of the Stretch Energy Code shall be to provide the city with a more energy efficient alternative to the base energy code otherwise set forth under the State Building Code.

(Ord. of 11-8-10(2))

Secs. 5-66—5-80. Reserved.

ARTICLE IV. PLUMBING³³

DIVISION 1. GENERALLY

Secs. 5-81—5-95. Reserved.

DIVISION 2. ADMINISTRATION³⁴

Sec. 5-96. Inspector of gas piping and gas appliances; appointment, term, removal.

The mayor, subject to the confirmation of the city council shall appoint an inspector of gas piping and gas appliances who shall hold office for a term of three (3) years and until ~~his~~his or her successor is appointed, unless sooner removed. ~~He~~The inspector of gas piping and gas appliances may be removed for cause by the mayor with the approval of a majority of the members of the city council.

(Code 1971, § 20-1)

Secs. 5-97—5-110. Reserved.

DIVISION 3. PERMIT AND INSPECTION FEES FOR PLUMBING AND GAS³⁵

Sec. 5-111. Permit fee cost for plumbing.

The fees for plumbing permits shall be pursuant to the schedule set forth in appendix B.

Plumbing Permit Fee

Residential	Fee
Permit fee:	\$20.00
Inspection fee:	\$30.00
Charge for each fixture:	\$5.00

³³Cross reference(s)—Health and sanitation, ch. 8; Fee schedule, appendix B; Cross reference(s)—; utilities, ch. 14Cross reference(s)—; use of public sewers required, § 14-27Cross reference(s)—.

State law reference(s)—Plumbing, M.G.L. ~~A~~ c. 142.

³⁴Cross reference(s)—Officers and employees, § 2-126Cross reference(s)— et seq.

State law reference(s)—Local inspectors, M.G.L. ~~A~~ c. 142, § 11.

³⁵Editor's note(s)—An ordinance adopted June 29, 2009, did not specifically amend the Code. Therefore such ordinance has amended §§ 5-111Editor's note(s)—, 5-112Editor's note(s)— to read as herein set out, at the editor's discretion.

Replacement hot water heater:	\$30.00
Commercial	Fee
Permit fee:	\$30.00
Inspection fee:	\$30.00
Charge for each fixture:	\$10.00
Replacement hot water heater:	\$40.00

(Ord. No. 7-13-09)

Sec. 5-112. Permit fee cost for gas.

The fees for gas permits shall be pursuant to the schedule set forth in appendix B.

Gas Permit Fee

Residential	Fee
Permit fee:	\$20.00
Inspection fee:	\$30.00
Appliance fee:	\$5.00
Replacement hot water heater:	\$30.00
Commercial	Fee
Permit fee:	\$30.00
Inspection fee:	\$30.00
Appliance fee:	\$10.00
Replacement hot water heater:	\$40.00

(Ord. No. 7-13-09)

Cross reference(s) - Fee schedule, appendix B.

Sec. 5-113. Permit fee cost for sheet metal.

The fees for sheet metal permits pursuant to the schedule set forth in appendix B.

Residential	Fee
Permit fee:	\$75.00
Inspection fee:	\$30.00
Re-inspection fee:	\$35.00
If work started before a permit:	\$150.00
Commercial	Fee
Permit fee:	\$150.00
Inspection fee:	\$30.00
Re-inspection fee:	\$35.00
Charge for each fixture:	\$10.00
If work started before a permit:	\$300.00

(Ord. of 4-25-16(1))

Cross reference(s) - Fee schedule, appendix B.

Secs. 5-114—5-130. Reserved.

ARTICLE V. ELECTRICITY³⁶

DIVISION 1. GENERALLY

Secs. 5-131—5-145. Reserved.

DIVISION 2. ADMINISTRATION³⁷

Sec. 5-146. Inspector of wires—Appointment; term of office; removal.

The mayor shall annually in January, subject to confirmation by the city council, appoint an inspector of wires who shall hold ~~his~~ their office for the term of one (1) year beginning the first day of February and until ~~his~~ their successor is appointed, unless sooner removed. ~~He~~ The inspector of wires may be removed for cause by the mayor with the approval of a majority of the members of the city council.

(Code 1971, § 9-1)

Cross reference(s)—Officers and employees, § 2-126Cross reference(s)— et seq.

Sec. 5-147. Same—General duties.

The inspector of wires shall, subject to the direction of the mayor, have general charge of the lighting of streets, parks and public buildings and shall require a full compliance with the terms of all contracts made by the city for lighting such streets, parks, and public buildings.

(Code 1971, § 9-2)

Sec. 5-148. Same—Annual report.

The inspector of wires shall on the first day of September of each year make a report to the mayor and city council of the activities of ~~his~~ their office for the preceding fiscal year, including therein the number of violations of this article and any other matter which ~~he~~ they may deem necessary.

(Code 1971, § 9-3)

³⁶State law reference(s)—State electric code, M.G.L. ~~A~~ c. 143, § 3L and 527 CMR 12.00; authority of cities to regulate wires in and under public ways, M.G.L. ~~A~~ c. 166, § 25; registration, licensing, etc., of electricians, M.G.L. ~~A~~ c. 141.

³⁷State law reference(s)—Appointment and powers and duties of inspector of wires, M.G.L. ~~A~~ c. 166, § 32.

Sec. 5-149. Same—Designated.

The inspector of wires is hereby designated as the inspector of wires under the provisions of M.G.L. ~~A~~ c. 166, § 32 and shall have the rights and perform the duties of such inspector as defined by law and ordinance. ~~He~~ They shall have the supervision of all telephone and all other electric lines of wire in the city and shall see that all laws and ordinances relating thereto are enforced.

(Code 1971, § 9-4)

Sec. 5-150. Care and management of city electrical wires.

The inspector of wires shall have the care and management of the erection and maintenance of all wires owned by the city, including the apparatus, machinery and other property connected therewith, and the posts and other supports erected or owned, or hereafter erected by the city. ~~He~~ They shall, under the general supervision of the mayor, purchase all apparatus, materials and supplies necessary for the maintenance of the department and shall set up or supervise the erection of all the wires, posts, supports, machinery and other electrical appliances required by the city in all its departments, and see that the same are maintained and kept in good order and condition.

(Code 1971, § 9-6; Ord. of 8-3-70(2), § 1)

Sec. 5-151. Fee schedule.

The fees for electrical permits pursuant to the schedule set forth in appendix B.

Electrical Permit Fee Schedule

Residential	
New Construction (includes service)	Fee is based on the projected building cost as shown on the building permit. First \$50,000 \$150.00 Each additional \$1,000.00 or fraction thereof \$1.00
Additions/renovations (service not included)	\$50.00 for the permit plus \$3 for each plug, switch, light, appliance, special equipment, etc. = fee
Services — New, changed, or altered	Overhead (includes 1st panel or main circuit breaker enclosure) \$45.00 Underground (includes 1st panel or main circuit breaker enclosure) \$85.00 Each additional panel \$20.00
Garages	Attached \$60.00 Detached \$100.00
Commercial/Industrial	
New construction	Fee is based on the projected building cost as shown on the building permit.

	First \$100,000 \$300.00 Each additional \$1,000.00 or fraction thereof \$1.00
Additions/renovations (service not included)	\$60.00 for the permit plus \$3 for each (service not included) plug, switch, light, appliance, special equipment, etc.— fee
Services—New, changed, or altered	Each 200 amps or fraction thereof \$50.00 (includes 1st panel or main circuit breaker enclosure) Each additional panel \$20.00
Miscellaneous	Burglar/fire alarm systems residential \$45.00 Burglar/fire alarm systems commercial \$85.00 Central heat or A/C residential \$45.00 Central heat or A/C commercial \$85.00 Swimming pool above ground \$55.00 Swimming pool inground \$85.00 Hot water heater replace residential \$30.00 Hot water heater replace commercial \$40.00 Utility lighting retrofit \$65.00 Tel/data systems \$85.00 Remove and reinstall for siding \$55.00 Gas piping grounding \$30.00

(Ord. of 7-31-78; Ord. of 7-13-09)

Cross reference(s) - Fee schedule, appendix B.

Sec. 5-152. Permits; requirements.

Permits must be obtained before starting work. No more than two (2) outlets shall be allowed on kitchen or dining room circuits. Clothes washers shall be on separate circuits. Dishwashers and disposals shall be on a separate circuit. No aluminum wire smaller than #6 shall be used. Ground fault interrupter breakers shall be installed on bathroom and outside outlets and temporary service. All aluminum metal siding must be grounded. Service entrance can be service entrance cable up to and including one hundred (100) amps, and if over one hundred (100) amps shall be EMT or rigid conduit.

(Ord. of 7-31-78)

Sec. 5-153. Permit and inspection fees.

Fees for the issuance of permits and performance of inspections by the city electrical inspector shall be established by order, from time to time, by the city council.

(Ord. of 9-12-88(2))

Editor's note(s)—An ordinance adopted Sept. 12, 1988, did not specifically amend this Code; hence, its inclusion as §§ 5-153Editor's note(s)— and 5-154Editor's note(s)— was at the discretion of the editor.

Sec. 5-154. Policies and procedures.

Policies and procedures of the office of the city electrical inspector are subject to review and approval by the city council.

(Ord. of 9-12-88(2))

Note—See the editor's note following § 5-153.

Secs. 5-155—5-170. Reserved.

DIVISION 3. REGULATIONS

Sec. 5-171. Enforcement of National Electrical Code.

The inspector of wires shall require that the rules and regulations of the current edition of the National Electrical Code as published by the National Fire Protection Association be complied with both for outside and interior construction.

(Code 1971, § 9-5)

Sec. 5-172. Certificate of approval required previous to replacing meter service.

Prior to the replacing of any meter service of any electric wiring or appliances for light, heat or power in any building, a certificate of approval thereof must be obtained from the inspector of wires.

(Code 1971, § 9-9)

Sec. 5-173. Inspection during, upon completion of, work; notice of completion; certificate of inspection; turning on current.

During the process of construction of any electrical work, the inspector of wires or ~~his~~their duly authorized agent shall inspect, and shall be allowed to inspect, such work from time to time. When such work is completed, and before any part thereof has been covered by moulding, lath, plaster or other means, the contractor or owner performing such work shall give to the inspector of wires twenty-four (24) hours' notice of such completion and shall make proper application for inspection of the same and for a certificate of inspection. The inspector of wires or ~~his~~their duly authorized agent shall make the inspection required and, if the work meets with ~~his~~their approval, ~~he~~they shall issue ~~his~~their certificate of inspection in due form. No such certificate shall be issued unless the electric light, heating or power installation, and all apparatus and wiring connected with it, shall be in strict conformity with the rules and regulations prescribed by the inspector of wires; nor shall any electrical current be turned on any such installation until the inspector of wires has issued ~~his~~their certificate of inspection.

(Code 1971, § 9-11)

Sec. 5-174. Certificate of inspection required previous to making service connection.

No person, or any agent thereof, shall make service connection to any wiring or appliances in any building until the inspection certificate of the inspector of wires has been issued.

(Code 1971, § 9-12)

Sec. 5-175. Turning off current due to unsafe conditions; turning on current.

The inspector of wires is hereby authorized and empowered to cause the turning off of electric current from all conductors or apparatus which are deemed by ~~him~~ them to be in unsafe condition or which have not been installed in conformity with the provisions of this article. No person shall supply, or cause to be supplied, any electrical current to conductors or apparatus which has been deemed by the inspector of wires to be in an unsafe condition, and from which the inspector of wires has caused the electric current to be turned off, until the required corrections have been made and the inspection certificate of the inspector of wires has been issued.

(Code 1971, § 9-13)

Sec. 5-176. Kind and construction of cables, conduits, wires.

The conduits, cables and wires mentioned in section 5-175 shall be of such kind and construction as the city council shall approve under recommendations of the inspector of wires and the work shall be done in a thorough manner and to the approval of the inspector of wires.

(Code 1971, § 9-15)

Sec. 5-177. Disturbing, interfering with wires or pipes in laying, repairing or removing other wires.

No company or other person in laying, repairing or removing its wires or conduits shall disturb, or in any way interfere with street or electric light wires or any other wires, or with any gas or water pipes or sewers or pipes therewith connected.

(Code 1971, § 9-18)

Sec. 5-178. Changes in conduits, cables caused by relocation, repair, enlargement of city sewers, water pipes, other public works.

Whenever the city shall repair, construct or enlarge sewers, water pipes or other public works in streets where conduits or cables are laid thereunder, and changes in the location of such conduits of cables will be rendered necessary or expedient, such changes shall be made at the expense of the company owning such conduits or cables.

(Code 1971, § 9-19)

Sec. 5-179. Additional technical requirements.

Oil burners shall have emergency switches at the burner and outside cellar door. Fire-O-Matic switches be located not more than three (3) feet above fire door. Only Romex of the grounding type may be used in house or cellar. Only grounding type outlets receptacles may be used.

(Ord. of 7-31-78)

Cross reference(s)—Fire prevention and protection, ch. 7Cross reference(s)—.

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Secs. 5-180—5-195. Reserved.

ARTICLE VI. UTILITY POLES³⁸

Sec. 5-196. Application of article.

The provisions of this article shall govern poles erected to carry telephone, electric light, or fire alarm wires.
(Code 1971, § 9-32)

Sec. 5-197. Contents of petition for location; reservation of arm for municipal purposes; minimum distance between arms.

All petitions for locations for posts or poles within the limits of the city for carrying wires, shall state the number, kind, shape and length of poles to be used. On the top of each pole located or set, sufficient space shall be reserved for one arm or gain to be used for telephone and fire alarm wires belonging to the city and which shall be used exclusively for municipal purposes. The gains or arms upon the poles shall be at least eighteen (18) inches apart.

(Code 1971, § 9-33)

Sec. 5-198. Supervision of erection; varying terms of article.

All poles shall be set under the personal supervision of the ~~superintendent~~ director of public works ~~services~~ and inspector of wires and all distances and heights referred to in this article may be changed by the inspector of wires under circumstances that may seem warranted by ~~him~~ them. Such changes in distances and heights must be approved by the mayor and city council.

(Code 1971, § 9-34)

Sec. 5-199. To be straight, properly trimmed, painted.

All poles shall be straight, properly trimmed and painted, in all respects, to the satisfaction and acceptance of the inspector of wires.

(Code 1971, § 9-35)

Sec. 5-200. Minimum height.

All poles shall not be less than twenty-five (25) feet in height from the ground.

(Code 1971, § 9-36)

³⁸Cross reference(s)—Utilities, ch. 14Cross reference(s)—.

Sec. 5-201. Material required; diameter.

All poles shall be of iron, hard pine, oak or chestnut and if of wood, not less than six (6) inches in diameter at the smaller end, and ten (10) inches in diameter at the ground.

(Code 1971, § 9-37)

Sec. 5-202. To carry name of owner; number required.

The name of the person owning each pole shall be distinctly identified on the pole, and each pole shall be distinctly numbered.

(Code 1971, § 9-38)

Sec. 5-203. Distance set into ground.

Each pole shall be properly set in the ground to a depth of at least five (5) feet.

(Code 1971, § 9-39)

Sec. 5-204. Minimum height of wire above ground; to cross at right angles.

Wherever any power line shall cross any street or way, it shall be of a height of not less than twenty (20) feet above such street or way, and when practicable, cross at right angles. No wire shall be less than twenty (20) feet above the ground.

(Code 1971, § 9-40)

Sec. 5-205. Examination of poles and posts; assistance by owner.

The inspector of wires shall thoroughly inspect the condition of all poles or posts carrying electric or other wires upon or over the streets in the city, in order to ascertain that they are free from decay or any injury rendering them dangerous. The person owning or using such pole shall, at its expense, when requested by the inspector of wires, furnish ~~him~~ them with adequate assistance to enable him to make a thorough examination of such poles.

(Code 1971, § 9-41)

Secs. 5-206—5-225. Reserved.

ARTICLE VII. EARTH REMOVAL³⁹

³⁹Cross reference(s)—Buildings and building regulations, ch. 5Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; licenses, permits and business regulations, ch. 9Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; excavations, § 12-71Cross reference(s)— et seq.; utilities, ch. 14Cross reference(s)—; zoning, app. A.

Sec. 5-226. Definition of abutter.

For purposes of determining abutters under this article, all contiguous land registered under names of individuals, corporations or trusts having common interest shall be considered as a single parcel. All persons owning land having at least one (1) common boundary (including roads) with such single parcel shall be considered as abutters for purposes of this article.

(Ord. of 10-12-76, § 34)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 5-227. Soil removal board created.

There is hereby created a soil removal board which shall have exclusive jurisdiction to issue permits under the provisions of this article. The membership of the board shall consist of:

- (1) A chair~~man~~ who shall be appointed by the mayor and whose term of office shall be one (1) year.
- (2) A member of the city council who shall be appointed by the council and whose term of office shall be one (1) year.
- (3) A member of the planning board who shall be appointed by the planning board and whose term of office shall be one (1) year.
- (4) A member of the zoning board of appeals who shall be appointed by the zoning board of appeals and whose term of office shall be one (1) year.
- (5) A member of the conservation commission who shall be appointed by the ~~conservation~~ conservation commission and whose term of office shall be one (1) year.

(Ord. of 10-12-76, § 2)

Cross reference(s)—Boards, committees, commissions, § 2-61Cross reference(s)— et seq.

Sec. 5-228. Exemptions.

- (a) The provisions of this article shall not apply to removal of sand, gravel or stone:
 - (1) Solely for the purposes of construction of foundations for buildings and other allow able structures for which building permits have been issued and for which the plot plan required by the city building code adopted in section 5-61 for issuance of a building permit has been filed with the soil removal board, such plan to contain not less than to scale size and location of all new construction and all existing structures on the site, distance from lot lines and the established street grades, and which shall be drawn in accordance with an accurate boundary line survey.
 - (2) For construction on the premises of roads for which plans have been approved by the planning board and for which plans have been filed with the soil removal board.
- (b) At any time that the soil removal board determines that material removal is not solely for purposes (1) or (2) above, the board shall require that a permit in accordance with this article be required for any further removal and initial deviation from the requirements of this article shall be treated under section 5-234.
- (c) When the permit involves a working area of less than one (1) acre and also the removal of less than five hundred (500) cubic yards of material, the soil removal board may waive the requirements of section 5-232(1)b, c, and/or (10).

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(Ord. of 10-12-76, § 6)

Sec. 5-229. Permit required.

The removal of sod, loam, soil, sand, gravel, or stone herein referred to as material from any land in the city not in public use is hereby prohibited except as allowed by issuance of a permit under the provisions of this article.

(Ord. of 10-12-76, § 1(a))

Cross reference(s)—Permits, licenses and business regulations, ch. 9Cross reference(s)—.

Sec. 5-230. Application for permit.

- (a) To be considered for a permit required by this article, the applicant must present to the soil removal board the following items:
- (1) A subdivision plan approved by the planning board or other plan showing ultimate use of the land conforming with the existing zoning ordinance. Desirability as well as technical feasibility of such use of the land shall be considered in approval or disapproval of such plan.
 - (2) A topographic chart in five-foot elevation increments indicating existing contours and proposed final contours.
 - (3) A study and report indicating the effect of the proposed material removal on water tables and the effect of the resulting changes in water run-off on the height of all encompassed, bordering and downstream surface water. Effect on both the lowest and highest water levels occurring during the year shall be considered by this study. This report shall be reviewed by the soil conservation service of the county conservation district or other authority acceptable to the soil removal board and shall be submitted to the board along with the written recommendations of the reviewing agency, such recommendations to be made a part of the records of the board. This requirement shall apply only when the working area, when combined with any previously worked area on the premises, exceeds one (1) acre.
 - (4) A complete list of the names and addresses of all current abutters of the property where such removal is proposed.
 - (5) The names of all contractors authorized by the owner to remove material from the property.
 - (6) The proposed entrance and egress from the property and routes within the city.
- (b) No permit shall be issued until the above requirements (a)(1)—(6) are met. In the event that the information required above is shown to be inaccurate or incomplete, the permit shall be suspended until all provisions have been met.

(Ord. of 10-12-76, § 3(a)—(c))

Sec. 5-231. Public hearing.

Prior to issuance of any permit, a public hearing shall be held. The applicant shall file all above required information with the soil removal board, before such public hearing is held and such documents shall be a public record. Written notice of the public hearing shall be given each abutter, the conservation commission, and the planning board. Notice shall be advertised in the newspaper of widest circulation in the city at least ten (10) days before the hearing. The expense of such hearing shall be borne by the applicant.

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Sec. 5-232. Safeguards.

The soil removal board shall issue permits under the provisions of this article for a period not to exceed one (1) year only upon conditions imposed, which in its discretion and judgment in each particular case, are especially designed to prevent personal injury and to safeguard the surrounding district and the city against possible permanent and temporary injury to values in the district during or after operations are completed or caused by methods of handling such material at the site or caused by transporting such material through the city. As minimum requirements, such permits shall require that:

- (1) The following buffer areas be left in their natural state on the applicant's property during the life of the permit: All areas within:
 - a. Three hundred (300) feet of any street line,
 - b. Two hundred (200) feet of any other boundary line,
 - c. Six hundred (600) feet of any occupied dwelling.

Reduction in the width of buffers above is allowed, provided that written consent of the affected abutters and/or occupants and the written approval of the planning board and/or the conservation commission is first obtained and filed with the board. Once such buffer strip has been established, no removal of trees or other natural screening within such buffer strip shall be allowed until building construction in accordance with a duly issued building permit is started.
- (2) Work hours shall be limited to 7:00 a.m. to 4:30 p.m., Monday through Friday. Operation of trucks (in or out) and all machinery, including, but not limited to, dozers, shovels, loaders, chain saws, shredders, screens, etc., shall be limited to these hours.
- (3) In material removal areas, ledge shall not be left exposed above the approved grade and boulders and all cleared trees, stumps, and brush shall be removed, shredded or completely buried.
- (4) All final bankings shall be graded to a slope no steeper than one (1) foot vertical to three (3) feet horizontal.
- (5) Following material removal, topsoil shall be spread to a minimum depth of six (6) inches and seeded in accordance with the recommendations of the appropriate soil district supervisor and the county extension director, or their successors or other authorities acceptable to the board. Their recommendations shall be made a part of the records of the board.
- (6) No excavation shall produce standing water except as part of the final plan approved by the planning board and the state under provisions of the Hatch Act.
- (7) Under no circumstances and at no time shall material be removed to an elevation less than six (6) feet above the maximum water table elevation.
- (8) A plan showing the location of all buried trees, stumps or other material subject to subsequent compacting by decay shall be filed with the planning board, the building inspector and the board of health.
- (9) No trees, stumps or other material subject to decay shall be buried at an elevation below the maximum water table.
- (10) A bond shall be posted with the city clerk and a covenant approved by the city solicitor, with penal sum and surety satisfactory to the soil removal board, conditioned upon the faithful performance by the applicant of the conditions of the permit. Such bond shall not be less than two thousand dollars

(\$2,000.00) per acre of working area; i.e., any area in condition other than its natural state or reconditioned state in accordance with (3), (4) and (5) of section 5-230. Such bond money, if forfeited, shall be used to restore the property as required by this article.

(11) The working area shall not exceed five (5) acres at any given time.

(Ord. of 10-12-76, § 4)

Sec. 5-233. Topsoil.

Topsoil will be retained on the property and respread by the property owner. When, in the opinion of the soil removal board, removal of topsoil from the property is necessary, a special permit conforming with all provisions of this article may be issued, provided that such removal is to some other location within the city.

(Ord. of 10-12-76, § 1(c), (d))

Sec. 5-234. Violation.

- (a) Upon verbal or written notification of violation of any conditions of the permit or this article to any member of the soil removal board or to any member of the police department, such member shall immediately investigate such claim of violation. If, in the opinion of the member or officer so notified, this or any other violation has been committed, the member shall be obligated and empowered to order immediate termination of material excavation and all related activity pending a formal hearing.
- (b) The soil removal board shall, after due hearing and proof of violation of any term of the permit or this article, revoke the permit. If the violation involves removal of material from the premises, all material shall be returned to proper grade or the penalties defined in section 5-235 shall be levied. If the infraction involves violation of the natural buffer areas, material and loam shall be replaced to the natural buffer areas, and trees destroyed shall be replaced with suitable trees of the size, type and spacing approved by the conservation commission. If all corrections cannot or are not made within a reasonable time stipulated by the board, the bond will be forfeited and the penal sum provided therein paid to the city.

(Ord. of 10-12-76, § 5)

Sec. 5-235. Penalty.

For each and any violation of this article, the penalty shall be ~~as established in chapter 1, section 1-18. fifty dollars (\$50.00) for the first offense, one hundred dollars (\$100.00) for the second offense, and two hundred dollars (\$200.00) for each subsequent offense.~~ Under this article, each individual truckload removed will be considered a separate violation.

(Ord. of 10-12-76, § 1(b))

Cross reference (s) – General provisions, ch. 1 fines schedule § 1-18.

Secs. 5-236—5-250. Reserved.

ARTICLE VIII. CONDOMINIUM CONVERSIONS⁴⁰

⁴⁰Editor's note(s)—Section 1 of an ordinance adopted Oct. 31, 1988, repealed an ordinance adopted Mar. 10, 1980, §§ 1—8, from which §§ 5-251Editor's note(s)—5-256, relative to condominium conversions, were derived.

Sections 2—8, 10, 11 of the ordinance adopted Oct. 31, 1988, were included as §§ 5-251Editor's note(s)—
5-258 at the editor's discretion.

Cross reference(s)—Permits and business regulations, ch. 9Cross reference(s)—; zoning, app. A.

Sec. 5-251. Findings of fact.

The city council finds and declares that a serious shortage of affordable rental housing exists in the city. This shortage of housing constitutes an acute rental housing emergency requiring local action on account of all of the factors set forth in M.G.L. ~~A~~ c. 183A, and the factors set forth below. One (1) of the factors contributing to the shortage of such rental housing is the conversion of existing rental housing units to the condominium or cooperative form of ownership. Such conversion removes rental units from the local housing market at existing rents and if such units are reoffered to the rental market after conversion, the amount of the monthly rents requested is often significantly higher than the pre-conversion rent. The shortage of affordable rental units constitutes a serious threat to the public health, safety, and the general welfare of all of the citizens of the city. Therefore, it is necessary to deal with this emergency immediately.

(Ord. of 10-31-88(1), § 2)

Sec. 5-252. Article supplementary; definitions; exceptions.

This article is intended to be a supplement to M.G.L. ~~A~~ c. 183A. Each and every provision of M.G.L. ~~A~~ c. 183A and all future amendments thereto are expressly incorporated herein, including the definition section. In the event that any provision of this article is found to be in conflict with any provision of M.G.L. ~~A~~ c. 183A, the provision affording greater protection for tenants shall govern. It is intended that there shall be no exemptions to this article other than those provided by M.G.L. ~~A~~ c. 183A.

(Ord. of 10-31-88(1), § 3)

Sec. 5-253. Notice of conversion.

The notice provision of M.G.L. ~~A~~ c. 183A is hereby extended to a period of not less than two (2) years. In the case of a housing accommodation occupied by a handicapped tenant or occupied by an elderly or low or moderate income tenant the period of notice shall not be less than four (4) years from the date the tenant of such housing accommodation receives the notice of intent.

(Ord. of 10-31-88(1), § 4)

Sec. 5-254. Applicability.

- (a) *Generally.* The provisions of this article shall apply to any building or commonly owned contiguous collections of buildings whose total residential rental units consist of four (4) or more, and which is converted to the condominium or cooperative form of ownership subsequent to the enactment of this article, and shall be applicable to such housing accommodations converted to the condominium or cooperative form of ownership prior to the enactment of this article, except as provided in (b), below.
- (b) *Exemptions.* The provisions of this article shall not apply to rental housing units not yet constructed as of the date of enactment of this article, and shall not be applicable to any unit in a building or buildings converted to the condominium or cooperative forms of ownership for which, on or before the date of adoption of this article, a master deed has been recorded or articles of organization filed, and a deed or, in the case of a cooperative, a proprietary lease, conveying the unit to a bona fide purchaser for value who intends to occupy such unit as a principal residence has been recorded, in the case of such deed, in the county registry of deeds.

(Ord. of 10-31-88(1), §§ 5, 6; Ord. of 11-28-88(1))

Sec. 5-255. Rent agreement, rent increases.

For the period described above in section 5-235, the rental agreement and rent increases shall be governed by the provisions of section 4-E of chapter 527 of the Acts and Resolves of 1983.

(Ord. of 10-31-88(1), § 7)

Sec. 5-256. Permits and inspections.

All future residential rental units converted to condominiums shall be required to have:

- (1) New occupancy permits;
- (2) New electrical inspection.

(Ord. of 10-31-88(1), § 10)

~~**Sec. 5-257. Severability.**~~

~~The provisions of this article are severable. If any provision of this article, or the application of such provision, is held invalid, the invalidity shall not affect the other provisions of this provision of this article which can and shall be given effect without the invalid provision or application. If any provision of this article is held invalid, the corresponding provision found in chapter 527 of the Acts and Resolves of 1983 shall govern.~~

~~(Ord. of 10-31-88(1), § 11)~~

~~**Sec. 5-257~~8~~. Violations; penalties.**~~

~~Any owner or other person who violates the provision of this article shall be subject to the penalties specified in chapter 527. Additionally, the city or any person aggrieved by a failure to comply with this article may enforce its provisions in a civil action for injunctive or declaratory relief.~~

~~(Ord. of 10-31-88(1), § 8)~~

~~**Secs. 5-258~~9~~—5-274. Reserved.**~~

ARTICLE IX. RESIDENTS' CONSTRUCTION EMPLOYMENT POLICIES

Sec. 5-275. Purpose.

- (a) Newburyport residents should be part of and benefit from improvements in the City of Newburyport, specifically those public projects including but not limited to residential, institutional, industrial and commercial construction which are funded by public funds.
- (b) Therefore, it is appropriate for the City of Newburyport to make certain that each development constructed with public funds as defined herein, includes employment opportunities for Newburyport Residents through compliance with this article entitled the Newburyport Residents' Construction Employment Policies.

(Ord. of 5-11-92)

Sec. 5-276. Definitions.

The intent of this section is to provide definitions for certain terms, words and/or series of words which are to be utilized in the interpretation of this article whether or not the definition stated herein is contrary to common usage or contrary as quoted in a dictionary, except as may be otherwise defined. All words in the plural number include the singular number. All words used in the present tense include the future tense. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. The word "shall" is mandatory ~~and directory~~. The word "may" is permissive. The word "used" includes "designed, intended, proposed, existing, or arranged to be used."

- (1) *Newburyport resident* shall mean any persons for whom the principal place of residence is within the City of Newburyport for at least six (6) months immediately prior to the award, contracting and or permitting of a public construction project. Proof of such residence shall be a valid Massachusetts drivers license indicating a Newburyport residence.
- (2) *Public construction* shall mean any and all building projects as defined by M.G.L. ~~A~~ c. 149, § 44 of the Massachusetts General Laws and any amendment thereto, which requires bidding under such chapter, takes place within the City of Newburyport for which the total contract price is in excess of one hundred thousand dollars (\$100,000.00), and which is publicly funded in whole or in part by city and/or by grant funds administered by the city, which in accordance with a federal, state or other grant, the city expends or administers, and/or a contract to which the city is a signatory.
- (3) *Contractor* shall mean all persons, corporations, agencies, firms, businesses, developers, subcontractors, for projects defined herein as "public construction."
- (4) *Bidding authority* shall mean the city department and or agency assigned or directly responsible for the bidding and or project management of public construction.
- (5) *Newburyport residents employment certification form* shall mean the form which must be submitted by the contractor with any and all bids for public construction. Such form may be from time to time amended by the mayor to suit the purpose and intent of this article.
- (6) *Newburyport resident employee reporting form* shall mean the form submitted by the contractor within twenty-one (21) days of acceptance of the contractor as lowest bidder. Such list shall contain Newburyport residents that have been contacted and confirmed to be employed by the contractor. Such form may be from time to time amended by the mayor to suit the purpose and intent of this article.
- (7) *Mayor decision on compliance with Chapter 5, Article IX of Newburyport Code of Ordinances* shall mean the form used by the mayor to render decisions on submittals of the Newburyport resident employee reporting form submitted by the bidding authority. Such form may be from time to time amended by the mayor to suit the purpose and intent of this article.
- (8) *DLI list* shall mean the most recent Commonwealth of Massachusetts Department of Labor and Industries List for minimum wage rates under the prevailing wage laws as determined by M.G.L. ~~A~~ c. 149, §§ 26—27D.
- (9) *Mayor* shall mean the mayor of the City of Newburyport and/or ~~his~~ their designee.

(Ord. of 5-11-92)

Sec. 5-277. Thirty percent required.

On public construction projects as defined herein the contractor shall comply with the following requirements:

- (1) A contractor shall be required to provide employment in the amount of thirty (30) percent per craft minimum of the total project hours to Newburyport resident(s) as defined herein.
- (2) Any apprentices hired shall be apprentice indentured to a bona fide apprenticeship program, approved by the Commonwealth of Massachusetts.

(Ord. of 5-11-92)

Sec. 5-278. Bidding authority responsibility.

- (a) *Bidding authority notice required.* Fourteen (14) days prior to the date of public bidding notice in accordance with M.G.L. ~~A~~ c. 149, § 44 (including any and all subcontractor bidding) it shall be the responsibility of the bidding authority to serve public notice to the residents of the City of Newburyport that a public construction project is being bid. Such notice shall be for the purpose of informing the Newburyport residents of employment opportunities in accordance with job classifications (the DLI list) determined in M.G.L. ~~A~~ c. 149, §§ 26—27D applicable to the project being bid.
- (b) *Form of notice.* Such notice shall be placed in the newspaper of regular circulation fourteen (14) days prior to the bid notice and shall include all project information as required by a notice under M.G.L. ~~A~~ c. 149, § 44 as amended and require the inclusion of the following language at the beginning of such notice:

CITY OF NEWBURYPORT NOTICE OF PUBLIC CONSTRUCTION CHAPTER 5, ARTICLE IX REGISTRATION OF NEWBURYPORT RESIDENTS FOR EMPLOYMENT

In accordance with Chapter 5, Article IX of the Newburyport Code of Ordinances this is a public notice to request Newburyport resident laborers skilled in trades as listed in M.G.L. ~~A~~ c. 149, §§ 26—27D amended as applicable to the below described project to register their names for consideration of employment for such project. Registration must be made on the appropriate form titled "Newburyport Resident Public Construction List" at the Newburyport City Clerk's Office at 60 Pleasant Street Newburyport within fourteen (14) days of this notice.

- (c) *Bidding authority inclusion of Chapter 5, Article IX.* The bidding authority shall include a copy of this article and any and all forms in all copies of the bid specifications for public construction projects as defined herein.
- (d) *Bidding authority submittal to city clerk.* It shall be the responsibility of the bidding authority to submit to the city clerk a copy of the DLI listing, Newburyport resident construction list with the appropriate items completed and the Newburyport resident employee reporting form for the lowest bidder.

(Ord. of 5-11-92)

Sec. 5-279. Contractor responsibility.

- (a) *Residents required.* In accordance with this article the contractor shall be required to provide employment in the amount of thirty (30) percent minimum per craft of the total project hours to Newburyport residents.
- (b) *Contractor bid submittal required.* The contractor shall be required to submit with any and all bids for public construction the form titled Newburyport residents employment certification form which is attached hereto and incorporated herein by reference. It is the responsibility of the contractor to complete such form. Forms will be made available in the bid specifications.

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- (c) *Lowest bidder submittal.* The lowest responsible bidder as determined by the bidding authority shall within twenty-one (21) days of such determination complete the Newburyport residents employee reporting form and submit the form to the bidding authority.
 - (d) *Contractor waiver request.* The contractor may submit with the Newburyport resident employee reporting form a request for waiver from Chapter 5, Article IX, such waiver shall be based on the fact that after review of sufficient data, a pool of labor does not exist.
 - (e) *Failure to comply.* Failure of the contractor to submit such forms completed with the bid or after determination of lowest bidder shall be sufficient reason for the bidding authority upon the recommendation of the mayor to not accept such bid.

(Ord. of 5-11-92)

Sec. 5-280. Administration.

- (a) *Administrator.* As cited herein the City of Newburyport city clerk shall be responsible for administering and enforcing compliance with the provisions of this article. Prior to action, the city clerk shall notify the mayor.
- (b) *Newburyport resident public construction list.* It shall be the responsibility of the city clerk to maintain the Newburyport resident public construction list on a project by project basis and provide copies of such list to prospective contractors bidding on public construction. A running list of all registrants shall also be maintained in a database for use by the city for contacting Newburyport residents.
- (c) *Newburyport resident employee reporting form.* Upon receipt of such forms from the bidding authority, the city clerk shall transmit copies to the mayor's office.

(Ord. of 5-11-92)

Sec. 5-281. Mayor review.

- (a) *Mayor review.* The mayor shall review the Newburyport resident employee reporting form as submitted by the contractor and bidding authority. The mayor shall further be responsible for carrying out the review provisions of this article.
- (b) *Mayor criteria for review.* The mayor shall make decisions as cited below within the following criteria:
 - (1) Ensure that the contractor has completed the Newburyport employee reporting form.
 - (2) The information provided must show compliance with the thirty (30) percent requirement cited in section 5-277.
 - (3) The contractor shall have received commitments from Newburyport residents in accordance with the Newburyport resident employee reporting form.
 - (4) A contractor who is not in compliance with the thirty (30) percent threshold shall provide adequate documentation to determine the applicability of a waiver.
- (c) *Mayor decision.* The mayor shall file a final decision with the city clerk within fourteen (14) days of receipt of the information as cited in above. Such decision shall also be forwarded to the bidding authority and sent registered mail to the contractors who have been reviewed for compliance. Such decision shall be in the manner of the form titled "Mayor Decision on Compliance with Chapter 5, Article IX City of Newburyport Code of Ordinances."
- (d) *Mayor Chapter 5, Article IX waiver.* Pursuant to section 5-280(c) above where it can be demonstrated by the contractor that a sufficient number of Newburyport residents are not available for employment, the mayor

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may grant such contractor a waiver of compliance. Such waiver, with the decision as cited above, shall constitute an approval of the contractors Newburyport resident employee reporting form. Such approval shall be based on a comparison of contractors submittal with the Newburyport resident public construction list on file with the city clerk.

(Ord. of 5-11-92)

Sec. 5-282. Other laws.

Where this law and any selection of employees thereto conflicts with other laws relating to affirmative action hiring requirements as set forth by federal, state or local laws, those laws shall supersede this chapter.

(Ord. of 5-11-92)

Secs. 5-283—5-305. Reserved.

ARTICLE X. BUILDING DEMOLITION⁴¹

Sec. 5-306. Intent and purpose.

This article is adopted for the purpose of preserving and protecting significant buildings or structures within the City of Newburyport which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the city; to encourage owners of preferably-preserved significant buildings to seek out persons who might be willing to purchase and to preserve, rehabilitate, or restore such buildings or structures, rather than demolish them; and by furthering these purposes to promote the public welfare and to preserve the resources of the city. To achieve these purposes, the Newburyport Historical Commission is empowered to advise the Newburyport Building Commissioner with respect to the issuance of permits for demolition, and the issuance of demolition permits for significant buildings and structures is regulated as provided in this article.

(Ord. of 11-8-05, § 1.1)

Sec. 5-307. Definitions.

The following terms when used, whether or not capitalized in ~~this~~ article X, shall have the meanings set forth below, unless the context otherwise requires:

Building or structure. Any combination of materials forming a shelter for persons, animals, or property, including additions and accessory structures.

Building commissioner. The person occupying the office of commissioner of buildings or otherwise authorized to issue demolition permits.

Business day. A day which is not a legal municipal holiday, Saturday or Sunday.

⁴¹Editor's note(s)—An ordinance adopted November 8, 2005, amended article X in its entirety to read as herein set out. Former article X, §§ 5-306Editor's note(s)—5-310, pertained to similar subject matter, and derived from Ord. of 9-30-02(1), §§ 1.1—1.5.

Cross reference(s)—Newburyport Historical Commission, § 2-106Cross reference(s)— et seq.

Commission or NHC. The Newburyport Historical Commission.

Commission staff. The chairman of the commission, the person performing the functions of the chairman in the event there is no person with the title of chairman as such, or any other person regularly providing staff services for the commission to whom the commission has delegated authority to act as commission staff under this article.

Demolition. The act of partial or total pulling down, destroying, removing, relocating, altering, or razing a historically significant building or structure or part thereof including: (a) a change in roof pitch or roof line; (b) all roofed features (excluding dormers in compliance with this section), such as towers and cupolas; (c) those unroofed features, such as widow's walks, decks, and railings, that project above the existing ridgeline or are located within three (3) feet of the edge of a flat roof; (d) a change in building footprint; or (e) the moving of the building or structure from its lot. Demolition also includes commencing the work of partial or total pulling down, destroying, removing, relocating, altering, or razing with the intent of completing the same. Demolition excludes: (i) installation or removal of antennas and other unroofed mechanical, electrical, or electronic equipment not visible from a public way, such as through their placement on the rear-facing portion of a sloping roof, and (ii) demolition of a part of a building or structure where such part can be documented through duly issued building permits as not contributing to a character-definition exterior architectural feature of such building or structure.

Determination. Any determination contemplated in section 5-308 of this article made by the Commission or the commission staff.

Dormer. A rooftop appurtenance, as distinguished from a vertical addition, to a building or structure, built out from a sloping roof, and not extending above the ridge line of the roof from which it projects, set back from all walls of the building or structure below it, and containing one (1) or more windows. A dormer may be either a shed dormer or a gabled (a.k.a. doghouse) dormer: a shed dormer has a roof with a single slope with its eave line parallel to the ridge line of the roof from which it projects; and a gabled dormer has a gabled, hipped, or arched roof with its ridge line perpendicular to the ridge line of the roof from which it projects.

Historically significant building or structure.

- (1) Any principle building or structure within the city which is in whole or in part seventy-five (75) or more years old; or
- (2) Any accessory structure one-hundred (100) or more years old; or
- (3) Any building or structure which is listed on the National Register of Historic Places; or
- (4) Any principle or accessory building or structure which is or has been designated by the commission to be a significant building or structure because either:
 - a. It is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the city or the commonwealth; or
 - b. It is historically or architecturally significant (in terms of period, style, method of building construction, or association with a famous architect or builder) either by itself or in the context of another building or a group of buildings, such as a neighborhood streetscape or farm complex.

Preferably-preserved. Any historically significant building or structure or part thereof which the commission determines, as provided in section 5-308 of this article, is in the public interest to be preserved or rehabilitated rather than to be totally or partially demolished.

NHC Demolition Permit Application. An application for a permit for the demolition of a building or structure available at the office of planning and development.

Permit. A permit issued by the building commissioner for demolition of a building pursuant to an application therefore.

(Ord. of 11-8-05, § 1.2; Ord. of 6-24-19)

Sec. 5-308. Review procedures.

- (a) For all buildings or structures listed in definition, "historically significant building or structure", the applicant shall complete the NHC Demolition Permit Application and submit it, along with the filing and review fee to the commission through the office of planning and development.
- (b) Within thirty (30) days from its receipt of a NHC Demolition Permit Application, the commission shall determine whether the building or structure is historically significant. The applicant for the permit shall be entitled to make a presentation to the commission if ~~he or she~~they so chooses. If the commission determines that the building or structure is historically significant and should be considered for preservation, the commission shall so notify the building commissioner in writing that a demolition plan review must be made prior to the issuance of any demolition permit.

If the commission determines that the building or structure is not historically significant or is historically significant but not considered for preservation, then it shall so notify the building commissioner, who may then proceed to issue a demolition permit. If the commission fails to notify the building commissioner of its determination within thirty (30) days of its receipt of the application, then the building or structure shall be deemed not historically significant and the building commissioner may issue a demolition permit.

(c) *Demolition plan review:*

- (1) After the commission's determination that a historically significant building or structure should be considered for preservation, the applicant for the permit shall submit to the commission ten (10) copies of a demolition plan which shall include the following information:
 - a. A map showing the location of the building or structure or part thereof to be demolished on its property and with reference to neighboring buildings or structures;
 - b. Existing conditions photographs of all street facade elevations;
 - c. A description of the building or structure, or part thereof, to be demolished;
 - d. A description of the proposed alternations to the historically significant building or structure, or part thereof, to be demolished is located. If the property is located within the NNRHD, the application shall include site plans and exterior elevations of any resultant exterior changes to the historically significant building or structure. In reviewing applications, the commission will reference the most recent copy of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings.
 - e. If the application for demolition is based on a claim of structural deficiency, then the applicant may be required by the commission to submit a structural report on the structure's soundness that is prepared by a licensed professional structural engineer.
 - f. A list of all permits required for the project, date of application for these permits and any conditions of approval.
- (2) Within thirty (30) days from its receipt of the demolition plan referenced in subsection (1) above, the commission shall hold a public hearing on the NHC Demolition Permit Application and shall give public notice thereof by posting notice of the time, place and purpose of the hearing in City Hall at least ten (10) days before said hearing and also, within seven (7) days of said hearing, mail a copy of said notice to the applicant and to a certified list of abutters and abutters to abutters within three-hundred (300) feet of the structure in question.

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- (3) After said public hearing, and within sixty (60) days from receipt of the NHC Demolition Permit Application, the historical commission shall provide written documentation to the building commissioner about the demolition plan, including, at a minimum, the following information:
- a. A description of the age, architectural style, historical associations and importance of the building or structure to be demolished;
 - b. A determination as to whether or not the building or structure should be preferably preserved.
- (4) If the building or structure is not determined to be preferably preserved or if the commission fails to file its report with the building commissioner within the time period set forth above, then the building commissioner may issue a demolition permit.
- (d) *Demolition delay:*
- (1) If the building or structure is determined to be preferably-preserved following the demolition plan review, then the building commissioner shall not issue a demolition permit for a period of twelve (12) months from the date the commission's report is filed with the building commissioner unless the commission informs the building commissioner at any time prior to the expiration of such twelve-month period that:
 - a. The NHC has been satisfied that the applicant has made a bona fide, reasonable and unsuccessful effort to locate a person willing to purchase or lease, and to preserve, rehabilitate or restore the preferably-preserved building or structure; or
 - b. The applicant has agreed to accept a demolition permit upon specified conditions approved by the commission. Such conditions may include the review and approval by the commission of a revised set of the submitted site plans according to the requirements of subsection (c)(1)f.
 - (2) The applicant may apply to receive a demolition permit any time prior to the expiration of the 12-month delay by demonstrating the conditions above (subsection (d)(1)) according to the following procedure:
 - a. Submit an amended Demolition Plan to the NHC including updated materials listed in subsection (c) above.
 - b. Present the amended demolition plan to the NHC during a regularly scheduled meeting of the NHC. If determined that material changes are included in the project, the NHC may choose to hold a public hearing to review the changes to the project. If so, they shall follow the review procedures listed in subsection (c) above.

The applicant may choose to repeat procedures described above (subsection (d)(2)) as many times as they choose.
 - (3) For a period no longer than six (6) months after the expiration of the 12-month delay, the applicant may act to implement a building commissioner-issued demolition permit as described in the application. Otherwise, the normal review procedures of subsection (c) shall apply anew to any application for proposed demolition subject to this article.
- (e) *Exempt dormers:* A proposed dormer shall be exempt from review under this article provided that it meets all of the following design requirements:
- (1) All dormers shall be set back at least one (1) foot, six (6) inches from the wall below of the building or structure that is parallel to the ridge of the roof from which the dormer projects, and at least three (3) feet, six (6) inches from a wall below of the building or structure that is perpendicular to the ridge of the roof from which the dormers project.
 - (2) No dormer shall extend above the ridge line of the roof from which it projects.

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- (3) The roof of any dormer shall not lack slope or otherwise be constructed flat. The roof pitch of a shed dormer may vary according to the pitch of the roof from which it projects, but the roof pitch of a gabled dormer shall match the pitch of the roof from which it projects, except in the case of gambrel or mansard roof.
 - (4) In no case shall windows be allowed in the side walls of dormers.
 - (5) Inset roof decks, created by cutting into a section of roof and inserting a decked opening, shall follow the same setback standards stipulated for dormers.

(Ord. of 11-8-05, § 1.3; Ord. of 6-24-19)

Sec. 5-309. Emergency demolition.

If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the building commissioner. After inspection of the building the building commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the building commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the building commissioner may issue an emergency demolition permit to the owner of the building or structure.

(Ord. of 11-8-05, § 1.4)

Sec. 5-310. Enforcement and remedies.

- (a) *Enforcement.* The building commissioner is specifically authorized to institute all actions and proceedings, in law or in equity, as they may deem necessary and/or appropriate to obtain compliance with, or to enforce the requirements of ~~this code ordinance~~ or to prevent a threatened violation thereof.
- (b) *Building permit to be withheld:* Unless written approval is obtained from the NHC, no building permit shall be issued for a period of three (3) years with respect to any premises upon which a historically significant building or structure as defined under "historically significant building or structure" has been intentionally demolished without a demolition permit obtained in compliance with the provisions of ~~this code ordinance~~. The three-year period begins after the date of the completion of such demolition. As used herein "premises" refers to the parcel or parcels of land upon which the demolished building or structure was located and all adjoining parcels of land under which the demolished building or structure was located and all adjoining parcels of land under common ownership or control at the time of demolition.

(Ord. of 11-8-05, § 1.4; Ord. of 6-24-19)

Chapter 6 CIVIL DEFENSE AND DISASTER RELIEF⁴²

Sec. 6-1. References to statute.

All references to chapter 639, Acts of 1950, as now in force, in this chapter shall be applicable to any act or acts in amendment or continuation of or substitution for chapter 639.

(Code 1971, § 8-1)

Sec. 6-2. Department of civil defense—Established.

There is hereby established a department of civil defense, hereinafter called the department.

(Code 1971, § 8-2)

Cross reference(s)—Departments, § 2-316Cross reference(s)— et seq.

~~State law reference(s)— Requirement that cities have civil defense organization, M.G.L.A. c. 33 app., § 13-13.~~

Sec. 6-3. Same—Function.

It shall be the function of the department of civil defense to have charge of civil defense as defined in section 1, chapter 639, Acts of 1950 and to perform civil defense functions as authorized or directed by that chapter or by any and all executive orders or general regulations promulgated thereunder, and to exercise any authority delegated to it by the governor under chapter 639.

(Code 1971, § 8-3)

Sec. 6-4. Director of civil defense—To direct department; appointment.

The department of civil defense shall be under the direction of a director of civil defense who shall be appointed as prescribed by law.

(Code 1971, § 8-4)

Cross reference(s)—Officers and employees, § 2-126Cross reference(s)— et seq.

~~State law reference(s)— Appointment of director of civil defense, M.G.L.A. c. 33 app., § 13-13.~~

⁴²Cross reference(s)—Administration, ch. 2Cross reference(s)—; fire prevention and protection, ch. 7Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—.

State law reference(s)—Civil defense with regard to municipalities, M.G.L.A. c. 33 app., § 13-15 et seq.

Sec. 6-5. Same—Duties; salary.

The director of civil defense shall have direct responsibility for the organization, administration and operation of the department of civil defense, subject to the direction and control of the appointing authority, and shall receive such salary as may be fixed from time to time by the appointing authority.

(Code 1971, § 8-5)

~~State law reference(s)—General duties of civil defense director, M.G.L.A. c. 33 app., § 13-13.~~

Sec. 6-6. Same—Hiring, firing employees.

The director of civil defense may, within the limits of the amount appropriated therefor, appoint such experts, clerks and other assistants as the work of the civil defense department may require, and ~~he~~they may remove them.

(Code 1971, § 8-6)

Sec. 6-7. Same—Appointment of district coordinators.

The director of civil defense shall have the authority to appoint district coordinators of civil defense.

(Code 1971, § 8-7)

Sec. 6-8. Same—Expenditures.

The director of civil defense may make such expenditures as may be necessary to execute effectively the purposes of chapter 639, Acts of 1950.

(Code 1971, § 8-8)

Sec. 6-9. Same—Acceptance of gifts, grants, etc.; records of same to be kept.

The director may accept and may receive, on behalf of the city, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of civil defense, offered by the federal government or any agency or officer thereof or any person subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. The director shall cause appropriate records to be kept of all matters relating to such gifts, grants or loans.

(Code 1971, § 8-9)

State law reference(s)—Acceptance of gifts, M.G.L.A. c. 33 app., § 13-15.

Sec. 6-10. Civil defense advisory council—Established.

There is hereby established a civil defense advisory council.

(Code 1971, § 8-10)

Cross reference(s)—Boards, committees, commissions, § 2-61Cross reference(s)— et seq.

Sec. 6-11. Same—Composition.

The civil defense advisory council shall consist of the director of civil defense, such other department heads and such other persons as the authority appointing a director may deem necessary.

(Code 1971, § 8-11)

Sec. 6-12. Same—Members to serve without pay.

Members of the civil defense advisory council shall serve without pay.

(Code 1971, § 8-12)

Sec. 6-13. Same—Term of service.

Members of the civil defense advisory council shall serve subject to the direction and control of the appointing authority and the director on matters pertaining to civil defense.

(Code 1971, § 8-13)

Sec. 6-14. Same—Designation of chairman.

One (1) member of the civil defense advisory council, as the appointing authority shall designate, shall serve as chairman of such council.

(Code 1971, § 8-14)

Sec. 6-15. Police department to assist other cities, towns to suppress violence.

The police department is hereby authorized to go to the aid of another city or town at the request of such city or town in the suppression of riots or other forms of violence therein.

(Code 1971, § 8-15)

Sec. 6-16. Effective life of chapter.

This chapter shall remain in force during the effective period of chapter 639, Acts of 1950 and any act in amendment or continuation thereof or substitution thereof.

(Code 1971, § 8-16)

State law reference(s)—Termination of statute, M.G.L. ~~A~~ c. 33 app., § 13-22.

Sec. 6-17. Acceptance of radiological emergency response plan; prohibitions.

- (a) No official, agent, employee, representative, designee, or appointee of the city or any other person purporting or attempting to act in an official or public capacity on behalf of the city, shall, for the purpose of developing a radiological emergency response plan for the licensing of the Seabrook Station Nuclear Power Plant, encourage, conduct, engage in, or participate in, any planning, training, exercise drills, tests, or other activities, regarding the plan, or request any formal or informal review, test, or approval of the plan, by the

federal emergency management agency, or accept, adopt, approve, or implement, any state, local, or privately developed radiological emergency response plan.

- (b) This section shall have the authority of law and shall remain in full force and effect, without amendment, unless and until a majority of the voters of the city vote to approve or implement any such radiological emergency response plan in a regularly scheduled or special election.

(Ord. of 7-14-86(1))

Chapter 6.5 ENVIRONMENT⁴³

ARTICLE I. IN GENERAL

Secs. 6.5-1—6.5-25. Reserved.

ARTICLE II. WETLANDS PROTECTION-ORDINANCE⁴⁴

Sec. 6.5-26. Purpose and authority.

Wetland resource areas and the land immediately adjacent to them contribute to a number of public values and interests and are therefore protected by this ~~code ordinance~~. The purpose of ~~the article II (article) of chapter 6.5 City of Newburyport Wetlands Protection Ordinance (the ordinance)~~ is to protect the wetlands, water resources, flood-prone areas, and adjoining upland areas (i.e., Buffer Zones) in the City of Newburyport by controlling activities deemed by the Newburyport Conservation Commission (the commission) likely to have a significant or cumulative adverse effect on resource area values deemed important to the community. These include, but are not limited to the following:

- (a) Protection of public or private water supply;
- (b) Protection of groundwater supply;
- ~~(c) Protection of water quality;~~
- ~~(d) Flood control;~~
- ~~(e) Storm damage prevention including coastal storm flowage;~~
- ~~(f) Erosion and sedimentation control;~~
- ~~(g) Prevention and control of pollution;~~
- ~~(h) Protection of land containing shellfish;~~
- ~~(i) Protection of fisheries;~~
- ~~(j) Protection of aquaculture;~~
- ~~(k) Protection of wildlife and wildlife habitat;~~
- ~~(l) Protection of water quality;~~
- ~~(m) Erosion and sedimentation control;~~
- ~~(n) Protection of rare species habitat including rare plant and animal species;~~

⁴³Cross reference(s)—Plum Island Overlay District (PIOD), App. A, Sec. XXI et seq.

⁴⁴Editor's note(s)—An ordinance adopted May 15, 2012, amended article II in its entirety to read as herein set out. Former article II, §§ 6.5-26Editor's note(s)—6.5-37, pertained to similar subject matter, and derived from Ord. of 10-9-01(1), § I—XII.

(m) Protection of agriculture;

~~(m) Protection of aquaculture;~~

(n) Recreation and educational values;

(o) Adaptation to climate change.

Collectively these are the resource area values and interests protected by the ~~ordinance~~ code.

~~The This ordinance article~~ is intended to utilize the Home Rule authority of this municipality ~~so as to protect to a greater degree~~ the resource areas under the Wetlands Protection Act 9 (the act) (M.G.L. c. 131 § 40) ~~to a greater degree~~, to protect additional resource areas beyond the act which are recognized by the city as significant, to protect all resource areas for their additional values beyond those recognized in the act, and to impose in local regulations and permits additional performance standards stricter than those of the Act and its regulations (310 CMR 10.00).

The portions of this article (and its regulations) requiring the payment of consultant fees are promulgated under the concurrent authority of M.G.L. c. 44 § 53G.

This article shall not be applicable to projects for which a determination of applicability, order of conditions, notice of resource area delineation or other permit under the Massachusetts Wetlands Protection Act has been issued and is valid at the time of adoption.

(Ord. of 5-15-12)

Sec. 6.5-27. Jurisdiction and regulated activities.

- (a) *Approval required:* Except as permitted by the conservation commission pursuant to this article and regulations (not inconsistent with this article) promulgated pursuant to section 6.5-35., no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter (as further defined in section 6.5-27(c)) the resource areas, buffer zones or riverfront areas described in section 6.5-27(b).
- (b) *Areas of jurisdiction:* The areas subject to protection under ~~the this article ordinance differ from~~ are greater than those protected solely by the Massachusetts Wetlands Protection Act (WPA) in that additional wetland resource areas and uplands (buffer zones) are protected by ~~the this article ordinance~~. The areas that are subject to protection under ~~the this article ordinance~~ and these regulations are as follows:
- (1) Rivers, perennial streams, brooks, creeks and lands adjoining these resource areas within two hundred (200) horizontal linear feet, known as the riverfront area;
 - (2) Vernal pool habitat, including vernal pools and lands adjoining vernal pools within two hundred (200) horizontal linear feet;
 - (3) Freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, rivers, perennial streams, springs, banks, flats, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, the ocean, and lands adjoining these resource areas within one hundred (100) horizontal linear feet, known as the buffer zone;
 - (4) Intermittent streams, brooks, creeks and lands adjoining these resource areas within one hundred (100) horizontal linear feet, known as the buffer zone;
 - (5) Lands subject to flooding or inundation by groundwater or surface water and lands subject to tidal action, coastal storm flowage, or flooding;
 - (6) Lands under water, beneath any of the water bodies listed above.

The above-named resources are collectively known as the "resource areas protected by ~~the this~~ code ordinance" or "resource areas." ~~Said~~ These resource areas shall be protected whether or not they border surface waters.

- (c) *Regulated activities:* Activities subject to regulation under this article ordinance and these regulations include the following:
- (1) Any activity proposed or undertaken within a resource area or buffer zone as described above in section 6.5-27(b);
 - (2) Any activity deemed by the commission as likely to have a significant or cumulative adverse effect upon resource areas as defined herein;
 - (3) Any activity, including but not limited to, any and all of the following activities when undertaken to, upon, within or affecting resource areas or their wetland values, as determined by the commission, including, but not limited to:
 - a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - b. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
 - c. Drainage, or other disturbance of water level or water table;
 - d. Dumping, discharging, or filling with any material which may degrade water quality;
 - e. Placing of fill, or removal of material which would alter elevation;
 - f. Driving of piles, erection, expansion or significant alteration of buildings, or structures of any kind;
 - g. Placing of obstructions or objects in water or the surface water or groundwater hydrology of any resource area;
 - h. Destruction or removal of plant life, including, but not limited to, cutting or trimming of trees and shrubs;
 - i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
 - j. Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater; and
 - k. Incremental activities that cause, or may cause, a cumulative adverse effect on the resource areas and the values and interests protected by ~~the this article ordinance~~ or these regulations.

(Ord. of 5-15-12)

Sec. 6.5-28. Special provisions for the Barrier Beach.

- (a) The Plum Island Barrier Beach received additional protection under the previous Newburyport Wetlands ~~Ordinance Article~~ (adopted October 9, 2001 and revised September 12, 2005) and therefore its provisions are included in this article. The additional protections afforded to the Plum Island Barrier Beach are for the following purposes:
- (1) To minimize environmental damage, loss of life, and destruction of property inevitably resulting from storms, flooding and erosion;

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- (2) To prevent loss or diminution of the beneficial functions of storm and flood damage prevention or reduction and pollution prevention provided by wetlands, beaches, dunes, barrier beaches, and coastal banks;
 - (3) To maintain vegetative buffers to wetlands and waterbodies ~~so as to~~ reduce and/or eliminate runoff and other non-point discharges of pollutants to protect public health and preserve environmental resources; and
 - (4) To maintain vegetative cover so that the integrity and stability of coastal dunes and banks are maintained ~~and so that the coastal dunes and banks can to~~ fulfill their functions and promote the interests identified in ~~the this article ordinance.~~

Notwithstanding any additional requirements or exemptions, all activities on the Plum Island Barrier Beach shall be in accordance with section 6.5-28(b).

(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.
- (2) All new buildings or substantial improvements to existing buildings shall be built on open pilings and comply with FEMA National Flood Insurance Regulations and State Building Code Regulations for elevation and flood proofing. All development and redevelopment shall comply with M.G.L. ~~A~~ c. 131, § 40, 310 CMR 10.00 and Section 744 of the Massachusetts State Building Code Design Requirements for Floodplain and Coastal High Hazard Areas.
- (3) For the purposes of ~~this article the ordinance~~, the term "substantial improvement" shall mean an improvement that increases the market value of the building by an amount equal to or greater than fifty (50) percent or an improvement that increases the square footage by an amount equal to or greater than twenty-five (25) percent.
- (4) All new buildings, replacements, substantial improvements or expanded footprints less than twenty-five (25) percent in square footage shall have their first floor built at least two (2) feet above base flood elevation or the highest existing ground elevation whichever is higher.
- (5) Electrical, heating, ventilation, plumbing and air conditioning and other service facilities shall be designed and/or located ~~so as to~~ prevent water from entering or accumulating within the components during conditions of flooding.
- (6) Development or redevelopment on or within two hundred (200) feet landward of the top of a coastal bank or dune shall have no adverse impact on the height, stability or function of the bank or dune to fulfill the purposes set forth in section 6.5-28(a) above.
- (7) In areas where there are coastal banks or primary or frontal dunes, all new buildings and structures shall be set back from the beach dune interface at a distance equal to thirty (30) times the average yearly historical erosion as shown by the most current CZM shoreline change map.
- (8) No activity shall increase the elevation or velocity of flows in a floodplain.
- (9) Within the FEMA V zone, A zone, or AO zone or their equivalent, new or reconstructed structures or development on the barrier beach that alters vegetation, interrupts sediment supply and/or changes

the form or volume of a dune or beach must comply with the specific performance standards in ~~the~~ this article ordinance and in the regulations promulgated pursuant hereto.

- (10) In all other areas of the Plum Island Barrier Beach outside of the V-zone and AO-zone, all new buildings shall be built on open pilings and shall comply with FEMA National Flood Insurance Regulations and State Building Code Regulations for elevation and flood proofing. All existing buildings with substantial improvements, and all horizontal expansions of the existing footprint, shall be built on open pilings and shall comply with FEMA National Flood Insurance Regulations and State Building Code Regulations for elevation and flood proofing. If a licensed engineer certifies that an existing portion of the solid foundation will not require modifications to support the proposed building (other than new pilings exterior to the existing footprint), the existing portion of the solid foundation may remain.
- (11) Notwithstanding the previous sentence, the existing solid foundation of a building shall be replaced with pilings, if, fifty (50) percent or more of the exterior walls have been removed, are proposed to be removed, or will not be used as exterior walls (i.e. including but not limited to encasing an existing wall within a new exterior wall) and a new roof will be constructed, or is proposed to be constructed.
- (12) Construction or alteration of any coastal engineering structures shall require review and approval by the conservation commission.

(Ord. of 5-15-12)

Sec. 6.5-29. Exemptions and exceptions.

The following exemptions shall apply, ~~and~~ no application or permit is required under this article for the following activities, provided that all such work shall be in compliance with section 6.5-28(b):

- (a) *The following activities are exempt in any resource area and buffer zone:*
 - (1) Routine mowing (including river meadows) and maintenance of lawns, gardens, and landscaped areas, in existence on the effective date of this article or which are created after such date in accordance with the terms of this article;
 - (2) Work performed for normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.00;
 - (3) Removal of dead and dying trees which are deemed to be a hazard to public safety, as confirmed by the Newburyport Department of Public Services Tree Warden or a certified arborist and documented to the commission within thirty (30) days of removal (In such instances notification shall be provided to the commission or its agent prior to such work);
 - (4) Fencing around existing vegetable gardens.
- (b) *The following activities in the one-hundred-foot buffer zone (which includes the twenty-five-foot no-disturb zone) or the two-hundred-foot riverfront area, provided the activity is not within any other resource area; there is no regrading; no trees greater than six (6) inches diameter breast height are removed; there is no alteration to additional resource areas; and erosion and sedimentation controls are used as needed or as determined by the commission or agent of the commission:*
 - (1) Maintaining and repairing existing buildings and structures provided that:
 - a. The footprint remains the same;
 - b. There is no additional alteration of any resource areas; and
 - c. There is no heavy equipment or stockpiling within fifty (50) feet of resource areas;

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- (2) Constructing, maintaining, and repairing unpaved pedestrian walkways for private use provided there is no use of fill material;
 - (3) Maintaining and repairing existing stonewalls;
 - (4) Maintaining and constructing new fencing provided that:
 - a. It is greater than fifty (50) feet from the edge of the wetland boundary or fifty (50) feet from the mean annual high-water line of a perennial stream (whichever is farther);
 - b. It does not constitute a barrier to wildlife movement (i.e., the fence is greater than six (6) inches from the ground surface);
 - (5) Stacking cordwood;
 - (6) Conversion of lawns to uses accessory to residential structures such as decks, sheds, patios, and pools, provided the activity, including any discharge pipes, is located more than fifty (50) feet from the mean annual high-water line within the riverfront area or from bordering vegetated wetland, whichever is farther, and erosion and sediment controls are implemented during construction. The conversion of such uses, or other impervious surfaces accessory to existing single family houses to lawn or natural vegetation is also allowed (Consistent with 310 CMR 10.02 (b)(1)(e), mowing of existing lawns is not subject to jurisdiction under this article);
 - (7) Activities, such as monitoring wells, exploratory borings, soil sampling, and surveying, that are temporary, have negligible impacts as determined by the commission, and are necessary for planning and design purposes;
 - (8) Planting native species of trees, shrubs, or groundcover (excluding turf lawns);
 - (9) Pruning of existing vistas, provided the activity is located more than fifty (50) feet from the mean annual high-water line within a riverfront area or from bordering vegetated wetland, whichever is farther.
- (c) *Utilities and roads:* The applications and permits required by this article shall not be required for:
- (1) Maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that notice has been given to the commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the commission.
 - (2) Maintaining and repairing existing and lawfully located existing roads (excluding bridges and culverts) provided that:
 - a. There is no increase in impervious surface;
 - b. There is no additional alteration of resource areas;
 - c. Written notice has been given to the conservation commission fourteen (14) days prior to commencement of work; and
 - d. Erosion and sedimentation controls are used as necessary.
- (d) *Stormwater management systems:* The applications and permits required by this article shall not be required for maintenance of a stormwater control structure or system in existence at the time of adoption of this article or of one approved in accordance with the stormwater management standards, as provided in the Massachusetts Stormwater Policy. This exemption shall apply provided that the work to maintain the stormwater management system is limited to maintenance and that said work

utilizes best practical measures to avoid and minimize impacts to wetland resource areas ~~outside~~outside of the footprint of the stormwater management system. Such stormwater management systems may include wetland resource areas created solely for the purpose of stormwater management and approved under an order of conditions.

- (e) *Emergency projects*: The applications and permits required by ~~code~~ the ordinance shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by, or has been ordered to be performed by, an agency of the commonwealth or a political subdivision thereof (including the City of Newburyport); provided that advance notice, oral or written, has been given to the commission prior to commencement of work or within twenty-four (24) hours after commencement; provided that the commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the commission for the limited purposes necessary to abate the emergency; and provided that within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the commission for review as provided by this article ~~the ordinance~~. Upon failure to meet these and other applicable requirements of the commission, the commission may, after notice and a public hearing, revoke or modify an emergency project approval, order restoration and mitigation measures.

Other than what is stated in this article, the exceptions provided in the Wetlands Protection Act (M.G.L. c. 131 § 40) and its regulations (310 CMR 10.00) shall not apply under this article.

The conservation commission may adopt additional exemptions and exceptions within the regulations promulgated pursuant to section 6.5-35.

(Ord. of 5-15-12)

Sec. 6.5-30. Variances, hardship and mitigation.

Applicants may, in appropriate circumstances, request that the commission grant a variance from specifically identified requirements of this article ~~the ordinance~~ or regulations promulgated by the commission pursuant to section 6.5-35.

The conservation commission may, in its discretion, grant variances from the specific submission requirements and performance standards of this ordinance ~~article~~ and regulations adopted pursuant to section 6.5-35. The conservation commission may grant such variances when an overriding public interest is demonstrated or when it is necessary to avoid so restricting the use of the property as to constitute an unconstitutional taking without compensation pursuant to federal and state laws. The intent of this section is to ensure that reasonable use may be made of such property; however, the extent of use shall be limited in so far as is necessary to protect the wetland values protected by this ordinance ~~article~~, and to ensure that there is no foreseeable danger to the public health or safety. In all cases, the burden of proof shall be on the applicant to demonstrate maximum feasible compliance with the requirements of this ordinance ~~code~~. In cases where a variance is granted, the commission may require mitigation measures to be implemented to offset potential adverse impacts to the wetland resource areas.

The commission may waive the application of any performance standard herein when it finds, after opportunity for a hearing that:

- (1) There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with these regulations;
- (2) Mitigating measures are proposed that will allow the project to be conditioned ~~so as to~~ contribute to the protection of the wetland values protected by this article; and

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- (3) That the project is necessary to accommodate an overriding public interest or that it is necessary to avoid a decision that so restricts the use of property as to constitute an unconstitutional taking without compensation.

A request for a variance or waiver shall be made in writing and shall include, at a minimum, the following information:

- (a) A description of the alternatives explored that would allow the project to proceed in compliance with the performance standards in these regulations and an explanation of why each is not feasible;
- (b) A description of the mitigating measures to be used to contribute to the protection of the wetland values protected by this article;
- (c) Evidence that an overriding public interest is associated with the project which justifies modifying one (1) or more performance standards in these regulations, or evidence that the decision regarding the permit application would so restrict the use of the land that it constitutes an unconstitutional taking without compensation.
- (d) In the event a taking claim is being made, the following additional information shall be submitted:
 - 1. Documentation that the subject property is legally and/or equitably owned by the applicant, including the date of acquisition. Also, identification of all property in contiguous ownership, including contiguous properties in which the applicant has a present, future or past fee interest or beneficial interest and documentation of the assessed value of the said contiguous property.
 - 2. Documentation of the assessed value of the property subject to regulation as well as documentation of acquisition costs, proceeds received to date, expected proceeds (including copies of purchase and sales agreements, expenditures, and any other financial and economic data relevant to the waiver/variance request.
 - 3. Documentation of the value of the loss alleged to result from compliance with the relevant performance standards from which a waiver/variance is sought.
- (e) The request for waiver/variance shall be sent to the commission by certified mail or hand delivered and a copy thereof shall at the same time be sent by certified mail or hand delivered to any other parties in interest.
- (f) Within twenty-one (21) days of the receipt of a request, the commission shall hold a public hearing on the request.
- (g) Within twenty-one (21) days of the close of the public hearing, the commission shall issue a decision as to whether to grant the waiver/variance request. Such decision shall set forth the findings as required herein.

(Ord. of 5-15-12)

Sec. 6.5-31. Applications and fees.

A written application ("permit application") shall be submitted to the commission to perform activities affecting resource areas protected by this ~~article~~ ordinance. The application shall include such information and plans as are deemed necessary by the commission to describe proposed activities and their effects on the resource areas protected by this ~~article~~ ordinance. No activities shall commence without receiving and complying with a permit issued pursuant to this article.

Forms and submission requirements: Applicants submitting filings governed by this ~~article~~ ordinance shall use the standard Wetlands Protection Act (WPA) Forms from the department of environmental protection (DEP). Applicants shall include the words: "City of Newburyport - Wetlands Protection ~~Ordinance~~ Code" on all applications

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for projects within the City of Newburyport, subject to review under this article and Wetlands Protection Act Regulations.

Request for determination of applicability (RDA): Any person desiring to know whether or not a proposed activity or area is subject to this article shall submit a written request for determination of applicability (RDA) to the commission. The application materials required shall be the same as those used in filing under the Wetlands Protection Act Regulations (310 CMR 10.00), WPA Form 1: Request for Determination of Applicability.

Notice of intent (NOI): A written notice of intent (NOI) shall be filed with the commission for a permit to perform activities affecting resource areas and buffer zones, protected by this article. Any person submitting a notice of intent (NOI) shall at the same time provide a copy to the city's engineer, at the department of public services, for review in accordance with ~~the chapter 17, stormwater management, ordinance~~ and related state and federal regulations. If during review of the application the commission or its agent determines that a peer review by a qualified engineer is necessary to ensure that the proposed work (including all work shown on plans, specifications and reports) will comply with federal, state and local stormwater regulations, the applicant shall (if so instructed) provide one (1) copy of the complete application to the commission's consultant engineer, pursuant to this article and M.G.L. ~~A~~ c. 44 § 53G. A single copy shall be provided with all plans and attachments to the conservation commission of the adjoining municipality, if the application or determination pertains to property within one hundred (100) feet of that municipality. An abutter notification affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the commission. The application materials required shall be the same as those used in filing under the Wetlands Protection Act Regulations (310 CMR 10.00), WPA Form 3: Notice of Intent. Where appropriate, under the requirements of the Wetlands Protection Act Regulations (310 CMR 10.00), the applicant may submit WPA Form 4: Abbreviated Notice of Intent. No activities shall commence without receiving, and complying with, a permit (order of conditions) issued pursuant to this article.

Other plan and submission requirements: Additional plan and submission requirements may be established by the commission through regulations adopted pursuant to section 6.5-35. of this article. No application ("permit application" such as a notice of intent or request for determination of applicability) shall be deemed complete or timely without the payment of all required fees, the submission of application forms and the submission of plans in accordance with these regulations. At its sole discretion the commission may relax these requirements where such information is not necessary to make a determination on a request for determination of applicability (RDA) or notice of intent (NOI).

Application and review fees:

Filing fees: At the time a Permit application is submitted, the applicant shall pay a filing fee as specified in regulations of the commission adopted hereunder. These fees shall be placed in an account established pursuant to M.G.L. ~~A~~ c. 44 § 53E½ which may be drawn upon by the commission as necessary to carry out the provisions of this article and its regulations. This fee is in addition to that required by the department of environmental protection (DEP), the Massachusetts Wetlands Protection Act and its regulations.

Advertisement fees: The applicant shall pay a fee for the cost of advertising and abutter notification for public hearings as required by the Wetlands Protection Act Regulations (310 CMR 10.00) and this article.

Consultant review fees: Pursuant to M.G.L. ~~A~~ c. 44 § 53G and regulations promulgated by the commission pursuant to section 6.5-35., the commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects.

The commission is authorized, any time during the hearing process, to require the applicant to pay all the costs and expenses of any expert consultant deemed necessary by the commission to review the permit application or resource area. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to: performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations; hydrogeologic and drainage analysis; and researching environmental or land use law relative to the application or work proposed.

The applicant shall deposit with the city funds in an amount sufficient to cover the initial costs associated with said peer review, as determined by the commission's agent. Funds shall be accounted for in accordance with M.G.L. c. 44 § 53G, and unexpended funds shall be returned to the applicant within twenty-one (21) days of the issuance of a decision. The applicant shall provide additional funds whenever notified by the commission or its agent that actual remaining funds are insufficient to pay for additional consultant review which may be necessary. Failure of the applicant to replenish the consultant review fund accordingly, prior to the next subsequent continuation of the applicable public hearing shall be sufficient grounds for the commission to deny the application or continue the public hearing to allow the applicant (and consultant) additional time.

The commission shall waive all application and consultant review fees for any permit application or notice filed by the City of Newburyport.

(Ord. of 5-15-12)

Sec. 6.5-32. Notice to abutters, review, and public hearing.

Abutter notification requirements for all permit applications shall follow the Wetlands Protection Act (M.G.L. c. 131 § 40) and Regulations (310 CMR 10.00) promulgated thereunder. Abutters under the ~~ordinance code~~ shall include property owners whose land abuts the subject land described in a plan subject to commission review including those across a traveled way, across a body of water, in another municipality and any property within one hundred (100) feet of the subject parcel(s).

The commission shall commence a public hearing (or consideration of the matter at a public meeting) within twenty-one (21) days from the receipt of a completed permit application (i.e. notice of intent or request for determination of applicability) which meets the commission's submission requirements as set forth in the regulations unless an extension is authorized in writing by the applicant. The commission shall have authority, in its discretion, to continue the hearing (or public meeting) to a specific date announced at the hearing or meeting, for the reasons stated at the hearing or meeting, which may include the need for additional information from the applicant or from others as deemed necessary by the commission, or based on the comments and recommendations of the boards and officials listed in § VIII.

Where applicable, the commission shall combine its meeting, hearing or other consideration of the matter under ~~the this ordinance code~~ with the meeting, hearing or consideration which is conducted under the Wetlands Protection Act (M.G.L. c. 131 § 40) and regulations (310 CMR 10.00) promulgated thereunder.

(Ord. of 5-15-12)

Sec. 6.5-33. Notice to and opportunity to comment by other officials.

Any person filing a permit application (i.e. notice of intent or request for determination of applicability) with the commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), certificate of mailing, or hand delivery, to the planning director, building inspector, and the department of public services if instructed by the conservation agent. A copy shall be provided in the same manner to the conservation commission of the adjoining municipality, if the permit application (i.e. notice of intent or request for determination of applicability) pertains to property within one hundred (100) feet of that municipality. An affidavit of the person providing notification, with a copy of the notification mailed or delivered, shall be filed with the commission. The commission shall not take final action until the above boards and officials have had fourteen (14) days from receipt of notification (postmark date or other evidence of delivery) to file written comments and recommendations with the commission, which the commission shall take into account but which shall not be binding on the commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a public hearing (or public meeting) of the commission, prior to final action.

Sec. 6.5-34. Orders and conditions.

- (a) *Permit conditions.* If the commission, after a public hearing (or consideration of the matter at a public meeting), determines that the activities which are the subject of the filing, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative adverse effect on the resource area values protected by ~~the this code ordinance~~, the commission, shall issue or deny approval in the form of a determination of applicability or an order of conditions (permit) for the activities requested. The commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

If it issues an order or negative determination of applicability, the commission shall impose conditions which the commission deems necessary or desirable to protect said resource area values and interests, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the commission is empowered to deny an order for failure to meet the requirements of ~~this code ordinance~~ or issue a positive determination of applicability. It may also deny an order for failure: to submit necessary information and plans requested by the commission; to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the commission; or to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values and interests protected by ~~the this code ordinance~~.

- (b) *Resource areas, no disturbance zones, presumption of significance and performance standards.* In reviewing activities within the buffer zone, the commission shall presume that the buffer zones surrounding resource areas are important to the protection of those resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.

The commission may establish, in its regulations (consistent with ~~this ordinance code~~), design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturbance areas, no-build areas, and other work limits for protection of such lands. These include without limitation strips of continuous, undisturbed vegetative cover unless the applicant convinces the commission that the area or part of it may be disturbed without harm to the values protected by ~~this code ordinance~~.

The commission shall require no-disturbance zones as follows, unless through the variance process as described in section 6.5-30. above, the applicant convinces the commission by a preponderance of credible evidence that the area or part of it may be disturbed without harm to the wetland values protected by this article.

In general. The buffer zone contains a twenty-five-foot no-disturbance zone which is that portion of the buffer zone which extends twenty-five (25) feet horizontally from the edge of the following wetland resource areas:

- (a) Any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, rivers, streams, springs, banks, flats, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, and the ocean;
- (b) Intermittent streams, brooks, and creeks.

Disturbance of any kind is prohibited within this twenty-five-foot no-disturbance zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction. Within the no disturb zone established by the commission, no grading, planting, site work, construction, or storage of materials is allowed. Vegetation in the no disturb zone shall not be cut or trimmed in

any manner unless authorized by the commission as part of regular maintenance required for man-made drainage systems (such as seasonal mowing).

Notwithstanding the above limitations, no activity which will result in the alteration of land within the presumptive no disturbance zone shall be permitted by the commission with the following exceptions:

- (a) Planting of native vegetation or habitat management techniques designed to enhance the wetland values protected by ~~the this code ordinance~~;
- (b) Construction and maintenance of unpaved pedestrian access paths not more than four (4) feet in width;
- (c) Maintenance of existing structures, utilities, stormwater management structures and paved areas;
- (d) Construction and maintenance of water dependent structures and uses;
- (e) Vista pruning and removal of dead and diseased vegetation consistent with conservation commission standards;
- (f) Construction of new utility lines where the proposed route is the best environmental alternative;
- (g) Septic system maintenance and, if a system has failed, repair/replacement meeting state/local standards where the maximum feasible buffer is maintained;
- (h) Construction of accessory structures/uses associated with lawfully existing single family houses where the conservation commission finds that alternatives outside the buffer area are not available; the size and impacts of the proposed structure/use have been minimized; and the structure/use is located as far from the resource as possible;
- (i) Where a buffer zone is already altered such that the required buffer cannot be provided without removal of structures and/or pavement, this requirement may be modified by the commission provided that it finds that the proposed alteration will not increase adverse impacts on that specific portion of the buffer area or associated wetland and that there is no technically demonstrated feasible construction alternative;
- (j) Where a lot is located entirely within buffer area, the commission may permit activities within the buffer area when the applicant has demonstrated that the proposed work has been designed to minimize impacts to the buffer area. As mitigation, the commission may require the applicant to plant or maintain a naturally vegetated buffer of the maximum feasible width given the size, topography, and configuration of the lot.

Vernal pool habitat. The above buffer zone does not apply to the "vernal pool habitat" resource area which is a no-disturbance zone in its entirety. Vernal pool habitat shall include vernal pool depressions (for all vernal pools, whether or not mapped and certified) and lands adjoining these depressions within two hundred (200) horizontal linear feet. In addition, components of subsurface sewage disposal systems shall not be permitted within one hundred (100) horizontal linear feet of the delineated edge of a vernal pool habitat or the delineated edge of the encompassing wetland resource area (if present).

- (c) *Work proposed within riverfront area.* In reviewing activities within the riverfront area, the commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of ~~this code ordinance~~, has proved by a preponderance of the evidence that meets those requirements that are set forth in the regulations that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by ~~the this code ordinance~~. The commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose

(e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

- (d) *Habitat assessment, alteration and mitigation.* To prevent resource area loss, the commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the statistical high likelihood of failure of such replication. The commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or expected presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

The commission shall presume that all areas meeting the definition of "vernal pool", including the adjacent area (together known as "vernal pool habitat"), perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the commission, demonstrates that the basin or depression or surrounding area does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

- (e) *Term, expiration and renewal of permits and approvals.* Determinations and orders, including a determination of applicability (DOA), an order of conditions (OOC) or an order of resource area delineation (ORAD) shall expire three (3) years from the date of issuance. Notwithstanding the above, the commission in its discretion may issue a determination or an order expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the commission. Any order or determination may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the commission at least thirty (30) days prior to expiration. Notwithstanding the above, a determination or order may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the commission may revoke any DOA, OOC, or ORAD or any other order, determination or decision issued under ~~the this code ordinance~~ after notice to the holder, the public, abutters, and city boards, pursuant to § VII and § VIII, and after a public hearing. Amendments to OOCs, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act Regulations and policies issued by the department of environmental protection (DEP) thereunder.

Where applicable the commission shall combine the decision issued under this ~~ordinance code~~ with the determination, order, emergency certification or certificate of compliance (COC) issued under the Wetlands Protection Act and its regulations.

No work proposed permitted in any order of conditions shall be undertaken until the order, or ORAD (if work is permitted through a simplified review by the commission with respect to such work) has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the order provides proof of such recording to the commission. If the applicant fails to perform such recording, the commission may record the documents itself and require the applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a certificate of compliance (COC).

(Ord. of 5-15-12)

Sec. 6.5-35. Regulations.

After public notice and public hearing, the commission shall promulgate rules and regulations to effectuate the purposes of ~~this article-ordinance~~, effective when adopted by the commission and filed with the city clerk. Failure by the commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this article. At a minimum these regulations shall incorporate the terms defined in ~~this article-ordinance~~, define additional terms not inconsistent with ~~this article-ordinance~~, identify more detailed performance standards for work within or adjacent to resource areas, and provide for plan and submission requirements and filing and consultant review fees for all applications.

(Ord. of 5-15-12)

Sec. 6.5-36. Definitions.

Except as otherwise provided in this article or in regulations promulgated pursuant to section 6.5-35, the definitions of terms and the procedures and performance standards in this article shall be as set forth in the Wetlands Protection Act (M.G.L. ~~A~~ c. 131 § 40) and regulations (310 CMR 10.00).

The following definitions shall apply to the interpretation and implementation of terms used in both ~~the this ordinance-article~~ and ~~Regulations-these regulations~~ promulgated pursuant to section 6.5-35.:

Agent: Any conservation commissioner or city staff who is appointed agent by a majority vote of the conservation commission at a regularly scheduled meeting of the conservation commission, and upon written approval of the mayor. (M.G.L. ~~A~~ c. 40, § 8c)

Alter: To change the condition of any area subject to protection under the Wetlands Protection Act (M.G.L. ~~A~~ c. 131 § 40) and further defined in its regulations (310 CMR 10.04) and any of the following activities when undertaken to, upon, within or affecting resource areas protected by ~~the this article-ordinance~~:

- (a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) Drainage, or other disturbance of water level or water table;
- (d) Dumping, discharging, or filling with any material which may degrade water quality;
- (e) Placing of fill, or removal of material, which would alter elevation;
- (f) Driving of piles, erection, expansion or significant alteration of buildings, or structures of any kind;
- (g) Placing of obstructions or objects in water or the surface water or groundwater hydrology of any resource area;
- (h) Removal or destruction of plant life including cutting or trimming of trees and shrubs;
- (i) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- (j) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- (k) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by ~~this code-ordinance~~.

Buffer zone: That resource area which extends one hundred (100) feet horizontally from the edge of the following wetland resource areas:

- (a) Any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, rivers, streams, springs, banks, flats, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, and the ocean;
- (b) Intermittent streams, brooks, and creeks.

It is possible that the buffer zone resource area will overlap in some instances (e.g., riverfront area and land subject to flooding).

Building: Shall mean a combination of any materials, whether portable or fixed, having a roof enclosed within exterior walls or firewalls built to form a structure for the shelter of persons, animals or property. Roof shall include an awning or any similar covering, whether or not permanent in nature. The term "building" includes bathhouses, sheds and garages.

Coastal engineering structure: A structure used to protect homes, buildings, roadways or utilities or to provide public or commercial access on or near the coast, such as seawalls, revetments, breakwaters, jetties, groins, piers, wharfs, bulkheads, stairways, access ramps, boat ramps, boardwalks and tide gates.

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

- (1) Construction of a new building or structure on a vacant lot including without limitation a shed, garage, coastal engineering structure, shear wall, vertical wall or fence;
- (2) Construction of a new septic system or the addition of flow to an existing or upgraded septic system;
- (3) Clearing of land, mining, extraction, beach scraping, dredging, filling, excavation or drilling;
- (4) Construction of new or proposed expansions of roads, driveways or parking lots, and/or paving of unpaved roads, driveways or parking lots; and
- (5) Conversion of pervious surfaces to impermeable surfaces and/or paving of existing unpaved roads, driveways or parking lots.

(See Note #1 below.)

Footprint: The total square feet within the outermost dimensions of a building including decks, porches and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Intermittent stream: A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows part of the year within, into or out of an area subject to protection under the WPA. A portion of an intermittent stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year is an intermittent stream including that portion upgradient of all bogs, swamps, vegetated wetlands, wet meadows and marshes. An intermittent stream does not have a riverfront area but does have an associated one hundred-foot (100) buffer zone. The outer boundary of an intermittent stream is the first observable break in slope or mean annual high water, whichever is higher.

Isolated vegetated wetland: Freshwater wetlands, of at least one thousand (1,000) square feet in area that do not border on creeks, rivers, streams, ponds or lakes. The types of isolated vegetated wetlands include wet meadows, marshes, swamps and bogs. Detention or retention basins or swales created for the purpose of stormwater management are not considered isolated vegetated wetlands under this code ordinance and these regulations.

In addition to the minimum size requirement, isolated vegetated wetlands must also meet the definition of "bordering vegetated wetlands" (310 CMR 10.55(2)) with the exception that these wetlands do not border any creeks, rivers, streams, ponds, lakes or other water bodies.

The boundaries of isolated vegetated wetlands are the same as those for bordering vegetated wetlands as defined in 310 CMR 10.55 (2)(c).

New development: As used in section 6.5-28, shall mean the construction of a new structure or building on a vacant lot.

No-disturbance zone: That portion of the buffer zone which extends twenty-five (25) feet horizontally from the edge of the following wetland resource areas:

- (a) Any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, rivers, streams, springs, banks, flats, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, and the ocean;
- (b) Intermittent streams, brooks, and creeks.

Disturbance of any kind is prohibited within this twenty-five-foot no-disturbance zone including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and /or driveway construction. The buffer zone does not apply to the "vernal pool habitat" resource area which is a no-disturbance zone in its entirety as defined below.

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 a twenty (20) percent (individual or cumulative) increase in the footprint of the existing structure. (Any such individual or cumulative increase not exceeding this twenty (20) percent threshold shall continue to require Commission review and approval.)
- (2) Conversion of porches, carports and decks to usable interior space below the first dwelling floor;

(See Note #1 below.)

Resource area: Those areas subject to protection under the Wetlands Protection Act (M.G.L. c. 131 § 40) and regulations (310 CMR 10.00), this article and regulations promulgated pursuant to section 6.5-35.

Riverfront area: That portion of land which extends two hundred (200) feet horizontally from the edge of the following wetland resource areas:

- (a) Rivers, perennial streams, brooks, creeks.

Structure: A combination of materials to form a configuration and includes, but is not limited to buildings, platforms, radio towers, storage bins, signs, swimming pools, septic systems, coastal engineering structures, and fences.

Substantial improvement: As used in section 6.5-28, shall include any reconstruction, rehabilitation, addition, or other improvement of a structure or building, the cost of which equals or exceeds fifty (50) percent of the value of the structure or building before the "start of construction" of the improvement. This term includes structures or buildings which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, building or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions for the existing structure.

Vernal pool habitat: A vernal pool is typically a confined basin or depression which, at least in most years, holds water for a minimum of two (2) continuous months during the spring and/or summer, contains at least two hundred (200) cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species. Under this article, a vernal pool shall meet the certification criteria of the Massachusetts Natural Heritage

and Endangered Species (NHESP) Program as outlined in the NHESP Guidelines for the Certification of Vernal Pool Habitat, March 2009, or successor guidelines. The boundary of the vernal pool habitat shall be two hundred (200) feet horizontally outward from the mean annual high-water line defining the depression or basin and shall not include lawns, gardens, landscaped areas, driveways or structures in existence or proposed under a plan approved by the commission at the time of adoption of this article.

The vernal pool habitat need not be located within another wetland resource area, or be certified as a vernal pool by the Massachusetts NHESP (or any other state or local agency) to be eligible for protection under ~~the this article ordinance~~ and these regulations; however, vernal pools certified by the Massachusetts NHESP are assumed to be vernal pools and are therefore protected under ~~this article ordinance~~ and these regulations.

The entire vernal pool habitat as defined above is considered a no-disturbance zone.

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

- (1) Bringing the electrical and/or plumbing system into compliance with current regulatory requirements;
- (2) Construction, repair, or replacement of unpaved elevated pedestrian walkways supported on open pilings and designed to minimize the disturbance to the vegetative cover and traditional bird-nesting habitat and the form and volume of the coastal dune, coastal beach, or coastal bank;
- (3) Construction, repair or replacement of sand fencing, designed to increase dune development, provided the fencing does not constitute a barrier to wildlife movement or the lateral movement of a coastal dune or coastal beach;
- (4) Repair or replacement of open pilings for an existing building;
- (5) Modification, maintenance, or repair of existing buildings or structures within the limits of existing foundations, which do not result in any addition to, or modification of the foundation itself, or the footprint of buildings or structures, additionally, additions or enclosures added above the first dwelling floor shall be allowed pursuant to FEMA guidelines.
- (6) Construction, repair, or replacement of decks on open pilings, with at least two (2) feet above grade to allow sand transport by wind or water;
- (7) Planting of native species that are indigenous to Plum Island and that are compatible with the natural vegetative cover excluding turf lawns;
- (8) Conversion of impervious to vegetated surfaces, provided that erosion and sedimentation controls are implemented, and that the impervious surface removed is disposed of off-site in accordance with all applicable federal, state, and local statutes, bylaws and regulations;
- (9) Relocating electrical, heating, ventilation, plumbing, air conditioning and other service facilities for an existing building to prevent water from entering or accumulating during conditions of flooding;
- (10) Construction, reconstruction, operation and maintenance of underground and overhead utilities, such as electrical distribution lines, transmission lines, communication lines, sewer pipes, water lines, and gas lines, including all structures and interconnections necessary to construct, reconstruct, operate, provide, and maintain electrical, communication, water, sewer, and gas service;
- (11) Assessment activities that are temporary in nature, have negligible impacts and are necessary for the planning and design of otherwise permissible projects, such as the installation of monitoring wells, exploratory borings, and natural gas service;
- (12) Temporary storage for not more than thirty (30) days of construction and/or demolition materials on non-vegetated portions of the barrier beach, provided that best management practices are used to minimize the adverse impacts of such storage and to protect the interests identified in this article;

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- (13) Placing an existing building on open pilings; repairing and/or replacing open pilings for an existing building;
 - (14) Elevating above flood elevation an existing building with a structurally sound foundation. In applying this subparagraph, the commission may require a certification from a professional engineer or architect stating that the foundation is structurally sound;
 - (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 not exceed a twenty (20) percent maximum (individual or cumulative) increase in the footprint of the existing structure; (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;
 - (16) For only those properties that do not have an existing parking area or parking area of lesser size, construction of two (2) parking spaces that are no more than nine (9) feet by eighteen (18) feet per space provided that there is no other area for parking on the property, and provided further that the surface of the parking area is pervious and that the construction complies with all the performance standards set forth in the commission's regulations and 310 CMR 10.00;
 - (17) Removal of stone groins, bulkheads, or other coastal engineering structures;
 - (18) Repair, restoration, modification or relocation of existing stone groins or jetties.

(Ord. of 5-15-12)

Sec. 6.5-37. Security.

As part of an order issued under ~~the this ordinance code~~, in addition to any security required by any other municipal or state board, agency, or official, the commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- (a) By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the order. The form of security shall be at the sole discretion of the commission.
- (b) By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

(Ord. of 5-15-12)

Sec. 6.5-38. Enforcement, inspections and fines.

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas or buffer zones protected by this article, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition (as authorized and directed by the conservation commission), or fail to comply with any permit or enforcement order issued pursuant to this article.

The commission and its agents shall have the responsibility, duty, and authority to enforce this article, its regulations, and permits issued thereunder by violation notices, and administrative (enforcement) orders. Any person who violates the provisions of this article may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

The commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purposes of performing their duties under this article, including site inspections, and may make or cause to be made such examinations, surveys or sampling as the commission deems necessary. Any permit application or request for certificate of compliance is evidence of the landowner's permission for said parties to enter ~~his or her~~ their private land for the purposes of conducting such inspections. An enforcement order issued by the commission shall be signed by a majority vote of the commission. In a situation requiring immediate action, an enforcement order may be signed by a single member or agent of the commission, if said order is ratified by a majority of the members at the next scheduled meeting of the commission.

The commission shall have authority to enforce ~~this code ordinance~~, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under M.G.L. ~~A~~. c. 40 § 21D, and civil and criminal court actions. Any person who violates provisions of ~~the this article ordinance~~ may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the commission, the mayor and city solicitor shall take legal action for enforcement under civil law. Upon request of the commission, the city marshal shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the commission in enforcement.

Any person who violates any provision of ~~this article ordinance~~, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine ~~as defined in chapter 1, section 1-18 of not more than three hundred dollars (\$300.00)~~. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of ~~the this ordinance code~~, regulations, permits, or administrative orders violated shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act, M.G.L. ~~A~~. c. 131 § 40.

As an alternative to criminal prosecution in a specific case, the commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. ~~A~~. c. 40 § 21D, which has been adopted by the City of Newburyport under its Code of Ordinances, section 1-15.

(Ord. of 5-15-12)

Sec. 6.5-39. Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the RDA or notice of intent will not have a significant or cumulative adverse effect upon the resource area values protected by ~~this ordinance ordinance~~. Failure to provide adequate evidence to the commission supporting this burden shall be sufficient cause for the commission to deny a permit or grant a permit with conditions.

(Ord. of 5-15-12)

Sec. 6.5-40. Appeals.

A decision of the commission shall be reviewable in the Superior Court in accordance with M.G.L. c. 249 § 4.
(Ord. of 5-15-12)

Sec. 6.5-41. Relation to the Wetlands Protection Act.

This ~~article ordinance~~ is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act (M.G.L. c. 131 § 40) and regulations (310 CMR 10.00) thereunder. It is the intention of ~~the this article ordinance~~ that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and its regulations.
(Ord. of 5-15-12)

Sec. 6.5-42. Reserved Severability

~~The invalidity of any section or provision of the ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.~~

~~(Ord. of 5-15-12)~~

ARTICLE III. PLASTIC BAGS

Sec. 6.5-43. Short title.

~~This article~~ Article III (article) may be cited as the "Thin-film Plastic Bags Ordinance Code."
(Ord. of 9-8-14)

Sec. 6.5-44. Purposes and intent.

The purposes of this article are (1) to regulate the retail distribution of thin-film plastic bags with integral handles in the City of Newburyport; (2) to encourage the use of reusable or biodegradable bags; and (3) to encourage retail establishments to offer reusable bags.
(Ord. of 9-8-14)

Sec. 6.5-45. Definitions.

Thin-film plastic bag with integral handles shall mean a bag with integral handles made of a non-biodegradable plastic that is 3.0 mils (3/1000th of an inch) in thickness or less.

Biodegradable bag shall mean a bag that both: (I) contains no polymers derived from fossil fuels; and (II) will decompose in a natural setting at a rate comparable to other biodegradable materials such as paper, leaves, and food waste.

Reusable bag shall mean a bag that is specifically designed and intended for multiple uses and is made of (I) plastic with a thickness greater than 3.0 mils, or (II) fabric or (III) other durable materials.

Retail establishment shall mean an establishment engaged in any "business" or "marine" uses regulated under section V (use regulations) of appendix A (zoning ordinance) of the Code of the City of Newburyport, Massachusetts.

(Ord. of 9-8-14)

Sec. 6.5-46. Limitations.

- (a) *Regulated activities.* No thin-film, plastic bag with integral handles shall be sold or otherwise distributed at or by any retail establishment within the City of Newburyport.
- (b) *Alternative activities.* Retail establishments, at their sole election, may sell or otherwise distribute biodegradable bags and/or reusable bags within the City of Newburyport.

(Ord. of 9-8-14)

Sec. 6.5-47. Enforcement.

- (a) *Regulations.* Consistent with this article, the city shall promulgate regulations to enforce and otherwise implement the provisions of this article ninety (90) days from the date that the mayor approves this article or it otherwise comes into force.
- (b) *Noncriminal disposition.* If the city determines that a violation of this article has occurred at or by a retail establishment, such retail establishment shall be penalized by a noncriminal disposition as provided in M.G.L. c. 40, § 21D, and adopted by the city as a general ordinance as section 1-17 of the Code of Ordinances of the City of Newburyport, in the amounts set forth in section 6.5-47 (d) of this article.
- (c) *Warning.* Upon the first violation of this article at or by a retail establishment, the city shall provide such retail establishment written notice that such first violation has occurred and issue a warning that any subsequent violations within a twelve (12) month period shall require the imposition of monetary penalty. No monetary penalty shall be imposed for this first violation.
- (d) *Subsequent violations.* Upon subsequent violations of this article at or by a retail establishment within twelve (12) months after a first violation, the city shall impose and provide the retail establishment written notice of the accrual of a monetary penalty as established in chapter 1, section 1-18. ~~Such monetary penalty shall not exceed the following amounts:~~

~~(1) One hundred dollars (\$100) for the second violation;~~

~~(2) Two hundred dollars (\$200) for the third violation; and~~

~~(3) Three hundred dollars (\$300) for the fourth and each subsequent violation.~~

- (e) *Late payment.* If payment of any monetary penalty is not received on or before the date when due, the city shall impose an additional penalty as provided by the regulations promulgated pursuant to this article.

(Ord. of 9-8-14)

Sec. 6.5-48. Effective date.

To facilitate compliance by retail establishments, enforcement of this article shall be suspended until date that is one hundred eighty (180) days from the date that the mayor approves this article or it otherwise comes into force. During such period of suspension, the city shall direct an effort to educate retail establishments about this article.

(Ord. of 9-8-14)

Sec. 6.5-49. Reserved ~~Severability~~

~~The city council intends that each separate provision of this article shall be deemed independent of all other provisions herein. The city council further intends that if a court of competent jurisdiction declares that any provision of this article is invalid, then the remaining provisions of this article shall remain valid and enforceable of this article.~~

~~(Ord. of 9-8-14)~~

Chapter 7 FIRE PREVENTION AND PROTECTION⁴⁵

ARTICLE I. IN GENERAL

Sec. 7-1. Master box.

A master box shall be installed and electronically connected to the municipal fire alarm system on any building in which a sprinkler system is installed or is required to be installed or on any building in which a type 1 (so-called) fire detection is installed. The only exception to such installation of a master box shall be for any structures defined as residential group (R-3, R-4) structures. A third-party monitoring system shall also be acceptable in lieu of a master box.

(Ord. of 9-24-90(1))

Sec. 7-2. Type 1 fire detection system requirements.

- (a) A type 1 (so-called) fire detection system shall be installed and maintained in full operating condition in any structure that meets any or all of the following requirements:
- (1) Construction of a new structure classified as Group A—Assembly Buildings; or
 - (2) Construction of a new structure classified as Group B—Business Buildings; or
 - (3) Any building of four thousand (4,000) square feet or larger; or
 - (4) Renovation of any structure in which more that twenty-five (25) percent of the structure is altered and the total area of the building is four thousand (4,000) square feet or greater.
- (b) The only exception to this section is for those structures designated as residential group R-3 or R-4 structures.

(Ord. of 9-24-90(1))

⁴⁵Cross reference(s)—Fires prohibited at the beach without a permit from the fire department, § 4-101Cross reference(s)—(b); buildings and building regulations, ch. 5Cross reference(s)—; fire limits designated, § 5-1; Fire-O-Matic switches to be located above fire door, § 5-179Cross reference(s)—; civil defense and disaster relief, ch. 6Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; traffic and motor vehicles, ch. 13Cross reference(s)—; utilities, ch. 14Cross reference(s)—; fire and explosive hazards, app. A, § XI-A.

State law reference(s)—Fires, fire departments and fire districts, M.G.L. ~~A~~ c. 48; fire prevention, M.G.L. ~~A~~ c. 148; disposal of burned or dangerous buildings, M.G.L. ~~A~~ c. 139, §§ 1—3; injuring fire alarm apparatus, M.G.L. ~~A~~ c. 266, §§ 11—18; false fire alarms, M.G.L. ~~A~~ c. 269, § 13State law reference(s)—.

Sec. 7-3. Sprinkler system requirements.

- (a) A sprinkler system (as defined by ~~NFPA~~the National Fire Protection Association, NFPA) shall be installed and maintained in full operating condition throughout the entire structure when the structure meets any or all of the following requirements:
- (1) New structures seven thousand five hundred (7,500) square feet or greater;
 - (2) When a structure is altered or an addition is put on a structure and the total area is seven thousand five hundred (7,500) square feet or greater.
- (b) The only exception to this section shall be for residential structures defined as R-3 or R-4 structures.
(Ord. of 9-24-90(1))

Sec. 7-4. Annual master box connection fee.

Each fire alarm user shall, on or before July 1 of each year, remit to the city treasurer/collector a connection fee of ~~three hundred dollars (\$300.00)~~ for each master box connection to the municipal fire alarm system as defined in appendix B.
(Ord. of 5-12-14(1))

Cross reference(s)—Fees schedule, appendix B.

Secs. 7-5—7-25. Reserved.

ARTICLE II. STANDARDS⁴⁶

Sec. 7-26. Adoption of fire prevention code.

The Fire Prevention Code, dated May 15, 2020 of the 1987 edition, and all National Fire Codes and Standards, ~~1988-2015~~ Edition, Volumes 1 through 174, as or as may be amended time to time as published by the National Fire Protection Association is hereby adopted by reference as the fire prevention codes of the city as if fully set out herein, except as amended or revised in this chapter.
(Code 1971, §§ 10-1, 10-2)

Sec. 7-27. Annual building inspection; written report.

- (a) Annually, there shall be made in the city an inspection of all public buildings, halls, churches, and any other structure in which the public gathers including factories, places of amusement and all places of business which are open to the public.

⁴⁶Cross reference(s)—Buildings and building regulations, ch. 5Cross reference(s)—.

State law reference(s)—Authority of city to establish, by ordinance, rules for explosives, M.G.L. c. 148, § 9.

(b) A written report in detail shall be made in the month of January of each year and submitted to the city council of the conditions found of all structures inspected.

(Code 1971, § 10-4)

Sec. 7-28. Fees.

~~(a) The fees previously charged for such keeping, or storage of flammables or explosives are hereby repealed and replaced by the fees listed in subsection (b) of this section.~~

~~(b) The fee for keeping or storage of flammables or explosives, as regulated by M.G.L. ch. 148, § 13 shall be as follows defined in appendix B.~~

~~Class A, B and C Liquids~~

1 gallon to 10,000	\$ 50.00
10,001 gallons to 25,000	100.00
25,001 gallons to 50,000	200.00
50,001 gallons and over	300.00

(Ord. of 4-9-90)

Chapter 8 HEALTH AND SANITATION⁴⁷

ARTICLE I. IN GENERAL

Sec. 8-1. No smoking at certain outdoor municipal facilities.

- (a) *Smoking prohibited.* No person shall smoke nor shall any person be permitted to smoke in or at any of the following municipal facilities:
- (1) Within ten (10) feet of any portion of the Inn Street Playground (Map 004, Parcel 002).
 - (2) Within ten (10) feet of any portion of the Inn Street Fountain (Map 004, Parcel 030).
- (b) *Posting notice of prohibition.* Every board, commission, or officer having control of premises upon which smoking is prohibited by and under the authority of this section shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).
- (c) *Violations and penalties.* Any private individual who violates this chapter shall be subject to a fine as defined in chapter 1, section 1-18. ~~of one hundred dollars (\$100.00).~~ Each day a violation occurs will be considered a separate offense. As an alternative to initiating criminal proceedings, violations of this section may be enforced in the manner provided in M.G.L. ~~A.~~ c. 40, § 21D. Any fines imposed under the provisions of this section shall ~~not~~ be paid to the City of Newburyport. For the purposes of this section, the following shall be enforcing officers: police officers, and employees of the health department, or their designees.

(Ord. of 11-13-17(2))

Cross reference(s)—General provisions, ch. 1, fines schedule § 1-18

Sec. 8-2. Non-residential districts.

For purposes of this chapter 8, the term "non-residential districts" shall mean the following zoning districts regulated under the zoning ordinance: agricultural and/or conservation (Ag/C), business (B-1, B-2, and B-3), and industrial (I-1, I-1B, and I-2).

(Ord. of 4-30-18)

⁴⁷Cross reference(s)—Administration, ch. 2Cross reference(s)—; animals, ch. 3Cross reference(s)—; disposal of animal waste, § 3-2; boats, docks and waterways, ch. 4Cross reference(s)—; buildings and building regulations, ch. 5Cross reference(s)—; plumbing regulations, § 5-81 et seq.; earth removal, § 5-226Cross reference(s)— et seq.; fire prevention and protection, ch. 7Cross reference(s)—; junk dealers and collectors, § 9-61Cross reference(s)— et seq.; licenses, permits and business regulations, ch. 9Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; utilities, ch. 14Cross reference(s)—; zoning, app. A; radioactivity or electrical disturbances, app. A, § XI-B; smoke, app. A, § XI-C.

State law reference(s)—Public health, M.G.L. ~~A.~~ c. 111; composition, appointment, etc., of board of health, M.G.L. ~~A.~~ c. 111, § 26 et seq.

Sec. 8-3. Regulation of the use of glyphosate.

- (a) *Introduction.* There is widespread use of pesticides including herbicides for the control of weeds and other unwanted vegetation, insecticides for controlling a wide variety of insects, fungicides used to prevent mold and mildew and disinfectants for the prevention of bacteria and various compounds for the control of mice and rats. Any government, whether local, state or federal, has the inherent duty to protect the health and safety of its citizens and to regulate the use of its own property. As appropriate and based upon scientific data analysis, the City of Newburyport should respond to any credible harm to its citizens by taking necessary measures on the use of its own property.
- (b) *Health concerns and rationale.* Certain herbicides, ~~such as the brand names Roundup and Rodeo,~~ contain glyphosate in an effort to control weeds and broadleaf plants. Although there has [been] some disagreement among the scientific community, the International Agency for Research on Cancer ('IARC') has classified glyphosate as 'probably carcinogenic.' Roundup-Herbicides with glyphosate is used most heavily on corn, soy, and cotton crops that have been genetically modified to withstand glyphosate. Glyphosate binds tightly to the soil and persist for up to six (6) months depending on the type of soil.
- (c) *Definition.*
- Glyphosate:* a synthetic compound which is a nonselective systemic herbicide, particularly effective against perennial weeds. Glyphosate will kill most plants by preventing the plants from making certain proteins that are needed for plant growth. Glyphosate stops a specific enzyme pathway, the shikimic acid pathway. The shikimic acid pathway is necessary for plants and some microorganisms.
- (d) *Authority.* The provisions of M.G.L. ~~A~~ c. 132B, the Massachusetts Pesticide Control Act, provide a comprehensive scheme regarding the regulation of pesticides in the commonwealth. The city has certain inherent authority to regulate the use of its own property. This ~~code ordinance~~ shall act as a measure of the city to regulate city-owned property and therefore is within the purview of the city. It does not seek to regulate the overall use of pesticides.
- (e) *Regulation.* For the aforementioned reasons the use and application of glyphosate, either by the City of Newburyport employees or by private contractors, is prohibited on all parks commission lands and City of Newburyport lands, including school fields which shall comply with the School Children and Families Protection Act; except for certain exemptions and emergency waivers. Said exemptions and emergency waivers and any necessary regulations thereunder shall be issued and authorized by the Newburyport Board of Health.
- (f) *Regulations and enforcement.* The Newburyport Board of Health, pursuant to M.G.L. ~~A~~ c. 111, § 31, may make reasonable health regulations and furthermore, pursuant to M.G.L. ~~A~~ c. 111, § 122, may make regulations for the public health and safety relative nuisances and causes of sickness.

The Board of Health by and through its health director is hereby designated as the enforcement agent for any violations hereunder.

- (g) *Penalties.* The penalty for any violation of this ~~ordinance code~~ shall be a fine ~~in the amount of five hundred dollars (\$500.00) for a first offense and one thousand dollars (\$1000.00) for second and subsequent offenses as established in chapter 1, section 1-18.~~ Each application of a prohibited product under this ~~ordinance article~~ shall be deemed to be a separate offense. Citations for violations of a prohibited product may be in such form as the board of health may determine.

(Ord. of 7-15-19)

Cross reference(s)—General provisions, ch. 1, fines schedule § 1-18

Secs. 8-4—8-25. Reserved.

ARTICLE II. ADMINISTRATION

DIVISION 1. GENERALLY

Secs. 8-26—8-40. Reserved.

DIVISION 2. BOARD OF HEALTH⁴⁸

Sec. 8-41. Membership.

The board of health shall consist of three (3) persons. One (1) member shall be a physician. No member shall be a member of the city council.

(Code 1971, § 12-13)

State law reference(s)—Similar provision, M.G.L. ~~A~~ c. 111, § 26.

Sec. 8-42. Appointment of members; term.

The members of the board of health shall be appointed by the mayor subject to confirmation by the city council. One (1) member shall be appointed in January of each year for a three-year term beginning on the first Monday of the following February.

(Code 1971, § 12-14)

State law reference(s)—Similar provision, M.G.L. ~~A~~ c. 111, § 26.

Sec. 8-43. Annual organization; selection of chairman; rules for government; employees.

The board of health shall organize annually in the month of February by the choice of one (1) of its members as chairman; make rules for its own government and for the government of its officers and assistants; may elect a clerk and agent who shall not be a member of the board; and may employ the necessary officer and assistant to execute the health laws and its regulations. It may fix the salary or other compensation of its clerk and other officers, but such salary or other compensation shall not exceed the amount appropriated by the city council for such purposes.

(Code 1971, § 12-15)

⁴⁸Cross reference(s)—Boards, committees, commissions, § 2-61Cross reference(s)— et seq.

State law reference(s)—Board of health, M.G.L. ~~A~~ c. 111, § 26 et seq.

Sec. 8-44. Assistance of police.

The board of health may call upon the police department to aid it in the performance of its duties.

(Code 1971, § 12-17)

Cross reference(s)—Police, § 2-346Cross reference(s)— et seq.

Sec. 8-45. Contracts and licenses for removal of garbage, house offal, etc.

The board of health may make contracts and issue licenses for the collection, removal and disposal of garbage, dead animals, decayed and decaying matter, and of ashes, rubbish and other nondecaying refuse substances and things. All such contracts and licenses shall contain the condition that such work shall be performed to the satisfaction of the board of health. All contracts must be approved by the mayor.

(Code 1971, §§ 12-18, 12-19)

Cross reference(s)—Solid waste collection and disposal, § 8-81Cross reference(s)— et seq.

Sec. 8-46. License required; revocation for violation.

No person shall engage in the business of collecting, removing or disposing of any of the substances or things mentioned in this article, without a license issued by the board of health. Any person violating the provisions of this article shall have ~~his or its~~ their license revoked by the board.

(Code 1971, § 12-21)

Sec. 8-47. Conditions governing licenses; recording of licenses.

All licenses granted pursuant to section 8-45 shall state that they are issued subject to the provisions of the city ~~ordinances code now or hereafter in force~~ and all rules of the board of health ~~now existing or which shall hereafter be made~~, and also subject to forfeiture for any violation thereof. All such licenses shall be recorded by the clerk.

(Code 1971, § 12-20)

Secs. 8-48—8-80. Reserved.

ARTICLE III. SOLID WASTE⁴⁹

DIVISION 1. GENERALLY

⁴⁹Cross reference(s)—Contracts and licenses for removal of garbage, § 8-45Cross reference(s)—; liquid or solid waste, app. A, § XI-E.

State law reference(s)—Solid waste, M.G.L. ~~A.~~ c. 111, § 3113; littering highways, M.G.L. ~~A.~~ c. 270, § 16State law reference(s)—.

Sec. 8-81. Business district for municipal collection of trash and recycling services described.

The boundaries of the business district are Water Street, ~~commencing at 29 Water Street (the~~ W.E. Atkinson Co. building), Market Square, Merrimac Street to Green Street (west side), State Street, Pleasant Street to Titcomb Street, Green Street, Harris Street, Hale's Court, Unicorn Street, Prince Place, Inn Street, Center Street, Liberty Street to Center Street, and Middle Street to Center Street.

(Ord. of 8-10-81, § 12-22)

Cross reference(s)—Establishment of districts and district regulations, app. A, §§ III, V.

Sec. 8-82. ~~Commercial~~ Containerization and removal.

All establishments, institutions and residential inhabitants which generate solid waste for collection by refuse contractor and city department of public works, and previously approved by them, shall abide by the requirements prescribed in this article.

(Ord. of 8-10-81, § 12-23)

Sec. 8-83. Regulations.

- (a) No disposable refuse shall be exhibited for collection prior to 5:00 p.m. on the day before the day of collection.
- (b) (1) Commercial and residential disposable refuse in the downtown district, as defined in section 8-81, must be placed in closed containers. All loose material shall be broken down and securely tied.
(2) Residential disposable refuse outside of the downtown district must be placed in closed containers or durable heavy bags and securely tied. All loose material shall be broken down and securely tied.
- (c) Commercial refuse containers shall be removed from sidewalks within one (1) hour after collection. Residential containers shall be removed from the street by 6:00 p.m. on the day of collection.
- (d) It shall be unlawful for any owner, manager or employee of a commercial establishment or institution or resident of the boundary area described in section 8-81 to deposit solid waste from that commercial establishment, institution or residence in any receptacle maintained by the city for the disposal of litter by pedestrians.
- (e) All commercial, institutional and residential customers ~~will~~ shall place disposable refuse in such a manner as not to interfere with motorist or pedestrian travel.
- (f) Enforcement of these provisions shall be by the police department, health department, board of health or department of public services. Each offense of subsections (a) through (e) and (h) shall be punishable by a fine as established in chapter 1, section 1-18, of twenty-five dollars (\$25.00).
- (g) Except in non-residential districts, or as expressly approved in writing, in advance, by the administrative official charged to enforce the Newburyport Recycling Code, disposal refuse shall be picked up and/or emptied into a vehicle, nor shall any such vehicle or related mechanical equipment be left idling or otherwise operating within the city of Newburyport between the hours of 10:00 p.m. and 7:00 a.m. on any day of the year. No dumpsters shall be picked up and/or emptied in residential areas between the hours of 10:00 p.m. and 7:00 a.m. Penalty for violation of this subsection ~~shall be a written warning for the first offense, followed by a three hundred dollar fine for each subsequent offense issued to the operator of the vehicle~~ is established in chapter 1, section 1-18. Enforcement of this provision shall be by the police department.

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(h) Said disposable refuse shall be the property of the owner, representative of the owner, occupant or operator.

(Ord. of 8-10-81, § 12-24(1)—(4), (6)—(8); Ord. of 12-11-89; Ord. of 10-30-00; Ord. of 3-26-01(1); Ord. of 8-8-11(2); Ord. of 3-26-07)

Cross reference(s)—General provisions, ch. 1, fines schedule § 1-18

Sec. 8-84. Litter in public places.

No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the city, except in public receptacles or in authorized private receptacles provided for collection of such refuse. Each such offense shall be punishable by a fine of fifty dollars (\$50.00) as established by chapter 1, section 1-18.

(Code 1971, § 16-18; Ord. of 8-10-81, § 12-26; Ord. of 12-11-89)

Cross reference(s)—General provisions, ch. 1, fines schedule § 1-18

Cross reference(s)—Nuisances, § 8-101
Cross reference(s)— et seq.; parks and recreation, ch. 11
Cross reference(s)—; Market Landing Park, Atkinson Common and Bartlett Mall, § 11-26
Cross reference(s)— et seq. streets, sidewalks and other public places, ch. 12
Cross reference(s)—; streets, § 12-26
Cross reference(s)— et seq.; sidewalks, § 12-51
Cross reference(s)— et seq.; public places, § 12-91 et seq.

State law reference(s)—Disposal of rubbish improperly, M.G.L. c. 270, § 16
State law reference(s)—.

DIVISION 2. RECYCLING

Sec. 8-85. Title.

This division shall be known and may be cited as "~~Recycling Ordinance of the City of~~ Recycling Code of Newburyport Recycling Code" hereinafter referred to as "this division."

(Ord. of 8-9-93)

Sec. 8-86. Purpose.

The purpose of this mandatory division is to require ~~as stipulated herein~~ the separation and collection of recyclable materials to facilitate the recovery of such materials in a manner that allows them to be recycled and thereby reducing the City of Newburyport's contribution to the waste stream.

(Ord. of 8-9-93)

~~**Sec. 8-87. Administration and enforcement.**~~

~~(a) *Administrative official.* This division shall be administered through the City of Newburyport board of health and its health department under the auspices of its director or their designee. The director shall have such powers as conferred to the position by this division.~~

~~(b) *Duties of administrative official.* Acting as an agent through the board of health it shall be the duty of the administrative official to enforce the terms and conditions of this division and to act as management official toward the implementation of this division and contracts referred to herein.~~

~~(Ord. of 8-9-93)~~

Sec. 8-88. Definitions.

- (a) *General.* The intent of this section is to provide definitions for certain terms, words and/or series of words which are to be utilized in the interpretation of this division whether or not the definition stated herein is contrary to common usage or contrary as quoted in a common dictionary, except as may otherwise be defined. All words in the plural number include the singular number. All words used in the present tense include the future tense.
- (b) *Definitions.*
- (1) *City* shall mean the City of Newburyport.
 - (2) *Ashes* is the residue from the burning of wood, coal, coke, or other combustible material.
 - (3) *Bulk item* shall mean an item of solid waste larger than twenty-four (24) inches by thirty-six (36) inches by eighteen (18) inches and/or heavier than fifty (50) pounds.
 - (4) *Debris* shall mean stones, dirt, demolition material, broken concrete and other like material.
 - (5) *Yard waste* shall mean brush, branches, small trees and bushes, grass clippings, leaves and other similar material.
 - (6) *Collector* shall mean the agency, corporation, firm and or persons responsible as contracted by the city for the collection of recyclables.
 - (7) *Garbage* is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food.
 - (8) *Household* shall mean any combination of persons living in a dwelling unit as defined by the State of Massachusetts Sanitary Code as amended.
 - (9) *Person* is any individual, firm, partnership, association, corporation, or organization of any kind.
 - (10) *Recyclable* means any discarded material which may be ~~reclaimed~~ reclaimed, and which are considered reusable and/or saleable by the city. For the purpose of this ~~division~~ division, they shall be defined as all materials listed in section 8-90(b), materials collected.
 - (11) *Regulations* shall mean those regulations as set forth by the administrative official for the purpose of implementing the terms and intent of this division.
 - (12) *Rubbish* is all non-putrescible solid wastes (excluding ashes and recyclables), consisting of both combustible and noncombustible wastes such as, paper, cardboard, rags, metal, wood, glass, bedding, crockery, and other similar materials.
 - (13) *Shall* is considered as mandatory and directory.
 - (14) *Solid waste* is all putrescible and non-putrescible refuse (except body wastes) including garbage, rubbish, ashes, dead animals, and solid market and industrial wastes.
 - (15) *Used* includes designed, intended, proposed, existing, or arranged to be used.
 - (16) *Board of health* shall mean the board of health of the City of Newburyport.

(Ord. of 8-9-93)

Sec. 8-87. Administration and enforcement.

- (a) Administrative official. This division shall be administered through the City of Newburyport board of health and its health department under the auspices of its director or their designee. The director shall have such powers as conferred to the position by this division.
- (b) Duties of administrative official. Acting as an agent through the board of health it shall be the duty of the administrative official to enforce the terms and conditions of this division and to act as management official toward the implementation of this division and contracts referred to herein.

(Ord. of 8-9-93)

Sec. 8-89. Compliance.

This division shall apply to all "persons," who currently or hereafter receive services from the city or any company contracted by the city for the collection of solid waste. Compliance with the requirement to recycle allowable materials as defined herein, section 8-90(b), materials collected, items (1) through and including (4), is mandatory by all "persons." Further no person shall cause any allowable materials as defined herein to be placed in the solid waste which is caused to be picked up by the city.

(Ord. of 8-9-93)

Sec. 8-90. Collection.

- (a) *Area and schedule of collection.* Collection shall be in all areas and to all persons who are currently or hereafter served by the solid waste collection services of the city. Zones for collection of recyclable materials as defined in the regulations shall be as indicated on the map titled "Solid Waste and Recyclable Zones" which is kept on file in the offices of the health department. Collections shall be pursuant to the regulations of the board of health as set forth through section 8-92 herein. The scheduling of collections shall be established by the administrative official pursuant to the regulations set forth by board of health. Except in non-residential districts, or as expressly approved, in advance, by the administrative official, no recyclable materials shall be picked up and/or emptied into a vehicle, nor shall any such vehicle or related mechanical equipment be left idling or otherwise operating within the City of Newburyport between the hours of 10:00 p.m. and 7:00 a.m., on any day of the year. Penalty finer for violation of this subsection shall be thereby established in chapter 1, section 1-18, a written warning for the first offense, followed by a three hundred dollar (\$300.00) fine for each subsequent offense issued to the operator of the vehicle. Enforcement of this provision shall be by the police department, board of health, or department of public services.
- (b) *Allowable materials.* The following allowable materials collected for the purposes of this division shall be limited to those materials that are defined as recyclable as determined by the Massachusetts Department of Environmental Protection (DEP). The following allowable materials are considered recyclable and must be in the condition as stated below:
- (1) Paper products and cardboard. Clean and unsoiled mixed paper, newspaper, magazines and cardboard boxes, not including miscellaneous stationery products or paper products other than those listed in the following categories:
 - ~~a. Newsprint, all newspapers and newspaper advertisements, supplements, comics and enclosures;~~
 - ~~b. Computer paper, noncarbonized and untreated;~~

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~~e. Magazines, periodical reading material.~~

- (2) ~~Glass products. Three-emptied and rinsed colors of glass, clear, brown, green, which shall be limited to unbroken glass bottles and jars emptied of all contents with and without caps. This shall not include dishes, crockery, window glass, glass blocks, plate glass or spark plugs or any other like glass material or object.~~
 - (3) ~~Metal products. Recyclable-emptied and rinsed food and beverage metal products cans shall be limited to such as tin, steel and aluminum cans and containers. Recyclable metal products shall not include any: bulk items, machinery, devices or implements such as appliances, washers, refrigerators, stoves, hot water heaters, bicycles, springs, tire rims, pipes or scrap metal or other like material.~~
 - (4) ~~Plastic products. Recyclable plastic containers such as bottles, jars, jugs and tubs from kitchen, laundry and bath emptied, rinsed and cap back on labeled #1 through #7 are allowed.~~
- (c) *Set-out requirements.* Recyclables shall be separate from solid waste and debris and placed at the street curb or curb line for collection at the scheduled time and in the manner as set forth ~~herein by the city's policies and in the regulations.~~ Where required persons shall use the appropriate recycling bin as supplied by the city. Persons placing any recyclable shall do so in a manner that the recyclable will not become a hazard to public travel, health, safety or to be a nuisance of any sort.
- (1) *Paper products.* All such products shall be placed in paper bags, ~~commonly used for groceries. In the event of inclement weather paper products shall be secured in the manner herein above and covered by a secured plastic or placed inside a plastic bag.~~
 - (2) *Glass products.* All such products shall be placed in recycling bins as supplied by the City of Newburyport.
 - (3) *Plastic products* All such products shall be crushed and placed in the recycling bin as supplied by the City of Newburyport.
- (d) *Anti-scavenging.* Except as contracted with the City of Newburyport no person shall pick up or procure any of the above which is deemed recyclable once the material has been set out for collection by the city under this division.

(Ord. of 8-9-93; Ord. of 9-26-11(1); Ord. of 4-30-18)

Cross reference(s)—General provisions, ch. 1, fines schedule § 1-18

Sec. 8-91. City to recycle and dispose properly of yard waste.

- (a) *Use of recycled paper products.* The City of Newburyport, including any and all departments, shall procure paper products such that no less than seventy-five (75) percent, calculated or by cost, of such paper products each fiscal year shall be labeled as "recycled" by the Forest Stewardship Council (FSC), or its equivalent. It shall be the responsibility of each department head to ensure the implementation of this section.
- (b) *Recycling of recyclable materials.* The City of Newburyport, including any and all departments, shall develop and implement a recycling program for all recyclable materials with the intent of recycling no less than seventy-five (75) percent of said recyclable materials. The board of health may promulgate regulations regarding this section. It shall be the responsibility of each department head to ensure the implementation of this section.
- (c) *Disposal of yard waste.* The City of Newburyport, including any and all departments, shall dispose of all yard waste generated from city-owned properties using the Colby Farm Lane Facility, unless leaving such waste on site is merited by best practices for responsible forestry as promulgated by the National Association of

Forestry, or unless otherwise directed by the board of health in response to a temporary emergency. The board of health may promulgate regulations regarding this section. It shall be the responsibility of each department head to ensure the implementation of this section. Any city-operated compost facility shall be approved by the sustainability office and shall conform to M.G.L. ~~A~~ c. 111 § 150A.

(Ord. of 8-9-93; Ord. of 6-8-20(2))

Editor's note(s)—Ord. of 6-8-20(2) amended § 8-91Editor's note(s)— and in doing so changed the title of said section from "City to recycle" to "City to recycle and dispose properly of yard waste," as set out herein.

Sec. 8-92. Regulations.

The board of health is hereby authorized to enact from time to time such regulations as it shall deem in the public interest for the scheduling, collection, separation, recovery, removal, storage, rates for fines and disposition of recyclable material. Such regulations shall require a two-thirds vote of the board of health for passage. The regulations shall become effective immediately upon passage and they shall be published within seven (7) days of passage once in a daily newspaper having circulation in the City of Newburyport.

(Ord. of 8-9-93)

Sec. 8-93. Enforcement and penalties.

Any person, firm, or corporation that violates or neglects to comply with any provisions of this division or any regulation promulgated pursuant hereto shall be fined as established in chapter 1, section 1-18. ~~in an amount not to exceed one hundred dollars (\$100.00) for each violation.~~ Such fines shall be of a noncriminal nature and shall be as follows: ~~First violation fifty dollars (\$50.00), the second violation seventy five dollars (\$75.00), and the third one hundred dollars (\$100.00).~~ Such fines shall be levied by the administrative official as defined above. Enforcement of this division shall be the responsibility of the board of health.

(Ord. of 8-9-93)

Cross reference(s)—General provisions, ch. 1, fines schedule § 1-18;

Sec. 8-94. Responsibilities of collector.

~~The collector shall be required to comply with all responsibilities as required in the most recent contract or amendments thereto between the City of Newburyport and said collector.~~ If the City of Newburyport directly assumes the responsibility of collector then the city through its board of health shall develop a scope of responsibilities to identify all responsibilities of the city in collection of recyclables.

(Ord. of 8-9-93)

Secs. 8-94—8-100. Reserved.

~~**DIVISION 3. MERCURY THERMOMETER BAN**~~

~~**Sec. 8-95. Definitions.**~~

~~City means City of Newburyport.~~

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~~Mercury thermometer means a mercury-containing product that is used to measure body temperature. A mercury-containing product is a product, instrument or piece of equipment into which elemental mercury or mercury compounds are intentionally added during its formulation or manufacture and in which the continued presence of mercury is desired to provide a specific characteristic or to permit a specific function.~~

~~Health care facility means any hospital, nursing home, extended care facility, long-term facility, clinic or medical laboratory, state or private health or mental institution, clinic, physician's office or health maintenance organization.~~

~~Manufacturer means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that produces a mercury fever thermometer. If the mercury thermometer is produced in a foreign country, the manufacturer is the importer or domestic distributor.~~

~~(Ord. of 5-14-01(1))~~

~~**Sec 8-96 Retail sale prohibited**~~

~~A person shall not sell or supply mercury fever thermometers to consumers and patients, except by prescription. The manufacturers of mercury fever thermometers shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur with all mercury fever thermometers sold through prescriptions.~~

~~(Ord. of 5-14-01(1))~~

~~**Sec 8-97 Manufacturing prohibited**~~

~~It shall be unlawful for any person to manufacture a mercury thermometer in the city.~~

~~(Ord. of 5-14-01(1))~~

~~**Sec 8-98 Importation prohibited**~~

~~It shall be unlawful for any facility to import, purchase, or distribute a mercury thermometer in the city, except in the case of medical necessity as determined by a licensed physician.~~

~~(Ord. of 5-14-01(1))~~

~~**Sec 8-99 Restriction on the sale of mercury thermometers**~~

~~Six (6) months after the adoption of this division, a person may not sell or supply mercury thermometers to consumers and patients.~~

~~(Ord. of 5-14-01(1))~~

~~**Sec 8-100 Penalty**~~

~~Any person who violates this division shall be subject to a fine of not more than three hundred dollars (\$300.00) per unit sold. The board of health shall have jurisdiction over outreach and enforcement of this division.~~

~~(Ord. of 5-14-01(1))~~

ARTICLE IV. NUISANCES⁵⁰

DIVISION 1. GENERALLY

Sec. 8-101. Noise.

- (a) *No unnecessary emissions of noise.* No person owning, leasing, or controlling a source of sound shall willfully, negligently, or through failure to provide necessary equipment, service, or maintenance, or to take necessary precautions, cause, suffer, allow, or permit unnecessary emissions of noise from said source of sound.
- (1) This section shall apply to, but shall not be limited to, prolonged unattended sounding of burglar alarms, construction and demolition equipment which characteristically emit sound but which may be fitted and accommodated with equipment such as enclosures to suppress sound, or may be operated in a manner so as to suppress sound, suppressible and preventable industrial and commercial sources of sound, and other manmade sounds that cause noise.
- (2) This section shall not apply to sounds emitted during and associated with: (A) parades, public gatherings, or sporting events, for which all required city permits have been issued; (B) emergency police, fire, and ambulance vehicles; (C) police, fire, and civil and national defense activities; (D) customary, domestic equipment such as lawn mowers, leaf blowers, and power saws, between the hours of 7:00 a.m. and 10:00 p.m.
- (b) *Noise defined.* For purposes of this section, noise shall mean sound of sufficient intensity and/or duration as to: (i) cause a nuisance; (ii) be injurious, or be on the basis of current information, potentially injurious to human health or animal life, to vegetation, or to property; or (iv) unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business. A source of sound shall be considered to constitute unlawful noise under this section if such source: (i) increases the broadband sound level by more than ten (10) dB(A) above ambient; and/or (ii) produces a "pure tone" condition - when any octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more.
- (c) *Measurement.* The criteria of the previous subsection shall be measured both at the property line and at the nearest inhabited residence. "Ambient" is defined as the background A-weighted sound level that is exceed[ed] ninety (90) percent of the time, measured during vehicle or equipment operating hours. The ambient may also be established by other means with the consent of the Massachusetts Department of the Environmental Protection.
- (d) *Vehicle deliveries and idling vehicles and mechanical equipment.* Except in non-residential districts, or as expressly approved in writing, in advance, by the mayor, the city marshal, the director of the department of public services, or the administrative official charged to enforce the recycling ordinance code, no vehicular

⁵⁰Cross reference(s)—Disposal of animal waste, § 3-2; nuisances created by dogs, § 3-28Cross reference(s)—; litter in public places prohibited, § 8-84Cross reference(s)—; junk dealers and collectors, § 9-61Cross reference(s)— et seq.; licenses, permits and business regulations, ch. 9Cross reference(s)—; parks and recreation, ch. 11Cross reference(s)—; streets, sidewalks and other public places, ch. 12Cross reference(s)—; traffic and motor vehicles, ch. 13Cross reference(s)—; zoning, app. A; fly ash, dust, fumes, vapors, etc., app. A, § XI-D; vibrations, app. A, § XI-F; noise, app. A, § XI-G; odors, app. A, § XI-H.

deliveries shall occur, nor shall any commercial or non-commercial vehicle or mechanical equipment be left idling or otherwise operating audibly within the City of Newburyport between the hours of 10:00 p.m. and 7:00 a.m., on any day of the year. This restriction shall apply, without limitation, to all construction vehicles and equipment related to demolition and construction.

- (e) ~~Enforcement.~~ The provisions of this section shall be enforced by the police department or the department of health, and the building commissioner in the connection with activities undertaken pursuant to the state building code, and the zoning administrator in connection with activities undertaken pursuant to the Newburyport Zoning Ordinance.

(Ord. of 4-30-18)

Secs. 8-102—8-120. Reserved.

DIVISION 2. JUNKED, WRECKED, ABANDONED, INOPERATIVE MOTOR VEHICLES⁵¹

Sec. 8-121. Application of division.

The provisions of this division shall not apply to the following persons:

- (1) A person holding a secondhand motor vehicle dealer's license under M.G.L. ~~A~~ c. 140, § 58.
- (2) Persons having control of farm property, as to the operative vehicles thereon which are reasonably related to the conduct of farming on that property.
- (3) The federal, state, or city governments or agencies thereof.

(Code 1971, § 16-59)

Sec. 8-122. Partially dismantled, inoperative, etc., vehicles on public property; exception.

- (a) It shall be unlawful for any person to leave any partially dismantled, inoperative, wrecked, junked, unregistered motor vehicle or a motor vehicle not having a valid inspection sticker on public property or a publicly maintained way within the city, except for registered and inspected motor vehicles temporarily disabled by the weather or mechanical failure.
- (b) A notice shall be affixed to the vehicle by the police department ordering the vehicle removed within seventy-two (72) hours. Failure to remove the vehicle after expiration of the seventy-two (72) hours shall cause the police department to order the towing of the vehicle under their direction and at the owner's expense.

(Code 1971, § 16-60; Ord. of 8-9-82; Ord. of 2-24-86)

State law reference(s)—Similar provisions, M.G.L. ~~A~~ c. 90, § 22C.

⁵¹Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—; traffic and motor vehicles, ch. 13Cross reference(s)—; zoning, app. A.

State law reference(s)—Removal of abandoned or stolen vehicles from public property, M.G.L. ~~A~~ c. 90, § 24H; removal and disposal of abandoned or stolen motor vehicles from public property, M.G.L. ~~A~~ c. 90, § 22C.

Sec. 8-123. Unregistered vehicles on private property—Permit required.

It shall be unlawful for any person having control of property within the city as owner, tenant or otherwise to allow to remain on such property without a permit any unregistered inoperative motor vehicle or more than one (1) unregistered operative motor vehicle, unless such vehicle or vehicles are within a wholly enclosed building.

(Code 1971, § 16-61)

Cross reference(s)—Zoning, app. A.

Sec. 8-124. Same—Permit application; information set out in permit; permits to be personal to grantee.

- (a) The city marshal shall upon application by any person having control of property within the city issue a permit to keep one (1) or more motor vehicles otherwise prohibited by this division if ~~he~~they finds that such vehicle is:
- (1) Actually being repaired or dismantled, or is being stored temporarily pending repair, dismantling or registration as the case may be; and
 - (2) Does not constitute a public nuisance or a danger to persons.
- (b) The city marshal shall set out in the permit:
- (1) The number and type of vehicles to be kept;
 - (2) The duration of the permit, which shall be reasonably related to purpose for which the vehicle is being kept, but which may not exceed two (2) years; and
 - (3) Such conditions as may reasonably be necessary to prevent the vehicle from becoming a public nuisance or a danger to persons.
- (c) Permits granted pursuant to this section are personal to the applicant and nonassignable, and do not run with the land.

(Code 1971, § 16-62)

Sec. 8-125. Enforcement.

The city marshal shall cause written notice by mail or personal service to any person who shall be in violation of this division. No complaint shall be issued by a police officer until thirty (30) days after such notice has been given, nor to any other person until forty (40) days after written notice has been given to the city marshal by such person of the alleged violation. A condition declared unlawful by this division shall be deemed to give rise to a separate offense on each day during which it exists after the giving of notice to the violator as herein provided.

(Code 1971, § 16-63; Ord. of 8-26-85(3))

Chapter 9 LICENSES, PERMITS AND BUSINESS REGULATIONS⁵²

ARTICLE I. IN GENERAL

Sec. 9-1. Lodging house licenses.

- (a) The license commission may grant licenses for lodging houses under M.G.L. ~~A~~ c. 140, § 23. Such licenses shall be for the period provided in M.G.L. ~~A~~ c. 140, § 4. A fee of ~~two dollars (\$2.00)~~ for such license is hereby established by the city council as established in appendix B.
- (b) The license commission may grant a general license to an owner of a bed and breakfast establishment. A bed and breakfast establishment shall be defined as an owner-occupied building containing no more than ten (10) guest rooms, not including living quarters for owner occupants and having a common entrance or entrances. Common cooking facilities may be included providing that service is limited to those who are owners of the building and those rooming in the building. Said general license shall be renewed annually for a fee of ~~twenty dollars (\$20.00)~~ as defined in appendix B.

(Code 1971, § 15-2; Ord. of 9-25-95)

Cross reference(s)— Fee schedule, appendix B.

State law reference(s)—Innholders and common victualers, M.G.L. ~~A~~ c. 140, §§ 1—21; lodging houses, M.G.L. ~~A~~ c. 140, §§ 22—32.

Sec. 9-2. Yard sales.

Any person or charitable organization may conduct a yard sale on their own premises at intervals of not less than two (2) months and for not more than two (2) consecutive days, after first securing a license from the city

⁵²Cross reference(s)—Administration, ch. 2Cross reference(s)—; the committee on licenses and permits shall review and make recommendations on all applications for licenses and permits that come under the jurisdiction of the city council, § 2-35Cross reference(s)—; finance, § 2-371Cross reference(s)— et seq.; condominium conversions, § 5-251Cross reference(s)— et seq.; animals, ch. 3Cross reference(s)—; licensing of dogs and kennels required, § 3-27Cross reference(s)—; boats, docks and waterways, ch. 4Cross reference(s)—; permit required for mooring of vessels in the harbor, § 4-81Cross reference(s)—; buildings and building regulations; ch. 5Cross reference(s)—; earth removal, § 5-226Cross reference(s)— et seq.; earth removal permit required, § 5-229Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; nuisances, § 8-101Cross reference(s)— et seq.; booths, tents, etc., for sale or exhibition prohibited in public places, § 12-4Cross reference(s)—; vehicles for hire, ch. 15Cross reference(s)—; signs, app. A, § VIII; permits, app. A, § X-D.

State law reference(s)—Licenses generally, M.G.L. ~~A~~ c. 140, § 1 et seq.; fee for innholders and common victualers licenses, M.G.L. ~~A~~ c. 140, § 2; fees for lodging house license, M.G.L. ~~A~~ c. 140, § 23; fee for intelligence office license, M.G.L. ~~A~~ c. 140, § 202; fee for bartering in junk, old metals, etc., license, M.G.L. ~~A~~ c. 140, § 202; secondhand goods dealer's license fee, M.G.L. ~~A~~ c. 140, § 202; secondhand motor vehicles license fee, M.G.L. ~~A~~ c. 140, § 59; pawnbroker's license fee, M.G.L. ~~A~~ c. 140, § 202; sale of firearms license fee, M.G.L. ~~A~~ c. 140, § 122; license fee for billiard and pool halls and bowling alleys, M.G.L. ~~A~~ c. 140, § 202; auctioneer's license fee, M.G.L. ~~A~~ c. 100, § 2; hawker and peddler of fruit and vegetable license fee, M.G.L. ~~A~~ c. 101, § 22.

clerk. There shall be no fee for a yard sale license. It shall be unlawful to conduct any yard sales without such license and any person or organization who violates or refuses to comply with any of the provisions of this section may upon conviction, be fined ~~a sum of fifty dollars (\$50.00)~~ for each offense as established in chapter 1, section 1-18. Each day or portion of a day that any violation is allowed to continue shall constitute a separate offense. The city clerk shall forward to the police department the names of approved licenses.

Items for sale are limited to personal property belonging to the applicant and ~~his~~ their immediate family, or if the applicant is a charitable organization, then in such event personal property donated to it shall be the only property to be sold at such yard sales.

It shall be the obligation of the holder of a yard sale permit to remove any and all publicly displayed notices of such yard sale by 12:00 noon on the date immediately following the last day of such yard sale as licensed by the city. Such sign for which a sign permit shall not be required, shall not exceed two (2) feet wide and two (2) feet long and shall not be affixed to any public property nor placed in such a manner as to obstruct the view of pedestrian or vehicular traffic.

(Ord. of 4-26-76; Ord. of 4-25-88(2); Ord. of 1-11-11)

Cross reference(s)—General provisions, ch. 1, fines schedule § 1-18; Zoning, appendix ~~app.~~ A.

Sec. 9-3. Self-service gasoline stations.

Gasoline stations in the city may offer self-service sale of gasoline so long as they offer full-service sale of gasoline.

(Ord. of 1-11-77; Ord. of 9-24-90(2))

Sec. 9-4. Notice of delinquencies—Furnished by treasurer/collector.

The treasurer/collector shall annually furnish to each department, board, commission, or division that issues licenses or permits, including renewals or transfers, a list of any person or business enterprise that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges for not less than a twelve-month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

(Ord. of 7-11-88, § 15-26)

Sec. 9-5. Same—Denial, revocation, etc., of license.

- (a) The department, board, commission or division which issues the license may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on the list of the treasurer/collector; provided, however, that written notice is given to the party and the treasurer/collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen (14) days after such notice. Such list shall be prima facie evidence for denial, revocation or suspension of a license or permit to any party. The treasurer/collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension.
- (b) Any findings made by the department board, commission or division issuing such license with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other legal ~~proceeding at law~~, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until a certificate is issued by the treasurer/collector that the party is in good

standing with respect to any and all local taxes, fees, assessments, betterments or other charges payable to the city as the date of issuance of such certificate.

(Ord. of 7-11-88, § 15-27)

Sec. 9-6. Same—Payment agreement.

The party shall be given an opportunity to enter into a payment agreement, thereby allowing the license to be issued and a certificate shall be issued indicating the limitations on the license or permit and the validity of such license shall be conditioned upon the satisfactory compliance with such agreement. Failure to comply with such agreement shall be grounds for the suspension or revocation of the license or permit; provided, however, that the party shall be given notice and a hearing as required by applicable provisions of law.

(Ord. of 7-11-88, § 15-28)

Sec. 9-7. Same—Waiver by council.

The city council, in its discretion, may waive such denial, suspension, or revocation, if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of ~~his~~ their immediate family, as defined in M.G.L. ~~A.~~ c. 268, § 1 in the business or activity conducted in or on the property.

(Ord. of 7-11-88, § 15-29)

Sec. 9-8. Nonapplication to certain licenses, permits.

The provisions of sections 9-4 through 9-7 shall not apply to the following licenses and permits:

- (1) Open burning, issued under M.G.L. ~~A.~~ c. 48, § 13;
- ~~(2) Bicycle permits, issued under M.G.L. ~~A.~~ c. 85, § 11A;~~
- ~~(3)~~ Sales of articles for charitable purposes, issued under M.G.L. ~~A.~~ c. 101, § 33;
- ~~(3)~~ Children work permits, issued under M.G.L. ~~A.~~ c. 149, § 69;
- ~~(4)~~ Clubs, associations dispensing food or beverage licenses, issued under M.G.L. ~~A.~~ c. 140, § 21E;
- ~~(5)~~ Dog licenses, issued under M.G.L. ~~A.~~ c. 140, § 137;
- ~~(6)~~ Fishing, hunting, trapping license, issued under M.G.L. ~~A.~~ c. 131, § 12;
- ~~(7)~~ Marriage license, issued under M.G.L. ~~A.~~ c. 207, § 28;
- ~~(8)~~ Public exhibition permits, issued under M.G.L. ~~A.~~ c. 140, § 181;

and any other such permits and licenses as the city council may from time to time determine.

(Ord. of 7-11-88, § 15-30)

ARTICLE II. BANNERS

Sec. 9-9. Defined.

Banners shall be defined as any display or sign which is hung along or across a public way in the city. Any individual or group wishing to hang such a banner must complete an application as prescribed by the committee on licenses and permits. Approval or disapproval of the application shall be made by the mayor or, in ~~his~~their absence, the city council president.

(Ord. of 10-29-90)

Sec. 9-10. Duration.

Upon receiving approval to hang such a banner, said banner may not be hung more than three (3) weeks prior to the event. The banner must also be removed no later than three (3) days after the conclusion of the event.

(Ord. of 10-29-90)

Sec. 9-11. Height.

Banners must be hung at least twenty (20) feet from the ground across public ways.

(Ord. of 10-29-90)

Sec. 9-12. Advertising of nonprofit events.

Banners may only be hung to advertise nonprofit events and said events must be held within the City of Newburyport.

(Ord. of 10-29-90)

Sec. 9-13. Use of utility company property.

The party responsible for hanging signage shall abide fully with any request or order made by authorized representatives of electric, Massachusetts Electric and/or New England Telephone, or other utility companies concerning the use of their property.

(Ord. of 10-29-90)

Sec. 9-14. Repair or removal.

Should the banner become entangled, ripped, or otherwise damaged, the party responsible for the banner shall, at their own expense and risk, repair or remove the banner.

(Ord. of 10-29-90)

Sec. 9-15. Liability.

The City of Newburyport shall not be responsible for hanging any such banner and the applicant agrees to hold the city harmless from any liability for the time period beginning with approval of and ending with removal of such banner.

(Ord. of 10-29-90)

Sec. 9-16. Penalty for violations.

Failure to comply with any of the above regulations shall subject the applicant to a fine of fifty dollars as established in chapter 1, section 1-18 ~~(\$50.00)~~ per day for each day that a regulation is violated.

(Ord. of 10-29-90)

Cross reference - General Provision, ch. 1 fines schedule § 1-18.

ARTICLE III. TAG DAYS

Sec. 9-17. Approval of city council required.

All Tag Days, so called, conducted in the city shall only be held with the approval of the city council.

(Ord. of 10-29-90)

Sec. 9-18. Nonprofit and charitable organizations.

Tag Days shall be held only by those organizations that have obtained nonprofit status, or by an organization that specifically states, in writing, that the funds collected shall be donated, in their entirety, to a specific charity.

(Ord. of 10-29-90)

Sec. 9-19. Limit on number.

The city council shall approve no more than two (2) such events per organization in any calendar year.

(Ord. of 10-29-90)

Sec. 9-20. Use of public way.

Tag Days shall not be conducted on any public way in the city without the written consent of the city council.

(Ord. of 10-29-90)

Sec. 9-21. Solicitors.

Approved Tag Day solicitors that solicit on private property shall abide by the wishes of the owner of the property.

(Ord. of 10-29-90)

Sec. 9-22. Frequency of events.

Tag Day events shall be held no more often than every two (2) weeks.
(Ord. of 10-29-90)

Secs. 9-23—9-25. Reserved.

ARTICLE IV. AMUSEMENTS⁵³

DIVISION 1. GENERALLY

Secs. 9-26—9-40. Reserved.

DIVISION 2. POOL AND BILLIARD TABLES AND BOWLING ALLEYS

Sec. 9-41. Council authority; term of license.

The city council may, under the provisions of M.G.L. ~~A~~ c. 140, §§ 177—180, grant licenses to keepers of pool and billiard tables and bowling alleys for the term of one (1) year from the first day of May unless sooner revoked.
(Code 1971, § 3-1)

State law reference(s)—Effective date of license, M.G.L. ~~A~~ c. 140, § 203.

Sec. 9-42. License fee.

The fee for each license granted under this article, as defined in appendix B, shall be ~~five dollars (\$5.00)~~ payable to the city clerk for the use of the city at such time as the license is granted.

(Code 1971, § 3-2)

Cross reference – Fee Schedule, appendix B.

Sec. 9-43. Hours of operation.

Hours of operation should be consistent with those designated in the license. No person keeping, owning or operating a pool or billiard table or bowling alley which is licensed under the provisions of this article shall allow or permit the same to be played on or used on Sunday or between the hours of 12:00 midnight and 7:00 a.m. on any other day.

(Code 1971, § 3-3)

⁵³State law reference(s)—Billiard and pool tables and bowling alleys, M.G.L. ~~A~~ c. 140, § 177 et seq.; automatic amusement devices, M.G.L. ~~A~~ c. 140, § 177A.

State law reference(s)—Minors admission to places of business, M.G.L. ~~A~~ c. 140, § 179.

Sec. 9-44. Obstructing view of interior.

No screen, blind, shutter, curtain, partition or opaque glass window or any obstruction shall be allowed in any pool or billiard room or bowling alley so as to prevent a view of the business carried on inside.

(Code 1971, § 3-4)

Secs. 9-45—9-51. Reserved.

DIVISION 3. STREET ENTERTAINERS

Sec. 9-52. Defined.

A street entertainer is defined as one who performs music or other entertainment for the general public, but not for hire by any business, nonprofit organization or government agency.

(Ord. of 11-9-98(2))

Sec. 9-53. Permits.

Persons wishing to play musical instruments in the public downtown area (defined as the area bordered by High Street, State Street, Merrimac Street and Green Street) must adhere to the following regulations:

- (1) Street entertainers are not permitted to use amplification.
- (2) The length of time a street entertainer may stay in a given area may not exceed three (3) hours.
- (3) All performances by a street entertainer will conclude each evening by 9:00 p.m.

(Ord. of 11-9-98(2))

Secs. 9-54—9-60. Reserved.

ARTICLE V. JUNK DEALERS AND COLLECTORS⁵⁴

Sec. 9-61. Licenses.

- (a) *Definitions.*

⁵⁴Cross reference(s)—Health and sanitation, ch. 8; nuisances, § 8-101; traffic and motor vehicles, ch. 13

State law reference(s)—Junk collector defined, M.G.L. ~~A~~ c. 140, § 56; authority of city to license and regulate junk dealers and collectors, M.G.L. ~~A~~ c. 140, § 54; licensing of junk dealers and collectors, M.G.L. ~~A~~ c. 140, § 202 et seq.

Junk: Old or scrap copper, brass, rope, batteries, paper trash, rubber debris, waste or junked, dismantled or wrecked automobiles or parts thereof, iron, steel and other scrap ferrous and non-ferrous material as defined by M.G.L. c. 140B § 1 as amended.

Old metals: Any ~~second hand~~secondhand metals or object constructed of or electroplated with gold, silver or platinum regardless of its form, weight or appearance.

- (b) *License required.* A license is required for any person or business seeking to engage in the purchase, sale, or barter of ~~second hand~~secondhand metals, including but not limited to jewelry, time pieces, ornaments, fixtures, construction materials and manufactured items.
- (c) *License conditional.* All licenses ~~which shall be~~that are granted ~~according to law~~ to any person or business engaged in the purchase, sale or barter of junk, old metals or ~~second hand~~secondhand articles, or dealers therein, shall contain the conditions and restrictions set forth in this article.

(Code 1971, § 13-1; Ord. of 7-23-12)

Sec. 9-62. Reserved.

Editor's note(s)—An ordinance adopted July 23, 2012, repealed § 9-62 Editor's note(s)—, which pertained to license fee and derived from § 13-2 of the 1971 Code.

Sec. 9-63. Purchase records to be kept; inspection of records.

- (a) Any person or business licensed under this article shall keep a record in which shall be written at the time of every purchase of any article of junk, old metals or second hand articles the following:
 - (1) A description of the article or articles purchased including weight and current market value.
 - (2) The name, age and residence of the person from whom, and day and hour when purchase was made.
- (b) Every such shop keeper shall require a ~~person from whom he or she makes a purchase to provide~~ positive identification (positive identification shall mean any picture identification card by a governmental agency) from purchaser to ensure the aforementioned information is accurate.
- (c) Every shopkeeper licensed pursuant to this article shall fill out and deliver to the office of the city marshal each week or more often if requested, a legible and true copy, either electronically or on paper, all entries made the preceding week in the record required to be kept by this article. The form of such delivery shall be pre-arranged through each shop and the office of the city marshal.

(Code 1971, § 13-3; Ord. of 7-23-12)

Sec. 9-64. Name and occupation of licensee to be posted at place of business and on vehicles.

Every keeper of a shop licensed under this article shall put in some suitable and conspicuous place on ~~his~~their shop a sign having ~~his~~their name and occupation legibly inscribed thereon in large letters, and each licensed person using a team or other vehicle in ~~his~~their business shall have ~~his~~their name and the number of ~~his~~their license ~~inscribed~~affixed on the vehicle in like manner, and such shops and vehicles, and all articles of merchandise therein may be examined by the mayor and city council, or by any person by them respectively authorized to make such examination at all times.

(Code 1971, § 13-4)

Sec. 9-65. Purchase, receipt from minors.

No keeper of a shop licensed under this article shall, directly or indirectly, either purchase or receive by way of barter or exchange, any of the articles regulated by this article of any minor.

(Code 1971, § 13-6)

Sec. 9-66. When material may be sold.

No article purchased or received by a shop or a person licensed under this article shall be sold until a period of at least two (2) weeks from the date of its purchase or receipt shall have elapsed.

(Code 1971, § 13-7; Ord. of 7-23-12)

Secs. 9-67—9-80. Reserved.

ARTICLE VI. PAWNBROKERS⁵⁵

Sec. 9-81. Authority of council.

The city council may license suitable persons to carry on the business of pawnbrokers in this city, subject to the laws of the commonwealth, and may revoke such licenses at pleasure.

(Code 1971, § 18-1)

Sec. 9-82. License fee.

The fee for any license to be issued under this article shall thereby be established and defined in appendix B. ~~A reduced amount will be established for any license, or renewal thereof, shall be fifty dollars (\$50.00), but if a license is issued on or after November first in any year, the fee shall be twenty-five dollars (\$25.00).~~

(Code 1971, § 18-2)

Cross reference – Fee Schedule, appendix B.

State law reference(s)—Pawnbrokers, term of license, M.G.L. ~~A~~ c. 140, §§ 202, 203.

Sec. 9-83. Filing of bond.

Each pawnbroker licensed under this article shall, at the time of receiving ~~his~~ their license, file with the city clerk a bond as required by law.

(Code 1971, § 18-3)

State law reference(s)—Bond, M.G.L. ~~A~~ c. 140, § 77.

⁵⁵State law reference(s)—Pawnbrokers generally, M.G.L. ~~A~~ c. 140, H 70-85, §§ 202—205; pawnbroker's license, M.G.L. ~~A~~ c. 140, §§ 70, 76; record of pledges, etc., M.G.L. ~~A~~ c. 140, § 79; books open for inspection, M.G.L. ~~A~~ c. 140, § 81; right of entry of certain officers for purpose of making examination, M.G.L. ~~A~~ c. 140, § 73; authority of city to limit rate of interest, M.G.L. ~~A~~ c. 140, §§ 72, 78.

Sec. 9-84. license term.

All pawnbroker's licenses shall continue in force until the first day of May following the granting of such license.

(Code 1971, § 18-4)

Sec. 9-85. Information set forth on license.

Each pawnbroker's license shall set forth the name of the person licensed, the nature of the business, and the address at which such business is to be carried on.

(Code 1971, § 18-5)

State law reference(s)—Similar provisions, M.G.L.A. c. 140, § 202.

Sec. 9-86. Licenses to be signed, recorded by city clerk.

Every pawnbroker's license shall be signed and recorded by the city clerk, ~~and shall be recorded by him~~ in a book kept for that purpose before being delivered to the licensee.

(Code 1971, § 18-6)

State law reference(s)—Similar provisions, M.G.L.A. c. 140, § 205.

Sec. 9-87. Place of business ~~limited,~~ limited, transfer.

No pawnbroker's license shall be valid to protect the holder thereof in a building or place other than that designated in the license, unless consent to removal is granted by the city council.

(Code 1971, § 18-7)

State law reference(s)—Similar provisions, M.G.L.A. c. 140, § 204.

Sec. 9-88. Duties of clerk upon revocation of license.

Whenever a pawnbroker's license is revoked, the city clerk shall note the revocation upon the face of the record ~~thereof, and~~ thereof and shall give written notice to the party of record of such revocation, delivering it to ~~him~~ them in person or leaving it at the place of business designated in the license.

(Code 1971, § 18-8)

State law reference(s)—Similar provisions, M.G.L.A. c. 140, § 205.

Sec. 9-89. Records to be kept of articles purchased or taken in pawn.

Every person licensed to carry on a pawnbroker's business shall keep a book at ~~his~~ their place of business in which ~~he~~ they shall, at the time of making a loan, enter in the English language a minute description of every article purchased or taken in pawn at the time of receiving it, particularly describing any prominent or descriptive marks, and the name, ~~age~~ date of birth, ~~(when there can be a reasonable doubt as to whether the person is a minor or not),~~ and residence (giving the street and number, if possible) of the person from whom and the day and hour when ~~he~~ they purchased it, and the amount paid therefor or loaned thereon, and the number of the pawn

ticket. The pawnbroker shall furnish a correct record of all transactions, containing all such information, once a week or ~~often~~ more frequently if required, to the licensing ~~commission board~~ or to a person designated by them. Every pawnbroker shall photograph any person pawning articles and keep the photograph ~~with the books~~ as part of ~~his~~ their records.

(Code 1971, § 18-9)

State law reference(s)—Record book, information, M.G.L. ~~A~~ c. 140, § 79.

Sec. 9-90. Daily delivery of records to city marshal.

Every pawnbroker licensed pursuant to this article shall make out and deliver at the office of the city marshal, each week or ~~often~~ more frequently if requested, a legible and true copy of all entries made during the preceding week in the record book required to be kept by this article.

(Code 1971, § 18-10)

State law reference(s)—Similar provisions, M.G.L. ~~A~~ c. 140, § 79.

Sec. 9-91. Receiving articles from minors.

No pawnbroker shall, directly or indirectly, receive any article in pawn of any minor.

(Code 1971, § 18-11)

Sec. 9-92. Sale of articles received in pawn.

No article received in pawn shall be sold until the expiration of the time and in the manner provided by statute.

(Code 1971, § 18-12)

State law reference(s)—Retention of articles, M.G.L. ~~A~~ c. 140, § 71.

Sec. 9-93. Entry onto licensed premises for inspection.

The city marshal, or any police officer authorized by ~~him~~ them, may at any time enter upon any premises used by a licensed pawnbroker for the purposes of ~~his~~ their business, ascertain how ~~he~~ they conduct ~~their~~ his business and examine all articles taken in pawn or kept or stored in or upon such premises, and all books and inventories relating thereto. Any person who willfully hinders, obstructs or prevents such officers from entering such premises or making such examinations shall be punished as provided by statute.

(Code 1971, § 18-13)

State law reference(s)—Entry into premises, etc., M.G.L. ~~A~~ c. 140, § 73.

Sec. 9-94. Violation of article.

It is unlawful for any person not being licensed to carry on any pawnbroker's business or be concerned therein within this city or being licensed to carry on such business or be concerned therein in any place or manner than that designated in ~~his~~ their license or after notice to ~~him~~ them that ~~his~~ their license is revoked.

(Code 1971, § 18-14)

State law reference(s)—Penalty, M.G.L. ~~A~~ c. 140, § 75.

Secs. 9-95—9-110. Reserved.

ARTICLE VII. TRANSIENT VENDORS, HAWKERS AND PEDDLERS⁵⁶

DIVISION 1. TRANSIENT VENDORS⁵⁷

Sec. 9-111. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Food truck shall mean a walk-on, parked vehicle where food is cooked, prepared, and served in individual portions. A food truck licensed under this division shall be no larger than thirty (30) feet by eight (8) feet.

Parked vehicle shall mean a vehicle that remains stationary for fifteen (15) minutes at a time. Vendors doing business in, from, or by means of any other vehicle, such as a hawker or peddler that sells frozen desserts from a vehicle stopped for up to fifteen (15) minutes at a time, shall be subject to division 2 (Hawkers and Peddlers).

Registered party shall mean a party that no later than the last day of February has requested in writing from the city clerk notice of transient vendor license applications for that calendar year, and paid an annual notice processing fee as defined in appendix B. ~~of ten dollars (\$10.00).~~

Temporary or transient business shall mean any exhibition and sale of goods, food and non-alcoholic beverages, wares, or merchandise that is carried on in, from, or by means of any parked vehicle, including food trucks, or tent, booth, or other temporary structure on the public way, or at any other real property owned or in the possession or control of the city, including, without limitation, all city parks and playgrounds.

Transient vendor shall mean any person, either principal or agent, who engages in a temporary or transient business in the commonwealth selling goods, including food and non-alcoholic beverages, wares, or merchandise. (Ord. of 6-26-17(3))

Cross reference – Fee Schedule, appendix B.

Sec. 9-112. License required.

It shall be unlawful for any transient vendor to sell, attempt to sell, or exhibit any food, beverage, goods, wares, or merchandise without first applying for and obtaining a license from the licensing board ~~commission~~.

⁵⁶Cross reference(s)—Streets, sidewalks and other public places, ch. 12.

⁵⁷Editor's note(s)—An ordinance adopted June 26, 2017, amended Div. 1, §§ 9-111Editor's note(s)—9-114, 9-131Editor's note(s)—9-139, in its entirety to read as herein set out. Former Div. 1 pertained to similar subject matter and derived from an ordinance adopted Jan. 24, 2011.

State law reference(s)—Transient vendors, M.G.L. ~~A~~ c. 101.

In the event that such license would allow transient vending at real property (1) under the jurisdiction of the harbor commission, the parks commission, the water and sewer commission, or the trustees of the waterfront trust, or (2) on any portion of a public way, or at any other real property owned or otherwise under the jurisdiction of the city, that physically adjoins such real property, then the applicant shall be required to obtain sign-offs from the commission, agency or department with such jurisdiction prior to submitting the application to the city clerk as required hereunder.

Issuance of a license pursuant to this section 9-112 shall be in addition to any other requirement of this code, including, without limitation, any requirement to obtain a license or permit from the board of health and its health department under the auspices of its director or ~~his or her~~ their designee, or from the parks commission for commercial activities in a city park or playground.

(Ord. of 6-26-17(3))

Sec. 9-113. Granting license after notice and public hearing.

- (a) The ~~licensing board e-commission~~ shall not issue more than ten (10) full-season transient vendor licenses, and an additional three (3) transient vendor licenses for food trucks, hereinafter "food truck licenses", or their equivalent in cumulative duration, per year, citywide, subject to the locational and other restrictions of section 9-114. Where a license is to be reissued after its abandonment, surrender, or revocation, the ~~licensing board e-commission~~ shall act upon an application within thirty (30) days after having received it. Otherwise, the ~~licensing board e-commission~~ shall issue any approved licenses for a given year by March 31 for any license not issued to a food truck, and by December 31 of the preceding year, for a food truck license, in all cases based upon applications received no later than required under section 9-133, below.
- (b) In addition to ten (10) full-season transient vendor licenses, and three (3) food truck licenses, or their equivalent in cumulative duration, available annually, the city council may grant special licenses to charitable and nonprofit organizations under such conditions as the city council may deem appropriate, subject to rules of the city council.
- (c) The ~~licensing board e-commission~~ shall not grant any license under this division without first holding a public hearing on the matter, for which notice shall be provided no later than ten (10) calendar days before the date of the public hearing, as follows:
- (1) All required notices shall contain the name of the applicant, the date, time and place of the public hearing, and the location and nature of the proposed business.
 - (2) The city clerk shall cause, at the applicant's sole expense, notice to be published in a newspaper of general circulation in Newburyport.
 - (3) The city clerk shall cause notice to be posted on the city's website.
 - (4) At its sole cost, the applicant shall cause notice to be sent by first-class mail to the owners and tenants of all real property located within three hundred feet (300) feet of the location(s) of the proposed business, as they appear on the most recent applicable tax list, based on a list obtained from the assessor's office, within three (3) days of the publication of the notice, and shall provide proof to the ~~licensing board e-commission~~ in the form of a signed attestation by the applicant, copies of such mailings and the list of addresses from the assessor's office.
 - (5) The city clerk shall give notice by first-class mail to each registered party not already receiving notice under subsection (c)(4), above.

(Ord. of 6-26-17(3))

Sec. 9-114. Restricted areas.

Approved transient vendors may operate only at the specific locations identified in the application approved by the license commission and subject to the other restrictions of this section 9-114 and licensing board e commission regulations. This ordinance code shall supersede any other regulation promulgated by the board of health relative to geographic limitations on transient vendors.

- (1) No more than a total of four (4) full-season licenses, or their equivalent in cumulative duration, at Inn Street, Inn Street Playground (Map 004-Lot 002), and Inn Street Mall (Map 004-Lot 030 [portion]) (the "Inn Street Licenses"), provided that no such license shall allow vending in, from, or by means of a parked vehicle or food truck, and at least two (2) such licenses shall be granted to an applicant whose primary business is the sale of artisan products and wares, as further defined by the licensing board se commission; and
- (2) No more than eight (8) full-season licenses, or their equivalent in cumulative duration, at locations outside of the Downtown Overlay District, established under section XXVIII of the zoning ordinance.
- (3) None of the three (3) food trucks licenses authorized under section 9-113 shall be granted within the Downtown Overlay District, established under section XXVIII of the zoning ordinance.
- (4) In no event shall the total number of full-season licenses, or their equivalent in cumulative duration, issued by the licensing board e commission exceed the citywide limit specified in this section 9-114.

(Ord. of 6-26-17(3))

Secs. 9-115—9-130. Reserved.

Sec. 9-131. Fees.

A successful applicant for a full transient vendor's license, excluding a food truck license, in the restricted areas as described in section 9-114 shall pay an annual license fee of ~~one thousand (\$1,000.00) dollars~~ for the season defined in subsection 9-135(d), which amount shall be prorated for partial seasons. A successful applicant for a food truck license shall pay an annual license fee of ~~one thousand five hundred dollars (\$1,500.00)~~ for the year, as further defined in subsection 9-135(d). Such annual license fees shall be in addition to any application processing fee required under section 9-133. The city council need not require an annual license fee for special licenses to charitable or nonprofit organizations. All fees under this section are hereby established as defined in appendix B.

All fees and fines collected under this division shall be used for the maintenance, repair and/or replacement of sidewalks within the city of Newburyport.

(Ord. of 6-26-17(3))

Cross reference – Fee Schedule, appendix B.

Sec. 9-132. Insurance.

No license shall be issued under this division, whether by the licensing board e commission or the city council, unless the applicant furnishes proof to the city clerk of a public liability bond or insurance policy in an amount not less than two million dollars (\$2,000,000.00) for property damage and injuries, including injuries

resulting in death, caused by the operation of the transient vendor business, which bond or policy shall name the city as additional insured.

(Ord. of 6-26-17(3))

Sec. 9-133. Application.

The application for a transient vendor license under this division shall contain all information necessary and relevant to determine whether a particular license may be issued. Such application shall be obtained from and shall be on a form prescribed by the city clerk's office. Applications for licenses to be issued for use between April 1 and December 31 must be received by the city clerk's office between the 45th and 15th day preceding the regularly scheduled March meeting of the licensing board e-commission of the year of intended use. Applications for food truck licenses shall be filed between October 15 and November 15 of the preceding year of intended use. Where a license becomes available during the period of issuance due to its abandonment, surrender, or revocation, the city clerk shall give notice of the availability of such license by publication in a newspaper of general circulation in Newburyport, posting on the city's website, and first-class mail to registered parties. An application to assume part or all of the unexpired term of such abandoned, surrendered, or revoked license, may be received at the city clerk's office at any time thereafter, and the licensing board e-commission may conduct a public hearing on such application without awaiting other applications. All applications for a transient vendor license under this division shall include, but not be limited to, the following:

- (1) An application processing fee as defined in appendix B in the amount of fifty (\$50.00) dollars, plus one dollar (\$1.00) for each registered party required to receive notice pursuant to subsection 9-113(c)(5), above.
- (2) Proof that the applicant has complied with all applicable Massachusetts general laws, including but not limited to M.G.L. ~~A~~ c. 101, §§ 1—12A.
- (3) Proof of the identity and business address of the applicant, and any other proof of identification which any state or federal agency may require the city to obtain.
- (4) A brief description of the nature, character, and quality of the food, beverages, wares, goods, or merchandise to be sold or exhibited. Any transient vendor selling food and beverages must include a copy of the proposed menu of items to be served.
- (5) A description of the length of time during which it is proposed the business shall be conducted.
- (6) Days of the week and hours of operation.
- (7) The location(s) where the transient vending business is proposed to be conducted.
- (8) Any other factors information relating to the application or applicant which the licensing board e-commission may deem relevant in determining whether approval of such license is consistent with the best interests of the city, and required by licensing board e-commission regulations or city council rules, as the case may be.
- (9) The licensing board e-commission shall act on completed applications within thirty (30) days of receipt of such applications by the city clerk's office. The licensing board e-commission or the city council, as the case may be, shall approve a license application only upon a written finding that the license shall be in the best interest of the city and serve the public need, taking into account existing establishments serving the general public in the vicinity of the licensed location.

(Ord. of 6-26-17(3))

Sec. 9-134. Renewals.

The licensing ~~board~~ ~~e-commission~~ and the city council shall review each application for renewal in the same manner, and upon the same footing, as a new application.

(Ord. of 6-26-17(3))

Sec. 9-135. General restrictions.

- (a) Tents, booths, and any other temporary structures in, from, or by means of which, business is conducted shall not exceed six (6) feet in length, four (4) feet in width, or eight (8) feet in height. The foregoing dimensional limitations shall not apply to parked vehicles, whose dimensions, other than food trucks, the licensing ~~commission-board~~ or the city council shall review and approve on a case-by-case basis, pursuant to any applicable regulations promulgated by the licensing ~~board~~ ~~e-commission~~.
- (b) Vendor activity shall not impede access to the entrance of any adjacent building or driveway.
- (c) Vendors shall be licensed to engage in business ~~only~~ no earlier than 8:00 a.m. and no later than 9:00 p.m. on any licensed day, unless otherwise specifically agree to by the licensing ~~board~~ ~~e-commission~~ in its written decision based on the nature of the location(s) of service and any public input. Parked vehicles, tenants, booths, and any other temporary structures in, from, or by means of, which business is conducted, shall either be removed or secured in place no later than their licensed closing time each licensed day, and continuing until their licensed opening time on the next licensed day of operation.
- (d) All licenses, other than food truck licenses, granted under this division shall be valid for a period commencing no earlier than April first and terminating no later than the last day in December in the year in which the license is issued.
- (e) No vendor shall conduct business within twenty-five (25) feet of any handicapped parking space or access ramp
- (f) All trash or debris accumulating within twelve (12) feet of any vending location and resulting from the activity thereof shall be collected and removed by the vendor.
- (g) Vendors shall ensure that staff is actually present during all their licensed hours of operation.
- (h) Vendors shall post an accurate price list or menu for any food, beverage, goods, wares, or merchandise offered for sale.
- (i) In any calendar year, no vendor shall hold more than one (1) transient vendor license, exclusive of food truck licenses, or its equivalent in cumulative duration, without regard to any special licenses granted to charitable and nonprofit organizations by the city council.

(Ord. of 6-26-17(3))

Sec. 9-136. License display.

- (a) Transient vendor licenses issued under this section and M.G.L. ~~A~~ c. 101, § 5, and pursuant to M.G.L. ~~A~~ c. 101, § 3, shall be displayed at the site of the transient business during business hours of operation.
- (b) Licenses shall be used by the individual to whom they were granted and are not transferable to any other person or business.
- (c) Failure to display a license granted under this section shall result in the same penalty as if the licensee has no license.

(Supp. No. 41)

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(Ord. of 6-26-17(3))

Sec. 9-137. Suspension or revocation of license.

- (a) Any license issued under this division may be suspended or revoked by the licensing board~~commission~~, after notice and a public hearing, for any of the following reasons:
- (1) Fraud or misrepresentation in the application for the license;
 - (2) Fraud or misrepresentation in the course of conducting the business of vending;
 - (3) Violation of any of the terms of the license;
 - (4) Violation of any of the terms of this division; and/or
 - (5) Conducting the business of vending in such a manner as to create a public nuisance or constitute a danger to the public health, safety, or welfare.
- (b) Upon suspension or revocation, the city clerk shall deliver written notice to the licensee stating the action taken and the reasons supporting such action. The written notice shall be delivered to the licensee's place of business or mailed to the licensee's last known address.

(Ord. of 6-26-17(3))

Sec. 9-138. Appeals.

Applicants who are denied licenses under this division, or licensees whose licenses have been suspended or revoked by the licensing board~~commission~~ under this division, may appeal to the superior court for relief.

(Ord. of 6-26-17(3))

Sec. 9-139. Penalties.

Any person who violates any provision of this division shall be fined as noted in chapter 1, section 1-18~~three hundred dollars (\$300.00)~~. Each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense.

(Ord. of 6-26-17(3))

Cross reference - General Provision, ch. 1 fines schedule § 1-18.

Secs. 9-140—9-155. Reserved.

DIVISION 2. HAWKERS AND PEDDLERS⁵⁸

⁵⁸State law reference(s)—Hawkers and peddlers, M.G.L. ~~A~~ c. 101, §§ 13—30.

Sec. 9-156. Definition.

For the purposes of this division, the words hawker and peddler shall mean any person, either principal or agent, who goes from town to town or from place to place in the same town selling or bartering, or carrying for sale or barter or exposing therefor, any goods, wares or merchandise, either on foot, on or from any animal or vehicle.

(Ord. of 3-28-88(2), § 15-17)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

State law reference(s)—Similar provisions, M.G.L. ~~A~~ c. 101, § 13State law reference(s)—; exemptions, M.G.L. ~~A~~ c. 101, § 15

Sec. 9-157. License required.

Articles other than those the sale of which is permitted in accordance with section 9-164 or permitted without a license under M.G.L. ~~A~~ c. 101, § 17 and not prohibited by M.G.L. ~~A~~ c. 101, § 16 shall not be sold by hawkers or peddlers unless duly licensed by the state director of standards.

(Ord. of 3-28-88(2), § 15-18)

Cross reference(s)—Sale of certain items without license, M.G.L. ~~A~~ c. 101, § 17Cross reference(s)—.

Sec. 9-158. Business prohibited between certain hours and in certain areas.

No hawker or peddler shall sell or offer for sale any goods, wares or merchandise, including publications, magazines and books or solicit subscriptions for publications, magazines or books in the city between the hours 5:00 p.m. and 9:00 a.m. Furthermore, at all times, no hawker or peddler shall sell or offer for sale any goods, wares or merchandise within the Downtown Overlay District, as defined under appendix A (zoning ordinance) of the Newburyport Code unless a license is granted by the city council.

(Ord. of 11-30-15(1))

Editor's note(s)—An ordinance adopted Nov. 30, 2015, amended § 9-158Editor's note(s)— in its entirety to read as herein set out. Former § 9-158Editor's note(s)— pertained to business prohibited between certain hours and derived from an ordinance adopted March 28, 1988, § 15-19.

Sec. 9-159. Conduct of business general.

Any hawker or peddler engaged in hawking or peddling activities in the city shall be governed by the following regulations:

- (1) No person hawking or peddling any articles for sale shall cry ~~his~~their wares to the disturbance of the peace and comfort of the inhabitants of the city.
- (2) No person hawking or peddling wares for sale shall do so otherwise than in vehicles and receptacles which are neat and clean and do not leak.
- (3) Every vehicle or other receptacle used by a hawker or peddler shall have plainly printed on each side thereof the name of the hawker and peddler and the license number of that person.
- (4) No hawker or peddler shall go uninvited to any dwelling or place of residence for the purpose of selling, bartering, attempting to sell or barter, soliciting or taking of orders for goods, wares,

merchandise, property of any kinds, or services of any nature, for immediate or future delivery or performance, within the city.

- (5) Any hawker or peddler shall endorse ~~his~~their usual signature upon the license. Any licensee who fails, neglects or refuses to exhibit the license when it is demanded by the licensing board ~~e-commission~~ or police officer shall be subject to the same penalty as if no license were possessed.

(Ord. of 3-28-88(2), § 15-20)

Sec. 9-160. Meats, butter, certain other food products—License required; exception.

Before selling any meats, butter, cheese, fish and fresh fruit or vegetables, any hawker and peddler must be duly licensed by the licensing board ~~e-commission~~; provided, however, that this section shall not apply to any person who peddles only fish obtained by ~~his~~their own labor or ~~his~~their family or to any person who peddles only fruits, vegetables or other farm products produced or raised by ~~himself~~themselves or ~~herself~~herselves or ~~his or her~~their family.

(Ord. of 3-28-88(2), § 15-21(a))

State law reference(s)—License to sell certain products, M.G.L.A. c. 101, § 22.

Sec. 9-161. Same—Qualifications of applicant; inspection, sealing of weighing and measuring devices.

The licensing board ~~e-commission~~ shall have authority to grant a license under section 9-157 to any person filing an application which shall be in a form prescribed by the licensing board ~~e-commission~~. If any weighing or measuring devices are intended to be used by the applicant, no license shall be issued until a certificate from the sealer of weights and measures stating that all such devices have been duly inspected and sealed.

(Ord. of 3-28-88(2), § 15-21(b))

Sec. 9-162. Same—Fee; issuance.

Any license issued by the licensing board ~~e-commission~~ under section 9-157 shall be issued by and signed by the city clerk as clerk of the licensing board ~~e-commission~~ upon payment of a license fee as established in Appendix B ~~of forty six dollars (\$46.00)~~. Every hawker and peddler so licensed shall be assigned a number by the licensing board ~~e-commission~~, which shall keep a record of all licenses issued.

(Ord. of 3-28-88(2), § 15-21(c))

Cross reference – Fee Schedule , Appendix B.

Sec. 9-163. Same—Revocation, expiration.

- (a) *Revocation.* Any license granted by the licensing board ~~e-commission~~ under this section may be revoked by the commission board for good cause after reasonable notice to the licensee and a hearing upon the grounds for revocation. The use, or possession with intent to use, by any person licensed under this section by the licensing board ~~e-commission~~, of any false or unsealed weighing or measuring device shall be sufficient cause for the revocation of that license.

(b) *Expiration.* Unless sooner revoked, any license granted by the ~~licensing board~~ commission under this section shall be valid for the period beginning April 1 and ending October 1.

(Ord. of 3-28-88(2), § 15-21(d), (e))

Sec. 9-164. Same—Inspection of products.

Any meats, butter, cheese, fish and fresh fruit or vegetables offered for sale by any hawker or peddler must be inspected by the board of health.

(Ord. of 3-28-88(2), § 15-22)

Sec. 9-165. Same—Penalty for possession, use of unsealed or false weighing or measuring device.

Any hawker or peddler of any meats, butter, cheese, fish and fresh fruit or vegetables who uses, or possesses with intent to use, any false, condemned or unsealed weighing or measuring device shall be subject to a penalty ~~not to exceed fifty dollars (\$50.00)~~ for each use or possession of a false or condemned measuring device and ~~twenty dollars (\$20.00)~~ for each use of an unsealed measuring device.

(Ord. of 3-28-88(2), § 15-23)

Cross reference - General Provision, ch. 1 fines schedule § 1-18.

Secs. 9-166, 9-167. Reserved.

DIVISION 3. REGULATION OF ~~DOOR-TO-DOOR~~ DOOR-TO-DOOR SALES

Sec. 9-168. Purpose and intent.

The ~~door-to-door~~ door-to-door solicitation of goods, services, and other wares can be disruptive and/or disconcerting to the daily lives for residents of dwelling houses in the City of Newburyport. To provide a better level of comfort to residents, the City of Newburyport Police Department will issue permits to vendors and solicitors that apply for and pass the requirements of the Newburyport Solicitor's Identification Card permit.

(Ord. of 9-15-15)

Sec. 9-169. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Solicitor any person or persons who arrives at a person's residence or dwelling house within the City of Newburyport soliciting, selling or taking orders for any goods, wares, merchandise, property of any kind, or services of any nature for immediate delivery or performance in exchange for compensation.

Permit a City of Newburyport Solicitor Identification Card issued by the Newburyport Police Department.

Residence is any home, apartment or condominium ~~that is~~ being used as a dwelling house.

(Ord. of 9-15-15)

Sec. 9-170. Limitations.

- (a) No person, either principal or agent, whether or not that person is licensed as a transient vendor, sales agent, hawker or peddler by the Commonwealth of Massachusetts under M.G.L. ~~A~~ c. 101 or otherwise, shall go to any dwelling place or residence within the City of Newburyport soliciting or taking orders for any goods, wares, merchandise, property of any kind or services of any nature, for future or immediate delivery or performance in exchange for compensation, without having first registered with the city marshal or ~~his~~ their designee and having received a solicitor identification card.
- (b) The city marshal, following application by such person, shall if satisfied with the honesty, character and criminal history, if any, of the applicant, issue a solicitor identification card to that person for a time period not to exceed twelve (12) months. Said card shall be conspicuously carried by the solicitor whenever soliciting or taking orders for goods as provided in the preceding paragraph. Sais permit shall contain the photograph, signature, and any other information deemed pertinent by the city marshal ~~City of Newburyport City Marshal~~ or their ~~his~~ designee.
- (c) Any vehicles used for transportation of solicitors working in Newburyport regardless of ownership, shall be on file at the Newburyport Police Department. Vehicle information shall include, but not be limited to, registration, ownership, make, model, and vehicle color.
- (d) Solicitors shall inform the City of Newburyport Police department prior to commencing their daily planned activity
- (e) The solicitor's identification card application fee shall ~~be hereby be established as defined in Appendix B fifty dollars (\$50.00) per person~~ be hereby be established as defined in Appendix B and is not transferable. Should an applicant fail to meet the provisions of application, the fee is nonrefundable.
- (f) The city marshal may for cause, and after providing the opportunity for a hearing, order any such person who has been issued a solicitor registration card to surrender that card to ~~him~~ them.
- (g) Persons seventeen (17) years or younger that from time to time solicit for a school or sports team fundraiser and/or lawn cutting, snow shoveling or odd job services are exempt so long as they are not affiliated with any landscaping, snow removal, or service company.
- (h) No person shall in any event engage in soliciting or taking orders except during the hours of 9:00 a.m. and 5:00 p.m.
- (i) No person shall enter upon the property of another or engage in soliciting at any residence or dwelling house in any manner which has conspicuously posted a "no solicitors" or similar sign.

(Ord. of 9-15-15)

Sec. 9-171. Enforcement.

- (a) *Enforcement agents.* City of Newburyport Police Department is the enforcement authority of this ~~ordinance~~ code.
- (b) *Inspection of identification.* City of Newburyport Police Officers whether responding to a complaint or acting on their own accord, may require inspection of a solicitor's identification card upon request.
- (c) *Qualification for obtaining card.* The Newburyport Police Department shall investigate the character, honesty and criminal history, if any, of the applicant. This decision to issue a solicitor identification card is in the sole discretion of the city marshal or ~~his~~ their designee.

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(Supp. No. 41)

(d) *Penalty.* Any person who violates any provision of this section shall be subject to a fine ~~as noted in chapter 1, section 1-18 of up to two hundred fifty dollars (\$250.00).~~

(Ord. of 9-15-15)

Cross reference - General Provision, ch. 1 fines schedule § 1-18;

Secs. 9-172—9-174. Reserved.

ARTICLE VIII. RETAIL STORES

Sec. 9-175. Purpose.

The purpose of this article is to ensure the health and safety of neighborhoods, to preserve public order, to prevent public nuisance, and to promote the general welfare of the community.

(Ord. of 4-27-92)

Sec. 9-176. License requirement.

No retail store as defined in Section V. Use Regulations of Appendix A (Zoning Ordinance of the City of Newburyport) shall operate between the hours of 11:00 p.m. and 5:00 a.m., except by license granted by the city council. This section shall not apply to retail operations between Thanksgiving and December 25. Further, this section shall not apply to retail stores located in B-1 zoning district.

(Ord. of 4-27-92)

Sec. 9-177. License procedure.

The owner of any such retail store shall apply to the city council for a license to remain open between the hours of 11:00 p.m. and 5:00 a.m. Said application shall be available from the office of the city clerk. The city clerk shall then forward said application to the city council's committee on licenses and permits. The committee, after due deliberation, shall, make a recommendation to the city council. The city council shall have the authority to place any restrictions it deems applicable on said license. The city council shall make the final determination as to the granting of such a license. Application for renewal shall be received by the city clerk by March 1 of each year. The council in granting a license shall determine that the proposed use is in harmony with the purpose and intent of this article. The fees for a license under this section, as defined in Appendix B, shall be ~~fifteen dollars (\$15.00)~~ payable to the City of Newburyport upon approval of an application.

(Ord. of 4-27-92)

Cross reference(s)— Fee schedule, Appendix B.

Sec. 9-178. Pre-existing conditions.

Commencing April 1, 1994, all retail stores as defined herein shall comply with the provision of this article.

(Ord. of 4-27-92)

Sec. 9-179. Expiration of license.

All licenses granted hereunder shall expire March thirty-first of each year. A new application shall be submitted annually for review by the committee and the city council. Renewal of said license shall be for one (1) year (April 1—March 31) and is not deemed given without an affirmative vote of a majority of all city council members.

(Ord. of 4-27-92)

Sec. 9-180. License revocation.

The city council, at the recommendation of the committee on licenses and permits, shall have the authority to revoke any license granted under these provisions for cause. No license may be revoked, however, until the license holder has been notified in writing and given reasonable opportunity to be heard in a public meeting.

(Ord. of 4-27-92)

Secs. 9-181—9-200. Reserved.

ARTICLE IX. FOOD SERVICE ESTABLISHMENTS

DIVISION 1. GENERALLY

Secs. 9-201—9-220. Reserved.

DIVISION 2. ALCOHOLIC BEVERAGES

Sec. 9-221. Consumption of alcoholic beverages.

No licensed food service establishment shall allow any patron to consume alcoholic beverages, as that term is defined in M.G.L. c. 138, or any amendments thereto, on its premises unless such food service establishment possesses a valid license to sell and serve alcoholic beverages, as duly issued by the ~~Newburyport Licensing e Commission board~~. This article shall apply regardless of whether said alcoholic beverages have been purchased by the patron or patrons from the establishment or elsewhere for consumption on the establishment's premises (i.e. brown-bagged, so called).

(Ord. of 12-28-92)

Sec. 9-222. Penalty.

- (a) Each such violation of this article shall be punished by a fine of ~~one hundred dollars (\$100.00)~~ as noted in chapter 1, section 1-18.

(Supp. No. 41)

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(b) A second or subsequent offense shall be punished by the suspension of the establishment's common victualler's license, upon the recommendation of the licensing board~~commission~~ following the normal hearing process.

(Ord. of 12-28-92)

Cross reference(s)— General Provision, ch. 1 fines schedule § 1-18;

Secs. 9-223—9-240. Reserved.

ARTICLE X. PROHIBITION OF NON-MEDICAL MARIJUANA RETAILERS

Sec. 9-241. In general.

Consistent with M.G.L. c. 94G, § 3(a)(2), "Marijuana Retailers," as defined in M.G.L. c. 94G, § 1, shall be prohibited within the City of Newburyport. This prohibition shall not apply to the sale, distribution manufacture or cultivation of marijuana for medical purposes.

(Ord. of 12-16-19(2))

Chapter 10 MISCELLANEOUS OFFENSES⁵⁹

Sec. 10-1. Operation of bicycles, mopeds, rollerskates and skateboards, in certain areas.

- (a) All persons operating bicycles, mopeds, skateboards and roller skates will observe the laws of the road as they pertain to motorists in the state and the city.
- (b) No bicycles, mopeds, skateboards, or roller skates will be allowed to be used on the business district sidewalks which is the area bordered by High Street, State Street, Merrimac Street and Green Street, including the Inn Street Mall and Market Square. A first offense shall result in the confiscation of such item for two (2) weeks by the police department. Each subsequent offense shall be punishable by a fine as noted in chapter 1, section 1-18 ~~of twenty dollars (\$20.00)~~.

(Ord. of 4-13-82; Ord. of 12-11-89)

Cross reference(s)—General Provision, ch. 1 fines schedule § 1-18; Streets, sidewalks and other public places, ch. 12; traffic and motor vehicles, ch. 13

Sec. 10-2. Discharging firearms, cannons, etc., in public places.

No person, except in the performance of a public duty by a duly authorized official, shall discharge any gun, cannon, field piece, pistol or other firearms upon the public streets, squares or other public places within the city.

(Code 1971, § 16-39)

Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—.

State law reference(s)—Discharge of firearm near buildings, etc. M.G.L. ~~A~~ c. 269, § 12E.

Sec. 10-3. Shooting bow and arrow, sling, air gun; flying kites, balloons; throwing stones, snowballs, etc.

No person shall shoot with or use a bow and arrow, sling or air gun, play ball or fly any kite or balloon, or throw a stone, snowball or other missile in any street.

(Code 1971, § 16-40)

Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—.

Sec. 10-4. Reserved.

Editor's note(s)—An ordinance adopted July 10, 2000, repealed § 10-4 which pertained to being an annoyance in the street, sidewalk, etc., and derived from Code 1971, § 16-41.

⁵⁹Cross reference(s)—General penalty, § 1-15; fines schedule, § 1-18.

State law reference(s)—Crimes and punishments, M.G.L. ~~A~~ c. 263—274.

Sec. 10-5. Obstructing passage in public places.

No person shall remain upon any street, sidewalk, or public place in such a manner as to obstruct the free passage of foot travelers thereon so that such foot travelers are forced to stop or pass in the portions of such streets used by motor vehicles. The fine for violation of this section is defined in chapter 1, section 1-18, ~~shall be a warning for the first offense, fifty dollars (\$50.00) for second and subsequent offenses.~~ Any person found in violation of this section shall be subject to arrest without a warrant by a police officer of the city. Nothing in this section shall be construed to curtail, abridge or limit the rights guaranteed by the state constitution, Constitution of the United States of America, or any statutes thereof.

(Code 1971, § 16-43; Ord. of 10-29-84, § 1; Ord. of 7-10-00(1))

Cross reference(s)— General provision, ch. 1 fines schedule § 1-18; Streets, sidewalks and other public places, ch. 12
Cross reference(s)—.

Sec. 10-6. Signs, notices, etc., on utility poles, city owned property, etc.

No person except a city official for a municipal purpose shall post up, or affix in any manner, or paint, print or write, or cause to be painted, printed, or written, a notice, advertisement or bill, upon a curbstone, sidewalk, telegraph pole, electric light pole, telephone pole, or lamppost, in any street or upon a wall, fence or building belonging to the city. Except otherwise as authorized by section 12-1.3.

(Code 1971, § 16-45)

Cross reference(s)—Signs, app. A, Art. VIII.

Sec. 10-7. Injuring, placing debris in drinking fountain, water basin.

No person shall injure or place in any drinking fountain, trough or basin of water set up or established in any street or public place for the use of man or beast, any dirt, stone, ashes, rubbish, filth, or other foreign matter.

(Code 1971, § 16-46)

Sec. 10-8. Use or consumption of alcoholic beverages upon public ways, etc.

No person shall use or consume any alcoholic beverages as defined in M.G.L. ~~A~~ c. 138, § 1, while in or upon any public way or any way in which the public has a right of access or any place to which the members of the public have access of invitees or licensees, park or playground, or private land, building, structure or place without the consent of the owner or person in control thereof provided however this section shall not apply in the event the city council has approved an application pursuant to section 12-1 for outdoor seating including an area demarcated by the placement of unfixed barricades and the local license commission has approved the consumption of alcohol for said area. All alcoholic beverages being used in violation of this section shall be seized and safely held until final adjudication against the person cited or summoned before the court, at which time they shall be returned to the person entitled to lawful possession. Each such offense shall be punishable by a fine as noted in chapter 1, section 1-18 ~~of fifty dollars (\$50.00).~~

(Ord. of 8-27-73; Ord. of 12-11-89; Ord. of 5-24-09)

Cross reference(s)— General Provision, ch. 1 fines schedule § 1-18; Streets, sidewalks and other public places, ch. 12
Cross reference(s)—.

State law reference(s)—Open containers of alcoholic beverages in automobiles, M.G.L. ~~A~~ c. 90, § 241.

PART II - CODE OF ORDINANCES
Chapter 11 PARKS AND RECREATION

Chapter 11 PARKS AND RECREATION⁶⁰

ARTICLE I. IN GENERAL⁶¹

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

All of the city's public parks and playgrounds shall retain the names by which they are listed in section 11-2 of this chapter 11, unless the city council, by a two-thirds ~~supermajority~~ ~~vote of the city council, votes to adopt~~ an ordinance to change such name in section 11-2 in the exception of cases where the park is protected under an endowment.

(Ord. of 9-19-18)

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

The following real property, identified by name, and listed by assessor's map and lot numbers, or other reference, constitute the city's public parks and playgrounds under the meaning of M.G.L. ~~A.~~ c. 45 and M.G.L. ~~A.~~ c. 94C, § 32J, and the city's Code of Ordinances.

Name	Map #	Lot #
Patrick Tracy Square	001	022
Market Square Bullnose	004	Not numbered
Inn Street Playground	004	002
Inn Street Mall	004	030 (portion)
Market Landing Park; Mayor Peter J. Mathews Memorial Boardwalk	011	001-B
Atwood Park (including Garrison Gardens)	019	030

⁶⁰Editor's note(s)—An ordinance was passed by the city council on June 3, 1968 stating that the control and management of the area known as the city forest located west of the interstate route 95 on the southerly side of Hale Street and containing 44.36 acres, be transferred to the Newburyport Conservation Commission to retain this land in its natural state, and to create a natural study area, including nature trails for the future enjoyment of the citizens of Newburyport reserving, however, to the city council, the right at any time to revoke this order in its entirety and to resume or transfer said control and management.

Cross reference(s)—Administration, ch. 2Cross reference(s)—; beaches, § 4-101Cross reference(s)— et seq.; litter in public places prohibited, § 8-84Cross reference(s)—; nuisances, § 8-101Cross reference(s)— et seq.; streets, sidewalks and other public places, ch. 12Cross reference(s)—; public places, § 12-91 et seq., subdivision rules and regulations, app. B.

State law reference(s)—Public parks and playgrounds, M.G.L. ~~A.~~ c. 45.

⁶¹Editor's note(s)—An ordinance adopted Sept. 19, 2018, repealed the former Art. I., §§ 11-1Editor's note(s)— 11-3, and enacted a new Art. I as set out herein. The former Art. I pertained to similar subject matter and derived from Code 1971, § 17-1Editor's note(s)—; an ordinance adopted June 27, 1994; an ordinance adopted Dec. 9, 2002; an ordinance adopted Jan. 31, 2005; and an ordinance adopted Apr. 14, 2008.

Brown School Playground	021 021	003 026 (portion)
Perkins Park	031	030
March's Hill	033 033 034	006 007 (portion) 020 (portion)
Bradley Fuller Park	037	001
Newburyport Skate Park	038	001 (portion)
Brown Square	047	004
Cushing Park (including Ayer's Playground)	051	042
Cashman Park	052 052	068 083
Atkinson Common (includes so-called Lower Atkinson Common)	069	028
Cornelius Doyle Triangle	070	086
Moulton Square	071	023
Moseley Woods	072	014
Jason Sawyer Playground	077	125-A
Woodman Park	094 100	004 001
Cherry Hill Athletic Fields	107	001-A
Clipper City Rail Trail—Phase 1	Clipper City Rail Trail - Phase 1: All locations depicted on a plan in 14 sheets entitled "Rail Trail—Phase I in the City of Newburyport, Essex County", on file with the city clerk	
Clipper City Rail Trail—Phase 2	All locations depicted on a plan in 17 sheets entitled "Newburyport/Newbury Clipper City Rail Trail—Phase 2, Preliminary Right of Way Property Plans," dated June 8, 2015, as revised on June 22, 2015, on file with the city clerk	

(Ord. of 9-19-18)

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

- (a) No person shall park any vehicle or trailer in the area known as Cushing Park for a period in excess of twenty-four (24) hours, except upon declaration of a snow emergency, or as authorized by an individual license or permit issued by the parks commission. In the case of a declared snow emergency, vehicles may remain for the duration of the snow emergency and for twenty-four (24) hours after the declaration of the end of the snow emergency.
- (b) No person shall park any vehicle or trailer in the playground area of the Bartlet Mall, located at the corner of Auburn Street and High Street.
- (c) No person shall park any vehicle or trailer in any portion of Bartlet Mall other than the playground area, even upon declaration of a snow emergency, with the sole exception of the presiding justice of the superior court and, in addition, no more than two (2) of ~~his or her~~ his or her designee, who may park in proximity to the superior courthouse.

(Ord. of 9-19-18; Ord. of 12-9-19(1))

Sec. 11-4. Board of parks commissioners.

- (a) A board of parks commissioners for the city is hereby established but with powers more limited than those set forth under M.G.L. ~~A~~ c. 45 (hereinafter referred to as the parks commission), and, instead, as enumerated herein.
- (b) The parks commission shall consist of five persons, who shall hold office for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, from the first Monday in May next following such appointment, or until their successors are qualified; and thereafter the Mayor shall annually, before the first Monday in May, with like approval appoint one such commissioner for a term of five years from said first Monday in May; subject to confirmation by the city council, as follows.
 - (1) Any three (3) residents of the city;
 - (2) One (1) member of a non-profit organization that (A) has as a principal purpose the maintenance, preservation, and improvement of Atkinson Common for the enjoyment of the citizens of and visitors to the city; (B) has at least ten members; and (C) allows any resident of the city to join as member; and
 - (3) A member of a non-profit organization that (A) has as a principal purpose the maintenance, preservation, and improvement of Bartlet Mall for the enjoyment of the citizens of and visitors to the city; (B) has at least ten members; and (C) allows any resident of the city to join as member.

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

All such commissioners shall serve without compensation. A vacancy in the parks commission shall be filled in like manner for the ~~residue~~ remainder of the unexpired term. Any commissioner may be removed by a vote of two thirds of all the members of the city council pursuant to M.G.L. c.45 § 2.

- (c) Subject to appropriation, the parks commission may lay out and improve public parks, make rules for their use and government, appoint all necessary engineers, surveyors, clerks and other officers, including a police force to act in such parks, and define their powers and duties and fix their compensation. At parks and playgrounds under its jurisdiction, the parks commission shall have the authority given to the mayor, city council, and tree warden respectively by M.G.L. ~~A~~ c. 84, § 7 and M.G.L. ~~A~~ c. 84. Subject to specific appropriation or order by the city council, the parks commission shall also have the power to conduct park programs and recreation activities at places other than at a public park or playground under its jurisdiction, such as maintenance of athletic fields under the jurisdiction of the school committee.
- (d) The parks commission shall make reports of its doings, and detailed statements of all receipts, expenditures, and liabilities for the preceding fiscal year of the city, to the city council annually, within thirty (30) days after the end of the city's fiscal year.
- (e) The parks commission shall meet a minimum of every month.

(Ord. of 9-19-18)

Sec. 11-5. Rules and regulations for all public parks and playgrounds.

- (a) All other city ordinances applying to public areas also apply to the public parks and playgrounds listed in section 11-2, including but not limited to the following:
 - (1) Dogs shall be leashed and animal waste cleaned up and disposed of pursuant to chapter 3 of the Code of Ordinances; provided, however, that pursuant to such chapter 3 dogs are permitted off leash certain

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locations, as set forth therein. Both the city marshal and the health director, and their designees, including, without limitation, the animal control officer, are expressly authorized to enforce these rules by issuing citations for civil infractions pursuant to M.G.L. c. 40, § 21D.

- (2) No littering is permitted.
 - (3) No vandalism, damage or defacement or other acts of willful destruction of public property is permitted.
 - (4) Loud noise, music, and other sounds are prohibited from 10:00 p.m. to 7:00 a.m. pursuant to chapter 8 of the Code of Ordinances.
 - (5) No snowmobiles, motorcycles, motorbikes or other motorized vehicles, with the exception of wheelchairs, are permitted outside of designated driveways or parking lots, unless specifically authorized by city council vote.
 - (6) No smoking pursuant to chapter 8 of the Code of Ordinances.
 - (7) For other activities regulated by city ordinances, additional authorization may be required from the city officer or department designated under this Code of Ordinances.
 - (8) No activities are permitted that would potentially endanger members of the public.
- (b) No activities are permitted that would interfere with the use and enjoyment of the city's public parks and playgrounds, without prior written authorization from the parks commission.
 - (c) No commercial activities, including, without limitation, soliciting, are permitted without prior written authorization from the parks commission.
 - (d) No commercial activities of any nature are permitted on any portion of the Bartlet Mall unless for specific, nonprofit events that benefit the Newburyport community, unless it is approved in advance by a majority vote of the city council.
 - (e) No vehicular parking is permitted in areas other than designated parking lots, in accordance with posted signs. No unauthorized vehicles are allowed in areas other than designated driveways and parking lots.
 - (f) No alcoholic beverages are permitted without prior written authorization from the parks commission.
 - (g) Horses are not allowed except as expressly authorized by rules and regulations promulgated under this chapter 11, and with prior written authorization from the parks commission.
 - (h) No dogs are permitted on athletic fields, tennis courts, in fountains, or in other restricted park areas.
 - (i) No bicycling, rollerblading, snowboarding, or skateboarding is permitted on play equipment or site furnishings, including, without limitation, benches, curbs, walls, statuary, handrails, fountains, ponds, tennis courts, playing fields, etc., except as specifically authorized by the parks commission. Within those public parks and playgrounds, as indicated by signage approved by the parks commission, bicycling, rollerblading, and skateboarding are prohibited entirely.
 - (j) Trash receptacles in public parks and playgrounds are intended for the collection of refuse related to public use of such facilities, and the disposal of other items in park trash receptacles is not permitted. Dumping of private yard waste is not permitted.
 - (k) No unauthorized posting of bills, signs, or any other materials is permitted.
 - (l) No fires are permitted except in specific locations expressly authorized by rules and regulations promulgated under this chapter 11, or with prior written authorization from the parks commission.
 - (m) No fireworks are permitted without prior written authorization from the fire chief.
 - (n) No firearms are permitted.

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- (o) No camping is permitted, unless specifically authorized by parks commission vote.
 - (p) No unauthorized change of any sort to the property, vegetation, equipment, or structures in is permitted, including, without limitation, trimming, pruning, removal or harming of plantings.
 - (q) No use of water or electrical receptacles is permitted, with the specific exception of public drinking fountains, and as authorized under an individual license or permit issued by the parks commission.
 - (r) Athletic field lighting shall be turned off by 10:00 p.m.
 - (s) Fines for violation of any rules and regulations promulgated under this chapter 11 shall be established by ordinance of the city council.
 - (t) The parks commission shall be the permitting authority for all of the city's public parks and playgrounds, and applications for activities therein shall be made to such commission. Solely for routine, non-recurring applications, the parks commission may delegate its authority to process such applications to the parks director, by promulgating a rule pursuant to section 11-6.
 - (u) For Market Landing Park and other Newburyport Waterfront Trust property, the Newburyport Waterfront Trust shall be the permitting agency, and applications for activities therein shall be made to the Newburyport Waterfront Trust.
 - (v) Permit applications for activities at parks and playgrounds, made pursuant to the rules and regulations of this chapter 11, shall be processed in the order of their receipt. The parks commission, or the parks director as its designee pursuant to subsection (t), shall determine whether to grant or deny an application within thirty (30) days of receipt of determining that such application is complete, in all respects, unless the applicant provides written consent to extend such period for a set period,
 - (w) A granted application for authorization made pursuant to the rules and regulations of this chapter 11 may permit the applicant a revocable license with a duration of no more than six (6) months to use designated areas of the relevant public park or playground. All other rights of use to any public park or playground, whether by revocable license, lease, or otherwise, shall be invalid unless approved by the city council pursuant to all applicable laws. Notwithstanding the foregoing, the Newburyport Waterfront Trust may grant rights of use at Market Landing Park, and other property held by it in public trust, pursuant to its declaration of trust, as amended.
 - (x) All fees for use of any public park or playground, regardless of type or duration, shall be established by ordinance of the city council, in consultation with the parks commission. Notwithstanding the foregoing, the Newburyport Waterfront Trust may grant rights of use at Market Landing Park, and other property held by it in public trust, pursuant to its declaration of trust, as amended.
 - (y) Denial of an application for authorization shall be in writing, and shall set forth clearly the grounds upon which the permit was denied. Where feasible, the parks commission, or the parks director as its designee pursuant to subsection (u), shall suggest in such written denial those measures by which the applicant may cure any defects in its permit application, or otherwise procure a permit in a subsequent application.
 - (z) An application for authorization may be denied on any of the following grounds:
 - (1) The application (including any required attachments and submissions) is not fully completed and executed;
 - (2) The application contains a material falsehood or misrepresentation;
 - (3) The applicant is legally incompetent to contract, or to sue and be sued;
 - (4) The applicant has on a prior occasion damaged public park or playground property, and has not paid full compensation for such damage, or has other outstanding and unpaid debts to the relevant authorizing agency;

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- (5) A fully completed and executed application for an activity at the same time and place has been received, and authorization has been or will be granted to such prior applicant authorizing uses or activities that do not reasonably permit multiple occupancy of the particular public park or playground, or part thereof;
 - (6) The use or activity intended by the applicant would conflict with a program or activity previously planned by the parks department, or by another city department or city official, for the same time and place; or
 - (7) The proposed use or activity is prohibited by or inconsistent with any rules and regulations of this chapter 11, or with the classifications and uses of the relevant public park or playground.

(Ord. of 9-19-18)

Sec. 11-6. Parks commission—promulgation of rules.

- (a) Provided they are not in conflict with the rules and regulations provided in this chapter 11, the parks commission may, as it deems appropriate, promulgate such additional, reasonable rules and regulations for the use of the city's public parks and playgrounds under its oversight, ~~rather other~~ than under that of the Newburyport Waterfront Trust. Such additional rules and regulations may include, but are not limited to, hours of use, conduct of persons, and the manner of use of particular facilities or areas within any public parks or playgrounds.
- (b) Such additional rules and regulations, or any repeal or amendment thereof, shall become effective only after they have been published ~~in each of~~ not less than two (2) weeks in a newspaper of local circulation ~~and~~ posted for a period of two (2) weeks in one (1) or more prominent places in the public park or playground to which they are proposed to pertain, without the need for further action by the city council, and submitted to the city clerk as a communication to the city council to be received and filed

(Ord. of 9-19-18)

Sec. 11-7. Fees.

- (a) *Definitions.* The following definitions shall apply to the interpretation and implementation of terms used in this section:
 - (1) *Group A:* City of Newburyport departments, including Newburyport Public Schools; other non-profit and for-profit education located within the city; and active duty military.
 - (2) *Group B:* Recurring use by exclusively youth leagues.
 - (3) *Group C:* Recurring use by organizations, including adult sports leagues.
 - (4) *Group D:* Recurring use by organizations that do not charge end-users any fee to participate, including pick-up leagues.
 - (5) *Group E:* Special events held by individuals or groups with up to twenty-five (25) attendees.
 - (6) *Group F:* Special events held by individuals or groups with twenty-six (26) to fifty (50) attendees.
 - (7) *Group G:* Special events held by individuals or groups with fifty (50) to two-hundred (200) attendees.
 - (8) *Group H:* Special events held by individuals or groups with greater than two-hundred (200) attendees

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

- (b) ~~Fees and charges. In consultation with the parks commission, the city council establishes the following fees and charges for reserved use of parks and playgrounds, as noted in Appendix B; parks and playgrounds not listed below are typically unavailable for reserved use:~~

	Group/Hourly Rate							
Athletic Fields and Courts	A	B[±]	C	D	E	F[±]	G[±]	H[±]
Cashman Park Ballfield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Ballfield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Soccer Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cherry Hill Soccer Field Parcel A	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cherry Hill Soccer Field Parcel B	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park Track	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park Infield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park North Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Woodman Park Multi-use Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bartlet Mall Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Basketball Court	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
G.W. Brown School Playground Basketball	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Woodman Park Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Moseley Woods Lawn	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Founders Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Pepe Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Hawkes Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Small Parks	A	B	C	D	E	F[±]	G[±]	H[±]
Brown Square	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cornelius Doyle Triangle	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Joppa Park	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Moulton Square	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Washington Park (Eppa Way, Pond Street, High Street)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
270 Water Street (Perkins Park)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Patrick Tracy Square (Tracy Place)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00

Newburyport Skate Park (Nook Schoolyard)	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Mid-to-Large Parks	A	B	C	D	E	F[±]	G[±]	H[±]
Atkinson Common, Upper (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Atwood Park/Garrison Gardens	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	N/A
Bartlet Mall (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cashman Park (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Clipper City Rail Trail (any segments)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cushing Park (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Inn Street Mall	N/C	N/A	N/A	N/C	N/A	\$25.00	\$100.00	\$200.00
March's Hill	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Market Landing Park	[per Newburyport Waterfront Trust]							
Market Square Bullnose	N/C	N/A	N/A	N/C	N/A	\$25.00	\$100.00	\$200.00
Moseley Woods Pavilion	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00

~~± - Up to 50% of the fee may be waived in exchange for in-kind services at the sole discretion of the parks commission.~~

~~** - Any charitable non-profit registered as a 501c3 may apply for a fee reduction or waiver from the parks commission. The parks commission is under no obligation to offer any reduction or waiver. Any reduction or waiver is at the sole discretion of the parks commission.~~

N/C = no charge, N/A = not applicable

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

~~(c) COVID-19 parks permitting. In response to the COVID-19 pandemic, the city council, in consultation with the parks commission, establishes a fee of zero dollars (\$0.00) per hour in certain cases defined as follows:~~

~~(1) Recurring use of the following parks:~~

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

~~(2) Five (5) or fewer weekdays in any given week.~~

~~(3) No more than two (2) hours on any given day.~~

~~(4) No tents or structures of any kind, temporary or permanent, are permitted.~~

~~(5) Requests for usage on any weekend day may not be permitted under this subsection.~~

~~(6) No more than twenty (20) participants maximum (subject to other laws and regulations promulgated by other entities).~~

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

- ~~(1) Identification of the individual or organization.~~
- ~~(2) Primary contact with contact information (including physical mailing address, phone number, and the cellphone number of the primary contact).~~
- ~~(3) A list of specific dates and time slot(s) requested.~~
- ~~(4) A description of the proposed use.~~
- ~~(5) A valid insurance binder with a minimum of one million dollars (\$1,000,000.00) of coverage indicating that the City of Newburyport is an additional named insured without limitation or any other additional requirement.~~

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

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

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

~~This section and any permits approved under it shall expire on April 30th, 2021 at 11:59 p.m. unless this subsection is extended by the city council or unless any individual permit is revoked by the parks commission at any time.~~

(Ord. of 8-19-19(3); Ord. of 6-8-2020(1), Ord. of 9-14-20(1); Ord. of 10-26-20(2))

Cross reference(s) – municipal fee schedule, Appendix B.

Secs. 11-8—11-25. Reserved.

ARTICLE II. MARKET LANDING PARK, ATKINSON COMMON AND BARTLETT MALL⁶²

⁶²Editor's note(s)—An ordinance adopted Sept. 19, 2018, repealed the former Art. II, §§ 11-26Editor's note(s)—11-35, and enacted a new Art. II as set out herein. The former Art. II pertained Atkinson Common and Moseley Woods and Bartlett Mall and derived from an ordinance adopted Nov 9, 1970, §§ 1, 2; Code 1971, §§ 17-2Editor's note(s)—17-8; Ord. of 2-23-04(2); an ordinance adopted Apr. 11, 2005; and an ordinance adopted Sept. 12, 2005(1)).

Cross reference(s)—Litter in public places prohibited, § 8-84Cross reference(s)—; public places, § 12-91 et seq.

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

- (a) Provided they are not in conflict with the rules and regulations provided in this chapter 11, the Newburyport Waterfront Trust may, as it deems appropriate, promulgate such additional, reasonable rules and regulations for the use of those city's public parks and playgrounds under their oversight. Such additional rules and regulations may include, but are not limited to, hours of use, conduct of persons, and the manner of use of particular facilities or areas within any public parks or playgrounds.
- (b) Such additional rules and regulations, or any repeal or amendment thereof, shall become effective only after they have been published ~~in each of~~ not less than two (2) weeks in a newspaper of local circulation, and posted for a period of two (2) weeks in one (1) or more prominent places in the public park or playground to which they are proposed to pertain, without the need for further action by the city council.
- (c) At those public parks and playgrounds under their oversight, the Newburyport Waterfront Trust shall have the authority given to the mayor, aldermen, selectmen, road commissioners and tree warden respectively by M.G.L. section 7 of chapter 84, and by chapter 87.

(Ord. of 9-19-18)

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

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

(Ord. of 9-19-18)

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

The board of commissioners of Atkinson Common is hereby abolished and dissolved, upon the effective date of ~~this September 19, 2018~~ new section 11-28.

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

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

(Ord. of 9-19-18)

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

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

(Ord. of 9-19-18)

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

The board of commissioners of Moseley Woods is hereby abolished and dissolved, upon the effective date of ~~this new section 11-32~~ September 19, 2018.

(Ord. of 9-19-18)

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

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

(Ord. of 9-19-18)

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

The board of commissioners of Bartlet Mall is hereby abolished and dissolved, upon the effective date of ~~this new section 11-34~~ September 19, 2018.

(Ord. of 9-19-18)

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

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

(Ord. of 9-19-18)

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

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

(Ord. of 9-19-18)

Secs. 11-36—11-50. Reserved.

Chapter 12 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES⁶³

⁶³Cross reference(s)—Responsibilities of committee on public service, § 2-37Cross reference(s)—; animals, ch. 3Cross reference(s)—; grazing animals prohibited from running at large, § 3-1; certain animals prohibited from sidewalks, § 3-3; boats, docks and waterways, ch. 4Cross reference(s)—; harbor, § 4-26 et seq.; beaches, § 4-101Cross reference(s)— et seq.; buildings and building regulations, ch. 5Cross reference(s)—; moving buildings through streets, § 5-2; earth removal, § 5-226Cross reference(s)— et seq.; civil defense and disaster relief, ch. 6Cross reference(s)—; fire prevention and protection, ch. 7Cross reference(s)—; health and sanitation, ch. 8Cross reference(s)—; litter in public places prohibited, § 8-84Cross reference(s)—; nuisances, § 8-101Cross reference(s)— et seq.; junked, wrecked, abandoned, inoperative motor vehicles, § 8-121Cross reference(s)— et seq.; transient vendors, hawkers and peddlers, § 9-111Cross reference(s)— et seq.; operation of bicycles, mopeds, roller skates and skateboards in certain areas restricted, § 10-1; discharging firearms and other weapons in public places prohibited, § 10-2; shooting bow and arrow, slingshots, air guns, etc., and throwing stones, snowballs, etc., prohibited in any street, § 10-3; being an annoyance in street, sidewalk, etc., prohibited, § 10-4; certain loitering in public places prohibited, § 10-5; consumption of alcoholic beverages upon public ways, etc., prohibited, § 10-8Cross reference(s)—; parks and recreation, ch. 11Cross reference(s)—; certain temporary closure of streets permitted, § 13-27Cross reference(s)—; traffic and motor vehicles, ch. 13Cross reference(s)—; utilities, ch. 14Cross reference(s)—; vehicles for hire, ch. 15Cross reference(s)—; zoning, app. A; off-street parking regulations, app. A, § VII; subdivision rules and regulations, app. B; required improvements for an approved subdivision, app. B, § V.

State law reference(s)—Streets, M.G.L. c. 81—92; sidewalks, M.G.L. c. 83, §§ 25—29; M.G.L. c. 85, § 4 et seq.; watering streets, M.G.L. c. 40, §§ 16State law reference(s)——18; act in regard to abolition of certain grade crossings, Acts 1900, c. 472; jurisdiction of cities over highways, M.G.L. c. 82, § 17State law reference(s)— et seq.; regulations relative to public ways generally, M.G.L. c. 85; authorizing cities to regulate use of ways for certain purposes, M.G.L. c. 85, § 10.

ARTICLE I. IN GENERAL

Sec. 12-1. Obstructing streets, sidewalks generally.

- (a) *Generally.* No person shall occupy, encumber or obstruct any street or sidewalk by means of boxes, crates, advertising signs, barrels, or other things, or in any other way hinder or obstruct the convenient use of the streets or sidewalks and other ways by any vehicles or pedestrians.
- (b) *Food service establishments on public rights-of-way.*
- (1) The above shall not apply to any restaurant or food service establishment located on a public way which includes a sidewalk and which is restricted to pedestrian traffic only and which has a sidewalk of no less than five (5) feet in width. Any such restaurant or food service establishment seeking to place such tables on a public way shall apply for a permit from the city council.
 - a. *Initial permit.* May be issued for a period of one (1) year subject to city council approval by majority vote.
 - b. *Renewal permits.*
 1. No material changes - may be issued for a period of two (2) years subject to administrative approval by the city clerk.
 2. Material changes - may be issued for a period of one (1) year subject to city council approval by a majority vote.
 - c. *Validity and Notice.* ~~Said permit.~~ Said permit shall be valid during any calendar year for which a valid permit has been issued. The city clerk shall notify in writing any business with an expiring permit of such expiration no later than sixty (60) days prior to the expiration date.
 - d. *Condition and Revocation.* Any condition of approval and submitted plan shall be in force for the entire duration of any validly issued permit. Any validly issued permit can be revoked at any time by super majority vote of the city council.
 - (2) Said restaurant or food service establishment may place tables upon the public way directly in the area in front of said establishment with the consent of the city council. The area occupied by said tables shall not exceed in width the frontage of said restaurant or food service on the public way. Said tables shall be solely for the exclusive use of customers of said restaurant or food service establishment.
 - (3) If no sidewalk exists on the public way, the tables, upon approval of the city council, shall be situated in a contiguous manner and shall allow at least twelve (12) feet of passage for pedestrian traffic to flow smoothly on the public way. In any circumstance, said tables, in the opinion of the city council, shall not impede the flow of pedestrian traffic, irrespective of the twelve-foot requirement.
 - (4) If a sidewalk so-called does not exist on the public way, said sidewalk must have a width of at least five (5) feet to allow tables to be situated on the sidewalk. In addition to the five feet described above, the configuration shall ensure that the remaining portion of the public way is at least twelve (12) feet wide and allows for free and smooth flowing pedestrian traffic.
 - (5) The city council can impose that any applicant provide certificates of liability insurance naming the city as insured and may impose such other conditions as in its discretion it deems appropriate.

(c) Each violation of this section 12-1 shall be punishable by a fine of one hundred dollars (\$100.00). Any condition found to violate this section shall be deemed to constitute a separate offense on each day during which it exists after the giving of notice to the violator.

(d) Prosecution of violations of this section 12-1 shall be non-criminal disposition as provided in M.G.L., c. 40, § 21D, as may be amended from time to time, the provisions of which are incorporated herein by reference.

(Code 1971, § 16-19; Ord. of 3-11-91; Ord. of 10-12-10(1); Ord. of 3-28-17(1))

Sec. 12-1.3. Signs in public ways.

(a) *Purpose.* The purpose of this section is to regulate any and all signs erected, placed, or installed in, on, over or projecting into public rights-of-way and private rights-of-way open to the public travel, including, without limitation, all signs erected, placed, or installed on telephone poles, light poles, and other public structures. Signs erected, placed, or installed on a lot, as distinguished from a public way, shall be regulated by the Zoning Ordinance of the City of Newburyport.

(b) *Definitions.*

Banner — A temporary sign that advertises, promotes or calls attraction to a civic, charitable, or for-profit event of finite duration held, hosted, or otherwise occurring in the city, including, without limitation, (i) art or historical exhibits, (ii) musical concerts or other media presentations or performances, (iii) cultural, historical, or entertainment festivals, and (iv) road races, walkathons, bicycle tours regulated under section 13-97.

Movable sign — A temporary sign, such as an a-frame sign or real estate for sale sign, that is not permanently affixed to the ground or any structure, and which advertises, promotes or calls attraction to an establishment, business or event.

Permanent sign — Any sign, such as a wayfinding sign, erected, placed, or installed for a period of time exceeding sixty three (63) days.

Public way — Any public right-of-way, or a private right-of-way open to public travel, and located within the city.

Sign — Any billboard, display, light, figure, painting, drawing, poster, picture, symbol, emblem, flag, banner, object, or other device, whether fixed or movable, which advertises, promotes or calls attraction to any business, article, substance, idea or any other thing or concept, including both the supporting structure, fixtures, and informative contents thereof.

Temporary — Any sign that is not a permanent sign.

Temporary traffic sign — Any temporary sign authorized by the department of public services to serve as a direction sign, warning sign or light, curb, street or other traffic marking, mechanical traffic signal system, traffic device, or parking meter, as such department may deem necessary for promoting the public safety and convenience.

(c) *Regulations for permanent signs.*

(1) It shall be unlawful for any person, including, without limitation, any city officer or employee, to erect, install, place, maintain, replace, reinstall, or reconstruct any permanent sign in, on, over or projecting into a public way for a distance of no more than twelve (12) inches or be lower than seven (7) feet or without having first obtained authorization from the city council by validly adopted order or ordinance, including, without limitation, any duly adopted traffic or parking regulation that implies associated signs.

(2) Before erecting, installing, placing, replacing, reinstalling, or reconstructing any permanent sign in a public way, the owner of such permanent sign, or the city officer or employee serving as the custodian

of such permanent sign, as the case may be, shall submit a written application to the city clerk in the format and including all supporting materials as required by that official.

- a. No application is required to maintain a permanent sign previously authorized under a validly adopted order or ordinance by the city council.
 - b. The city clerk may waive the requirement of a written application for a city officer or employee to replace, reinstall, or reconstruct a permanent sign previously authorized under a validly adopted order or ordinance by the city council.
- (3) The applicant shall pay an application fee to the city clerk of one hundred and fifty dollars (\$150.00), except that such fee shall be waived for an application filed by a city officer or employee.
 - (4) Except in the case of applications filed by a city officer or employee for a city-owned sign, the applicant shall file with its application to the city clerk a release and agreement to hold harmless the city from any and all liability, together with evidence of liability insurance for the temporary sign, with a minimum coverage of one million dollars (\$1,000,000.00) and naming the city as a co-insured entity. The city clerk shall keep on file a statement certifying to said liability policy.
 - (5) The applicant for and the owner of any sign erected, installed, placed, maintained, replaced, reinstalled, or reconstructed within the public way, at all times shall together be solely responsible for such work, in addition to any and all liability associated with it.
 - (6) The city council shall not approve any application under this subsection (c) unless it expressly finds that such authorization will serve a public purpose. Examples of a permanent sign that may be deemed to serve a public purpose include, without limitation, so-called wayfinding maps or signs intended to direct the public to multiple establishments.
 - (7) In the case of permanent signs subject to this subsection (c) and located within the Downtown Overlay District, the building commissioner shall process all permit applications consistent with The Sign Book: a Guide for the Urban Renewal Project Area, originally published for use by the Newburyport Redevelopment Authority, a copy of which shall be maintained at the office of the building commissioner for public use.
 - (8) Except in the case of applications filed by a city officer or employee for a city-owned sign, no permit for a permanent sign may have a duration greater than five (5) years.
 - (9) Traffic and parking regulatory signs as defined in the Manual of Uniform Traffic Devices are excluded from the above restrictions.
- (d) *Regulations for temporary signs.*
- (1) *Temporary signs.* It shall be unlawful for any person, including, without limitation, any city officer or employee, to erect, install, place, maintain, replace, reinstall, or reconstruct any temporary sign other than a temporary traffic sign in, on, over or projecting into a public way for a distance of more than twelve (12) inches or be lower than seven (7) feet without having received permission by completing and submitting a written application with all supporting materials to the city clerk.
 - (2) *Banners.*
 - a. The city council may, in addition to Atkinson Common and Fuller Field fence, designate additional areas within public ways where a limited number of banners, in an amount to be specified in writing by the Council shall be allowed for up to twenty-one (21) days prior to the occurrence of its associated event. All such banners shall be removed within three (3) calendar days after the event has taken place.

If the banner is not removed timely, such banner shall constitute a nuisance, and the department of public services may immediately remove and store such banner, with subsequent notice to the

applicant. If, after such notice, an applicant fails to retrieve its removed banner within twenty (20) days, then the department of public services may destroy such sign without compensation to the applicant.

- b. Before erecting, installing, or placing, any banner in a public way, the owner of such banner, or the city officer or employee serving as the custodian of such banner, as the case may be, shall submit a written application to the city clerk in the format and including all supporting materials as required by that official.
- c. The applicant shall pay a deposit fee to the city clerk of ~~twenty-five dollars (\$25.00)~~ for each banner as seen in Appendix B, except that such fee shall be waived for an application filed for a city sponsored event.

Deposit to be refunded after removal as specified in (a) above.

- d. Only one banner shall be permitted per event, per area designated by the city council. Permitted dimensions, materials, and means of erection, installation, or placement for banners shall be in accordance with specification outlined on application.
- e. Applications for banners shall be processed by the city clerk on a first-come, first-served basis.
- f. The applicant for a banner erected, installed, or placed within the public way, shall at all times be solely responsible for such work, and any and all liability associated with it, and, furthermore, shall maintain such banner in good repair. No banner shall be erected, installed, or placed within the public way more than twenty-one (21) days prior to the occurrence of its associated event.

(3) *Moveable signs.*

- a. By written permit approved by city council and issued by the city clerk, each permittee may maintain no more than one (1) movable sign in a nearby public way for a period of one (1) year.
- b. A movable sign permit shall require payment of an annual fee to the city as noted in Appendix B, ~~of fifty dollars (\$50)~~. Each such permit shall commence on the first day of April and expire on March 31. The permit fee for new businesses opening during the annual period shall be prorated ~~at a rate of \$5.00 a month~~.
- c. Each movable sign may be two-sided, but none shall exceed two (2) feet in width or depth, or four (4) feet in height.
- d. Unless relief is granted by city council:
 - 1. One moveable sign is allowed for each business location.
 - 2. Each sign shall be placed within five (5) feet of either side of the main entrance and as to allow for at least five (5) feet of clear passage between the curb and the sign.
- e. Each movable sign shall be affixed with a current permit.
- f. As a condition of any approved application, the owner of such movable sign shall file with the city clerk a release and agreement to hold the city of Newburyport harmless from any and all liability, together with evidence of liability insurance covering the sign or merchandise display, with a minimum limit of one million dollars (\$1,000,000.00) and naming the city of Newburyport as a co-insured entity. A statement certifying to said liability policy shall be kept on file with the city clerk.

(4) Residential open house signs in the public way.

- a. Sized on larger than four (4) square feet per face.
- b. No taller than four (4) feet.

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- c. Only one (1) sign per property and one (1) sign per intersection, allowed.
 - d. Shall not be attached to any tree, pole, bench, or any other public way feature.
 - e. Displayed only from 9:00 a.m. to 6:00 p.m.
 - f. May have only two (2) sign faces.
- (f) *Regulations for public ways within MassDOT jurisdiction.*
- (1) As to signs located within public ways subject to the jurisdiction of the Massachusetts Department of Transportation, or its successor agency, the department of public services shall coordinate with such state agency regarding the regulation of such signs under a written memorandum of understanding between the department and such state agency.
 - (2) It shall be the policy of the city, though such memorandum:
 - (a) to encourage the state agency to make maximum use of the engineering judgment allowed by the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) to minimize clutter from Permanent Signs, and
 - (b) for the department of public services to obtain from such state agency ongoing authority to remove all unauthorized signs, whether permanent or temporary, located within public ways subject to such state agency's jurisdiction.

(Ord. of 5-31-16(1))

Cross reference(s) – municipal fee schedule, Appendix B.

Sec. 12-1.5. Signage, merchandising and beautification on public ways.

- (a) One (1) A-frame sign is allowed on public ways for each public entrance to a lawfully occupied commercial building, and, in addition one (1) display of merchandise is allowed on public ways solely for the primary public entrance to a lawfully occupied commercial building, and, in all cases, subject to the standards and criteria herein.
- (b) All A-frame signs shall be placed on the sidewalk directly adjacent to its related building. No A-frame sign shall exceed two (2) feet in width or depth, or four (4) feet in height, nor shall it cover more than four (4) square feet of the sidewalk, measured from any height of such sign. No movable sign shall be attached, affixed, and otherwise secured to the ground, nor to any structure or fixture. The applicant for an A-frame sign under paragraph (f) of this section may petition the city council, by majority vote, for relief from any of these size, movability, and location requirements. In the event that any relief is granted by the city council, such relief shall expire concurrent with the accompanying license as prescribed by ~~12-1.5~~ subsection (f) shown below. Such relief is subject to revocation by super majority vote of the city council, at its sole discretion, at any time.
- (c) All merchandise displays shall be placed on the sidewalk directly adjacent to its related building, parallel to and within one (1) foot of an exterior wall of such building, and with one end located no more than four (4) feet from its related primary public entrance. A merchandise display may be placed as multiple objects, or otherwise in segments or pieces, but in no event shall the total width permitted for each primary public entrance exceed eight (8) linear feet in the aggregate. No merchandise display shall extend from the exterior wall of its related building by more than four (4) feet into the public way (sidewalk), nor shall any merchandise display exceed five (5) feet in height above the grade of such sidewalk. No merchandise display shall be attached, affixed, and otherwise secured to the ground, nor to any structure or fixture. No merchandise display shall be located within fifteen (15) feet of the intersection of the sidewalk of two (2) streets. The owner of a proposed merchandise display may petition the city council, by majority vote, for relief from any of these size, movability, and location requirements. In the event that any relief is granted by

the city council, such relief shall expire on March 1 of the second calendar year following approval. Such relief is subject to revocation by super majority vote of the city council, at its sole discretion, at any time.

- (d) Notwithstanding section 12-4, a merchandise display may include tables and/or clothing racks, however, no merchandise display shall include any tent, stall, booth, or other structure unless such structure is itself merchandise displayed in accordance with this section, or a permit is granted subject to section 12-4.
- (e) Before placing any A-frame sign or merchandise display on a public sidewalk, the owner thereof shall file with the city clerk a release and agreement to hold the City of Newburyport harmless from any and all liability, together with evidence of liability insurance covering the A-frame sign and/or merchandise display, with a minimum limit of one million dollars (\$1,000,000.00), and naming the City of Newburyport as a co-insured entity. The applicant shall maintain such insurance in full force and effect at all times that the A-frame sign and/or merchandise display is in place.
- (f) To place an A-frame sign in a public way, the applicant shall first obtain a license, by submitting a written application to the city clerk as directed by that official, and pay a biennial licensing fee of ~~one hundred dollars (\$100.00)~~ per A-frame sign as noted in Appendix B.
- (g) Provided that the proposed A-frame sign complies with all provisions of this section, the city clerk shall approve each such license applied for a term not to exceed two (2) years from the date of approval. Each licensed A-frame sign shall display upon it the unique license number issued for it by the city clerk, and the date of expiration of the license.
- (h) Flower boxes, planters, or similar items to beautify (beautification items) may be placed on the public sidewalk directly adjacent to a lawfully occupied commercial building without the prior, written permission of the city council, provided, however, that that city council may order their removal at any time.
- (i) All A-frame signs, merchandise displays, and beautification items placed on a public sidewalk shall preserve a travel lane along such sidewalk that is at least five (5) feet in width, and shall allow for free and unobstructed passage of pedestrians.
- (j) Enforcement of paragraphs (a) through (i) of this section shall be the responsibility of a city employee designated in writing by the mayor within the downtown overlay district, established under section XXVIII of the zoning ordinance, and of the department of public services for all other locations.
- (k) Any sign, merchandise display, or beautification item existing unlawfully within a public way shall constitute a trespass upon public property, and may be removed, without prior notice or compensation to its owner, by the city officer charged with enforcement under paragraph (j) of this section.
- (l) Each violation of paragraphs (a) through (i) of this section shall be punishable by a fine as noted in chapter 1, section 1-18, of ~~one hundred dollars (\$100.00)~~. Each such violation shall be deemed to constitute a separate offense on each day during which it exists after the giving of notice to the violator.
- (m) Prosecution of violations of paragraphs (a) through (i) of this section shall be by non-criminal disposition as provided in M.G.L. c. 40, § 21D, as it may be amended from time to time, the provisions of which are incorporated herein by reference.

Table 12-1.5

The following table is intended to serve as a quick-reference guide to the application of section 12-1.5, and does not substitute for the provisions of that section.

Proposed Object in Public Way	City Council Approval?	Permit from City Clerk?	Permit Fee	Max. Permit Duration	Max. Quantity of Object	Max. Dimensions	Permitted Locations

A-frame signs*	Not required	Required	\$100.00 see Appendix B	2 years	1 per public entrance to commercial buildings	2' W x 2' D x 4' H, and less than four (4) square feet total	Sidewalk directly adjacent to related building
Merchandise displays* (tables, clothing racks, or actual merchandise only)	Not required	Not required	N/A	N/A	1 per primary public entrance to commercial buildings	8' W x 4' D x 5' H. May be placed in segments, but aggregate width permitted for each primary public entrance cannot [exceed] eight (8) feet	Sidewalk directly adjacent to related primary public entrance, parallel to exterior wall, starting within four (4) feet of primary public entrance
Beautification items (e.g. planters)	Not required	Not required	N/A	N/A	N/A	N/A	Sidewalk directly adjacent to a lawfully occupied commercial building
* Exceptions may be granted by city council on location, size, or moveability by written request of applicant.							

All A-frame signs, merchandise displays, and beautification items placed on a public sidewalk shall preserve a travel lane along such sidewalk that is at least five (5) feet in width, and shall allow for free and unobstructed passage of pedestrians.

(Ord. of 5-31-16(1); Ord. of 12-11-2017(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-1; Appendix B – municipal fee schedule

Editor's note(s)—An ordinance adopted Dec. 11, 2017, changed the title of § 12-1.5 Editor's note(s)— from "Merchandising displays and beautification items in a public way" to read as herein set out.

Sec. 12-1.7. Enforcement of sections 12-1.3 and 12-1.5.

- (a) All signs, merchandise displays, and beautification items permitted in a public way shall preserve a travel lane along the sidewalk of such public way that is at least five (5) feet in width, and shall allow for free and unobstructed passage of pedestrians.
- (b) Enforcement of sections 12-1.3 and 12-1.5 shall be designated by the Mayor.
- (c) Any sign or merchandise display that has been placed in a public way without an issued permit shall be subject to removal.

Prior to the removal, the owner of the sign / display will be given five (5) business days to secure a permit or make application for placement relief.

Should relief be requested - while the application for relief is being considered, the sign or display must be removed from the public way.

The cost of a permit for a sign that has been placed without a permit will not be prorated.

Any non-permitted or non-conforming sign or display shall be subject to immediate removal.

- (d) Each violation of sections 12-1.3, ~~and~~ 12-1.5 shall be punishable by a fine of ~~one hundred dollars (\$100.00 as noted by chapter 1, section 1-18)~~, upon not fewer than five (5) days' notice to the violator. Any condition found to violate either section shall be deemed to constitute a separate offense on each day during which it exists after the giving of notice to the violator.
- (e) Prosecution of violations of sections 12-1.3 and 12-1.5 shall be by non-criminal disposition as provided in M.G.L. c. 40, § 21D, as may be amended from time to time, the provisions of which are incorporated herein by reference.

(Ord. of 5-31-16(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18

Sec. 12-2. Interference with use of public ways.

- (a) No person shall sit, stand or lie on any public street, way or sidewalk within the city in such manner as to create an obstruction or interference with the public's right of free use of or passage over such street, way or sidewalk. No offense shall be deemed to have been committed unless a police officer has first advised the person sitting, standing or lying, that ~~he they are~~ is creating an obstruction or interference, has asked ~~him them~~ them to move on and has given ~~him them~~ them a reasonable opportunity to do so.
- (b) No person on a public street, way or sidewalk in the city shall conduct ~~himself themselves~~ themselves in a manner which would reasonably create in the mind of a person properly using or intending to use such street, way or sidewalk, the fear of bodily injury, ridicule or embarrassment. No offense shall be deemed to have been committed unless a police officer shall first have asked such a person to desist from such conduct, and such person has failed or refused to do so.

(Ord. of 8-3-70(1))

Sec. 12-3. Encroachments on streets, rights-of-way and public ground.

- (a) No person shall construct or place, cause to be constructed or placed or suffer or permit to remain, any portico, porch, doorstep, window, post, fence or other obstruction projecting into any street, right-of-way or public ground within the city. No person shall erect or cause to be erected, any fence or building on the line of any street without first ascertaining the bounds of the street from the ~~superintendent~~ director of public ~~works~~ services.
- (b) The city marshal shall cause written notice by mail or in hand to be given to any person of whom ~~he they~~ they ~~have has~~ has knowledge ~~who~~ is violates this section. Any person receiving such notice shall have forty-eight (48) hours to remove the obstruction.
- (c) Should such obstruction remain after expiration of such time, a criminal complaint may be sought by the marshal or ~~his their~~ their designee against the violator. Any person adjudged guilty of violating this section shall be punished by a fine as noted in chapter 1, section 1-18, ~~of not more than three hundred dollars (\$300.00)~~.
- (d) Any condition found to violate this section shall be deemed to constitute a separate offense on each day during which it exists after the giving of notice to the violator as herein provided.

(e) The ~~department of public works services department~~ may remove any obstruction subject to this section and the violator shall be liable to the city for the costs and expenses of such removal.

(Code 1971, §§ 16-24, 16-27, 23-24, 23-25; Ord. of 9-14-87(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-1:

~~Cross reference(s) – Buildings and building regulations, ch. 5~~Cross reference(s) –

State law reference(s) – Encroachments, M.G.L. ~~A~~ c. 86.

Sec. 12-4. Booths, tents, etc., for sale or exhibition in public place.

No person shall place or maintain any table, tent, stall, booth, or other structure in any public place, for any sale or exhibition, without permission of the mayor and city council.

(Code 1971, § 16-38)

Cross reference(s) – Licenses, permits and business regulations, ch. 9~~Cross reference(s) –~~

Sec. 12-5. Altering grade, width, sidewalk, driveway openings, etc.

No person shall change the grade of any such street, way or grounds, or of any sidewalk of any such street, way or grounds, or the width or materials of any such sidewalk, including, without limitation, by installing or altering a driveway opening, or in any manner alter the grade, width or direction of any curbstone of such sidewalk without permission ~~of from~~ the department of public services. Unless undertaken by the department of public services itself, all such changes, including, without limitation, by installing or altering a driveway opening, shall require a permit to be issued beforehand by the director of such department in compliance with all provisions of the Newburyport Code, including, without limitation, section 12-54 (street way or grounds specifications).

(Code 1971, § 16-25; Ord. of 11-25-05(2); Ord. of 10-26-20(1))

Editor's note(s) – Ord. of 10-26-20(1) amended § 12-5Editor's note(s) – and in doing so changed the title of said section from "Altering grade, width, sidewalk, etc." to "Altering grade, width, sidewalk, driveway openings, etc.," as set out herein.

Sec. 12-6. Blocking flow of water through culverts.

~~So as to prevent the free passage of water into a culvert, n~~No person shall put or place any snow, ice or other material in any gutter in any of the streets of the city where a culvert has been constructed, ~~so as to prevent the free passage of water into such culvert.~~

(Code 1971, § 16-28)

Sec. 12-7. Throwing snow and ice into streets.

No person shall throw any ice or snow into any street outside of the sidewalk. This section shall also apply to snow and ice thrown into any street from any roof or yard. The penalty for violation of this section shall be as noted in chapter 1, section 1-18, ~~fifty dollar (\$50.00) fine to the property owner, tenant, occupant for initial and subsequent offenses.~~ Violations of this section may be enforced by any police officer, the health director, director of public services, or their designees.

(Code 1971, § 16-29; Ord. of 11-28-05(2); Ord. of 1-27-21(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18

Sec. 12-8. Leaving cellar door in street open; downspouts casting water on pedestrians.

No person shall suffer any cellar door or other passageway from the street to a cellar under ~~his~~their control to remain open except when in immediate use, nor suffer any spout under ~~his~~their control to cast water upon the heads of pedestrians upon any sidewalk.

(Code 1971, § 16-17)

Sec. 12-9. Maintenance of city-owned sidewalks.

- (a) The City of Newburyport shall appropriate the sum of no less than sixty thousand dollars (\$60,000.00) each fiscal year for the purpose of maintaining the repair of city-owned sidewalks. The maintenance of city-owned sidewalks shall be conducted in a manner to ~~insure~~ensure that the city meets its obligations of other sections of chapter 12 ~~in the Revised Code of Ordinances~~. The funds shall be distributed among the six (6) wards in a responsible and equitable manner. Funds for the maintenance and keeping in good repair of city-owned sidewalks shall be included in the municipal budget, sources for the funding may be derived from any source available to the City of Newburyport so allowed by local, state and federal regulations.
- (b) The city hereby accepts the bequest in the will of John Bromfield, late of Boston, proved January 14, 1850 such that each fiscal year, one-half of the interest which shall accrue or become payable for or in respect of all moneys and funds from the estate of John Bromfield in the hands of the trustees of Newburyport trust funds, and known as the John Bromfield Fund, shall be added to those funds otherwise included in the municipal budget for the maintenance and repair of the condition of city-owned sidewalks.
- (c) It shall be the policy of the city to promote the maintenance and keeping in good repair of city-owned sidewalks by encouraging and facilitating substantial increases to the John Bromfield Fund, including, without limitation, by soliciting cash contributions to such fund from other government agencies or subdivisions, private entities, not-for-profit entities, trusts, and individuals.

(Ord. of 11-9-15(3))

Editor's note(s)—An ordinance adopted Nov. 9, 2015, amended § 12-9Editor's note(s)— in its entirety to read as herein set out. Former § 12-9Editor's note(s)— pertained to sidewalk maintenance, and derived from an ordinance adopted July 10, 1995; and an ordinance adopted Sept. 8, 2008.

Secs. 12-10—12-25. Reserved.

ARTICLE II. STREETS⁶⁴

⁶⁴Cross reference(s)—Moving buildings through streets, § 5-2; litter in public places prohibited, § 8-84Cross reference(s)—; traffic regulations for specific streets, § 13-91Cross reference(s)— et seq.

State law reference(s)—Laying out, altering, etc., public ways, M.G.L.~~A~~ c. 82; signs and structures projecting into ways, c. 85, §§ 8, 9; authority of council to remove material from public ways at owner's expense, M.G.L.~~A~~ c. 86, § 7; throwing glass in streets, M.G.L.~~A~~ c. 265, § 32; encroachments, M.G.L.~~A~~ c. 86.

Sec. 12-26. Disturbing street surface—Permit required.

The surface of a street shall not be disturbed for the purpose of laying, repairing or removing wires, conduits, or erecting or removing distributing or other poles, without a permit from the city council, indicating the time, manner and place of opening such street, and the time within which such work shall be completed. This section shall not be construed as requiring any permit for the opening of manholes for the purpose of drawing in, removing or repairing wires and cables.

(Code 1971, § 9-16)

Sec. 12-27. Same—Restoration of street surface.

When an opening is made in any street for any of the purposes mentioned in this article, the portion of the street so opened shall be restored to a condition satisfactory to the ~~superintendent director~~ of public ~~works~~ services and shall be maintained in such condition for one (1) year thereafter. If not so restored and maintained by the company performing the work, the ~~superintendent director~~ of public ~~works~~ services shall cause the same to be restored and maintained at the expense of the company.

(Code 1971, § 9-17)

Sec. 12-28. Same—Bond.

Before a street is disturbed for the laying of its wires or conduits, any person so doing shall, if required by the city council, execute a bond with surety to be approved in writing by the city solicitor and filed in the office of the city clerk, in a penal sum of not less than ten thousand dollars (\$10,000.00), conditioned to fulfill all the agreements with the city and its duties under this article and all ordinances in addition thereto or in amendment thereof. A new bond of like import may at anytime be required of such company by the city council, which new bond shall be a strengthening bond, unless the surety on former bonds are expressly released from further liability by vote of the council, provided, however, that any corporation required under the provisions of Chapter 448 of the Acts of 1910 or acts in amendment thereof or in addition thereto, to place its wires underground, shall be exempt from furnishing surety on its bond required by the provisions of this section when given for the purpose of carrying out the provisions of such act.

(Code 1971, § 9-20)

Sec. 12-29. City council authorized to allow utility companies to use streets for underground conduit, cable, wire.

Except as provided in section 12-28, the city council may authorize any telephone, electric light or electric power company to construct and maintain underground conduits, cables and wires for conduct of the business of such company, in such ~~of the~~ streets of the city as the city council, upon advice of the inspector of wires and ~~superintendent director~~ of public ~~works~~ services, may deem advisable and to construct therein and maintain the necessary manholes and house connections, and to erect and maintain distributing poles at the terminal of such conduits and at suitable distributing points; and may give such authority under such conditions, restrictions and limitations as the city council may impose, to be expressed in the license or permit.

(Code 1971, § 9-14)

Sec. 12-30. Petitions for laying out, relocating or altering street; payment of costs; deposit; city council supervision.

Petitioners for laying out, relocating or altering a street, highway, or private way, or part thereof, shall, in all cases first pay the cost of surveying, giving of notices, making of plans and other expenses of such proceedings. Each such petition shall be accompanied by a deposit with the planning board sufficient, in its estimation, to pay the cost, and any unexpended balance thereof shall be returned to the petitioner. Such surveying and laying out, relocation or altering shall be done ~~under the supervision~~ with the approval of the city council.

(Code 1971, § 23-16)

Sec. 12-31. Orders laying out, relocating, altering, etc., streets, etc., to be recorded by city clerk.

All orders laying out, relocating, altering or discontinuing any street, highway, or private way, or part thereof, together with a plan thereof, shall be recorded by the city clerk in a book kept for that sole purpose, and with an index thereto.

(Code 1971, § 23-19)

Sec. 12-32. Names of streets and highways.

(a) The streets and highways in the city shall retain the names by which they are known as of July 1, 1987.

Any applicant/developer, prior to submitting a definitive plan to the planning board, shall request from the office of veteran's services a list of potential names to be used as street names, and shall designate the proposed streets within the subdivision as directed by the director of the office of veteran's services. The director shall select the names from a list of individuals from the city who made the supreme sacrifice during World War I, World War II, the Korean War or the Vietnam War. Subsequent to planning board approval, the applicant/developer shall inform the city council, who, within a reasonable time period, shall approve or disapprove the street names assigned by the director of veteran's services. Any exception to the naming of a street after a deceased veteran as provided in this section shall require a two-thirds vote of the entire city council.

(b) The city council may, by a two-thirds vote of the council, change the name of any public street or way in the city, provided, that whenever the council proposes to change any such name, they shall, before final action thereon, appoint a time and place for hearing all persons interested therein and give public notice thereof.

(Code 1971, §§ 23-20—23-22; Ord. of 6-8-87; Ord. of 9-12-88(3); Ord. of 9-12-88(4))

State law reference(s)—Street names, M.G.L. ~~A.~~ c. 85, §§ 3—3B.

Sec. 12-33. Display of street address number on buildings: use in enhanced 911 service.

(a) *Purpose.* The purpose of this section is to:

- (1) To establish a uniform system of numbering buildings to facilitate use of enhanced 911 service.
- (2) To enable emergency responders to locate buildings, and to promote efficiency in locating buildings for mail, utility and other delivery systems.

(b) *Numbering system.*

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- (1) All buildings in the City of Newburyport shall be numbered in accordance with the assessor's records, and so designated by the assessor's office.
 - (2) The assessor's office shall designate numbers for vacant parcels of land.
 - (3) Duplexes shall be assigned only one number to the primary entrance onto the street. Units shall be logically lettered "A" and "B".
 - (4) Corner lots shall be assigned the number that corresponds to the street or road on which the front door of the building faces.
- (c) *Procedures.* All owners of buildings shall affix the assigned number in accordance with this section.
- (1) All assigned numbers shall be displayed so as to be readily visible from the street or road.
 - (2) Size of numbers displayed shall be no less than three (3) inches high by two and one-half (2½) inches wide.
 - (3) Color of numbers shall contrast with the color of the structure.
 - (4) If a ~~mail box~~ mailbox is located on the opposite side of the street, the number shall be displayed on the front of the mailbox.
 - (5) If the building is so far from the street or road, or situated in a manner causing visibility of the number from the street or road to be impractical, a post with the number affixed thereto shall also be placed at the entrance to the driveway or public way leading to the building.
 - (6) Where entrance to condominium or apartment units do not face the street or road, but are accessible only through common areas within or without of the buildings, said units shall be numbered so as to be easily identifiable.
- (d) *New buildings and subdivisions.* Whenever a building or occupied structure shall be erected, a designated number shall be affixed to the said building as assigned by the assessor. Final approval of the certificate of occupancy shall be withheld by the building inspector until permanent and proper number(s) are affixed as provided in the section 12-33(b).
- (e) *Identification of streets.* The City of Newburyport shall be responsible for erecting and maintaining signs that clearly indicate the name of public ways.
- (f) *Penalties.* Any person, firm, or corporation found not to be in compliance with the provisions of this section within six (6) months of the effective date of this section shall be subject to a ~~fine~~ fine as noted in chapter 1, section 1-18 of ten dollars (\$10.00) per day, and shall be denied any and all permits issued by the city until compliance with such section is met.

(Code 1971, § 23-23; Ord. of 7-29-96)

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18

State law reference(s)—Authority of city to regulate numbering of buildings, M.G.L. ~~A~~ c. 148, § 59.

Secs. 12-34—12-50. Reserved.

ARTICLE III. SIDEWALKS⁶⁵

Sec. 12-51. General duty to ~~police~~ maintain.

All establishments, institutions and residents shall be responsible for ~~police~~ removing or refuse, including snow and ice ~~removal~~, from sidewalks of their designated establishments daily in a manner consistent with this Article.

(Ord. of 8-10-81, § 12-24(5))

Sec. 12-52. Removal of snow and ice from sidewalks.

- (a) The owner, tenant, occupant or any person having the care of any building or lot of land bordering on any street, lane, court, square or public place, within the city, where there is a sidewalk, shall cause all snow that may be on such sidewalk to be removed within six (6) hours after the snow ceases to fall if it ceases to fall in the daytime and before 12:00 noon if it ceases to fall in the nighttime. The provisions of this section shall apply to snow which falls from buildings as well as to that which falls from the clouds.
- (b) The owner, tenant, occupant or any person having the care of any building or lot of land bordering on any street, lane, court, square or public place, within the city, where there is a sidewalk, shall cause such sidewalk to be made safe and convenient by removing the ice therefrom or if removal is not feasible, by making the area passable within six (6) hours after the ice forms if in the daytime, and by 12:00 noon if it forms in the nighttime.
- (c) The penalty for violation of this section shall be as that noted in chapter 1, section 1-18. ~~a fifty dollar (\$50.00) fine for first and subsequent offenses.~~ Violations of this section may be enforced by any police officer, the health director, parking clerks or their designees
- (d) *City snow clearing of sidewalks used as school routes.* The department of public services shall clear snow and slush from certain city sidewalks including portions of both school pedestrian routes and specific arterial and collector roadways. Each year during the month of November, the director of public service shall publish an updated snow and ice plan including sidewalk snow clearing routes. The director of public services shall send a copy of snow and ice plan to the city council, city marshal and the superintendent of schools, and post on city website.
- (e) *Snow clearing assistance.* The COA in collaboration with NYS shall annually prepare lists of persons available to provide snow clearing assistance either for a fee or on a volunteer basis. Said lists shall be referenced in the snow and ice plan submitted November each year.

⁶⁵Cross reference(s)—Certain animals prohibited from sidewalks, § 3-3; litter in public places prohibited, § 8-84
Cross reference(s)—

State law reference(s)—Permission required to dig up, obstruct sidewalk, M.G.L. ~~A~~ c. 83, § 25; sidewalk establishment and assessment, M.G.L. ~~A~~ c. 83, §§ 25, 26; sidewalks, M.G.L. ~~A~~ c. 83, §§ 25—29; M.G.L. ~~A~~ c. 85, § 4 et seq.; authority of city relative to removal of snow from sidewalks, M.G.L. ~~A~~ c. 40, § 21(3); M.G.L. ~~A~~ c. 85, § 5; authority of city to regulate prevention of snow and ice falling from roofs, M.G.L. ~~A~~ c. 40, § 21(3), (4).

(Code 1971, § 23-39; Ord. of 2-12-90; Ord. of 11-28-05(2); Ord. of 1-27-21(1))

Editor's note(s)—Ord. of 1-27-21(1) amended § 12-52 Editor's note(s)— and in doing so changed the title of said section from "Removal of snow from sidewalks" to "Removal of snow and ice from sidewalks," as set out herein.

State law reference(s)—Removal of snow and ice, penalty M.G.L. c. 85, §§ 5—7.

Sec. 12-53. Reserved.

Sec. 12-54. Street, way or grounds specifications.

- (a) *Design and methods specifications.* Any change in grade of any such street, way or grounds, or of any sidewalk of any such street, way or grounds, or the width of any such sidewalk, including, without limitation, by installing, constructing, maintaining, repairing, replacing, reconstructing installing a sidewalk and/or a driveway opening, or in any manner alter the grade, width or direction of any curbstone of such sidewalk, including when undertaken by the department of public services itself, shall be undertaken in compliance with both this section and also the "Construction and Traffic Standard Details" promulgated by the department of public services.
- (1) For the purposes of clarification, neither the Clipper City Rail Trail nor the Harbor Walk constitute sidewalks under the meaning of this section.
 - (2) The department of public services may amend its Construction and Traffic Standard Details, from time to time, provided, however, that no such amendment shall take effect until a copy has first been posted on the city website for a period of thirty (30) calendar days to solicit comment from interested parties, including other city departments, and has been approved by order of the city council.
- (b) *Sidewalk materials.*
- (1) *Brick or cement surfaces only.* At the time of installation, construction, maintenance, repair, replacement, or reconstruction of any sidewalk located in the city and open to public travel, whether such sidewalks are located on public or private land, the surface material shall be either brick or cement, and no other materials, as follows:
 - a. *Downtown.* Brick shall be the required surface material for all sidewalks located within the Downtown Overlay District, established under section XXVIII of the zoning ordinance.
 - b. *Historic areas outside of downtown.* Brick shall be the encouraged surface material for all sidewalks located outside of the Downtown Overlay District but within the Newburyport Historic District, which was listed on the National Register of Historic Places and the State Register of Historic Places on August 2, 1984, and both brick and cement shall be permitted therein.
 - c. *All other areas.* Cement shall be the required surface material for all sidewalks located outside of the Newburyport Historic District.
 - (2) *Existing nonconforming sidewalk surfaces.* Any sidewalk open to public travel whose surface does not comply with this section as of its effective date may remain in such noncompliance until such time as it is maintained, repaired, replaced, and reconstructed, at which time it shall be brought into compliance.
 - (3) *Temporary asphalt surfaces.* Notwithstanding anything in this section to the contrary, the department of public services may, in its discretion, permit the temporary use of asphalt surface material for sidewalks: (A) for a period no than two (2) months, tolled from November 1 through April 30; and/or (B) for sidewalks abutting undeveloped parcels until issuance of a certificate of occupancy. The

department shall specify in writing the time by which brick or cement surface material, as the case may be, shall replace the temporary asphalt material.

- (c) *City supervision.* In all cases, any work subject to this section 12-54 shall be performed by the department or a licensed contractor of the city supervised by the department.

(Ord. of 11-9-15(3); Ord. of 10-26-20(1))

Editor's note(s)—Ord. of 10-26-20(1) amended § 12-54 Editor's note(s)— and in doing so changed the title of said section from "Sidewalk materials" to "Street, way or grounds specifications," as set out herein.

Sec. 12-55. Permit procedures and notification of work.

- (a) *Administrative discretion.* Consistent with the city Charter and the other provisions of this Municipal Code, the department of public services shall determine in its discretion whether to grant a permit for any change in grade of any such street, way or grounds, or of any sidewalk of any such street, way or grounds, or the width of any such sidewalk, including, without limitation, by installing, constructing, maintaining, repairing, replacing, reconstructing installing a sidewalk and/or a driveway opening, or in any manner alter the grade, width or direction of any curbstone of such sidewalk. When exercising its discretion under this section 12-55, the department must first consider the impact that the proposed work will have on the safety and convenience of pedestrians and motor vehicles on the adjacent ways open to public travel, on the physical integrity of the adjacent ways open to public travel, on traffic and parking on the adjacent ways open to public travel, and the management of the adjacent ways open to public travel.
- (b) *Notice of work.* No fewer than fourteen (14) calendar days before granting a permit for, or itself undertaking, as the case may be, any change in grade of any such street, way or grounds, or of any sidewalk of any such street, way or grounds, or the width of any such sidewalk, including, without limitation, by installing, constructing, maintaining, repairing, replacing, reconstructing installing a sidewalk and/or a driveway opening, or in any manner alter the grade, width or direction of any curbstone of such sidewalk, the department of public services shall cause written notice of such permit application or planned work, as the case may be, to be posted within twenty (20) feet of the portion of sidewalk proposed to be affected, as well as delivered by hand or mail to each residence and place of business abutting such work, and to the city councillors for all wards where such area of work is located.
- (c) *Notice of brick option.* Where the department of public services intends to permit the use of, or to itself use, cement surface material in the installation, construction, maintenance, repair, replacement, or reconstruction of any portion of a city-owned sidewalk that is located outside of the Downtown Overlay District but within the Newburyport Historic District, no fewer than ninety (90) calendar days before undertaking any such work, the department shall cause written notice thereof to be mailed or delivered by hand to the owner of each parcel abutting the affected portion of sidewalk, as well as to the city councillors for all wards where such area of work is located.
- (1) Such required notice shall include the estimated cost per square foot to install brick surface material instead of cement. Such estimated cost shall exclude all costs that would also be incurred to use cement surface material, including, without limitation, work involving grading, base material, and curbstones.
 - (2) Each owner of an abutting parcel shall have twenty (20) calendar days from the mailing or delivery of such required notice to deliver its own written notice to the department that such owner agrees to pay the incremental cost for the use of brick surface material instead of cement for the affected portion of sidewalk abutting its parcel. It shall be the responsibility of such owner to confirm delivery to the department of such owner's agreement to pay, and to render such payment no later than the start of sidewalk construction.

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- (3) No later than twenty (20) days after the expiration of the period in which an abutting owner may agree to pay the incremental cost of brick surface material, the department shall review all such responses, determine in its discretion the feasibility of using brick surface material instead of cement within the area of work, and cause written notice of its determination to be mailed or delivered to each owner that responded timely, as well as to the city councillors for all wards where such area of work is located. The department's determination regarding the feasibility of using brick surface material shall be final.

(Ord. of 11-9-15(3); Ord. of 10-26-20(1))

Editor's note(s)—Ord. of 10-26-20(1) amended § 12-55Editor's note(s)— and in doing so changed the title of said section from "Notice of work involving city-owned sidewalks" to "Permit procedures and notification of work," as set out herein.

Secs. 12-56—12-69. Reserved.

ARTICLE IV. EXCAVATIONS⁶⁶

Sec. 12-70. Drain layers/utility contractors license.

- (a) The city council may license suitable and competent personsu to be drain layers/utility contractors.
- (b) The fee for each drain layers/utility contractors license shall be as that noted in Appendix B, ~~in the amount of five hundred dollars (\$500.00) per year.~~
- (c) Drain layers/utility contractors license shall be valid January 1st to December 31st for each year.

(Ord. of 1-10-05)

Sec. 12-71. Permission required; repair; traffic flow.

No person shall break or dig up any part of the surface of any street or sidewalk or remove any gravel or other material therefrom without first obtaining a permit from the director of public ~~works~~services. This permit is issued only to contractors with a drain layers/utility contractors license. Whenever any person breaks or digs up any part of the surface of any street or sidewalk or removes any gravel or other material therefrom, either to lay pipes, rails or conduits, or for any other purpose ~~whatever~~, such person shall cause the same to be repaired and restored to the satisfaction of the director of public ~~works~~services. If such person fails to ~~so~~ repair and restore within ten (10) days after notification ~~so to do~~, the director of public ~~works~~services shall furnish the material and labor necessary to put such street or streets into condition satisfactory to ~~him~~them and charge the expense thereof to such person who shall reimburse the city for the cost thereof within thirty (30) days. ~~If thereafter and where~~ the passage or flow of pedestrians or vehicular traffic will be impeded or rerouted ~~the that such~~ licensee shall procure at ~~their~~their ~~such licensee's~~ expenses sufficient police detail as the regulations issued by the city marshal may require. No permit shall be issued until the applicant complies with requirements, outlined in city ordinances.

(Code 1971, § 16-12; Ord. of 1-10-05)

⁶⁶Cross reference(s)—Buildings and building regulations, ch. 5Cross reference(s)—; earth removal, § 5-226Cross reference(s)— et seq.

~~Sec. 12-71A~~(a). Application and fee for permit.

All persons desiring to open a permanently constructed street, sidewalk or public way for any purpose whatsoever shall make applications in writing to the director of public works for a street opening permit. The applicant shall pay to the director of public works one hundred dollars (\$100.00) for each street opening permit required of the applicant.

(Ord. of 1-10-05)

~~Sec. 12-71B~~(b). Performance bond.

Each applicant for a permit under section 12-71 and section 12-71A shall upon receiving a permit, further post with the director of public works a five thousand dollar (\$5,000.00) performance bond payable to the City of Newburyport in order to protect the city in event that after the opening work has been completed, in the final written judgment of the director of public works, the area is not properly restored by the applicant to at least comparable if not better than its condition prior to the opening. No permit is valid nor work may commence until applicant has posted the performance bond.

(Ord. of 1-10-05)

Sec. 12-72. When opening not to be made; exception.

No street or way shall be opened up by drainlayers or other persons between the fifteenth day of November and the first day of April following thereof except in case of necessity certified to and approved by the ~~superintendent~~ director of public ~~works~~ services but nothing in this section shall prevent connection being made with a common sewer or drain when ordered by the board of health.

(Code 1971, § 16-13)

Sec. 12-73. Opening to be fenced, lighted.

Whenever any street is open or dug up, the person in charge of the work which is being performed shall cause a sufficient rail or fence to be erected so as to enclose that portion of the street or way so open or dug up, and the material thrown therefrom to be placed therein. Such fence shall be continued during the whole time such street is open or dug up and a lighted lantern or some other proper and sufficient light shall be affixed to the fence, or placed in the immediate vicinity thereof, between sunset and sunrise.

(Code 1971, § 16-14)

Sec. 12-74. Leaving excavation unfastened, unguarded.

No person shall make any permanent excavation under the surface of any street or sidewalk in the city, ~~for the purpose of constructing a coal hole, or for light and air, or for an entrance or for any other purpose,~~ without permission of the city council. No person shall leave such ~~coal hole or other~~ aperture open or unfastened between sunset and sunrise in any case, nor in the daytime, unless actually in use and guarded by one (1) or more persons.

(Code 1971, § 16-15)

Sec. 12-75. Construction, reconstruction of streets, ways; notice to be given.

Forty-five (45) days before the construction or reconstruction of any street, court, or way, notice shall be given to the city clerk and to all parties concerned in such work, as referred to in section 12-71~~2~~.

(Code 1971, § 16-16)

Secs. 12-76—12-90. Reserved.

ARTICLE V. PUBLIC PLACES⁶⁷

DIVISION 1. GENERALLY

Secs. 12-91—12-100. Reserved.

DIVISION 2. CEMETERIES⁶⁸

Sec. 12-101. Cemetery fees established.

The schedule of fees set forth in this section can be found in Appendix B and is hereby established for services performed by the city in the Highland and Old Hill Cemeteries of the city.~~‡~~

~~(1) Digging of graves and rental of lowering devices and greens \$200.00~~

~~(2) Purchase of single grave 150.00~~

(Code 1971, § 7-1; Ord. of 3-15-73; Ord. of 7-29-80(3); Ord. of 9-28-87)

Sec. 12-102. "Cemetery Receipts, Reserved" account designated; utilization of account.

Receipts from services performed pursuant to section 12-101 shall be placed in a special account of the city to be reserved for appropriation by the mayor and city council for the care, improvement, embellishment or enlargement of the public cemeteries of the city. This special account is to be designated the "Cemetery Receipts, Reserved" account.

(Code 1971, § 7-2)

⁶⁷Cross reference(s)—Harbor, § 4-26 et seq.; beaches, § 4-101Cross reference(s)— et seq.; litter in public places prohibited, § 8-84Cross reference(s)—; names of parks and squares, § 11-1Cross reference(s)—; Market Landing Park, Atkinson Common and Bartlet Mall, § 11-26Cross reference(s)— et seq.

⁶⁸Cross reference(s)—Responsibilities of committee on public service, § 2-34Cross reference(s)—.

State law reference(s)—Cemeteries, M.G.L. ~~A~~ c. 114 et seq.

Sec. 12-103. Highland Cemetery Commission.

- (a) *Establishment.* There is hereby established a Highland Cemetery Commission for the purpose of assisting in preserving and enhancing Highland Cemetery; in a shared stewardship with the public and municipal departments.
- (b) *Board of commissioners; term of office.* The mayor shall appoint five (5) members to constitute the Board of Commissioners of Highland Cemetery. Members must be residents of the city and shall serve without pay. Each commissioner of said commission shall be appointed for a term of not in excess of three (3) years and the appointments shall be made so that the terms of not more than two (2) commissioners shall expire in a single year. The appointments shall be made on or before the first Monday of February. All members shall hold office until their respective successors are appointed.
- (c) *Annual appropriation for upkeep; use of other funds.*
 - (1) The mayor and city council shall annually appropriate a sum of not less than five hundred dollars (\$500.00) for the preservation and enhancement of Highland Cemetery.
 - (2) The money annually appropriated by the city for the upkeep of Highland Cemetery together with such sums as may be received by the commissioners shall be expended, in consultation with the mayor and city council, to the satisfaction of the commissioners for the preservation and enhancement of Highland Cemetery as a public cemetery.
- (d) *Promulgation of rules.* Commissioners are hereby authorized to promulgate reasonable rules for the use by the public of Highland Cemetery. Such rules may include, but are not limited to, hours of use, conduct of visitors, and manners of use of certain areas. Commissioners shall consult with the mayor and city council prior to such promulgation.
- (e) *Financial matters.* All money received for the account of the Highland Cemetery Commission shall be deposited with the city treasurer/collector, in trust, subject to withdrawal by the majority of a quorum of the board of commissioners only for expenditures on Highland Cemetery; and the accounts of the Highland Cemetery Commission shall be kept by the city treasurer/collector in such form and manner as the commissioners may direct.
- (f) *Annual report of commission.* The Board of Commissioners of Highland Cemetery shall make a report of their doings, receipts and expenditures by the thirtieth (30th) day of September in each year, to the city council, before the last Monday in October.

(Ord. of 9-26-11(2))

Secs. 12-104—12-120. Reserved.

DIVISION 3. LIBRARY⁶⁹

Sec. 12-121. Designation of library trustees; supervision of library.

The mayor and city council shall be trustees of the public library of the city and, as such, shall have and exercise a general supervision over its affairs.

⁶⁹State law reference(s)—Libraries generally, M.G.L. ~~A~~ c. 78.

(Code 1971, § 14-1)

Sec. 12-122. Board of directors—Membership; term of members; filling vacancies.

In the month of January annually there shall be appointed by the mayor, subject to confirmation by the city council, one (1) registered voter of the city, who, together with the six (6) directors remaining in office, and the mayor and president of the city council, ex officio, as well as the persons referred to in section 12-123, shall constitute a board of directors of the public library. The director elected in January, annually, shall hold ~~his~~ office for seven (7) years. Such directors shall hold their office until their successors are chosen. Vacancies may be filled at any time in the manner prescribed in this section.

(Code 1971, § 14-2)

Sec. 12-123. Same—Additional members; duties of same.

In addition to the number of board of directors of the public library, there shall be as ex officio members the three (3) persons appointed by deed of the subscribers to the fund for a public library building, to hold in trust the over-plus funds provided by the subscribers for the reparation and improvement of the building, and their successors in office, comfortably to the tenor of the trust deeds; provided that a duplicate copy of the deed shall be filed with the city clerk, and that due notice of all changes of the trustees shall be communicated by them, in writing, addressed to the city council.

(Code 1971, § 14-3)

Sec. 12-124. Same—General duties and powers; bylaws and regulations.

The board of directors shall have the general care and superintendence of the public library, make all purchases and exchanges of books, and cause the same to be kept in good repair, prescribe the duties of the librarian, and have the control and direction of the librarian in the discharge of ~~his~~ their duties; and establish all convenient and necessary bylaws and regulations to be observed in the use of books, and determine the fines and penalties to be incurred for their nonobservance.

(Code 1971, § 14-4)

Sec. 12-125. Same—Annual report.

The board of directors shall, at the first meeting of the city council in September, annually, present a report exhibiting the condition of the library, the number of books added during the fiscal year, an account of all receipts and expenditures, and such other information or suggestions as they may deem proper.

(Code 1971, § 14-5)

Sec. 12-126. Librarian—Appointment; term of office.

Once every three (3) years in the month of January, a librarian shall be appointed by the board of directors. The librarian shall hold office for three (3) years from the first day of February succeeding ~~his~~ their appointment, or until ~~his~~ their successor is chosen and qualified in like manner.

(Code 1971, § 14-6; Ord. of 3-27-89)

Sec. 12-127. Same—Duties generally.

The librarian shall perform any and all of the services in relation to the library, and obey and enforce all such rules and regulations as may be prescribed by the board of directors. ~~He~~ They shall keep an account of all receipts and expenditures of the library.

(Code 1971, § 14-8)

Sec. 12-128. Same—To be secretary of board of directors; records of proceedings.

The librarian shall act as the secretary of the library board of directors and shall keep full and accurate records of the proceedings of such board.

(Code 1971, § 14-9)

Sec. 12-129. Disposition of fines, penalties, other moneys.

All fines and penalties which may be incurred under the rules and regulations of the library shall be collected by the librarian and paid over monthly to the city treasurer/collector to be credited to the general fund.

(Code 1971, § 14-10)

Sec. 12-130. Edward Strong Moseley Fund—Separate bequest; control of same.

The fund known as the "Edward Strong Moseley Fund" shall be kept as a separate bequest known as the "Edward Strong Moseley Fund," and shall be controlled by the trustees of the public library.

(Code 1971, § 14-12)

Sec. 12-131. Same—Annual report.

The trustees of the public library shall incorporate in their report annually the condition of the "Edward Strong Moseley Fund," giving the amount of the annual income from the same, with a full record of all moneys expended by them, and furnish vouchers therefor.

(Code 1971, § 14-13)

Secs. 12-132—12-139. Reserved.

DIVISION 4. CIVIC COMMISSION

Sec. 12-140. Creation.

In accordance with Section 5 of Chapter 486 of the Acts of 1980, there is hereby created a civic commission by the City of Newburyport.

(Ord. of 2-14-94)

Sec. 12-141. Composition.

The commission shall consist of five (5) persons, who shall hold office for terms of one (1), two (2), three (3), four (4), and five (5) years respectively from the first Monday in March next following such appointment, or until their successors are qualified; and thereafter the mayor shall annually, before the first Monday in March, with approval from the city council, appoint one such commissioner for a term of five (5) years from said first Monday in March. A vacancy in such board shall be filled in like manner for the remainder of the unexpired term. Such commissioners shall serve without compensation.

(Ord. of 2-14-94)

Sec. 12-142. Members, prohibition.

No person may serve on the commission who is either a member of the board of directors of the Society for the Development of the Arts and Humanities of Greater Newburyport, Inc. (hereinafter referred to as SDAH) as lessee or an employee or official of the City of Newburyport, nor the spouse or other immediate family member of any such director, employee, or official.

(Ord. of 2-14-94)

Sec. 12-143. Rules.

- (a) The commission, at its discretion, shall draft and approve rules and regulations that govern the operation of the commission and the administration of the lease. Such rules shall include, but not be limited to, a method by which disputes between the SDAH and vendors may be resolved with the commission acting in the role of arbitrator.
- (b) The commission shall further require a monthly report from the SDAH in relation to the operation of the Firehouse Civic Center.

(Ord. of 2-14-94)

Sec. 12-144. Responsibilities.

Said commission shall be responsible for the duties granted to it by said Chapter 486 of the Acts of 1980. Further, said commission shall be authorized by the City of Newburyport to carry out all of the city's obligations and to exercise all of the city's rights as determined by the lease agreement for the Firehouse Civic Center as entered into by the City of Newburyport as lessor and the SDAH as lessee. Said lease agreement was originally entered into on September 12, 1990. Any future amendments to such lease shall be governed by the terms of this section. A copy of the lease agreement and any amendments are on file in the office of the city clerk.

Said commission is authorized to enter into a lease with the Trustees of the Newburyport Waterfront Trust ("Trust") for the property shown as "Area to be Leased 4,662 Sq. Ft." on a sketch plan filed with the city clerk. Any future lease agreement shall be governed by the terms of this section. A copy of any lease and any amendments entered into by said commission and the Trust shall be filed with the city clerk.

(Ord. of 2-14-94; Ord. of 4-26-04)

Secs. 12-145—12-170. Reserved.

ARTICLE VI. PROTECTION OF PUBLIC TREES⁷⁰

Sec. 12-171. Purpose.

The City of Newburyport promulgates this article to plant, maintain, plan, protect and preserve public trees, believing that the presence of trees: contributes to the distinct character of the city; improves air quality; creates habitats for wildlife, including various rare and protected species; reduces noise; provides privacy; protects soil from erosion; provides glare and heat protection; provides an aesthetic appeal that enhances property values; and provides natural privacy to neighbors as well as civic pride and enjoyment.

The purpose of this article is to promote and protect the public health, safety and general welfare by providing for the regulation of tree planting, maintenance and removal of trees, shrubs and other plants on public property and trees on private property that constitute a hazard to the public in the city right-of-way.

This article is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution, Chapter 294 of the Acts of Massachusetts 1920, as amended, and the powers granted to cities in the Massachusetts General Laws. This article supplements M.G.L. c. 87: Shade Trees. (Ord. of 6-25-12(1))

Sec. 12-172. Tree commission.

Commission established: To advance the City of Newburyport's stewardship of trees and their ecology the city hereby establishes a tree commission to aid in carrying out the provisions of this ordinance code. The mission of the commission is to select, plant, protect, maintain, plan for and increase the health, beauty, quantity, diversity and vitality of Newburyport's trees. The tree commission shall be a volunteer group whose members are appointed by the mayor with the approval of the city council for the following purposes:

- (1) Advising the tree warden and other city officials with respect to the adoption and amendment of plans, programs and regulations pertaining to the protection of public trees in the city, including the city tree plan and tree regulations;
- (2) Monitoring the health and protection of public trees, creating and updating inventories of such trees;
- (3) Identifying issues relative to the health and protection of public trees and recommending solutions to problems identified;
- (4) Advising the tree warden and other city officials with respect to the planting and replacement of public trees and on tree-related issues;
- (5) Seeking grants and conducting fundraising to assist the commission's mission, such funds to be deposited into the tree fund;
- (6) Promoting knowledge and awareness of the benefits of trees and their impact on the quality of life in Newburyport.

⁷⁰Editor's note(s)—An ordinance adopted June 25, 2012, amended article VI in its entirety to read as herein set out. Former VI, §§ 12-171 Editor's note(s)—12-189, pertained to trees and shrubs, and derived from Ord. of 6-11-01(1), §§ 1—19.

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- (7) Actively design, select, plant and maintain the tree ecology of Newburyport in coordination with the tree warden and city tree plan.

Membership: The commission shall consist of seven (7) voting members, plus two (2) alternates, not including the tree warden or ~~his~~their designees who shall serve as ex-officio members of the commission.

Term of appointment: The members of the tree commission shall be appointed for staggered terms of such length and so arranged that the term of at least one (1) member will expire each year, and their successors shall be appointed or reappointed for terms of three (3) years. All such members may continue to serve after their term has expired until a successor is appointed.

Officers: By a majority vote of the members of the tree commission, a chairman of the tree commission and a vice chairman shall be elected annually. The nominees must be present at the time of nomination.

Quorum: A majority of the voting members of the commission shall constitute a quorum. Alternate members may vote whenever authorized by the chair and necessary due to the absence or disqualification of a voting member.

Meetings: The commission shall convene a general business meeting once per month for a minimum of ten (10) months per year. Subcommittees shall meet as needed. The tree warden or ~~his~~their designee should attend all meetings of the tree commission.

Meeting posting: Notice of commission meetings shall be posted with the city clerk in accordance with Massachusetts Open Meeting Laws.

(Ord. of 6-25-12(1))

Sec. 12-173. Definitions.

The meaning of terms used in this article shall be as follows:

City tree plan: A plan for the care of public trees. Said plan shall be updated annually in accordance with section 12-181. This plan differs from the tree regulations because it is concerned with both a short and a long term proactive vision of the stewardship of the trees and tree ecology.

DBH: Refers to the "diameter at breast height" of the main tree trunk measured four and one-half (4.5) feet above the ground. The diameter measurement can be based on the widest width of an ovoid shaped trunk or computed from the circumference using the appropriate mathematical formula or circumference tape measure especially designed for the purpose - whichever measurement is larger.

Drip line: The area defined by the outermost circumference of a tree canopy. The imaginary circle that you would draw on the soil around a tree directly under the outermost branch tips. Rainwater tends to drip from the tree at this point.

Green strip (or planting strip): A length of city owned land between a road side or curb and an adjacent sidewalk or paved way. Some green strip areas may be too narrow to support new or replacement plantings. Care must be taken to keep a green strip permeable to water and not paved or covered with plastic anti-weed sheeting, large stones that may over heat tree roots, or other decorative materials.

Hazard tree: A standing tree, either live or dead, large enough to cause damage, having defects, singly or combined, in roots, butt, bole (trunk), or limb, which predispose it to mechanical failure in whole, or in part, and which is so located that such failure has a probability of injury and damage to persons and property; public or private.

A hazard tree poses a threat to persons and/or property. As defined by the International Society of Arboriculture (ISA), a hazard tree must meet three (3) criteria:

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- (1) The tree is sufficiently large enough to cause damage should it fall;
 - (2) The tree has a target (that would be damaged should it fall);
 - (3) The tree has a condition that would make it likely to fall.

Invasive species: A species that is:

- (1) Non-native (or alien) to the ecosystem under consideration; and
- (2) Whose introduction causes or is likely to cause economic or environmental harm or harm to human health; or
- (3) Any species identified by the Massachusetts Department of Agricultural Resources (MDAR) as noxious and/or invasive in the Commonwealth on the "prohibited plants list" adopted pursuant to Massachusetts General Laws (MGL) including, but not limited to, M.G.L. c. 128, §§ 2 and 16 through 31A.

Maintenance: Activities, plans, provisions, and equipment to keep trees alive and flourishing.

Mitigation plan: A document submitted as part of a permit application whenever any public trees are proposed to be removed. See section 12-196.

Offset: The distance in feet that a tree is planted to one (1) side of (offset) or away from (setback) a road right-of-way, curb, hydrant, walkway, buried utility service line, sewer pipe or line, utility pole or traffic sign post, overhead wire, or surveyed (or global positioning satellite - GPS - determined) lot line. The purpose of the offset or setback is to preserve safe sight lines for road traffic and pedestrians, minimize any potentially damaging interaction of roots and branches with utility lines or pipes, and allow firefighting or other large equipment to negotiate corner turns with ease.

Ordinance: Chapter 12, streets, sidewalks, and other public places - article IV, protection of public trees" of the "Code of Ordinances of the City of Newburyport, Massachusetts".

Owner: A person or business entity with a legal or equitable interest in property.

Person: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

Pollarding: A formal pruning technique of pruning a young tree to achieve a globe like growth of branches atop the main stem. Such pruning is redone annually to maintain the shape. Pollarding is not the same as "topping" which is defined separately in this section.

Pruning: A horticultural practice that alters the form and growth of a tree by selectively cutting away undesirable, dead, or overgrown branches, stems, or twigs. Based on aesthetics and science, pruning can be considered preventive maintenance. Many problems may be prevented by pruning correctly during the tree's formative years.

Public trees: Trees, shrubs and other woody vegetation within the public right-of-way (public shade trees) and on any public property (lands owned or managed by the city) other than those managed by the parks commission or conservation commission, or successors to those bodies. See section 12-175.

When it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the public right-of-way or public property cannot be made certain by records or monuments, and for that reason it is doubtful whether such tree is a public tree, it shall be taken to be within the public right-of-way and/or to be on public property until evidence to the contrary is shown.

Regulations: See "tree regulations".

Replacement trees: A tree or trees to be planted to replace any trees removed, or reflects the equivalent replacement value that shall be paid to the city's tree fund. If the trees are no longer present on the site (e.g., not available for identification due to having been removed or covered over) then the valuation of the removed trees shall be based on the value of the most expensive species that were removed.

Setback: See "offset".

Shrub: A botanical or ecological term used to describe the particular physical-structural or plant life-form of a woody plant. A shrub or bush is distinguished from a tree by its multiple stems arising at or near the ground and shorter in height, usually under fifteen (15) to twenty-six (26) feet tall. A large number of plants may become either shrubs or trees, depending on the growing conditions they experience. Shrubs can be either deciduous or evergreen.

Stop work order: The issuance of an order to immediately discontinue work that affects trees.

Street: A public thoroughfare which has been accepted for public use or a planning board approved subdivision street.

Street trees: Trees, shrubs and other woody vegetation growing within the public right-of-way.

Tree commission: See section 12-172.

Tree fund: The financial account that shall be administered by the city auditor and tree warden. Any payments into the tree fund required under this ~~ordinance code~~ shall be deposited in said fund, and, at the direction of the tree commission, shall be used solely for the purpose of buying trees, tree related equipment and services (including tree inventory, education and training), planting, and providing tree care in the city.

Tree plan: See "city tree plan" or "tree work plan".

Tree regulations: See section 12-177. These regulations complement the city tree plan but shall not replace it.

Tree topping: The severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Topping is not the same as "pollarding" which is a formal pruning technique where the previous season's growth is cut back to a branch stub annually, resulting in swollen fist-like branch ends.

Tree warden: A mayor-appointed official with the qualifications of a certified arborist, or with relevant training and/or experience. If a certified arborist cannot be employed in the position of tree warden, the city may retain the services of a certified arborist as a consultant available to provide expert supervision as needed.

The duties or responsibilities of the tree warden shall conform to this article and M.G.L. ~~A.~~ c. 87. For the purposes of this article, the tree warden shall be the "enforcement officer." The tree warden shall be the city's authorized agent to enforce the provisions of this article and any regulations, orders, violation notices, enforcement orders and permit conditions relative thereto on behalf of the city.

Tree warden designee or agent: That person or persons formally designated by the city's tree warden to carry out duties consistent with those of the tree warden.

Tree work permit: A permit obtained pursuant to this article by an owner, builder, developer, agent, or utility doing any work on public trees. Said permit shall be issued by the tree warden in accordance with section 12-180.

Tree work plan: See section 12-180.

Tree worker license: A document obtained from the city by any hired person or entity doing tree work in the city. The licensee is engaged in the business of planting, maintaining, pruning, trimming, or removing public trees or their stumps/roots. The license shows that documentation of the holder's tree expertise and insurance coverage is on file with the office of the tree warden.

Way: Any public land, which is not a street as defined herein, used by the general public as a footpath, walkway, bridle path or other similar use.

(Ord. of 6-25-12(1))

Sec. 12-174. Applicability.

No person other than the tree warden or his/her designee shall plant, spray, prune, trim, cut, remove, conduct any excavation on public trees, or otherwise alter a public tree without first filing an application and obtaining a written permit from the tree warden in accordance with section 12-180.

A valid tree work permit shall be obtained prior to doing any of the following work:

- (a) Removal of public trees;
- (b) Trimming of public trees;
- (c) Site preparation, alteration, clearing, grubbing or excavation within the public right-of-way or public property or within the drip-line of any public trees which may disturb roots, trunks, or limbs of public trees, including but not limited to the installation of utilities;
- (d) Replacement or replanting or relocation of public trees;
- (e) Proposed cutting (trunk, limbs or roots) of public trees.

The requirements of this article or regulations promulgated pursuant to section 12-177 may be waived or reduced at the sole discretion of the tree warden upon a determination that doing so would be in the public interest as the result of an overriding public need.

(Ord. of 6-25-12(1))

Sec. 12-175. Non-applicability.

This article shall not apply in any instance where the planning board, the zoning board of appeals, parks commission, or conservation commission has regulatory authority or designated care and custody of such property, including but not limited to definitive subdivisions still under construction. In such instances the tree warden and tree commission shall be notified and offered the opportunity to review plans and make recommendations prior to a decision by the respective board, but such recommendations shall not be binding. The tree warden and tree commission shall be notified and consulted by the above boards as early as possible in the development approval process.

(Ord. of 6-25-12(1))

Sec. 12-176. Emergencies and exemptions.

Provisions of this article shall not apply to:

- (a) Emergency projects necessary for public safety, health and welfare, as determined by the tree warden, the director of public services, or mayor.
- (b) Trees that are hazardous as determined in writing by the tree warden.
- (c) Removal of invasive tree species as identified by the tree warden.
- (d) Trees identified by the tree warden or by the commonwealth as posing a risk of disease or insect infestation.

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- (e) Utility emergencies: The utility company or tree contractor shall notify the tree warden of the nature of the emergency and the work performed within two (2) business days of such work.

If, upon review, the tree warden determines that an emergency did not exist then the work undertaken shall be considered a violation of this article. The responsible parties shall be subject to enforcement and fines under the provisions of this article.

(Ord. of 6-25-12(1))

Sec. 12-177. Tree regulations.

The tree warden may adopt and periodically amend rules and regulations, not inconsistent herewith, to effectuate the purposes of this article. Such regulations, and any amendments thereto, shall be effective as of the date and time they are filed with the city clerk. Said regulations may include, but shall not be limited to provisions regarding: Administration; application requirements and fees; permitting procedures and requirements; design standards, dimensional controls (setbacks and offsets) and requirements for planting, replacement, protection, maintenance, and other work on or adjacent to public trees (including the classification of trees by size, caliper, location, significance or other important factors); qualifications for anyone responsible for doing work on public trees (as defined in section 12-174); surety requirements; inspection and site supervision requirements; waivers and exemptions; and enforcement procedures. Said regulations shall be adopted within ninety (90) days of the effective date of this article in consultation with the tree commission. Failure by the City of Newburyport or the tree warden to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not have the effect of suspending or invalidating this article. A copy of the current tree regulations in effect shall be filed with the city clerk and shall be maintained at all times on the city website and for public inspection at the department of public works and office of planning and development.

Unless otherwise waived by the tree warden, all planting, replacement, maintenance, and other work on public trees shall comply with the tree regulations regardless of whether such work shall be done by private individuals, corporations, public utility companies, contractors or city officials and employees.

(Ord. of 6-25-12(1))

Sec. 12-178. Enforcement.

The tree warden or ~~his/her~~their designee, in consultation with the tree commission, shall enforce this article and any regulations, orders, violation notices, enforcement orders and permit conditions on behalf of the city, and may pursue all civil and criminal remedies for such violations pursuant thereto. If the tree commission cannot be consulted due to extenuating circumstances, the tree warden shall communicate, in writing or by internet mail (email) to the chairperson, the details of the situation within forty-eight (48) hours of having carried out the enforcement.

- (1) *Civil and injunctive relief.* If a person violates the provisions of this article and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, the tree warden may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- (2) *Orders.*
 - a. The tree warden may issue a written order to enforce the provisions of this article and any regulations, orders, violation notices, enforcement orders and permit conditions hereunder, which may include requirements to:

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- i. Cease and desist from construction or land disturbance until there is compliance with this article and regulations, and an approved construction permit, including the tree management plan and the erosion and sediment control plan;
 - ii. Repair, maintain, or replace the tree management system or portions thereof in accordance with ~~the~~ this article, the city tree plan, tree regulations, or tree work plans;
 - iii. Remediate adverse impact resulting directly or indirectly from malfunction of the tree environment.

Notice of the order or enforcement action shall be given by hand, by certified mail, or by registered mail.

- b. If the tree warden determines that abatement or remediation of contamination, land grade or compaction changes or other adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed by the violator or property owner.
- (3) *Criminal penalty.* Any person who violates any provision of this article and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, shall be punished by ~~a fine of three hundred dollars (\$300.00) or the otherwise~~ maximum allowable by state law. Each day or part thereof that such violation ~~occurs, or~~ occurs or continues to occur by failure to comply with an order or notice from the tree warden shall constitute a separate offense.
 - (4) *Non-criminal disposition.* As an alternative to criminal prosecution or civil action, the city may elect to utilize the non-criminal disposition procedure set forth in M.G.L. ~~A~~ c. 40, § 21D as a general ordinance in which case the tree warden of the city shall be the enforcing person. The penalty for violations shall be ~~three hundred dollars (\$300.00) or the otherwise~~ maximum allowable by state law as noted in chapter 1, section 1-18. Each day or part thereof that such violation ~~occurs, or~~ occurs or continues to occur by failure to comply with an order or notice from the tree warden shall constitute a separate offense. When offense(s) result in removal, death or irreparable damage of a public tree, as determined by the tree warden, the responsible party shall incur the cost of removal and replacement as determined by the tree warden, in addition to the fine.
 - (5) *Entry to perform duties under this article.* To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the tree warden, ~~his~~ their agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this ~~ordinance code~~ and regulations and may make or cause to be made such examinations, surveys or sampling as the tree warden deems reasonably necessary.
 - (6) *Appeals.* Decisions or orders of the tree warden shall be final. Further relief of a decision made under this article shall be reviewable in superior court in an action filed in accordance with M.G.L. ~~A~~ c. 249, § 4.

(Ord. of 6-25-12(1))

Sec. 12-179. Application fees and financial security.

Fees for all tree work permits shall be established by the director of public services in consultation with the tree warden. Fees shall be waived for work done for the benefit of the city, at the discretion of the tree warden.

In addition to application fees the tree warden may require, as a condition of approval, that the applicant provide guarantee funds (financial security) to be held by the city in escrow prior to any site work and until the completion of all work.

(Ord. of 6-25-12(1))

Sec. 12-180. Tree work permit required.

Application for a tree work permit required under this article shall be made to the tree warden a minimum of forty-five (45) calendar days prior to commencement of the planned work, except in an unforeseen emergency which is subsequently confirmed in writing by the tree warden. The tree warden may issue the permit, deny the permit, or may issue a permit with conditions, including a so-called "mitigation plan" as described in section 12-196. Failure to comply with the conditions of a previously issued permit shall be grounds for denial. The tree commission shall be consulted prior to the issuance of a permit or decision regarding tree work. For removal or replacement of public trees, see section 12-195.

All applications for a tree work permit shall be accompanied by a tree work plan, which shall include:

- (1) A scale drawing showing the location of all existing and proposed public trees, as well as all trees over five (5) inches diameter breast height (DBH) in the vicinity of the proposed work;
- (2) The DBH, height, conformation, and estimated area of leaf canopy in square feet as if viewed from above;
- (3) Identification of species and DBH, showing the locations of current and intended plantings; and
- (4) A plan indicating property lines, existing structures, utilities, and depicting changes to the grade and drainage of the land (if applicable to the work);
- (5) A scale drawing of the existing or pre-construction leafed out canopy coverage compared to post-construction spread/density of the overhead tree canopy.

(Ord. of 6-25-12(1))

Cross reference(s)—Damage, removal and replacement of city-owned trees, § 12-195Cross reference(s)—(c).

Sec. 12-181. City tree plan; John Bromfield Fund.

- (a) The tree warden shall develop a city tree plan for the care, preservation, pruning, planting, replanting, removal and disposition of public trees within the City of Newburyport in consultation with the tree commission. The plan shall be submitted by February 15 of each year to the mayor and city council via the director of public services.
- (b) The city hereby accepts paragraph 18 of the provisions of the will of John Bromfield, late of Boston, proved January 14, 1850. Accordingly, each fiscal year, one-half of the interest which shall accrue or become payable for or in respect of all moneys and funds from the estate of John Bromfield in the hands of the trustees of Newburyport trust funds, and known as the John Bromfield Fund, shall be added to those funds otherwise included in the municipal budget for planting and preserving trees in the public right-of-way (public shade trees) "for the embellishing and ornamenting of said streets for the pleasure and comfort of the inhabitants."
- (c) It shall be the policy of the city to promote the planting and preserving trees in the public right-of-way (public shade trees) by encouraging and facilitating substantial increases to the John Bromfield Fund, including, without limitation, by soliciting cash contributions to such fund from other government agencies or subdivisions, private entities, not-for-profit entities, trusts, and individuals.

(Ord. of 11-9-15(4))

Editor's note(s)—An ordinance adopted Nov. 9, 2015, amended § 12-181Editor's note(s)— in its entirety to read as herein set out. Former § 12-181Editor's note(s)— pertained to city tree plan, and derived from an ordinance adopted June 25, 2012.

Sec. 12-182. Listing of trees acceptable for planting.

The tree warden, in consultation with the tree commission, shall develop and maintain within the tree regulations an up-to-date list of trees acceptable ("approved") and unacceptable ("prohibited") for planting under appropriate circumstances.

(Ord. of 6-25-12(1))

Sec. 12-183. Spacing between street trees.

Street trees shall be planted with the goal of creating an integrated canopy above the city's streets, while bearing in mind restrictions of particular sites. Accordingly, the tree warden, in consultation with the tree commission, may impose requirements in the tree regulations on the spacing of street trees.

(Ord. of 6-25-12(1))

Sec. 12-184. Plantings near curbs and sidewalks.

- (a) Street trees shall be planted in accordance with the tree regulations and dimensions specified in the most recently approved city tree plan. Exceptions may be made for special plantings, if authorized in writing by the tree warden.
- (b) Cutouts for planting in a ~~walk-way~~walkway or a curb shall be sufficient to capture rainwater for the health of the tree. Where appropriate, trees shall be planted with root barriers (root growth guide guards) to minimize the development of uplifting and girdling roots.

(Ord. of 6-25-12(1))

Sec. 12-185—12-187. Reserved.

Sec. 12-188. Trimming of public trees by utility companies.

Because of the extensive impact of utility pruning, utility and communications service companies shall employ a certified arborist who shall be present on site to actively supervise the pruning of public trees. Such work shall be performed in accordance with accepted arboricultural standards set forth by the National Arborist Association and American Nursery Standards.

(Ord. of 6-25-12(1))

Sec. 12-189. Planting, maintenance, and removal.

- (a) The city shall have the right to plant, maintain, and remove trees, plants, and shrubs within the public right-of-way of the city-owned streets, alleys, avenues, lanes, squares and other public property to ensure public safety and to preserve or enhance the symmetry and beauty of such public property. The tree commission shall aid the city and tree warden by promoting, fundraising, and carrying out activities associated with tree planning, planting and maintenance in accordance with the city tree plan.
- (b) The city's tree warden may remove or order to be removed a tree or shrub, or a part of a tree or shrub which is in an unsafe condition or by its nature is injurious to sewers, electric power lines, gas lines or other public

improvements, or is affected with any injurious fungus, insect pest and/or disease, or obstructs lines of sight related to public safety.

- (c) The planting of street trees within the street right-of-way by abutting property owners is permissible provided that the tree warden grants written approval and that the selection and location of said trees are in accordance with provisions of this article, the tree regulations, and the list of acceptable trees. All such plantings shall become property of the city upon planting.
- (d) Work on city trees shall be subject to the supervision requirements set forth in section 12-188 above.

(Ord. of 6-25-12(1))

Sec. 12-190. Topping of trees.

Unless authorized by the tree warden, it shall be unlawful to top a public tree. Refer to the tree regulations to determine to the amount of pruning and methods that are allowed. In general, no more than one-third ($\frac{1}{3}$) of a tree's limbs may be removed in one (1) growing season.

Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where best pruning practices are impractical may be exempted from this article as determined by the tree warden. Illegal topping of a tree shall result in a fine ~~of not less than three hundred dollars (\$300.00) or the otherwise at~~ the maximum allowable limit by state law as noted in chapter 1, section 1-18.

(Ord. of 6-25-12(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18

Sec. 12-191. Pruning and removal of non-public trees that may affect public safety.

- (a) *Removal to ensure public safety:* The tree warden may determine that a tree located on private property constitutes a hazard to life or safety of people, buildings, or other public property that use or exist on city property. Such trees shall be removed by the owners at their expense within sixty (60) days following written notification by the tree warden. In the event the owners fail to comply with such notification, the city shall have the right to remove or cause to have removed such trees and charge the city's removal cost to the owners.
- (b) *Pruning for visibility and safe passage:* The tree warden may permit the owner of a tree or shrub overhanging a street or right-of-way within the city to prune the branches so the branches do not obstruct the light from a street lamp and/or to maintain clear passage for pedestrians, cyclists, or other legal conveyances to a height of eight (8) feet above the sidewalk surface. Professional safety methods shall be followed. The tree warden shall provide the owner and/or pruner with illustrative requirements for the proper method of pruning and trimming trees. Refer to the tree regulations for details [~~section 12-177~~].

The city shall have the right to prune a tree or shrub on private property when it interferes with proper spread of light along the street from a street light, or that interferes with visibility of a traffic control device, sign and oncoming traffic at intersections.

- (c) *Removal in response to disease and infestation:* Trees or shrubs located on private property which harbor insects or disease constituting a potential threat to other trees or shrubs within the city shall be removed by the owners at their expense within sixty (60) days following written notification by the tree warden. In the event the owners fail to comply with such notification, the city shall have the right to remove or cause to have removed such trees and charge the city's removal cost to the owners.

(Ord. of 6-25-12(1))

Sec. 12-192. Reserved.

Sec. 12-193. Removal of tree stumps.

All tree stumps shall be removed within six (6) months of tree removal to a minimum depth of six (6) inches below grade, along with their major roots within six (6) inches of the surrounding grade to improve the safety of sidewalks, pavement and other landscape and roadway features.

The party responsible for removing the tree shall pay for stump removal. However, any private land owners may apply for prior written permission from the tree warden to remove the stump at their own expense.

Stumps of public trees shall be removed to a minimum of six (6) inches below the ground surface so the top of the stump does not project above the ground surface. Chipping of brush and removal of all stumps, wood and other debris shall be completed at the time of stump removal.

(Ord. of 6-25-12(1))

Sec. 12-194. Installation of tree lights, signs, or hardware.

- (a) It shall be unlawful to install lights - decorative or other - on public trees without written approval of the tree warden. With written approval from the tree warden, decorative lights may be installed in city-owned trees on public property for periods defined below which will not interfere with the proper growth and maintenance of the trees and when the occasion for the lights is deemed appropriate.
- (b) Decorative lights shall be installed no earlier than November 1 and removed no later than February 1. Longer term approvals may be allowed, if approved by the tree warden.
- (c) The parties receiving approval shall be responsible for proper installation and timely removal of decorative lights.
- (d) Cables, nails, screws, signs, staples, wires or other hardware shall not be affixed to city trees unless approved in writing by the tree warden.

(Ord. of 6-25-12(1))

Sec. 12-195. Damage, removal and replacement of city-owned trees.

Anyone violating the provisions of this article shall be fined ~~not less than three hundred dollars (\$300.00) or otherwise~~ as noted in chapter 1, section 1-18 or the value of the tree as determined by the tree warden, when the offense results in removal, death or irreparable damage of the tree or shrub as determined by the tree warden. Each act causing damage to a separate tree shall constitute a separate offense. A separate offense shall be deemed committed for each day a violation occurs or continues occur.

- (a) *Damage and removal:* It shall be unlawful to remove or damage city-owned trees, their branches, trunk, root systems, bark and other parts of the tree; attach signs or other items to parts of trees using nails or other devices which may puncture or damage the bark. Damage shall be as defined and determined by the tree warden or ~~his~~ their designee.
- (b) *Unsafe trees and expedited removal:* If, in the informed opinion of the tree warden, a tree presents a public hazard, that tree may be removed without a hearing as required by section 12-180. The tree warden shall provide the tree commission with a written explanation of the reason(s) for the tree removal with photo documentation, within fifteen (15) days following the date of the removal.

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- (c) *Removal hearing:* When the removal of one (1) or more city-owned trees, assessed by the tree warden as being non-hazardous, is requested, the party making the request shall demonstrate the necessity of removal and show how the removal will benefit the city. A hearing shall be held by the tree warden with the tree commission, which shall issue a recommendation to the tree warden regarding the removal and/or replacement of the tree. After such hearing, and in consideration of the recommendation of the tree commission, the tree warden shall issue a decision with explanation regarding removal and/or replacement of the tree. The party requesting the tree removal shall be responsible for all costs associated with public notice prior to the hearing.

"Except as provided by section five [of Massachusetts General Laws, Chapter 87], public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four [of Massachusetts General Laws]." (Excerpted from M.G.L. c. 87, § 3.)

"Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five [of Massachusetts General Laws]. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two [of Massachusetts General Laws], including the Dutch elm disease." (Excerpted from M.G.L. c. 87, § 5.)

In cases involving trees that are known to be invasive species, the tree warden may make the decision to remove the tree(s) without a hearing as required by section 12-180 if such work is done in accordance with the tree regulations and city tree plan as part of a tree replacement plan. Such a removal shall be part of a replanting project and the funding necessary for replanting shall have been secured prior to doing the removal work.

- (d) *Approval and assignment of costs:* Tree removal may occur only with the prior written approval of the tree warden. The requesting party shall incur the cost of removal, disposal, stump removal, as well as the costs of replacement, protection and maintenance of new plantings, as determined by the tree warden.
- (e) Public street or lawn shrubs which are removed, damaged or destroyed shall be replaced with a city approved shrub species of similar value and equal spread or height. The trees or shrubs shall be replaced at no cost to the city.
- (f) All trees and shrubs planted on public lands shall conform to the botanical names and standards of size, culture and quality adopted by the American Association of Nurserymen, Inc. in the American Standard for Nursery Stock.

(Ord. of 6-25-12(1))

Sec. 12-196. Tree valuation, mitigation and replacement costs.

- (a) *Required replacement and/or mitigation:* No public tree may be removed without the prior written approval of the tree warden. The tree warden, in consultation with the tree commission, shall determine all tree values and replacement costs.

When public trees are damaged or destroyed by a private individual, corporation, public utility company, or contractor, as determined by the tree warden, the responsible party shall incur the cost of removal, replacement, and maintenance as provided for herein.

- (b) *Damage and replacement:* The party responsible for damage to public tree(s) shall be responsible for the cost and timely replacement of such trees to the tree warden's specification and satisfaction, and/or for providing to the Newburyport Tree Committee Fund a dollar amount equal to the cost of the required replacement, including transport, planting, and five-year maintenance.

Replacement costs as determined by the tree warden and tree commission shall take into account the ecological impact of the damage or loss as well as the trunk diameter (DBH) of the damaged or illegally removed tree(s). The tree warden shall determine a dollar value for the replacement(s) by determining the nursery price of the replacement trees in the upcoming planting season as described in (e) above plus the cost of delivery, planting, five (5) years maintenance and five (5) years guarantee based on quotes for such services by a landscape or tree contractor. Said contractor shall meet the city's qualifications for contracted service providers and shall plant trees in accordance with the city's written specifications. The removing party shall bear the costs of removal and disposal of the removed tree, the grinding of the stump and sidewalk/landscape repairs. The final decision of the valuation rests with the tree warden and the mayor.

Public trees which are removed, damaged or destroyed shall be replaced with a nursery-grown, city-approved tree species in quantity and size equal in value to tree(s) removed as determined and approved by the tree warden. Minimum tree size shall be two-inch caliper DBH. Such trees shall be planted in locations selected by the tree warden in consultation with the tree commission.

Example: A tree with a twenty-four-inch DBH (diameter at breast height) that is removed shall be replaced with a combination of trees that is equal or greater than twenty-four (24) inches DBH. In this example, acceptable combinations for replacement of twenty-four-inch DBH tree could include:

- (i) Eight (8) three-inch caliper trees;
- (ii) Ten (10) two and one-half-inch caliper trees; or
- (iii) Twelve (12) two-inch caliper trees.

In lieu of planting replacement trees on the site an equivalent replacement value may be proposed. If accepted by the tree warden, the funds shall be deposited into the Newburyport Tree Committee Fund for use by the tree commission for the planting and care of trees throughout the city as deemed necessary.

- (c) *Waiver or reductions of mitigation:* The tree warden may waive or reduce the costs if deemed proper within the spirit of this article. The tree warden shall notify the mayor and the tree commission chairman in writing within forty-eight (48) hours of the decision stating the dollar amounts, method of calculation, and reasons for the waiver or reduction.

(Ord. of 6-25-12(1))

Sec. 12-197. Building and development.

When applicable, the building commissioner may withhold issuance of an occupancy permit for a project or development until all outstanding terms and conditions of the property owner's or developer's tree work plan have been fulfilled and reviewed and approved by tree warden in consultation and consideration of the recommendations of the tree commission.

(Ord. of 6-25-12(1))

Sec. 12-198. Surety.

A surety is a bond posted to ensure a specific performance of a duty or obligation.

The tree warden, in consultation with the tree commission, may require the applicant for a tree work permit to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other security. The form and amount of any surety shall be deemed sufficient in the opinion of the tree warden, based on the scale and nature of the subject project, to ensure that all work will be completed in accordance with the permit and tree regulations. If the project is phased, the tree warden may release part of the bond as each phase is completed in compliance with the permit. The bond may not be fully released until the tree warden and tree commission has received any final inspection reports, and a satisfactory final inspection has been conducted. At such time the tree warden shall issue a notice of compliance and return any surety being held.

(Ord. of 6-25-12(1))

~~Sec. 12-199. Severability.~~

~~The provisions of this article are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid for any reason, such invalidity shall not affect the other provisions or application of this article, and all other provisions shall continue in full force and effect.~~

~~(Ord. of 6-25-12(1))~~

Chapter 13 TRAFFIC AND MOTOR VEHICLES⁷¹

ARTICLE I. IN GENERAL

Secs. 13-1—13-25. Reserved.

ARTICLE II. ADMINISTRATION

Sec. 13-26. Enforcement.

It shall be the duty of officers designated by the city marshal to enforce the provisions of these regulations. Such officers are hereby authorized to direct all traffic either in person or by means of visible or audible signals in conformance with the provisions of these regulations, provided that in the event of a fire or other emergency to expedite traffic or safeguard pedestrians, officers of the police or fire departments may direct traffic, as conditions may require, notwithstanding the provisions of these regulations.

Additionally, it shall be the duty of parking enforcement officers designated by the parking clerk to enforce any parking regulations provided herein.

Finally, any personally identifiable information ("PII", e.g. license plate data) collected in the course of parking regulation enforcement via any means that does not result in a violation or warning shall be discarded within twenty-four (24) hours of collection.

Nothing contained herein shall prevent the parking clerk from collecting and retaining information of a general nature, without personally identifiable information, to be used for parking reports and studies.

(Rev. Ords. 1937, Ch. 31, Art. II, § 1; Ord. of 8-29-11(1); Ord. of 7-16-18)

⁷¹Editor's note(s)—The city enforces the traffic and motor vehicle laws of the commonwealth, M.G.L. ~~A~~ c. 89 et seq.

Cross reference(s)—Operation of motor vehicles or motorized bicycles prohibited on the beach, § 4-101Cross reference(s)—(c); buildings and building regulations, ch. 5Cross reference(s)—; fire prevention and protection, ch. 7Cross reference(s)—; nuisances, § 8-101Cross reference(s)— et seq.; junked, wrecked, abandoned, inoperative motor vehicles, § 8-121Cross reference(s)— et seq.; junk dealers and collectors, § 9-61Cross reference(s)— et seq.; operation of bicycles, mopeds, roller skates and skateboards in certain areas restricted, § 10-1; streets, sidewalks and other public places, ch. 12Cross reference(s)—; vehicles for hire, ch. 15Cross reference(s)—; zoning, app. A; off-street parking regulations, app. A, § VII.

State law reference(s)—Motor vehicles generally, M.G.L. ~~A~~ c. 90; law of the road, M.G.L. ~~A~~ c. 89; other provisions relating to traffic, M.G.L. ~~A~~ c. 85; cities authorized to regulate vehicles and carriages, M.G.L. ~~A~~ c. 40, § 22, M.G.L. ~~A~~ c. 90, § 18, M.G.L. ~~A~~ c. 85, § 2, M.G.L. ~~A~~ c. 89, §§ 8, 9; cities authorized to appropriate money for maintenance of programs designed to prevent automobile accidents, M.G.L. ~~A~~ c. 40, § 7A; registration and operation of bicycles, M.G.L. ~~A~~ c. 85, §§ 11A, 11B.

Sec. 13-27. Assemblies, etc.—Temporary closure of streets.

The city marshal is hereby authorized to close temporarily, any street or highway in an impending or existing emergency, or for any lawful assemblage, demonstration or procession provided there is reasonable justification for the closing of such street.

(Rev. Ords. 1937, Ch. 31, Art. II, § 2)

Cross reference(s)—Streets, sidewalks and other public places, ch. 12Cross reference(s)—.

Sec. 13-28. Same—Parking restrictions.

The city marshal is hereby authorized to prohibit, temporarily, parking on any street or highway or part thereof in an impending or existing emergency, or for a lawful assemblage, demonstration or procession provided there is reasonable justification for such prohibition. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of an officer.

(Rev. Ords. 1937, Ch. 31, Art. II, § 3)

Sec. 13-29. Snow emergencies.

Upon the declaration of a snow emergency by the superintendent of the department of public ~~works~~services, no parking shall be allowed on any street or way in the city unless specifically allowed by order of the city council. The superintendent, upon such declaration, shall cause notice of the snow emergency to be given by radio broadcast or other suitable media. Upon the declaration of the end of the snow emergency by the superintendent, parking shall be allowed on any street or way in the city. Provided, however, that this section shall not be construed to permit parking where it is specifically prohibited by the provisions of this chapter.

(Ord. of 10-31-88(4))

Editor's note(s)—An ordinance adopted Oct. 31, 1988, did not specifically amend this Code; hence, its inclusion as § 13-29Editor's note(s)— was at the discretion of the editor.

Cross reference(s)—Throwing snow and ice into streets, § 12-7Cross reference(s)—; stopping, standing or parking schedules, § 13-167Cross reference(s)— et seq.

Sec. 13-30. Leaf pickup—Parking restrictions.

Beginning the Monday following the Columbus Day holiday and continuing through December 15, the manager of the department of public ~~works~~services, working in conjunction with the police department may restrict parking on streets within the city for the purpose of effective pickup of leaves at curbsides. These restrictions are limited to the hours of 7:30 a.m.—3:30 p.m. The manager of the department of public ~~works~~services shall give notice to the citizens of the city regarding these parking restrictions through appropriate media and posting of temporary signs twelve (12) hours before restriction becomes effective. The parking restrictions shall be further controlled so that parking is not restricted for more than one-week intervals in each ward.

(Ord. of 10-9-01(2))

Sec. 13-31. Placement and enforcement of temporary parking restriction signage.

The mayor, the parking clerk or the city marshal or any designee may place temporary parking restriction signage as required for the safety of public on public ways or public areas as deemed necessary. Temporary signage shall be considered enforceable under the current parking schedule as set by city council. Temporary signage shall clearly state the restriction imposed and be embossed with "per order of the City of Newburyport". City council shall be notified of all temporary restrictions for review at the next regularly scheduled city council meeting.

(Ord. of 8-29-11(2))

Secs. 13-32—13-45. Reserved.

ARTICLE III. TRAFFIC CONTROL DEVICES

Sec. 13-46. Placement of devices.

The city council is hereby authorized and as to those signs and signals required in this chapter it shall be its duty, to place and maintain or cause to be placed and maintained all official traffic signs, signals, markings and safety zones. All signs, signals, markings and safety zones shall conform to the standards as prescribed by the department of public works of the commonwealth.

(Rev. Ords. 1937, Ch. 31, Art. III, § 1)

Sec. 13-47. Interference with devices, markings prohibited.

It is unlawful for any person to willfully deface, injure, move, obstruct or interfere with any official traffic sign, signal or marking.

(Rev. Ords. 1937, Ch. 31, Art. III, § 3)

Sec. 13-48. Obedience to traffic signs, signals and markings.

No driver of any vehicle ~~or of any street car~~ shall disobey the instructions of any official traffic control signal, sign, marking, marker or legend unless otherwise directed by a police officer.

(Rev. Ords. 1937, Ch. 31, Art. III, § 5)

Sec. 13-49. Unauthorized devices, markings.

It shall be unlawful for any person to place or maintain or to display upon or in view of any street any unofficial sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic sign, signal, marking or device or which attempts to direct the movement of traffic or which hides from view any official sign or signal. The city marshal is hereby empowered to remove every such prohibited sign, signal, marking or device or cause it to be removed without notice.

(Rev. Ords. 1937, Ch. 31, Art. III, § 2)

Secs. 13-50—13-90. Reserved.

ARTICLE IV. SPECIFIC STREET SCHEDULES⁷²

DIVISION 1. GENERALLY

Sec. 13-91. Zone of quiet.

- (a) All of the territory within two hundred (200) feet of the premises of each hospital in this city is hereby created and established as a zone of quiet. The city marshal is hereby authorized to erect and maintain in a conspicuous manner within this area such signs and markings as are necessary to designate it as a zone of quiet.
- (b) The city council may temporarily establish a zone of quiet upon any street where a person is seriously ill, if requested to do so by the written statement of at least two (2) registered physicians certifying to its necessity. Such temporary zone of quiet shall embrace all territory within a radius of two hundred (200) feet of the building occupied by the person named in the request of such physicians. Such temporary zone of quiet shall be designated by the police by placing at a conspicuous place in the street a sign or marker bearing the words "Zone of Quiet."
- (c) No person operating a motor vehicle within any designated and signed zone of quiet shall sound the horn or other warning device of such vehicle except in an emergency.

(Rev. Ords. 1937, Ch. 31, Art. IV, § 2)

Secs. 13-92—13-96. Reserved.

Sec. 13-97. Road races, walkathons, bicycle and other multidisciplined events.

- (a) *Short title.* This section may be cited as the "road races, walkathons and bicycle events."
- (b) *Purpose and intent.* The use of city streets and sidewalks for the purpose of road races, walkathons or bicycle tours are positive events that promote exercise, general good health and Newburyport as a destination. These events do from time to time create hardships, impacting neighborhoods and traffic. To create a balance between conflicting interests, by safeguarding participants, residents, visitors and the City of Newburyport, this section will define and codify the procedure for the benefit of all.
- (c) *Definitions.*
 - (1) *Road race.* A competitive or non-competitive running event that utilizes the streets, sidewalks and/or crosses over streets or sidewalks within city limits and in which an entry fee is required or charitable donation is solicited or suggested.
 - (2) *Walkathon.* A competitive or non-competitive walk event that utilizes the streets, sidewalks and/or crosses over streets or sidewalks within city limits and in which an entry fee is required or charitable donation is solicited or suggested.

⁷²Cross reference(s)—Streets, § 12-26Cross reference(s)— et seq.

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- (3) *Bicycle race.* A competitive or non-competitive bicycling event that utilizes the streets, sidewalks and/or crosses over streets or sidewalks within city limits and in which an entry fee is required or charitable donation is solicited or suggested.
 - (4) *Multidisciplined event.* A competitive or non-competitive event requiring or offering running, walking, biking, swimming or any combination thereof in which an entry fee is required or a charitable donation is solicited or suggested.
 - (5) *Event.* Any road race, walkathon, bicycle race, multi-disciplined event as defined above.
- (d) *Limitations.*
- (1) *Procedure.* All events shall, through that event's organizer, board of directors, charity foundation or designee ("organizer") apply for city council authorization to hold the event through the office of the city clerk no later than sixty (60) days before the event's proposed date. ~~There shall be a grace period through December 31, 2017, during which applications will be accepted beyond the prescribed due date.~~ Prior to application with the city council, the event shall file and receive approval from all applicable city departments, boards, and commissions. Copies of such approved applications, including along with documentation of any fees, donations, in-kind donations paid as part of said application(s), shall be included as part of the city council application.

The date of application is the date a completed application is submitted to the city clerk's office and stamped by the same. The city clerk, upon review of the completed form, will place the application on the next regular city council agenda, even if such submission is a late file. Upon following the procedures of the council, as deemed appropriated in the sole judgment of the council, the application will be considered approved if the council votes favorably by majority. The application shall name one (1) person responsible on the application and shall provide contact information to include name, address, email address, and telephone number.
 - (2) *Exemptions.* Each event organizer or organization shall comply with this ~~ordinance article~~ and no exemptions will be permitted.
 - (3) *Course map.* All applications shall be accompanied by a legible, precise course map showing the event route, water stops, refreshment stops, and so-called "port-a-potties". The course map shall also include any road closures, detours and parking areas. The course map shall be approved by police, fire, department of public services, parks commission and harbor masters departments prior to submission to the city clerk.
 - (4) *Electronic amplifier.* Electronic amplifiers, loudspeakers and bullhorn use shall be requested at time of application. Under no circumstances will they be used for public address announcements or music before 8:00 a.m., except for Sundays when electronic amplifiers, loud speakers or bullhorns will not be used for public address announcements or music before 9:00 a.m.
 - (5) *Road closure.* No ways, public or private, boat ramps or parking lots controlled or patrolled by the city shall be closed without authorization. Authorization shall be considered granted only if said closure(s) are contained in the approved permit. It is the sole responsibility of the race organizers to notify residents fourteen (14) days in advance that neighborhood roads will be closed if no alternate route is available to those residents. Notification shall be made by race organizers by informational packet drop-off at all residences that may be impacted, including, but not limited to, road closures, restricted driveway access, parking restrictions, or noise. In the case of multi-family residences with so-called security doors, notification will be sufficient at said security door. A copy of the notification shall be provided to the city clerk and, when possible, posted on the city website and distributed via email. Further, a list of all streets notified shall be provided to the city clerk to be date stamped and appended to the application record. Press releases and other media type notifications are encouraged.

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- (6) *Insurance.* All events shall have an insurance policy or rider in effect for the event naming the "City of Newburyport" as an additional insured. The policy shall be no less than two million dollars (\$2,000,000.00).
 - (7) *Event termination.* If in the judgment of the city marshal, fire chief or department of public services (DPS) director or designees thereof determine that an event is unsafe due to existing conditions, that event may be stopped, terminated or suspended. In the case of a multidiscipline event such as a triathlon, the harbormaster or their~~his/her~~ designee may likewise stop, terminate or suspend the swimming portion for cause.
 - (8) *Event and traffic security.* The city marshal, fire chief, DPS director or in the case of a triathlon, the harbormaster can require special duty personnel to assist in the organizing and coordinating the safety and security of the event. All special duty assignments will be paid by the event organizers.
 - (9) *Clean-up.* The event organizers shall be responsible for post event trash collection, removal of signage, directional arrows, advertisements or other promotional material associated with the event.
 - (10) *Parking.* The event organizers shall be responsible for including parking instructions in materials disseminated to event participants. If the event is happening within one-half mile of municipal parking, then participants shall be asked to park at such parking facilities.
 - (11) *Notification of previous event organizers.* To the extent reasonably possible, the city clerk shall notify all event organizers from events held ~~from 2014 — 2016~~ previously, inclusive, by a one-time phone, email, or letter of the new application timeline and other requirements.
 - (12) *Simplification.* Departments are encouraged to unify their respective applications into a singular application, managed and distributed by the city clerk's office.
 - (13) *Americans with Disabilities Act.* Event organizers are reminded of the importance of and expectation of adherence to the Americans with Disabilities Act of 1990 (42 U.S.C § 12101) and subsequent applicable amendments.
- (e) *Enforcement.*
- (1) *Regulations.* Consistent with this section, the city shall promulgate regulations to enforce and otherwise implement the provisions of this section upon passage by the city council. Any event previously approved by city council shall be deemed permitted.
 - (2) *Warning.* In the circumstance that this section is violated, the enforcement may consist of a warning. Any warnings issued for violation(s) will be reported to the city clerk and city council and may be used as a factor in future application approvals and denials.
 - (3) *Noncriminal disposition.* If the city determines that a violation has occurred in which a noncriminal violation is issued, the named event organizer shall be penalized by a non-criminal disposition as provided in Massachusetts General Law as adopted by the City of Newburyport as a general ordinance in section 1-17 of chapter 1 of the Code or Ordinances of the City of Newburyport in the amounts set herein in subsection (e)(4) below.
 - (4) *Violation.* The non-criminal violation finer are defined in chapter 1, section 1-18~~shall be one hundred dollars (\$100.00) for the first offense and two hundred fifty dollars (\$250.00) for second and subsequent offenses.~~ Any non-criminal citations issued for violation(s) will be reported to the city clerk and city council and shall be used as a factor in future application approvals and denials.
 - (5) *Failure to notify.* If the event fails to notify residents and provide documentation to the city clerk, pursuant to subsection (d)(5) above, shall render that organization ineligible to receive an event permit for a period of twelve (12) months unless special leave is granted by two-thirds supervote of the city council.

(Ord. of 8-11-14(3); Ord. of 5-30-17(2); Ord. of 11-13-17(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

Editor's note(s)—Ord. of 8-11-14(3), set out provisions intended for use as §§ 13-97Editor's note(s)—13-101.

Inasmuch as §§ 13-100Editor's note(s)— and 13-101Editor's note(s)— were already in use in the Code, and at the editor's discretion, these provisions have been included herein as § 13-97Editor's note(s)—(a)—(e).

Secs. 13-98, 13-99. Reserved.

DIVISION 2. SCHOOL ZONES

Sec. 13-100. Established.

The City of Newburyport establishes school zones under the regulations of M.G.L. ~~A~~ c. 90, § 17 which regulates statutory speed limits to twenty (20) miles per hour, in these designated areas. Traffic signal devices located in these areas must conform to Manual on Uniform Traffic Control Devices and other pertinent regulations under M.G.L. ~~A~~ c. 85, § 2.

(Ord. of 6-12-95)

Sec. 13-101. Designated.

The following streets or portions of these streets are located in designated school zones:

~~Auburn Street.~~

Court Street.

Green Street.

High Street.

Johnson Street.

~~Lime Street.~~

Low Street.

Merrimac Street.

~~Milk Street.~~

Myrtle Avenue.

North Atkinson Street.

Plummer Avenue.

~~Prospect Street.~~

Toppans Lane.

Washington Street.

(Ord. of 6-12-95; Ord. of 8-13-01(1))

Sec. 13-102. School bus parking.

School bus parking shall be restricted as indicated below:

Street	Restriction
Plummer Avenue	Parking restricted to school buses only at entrance to Community Action Head Start School during the following hours when school is in session: 8:45 a.m. to 9:15 a.m., 12:15 p.m. to 12:45 p.m., and 3:45 p.m. to 4:15 p.m.

(Ord. of 3-25-02)

Secs. 13-103—13-120. Reserved.

DIVISION 3. ONE-WAY STREETS

Sec. 13-121. Established.

The following are designated as one-way streets and vehicles traveling upon these streets or parts of streets shall move only in the direction indicated below:

Street	Extent
Atkinson	Easterly from Boardman Street to Strong Street.
Beck	From Federal Street to Lime Street in a southeasterly direction.
Boardman	From Washington Street to Merrimac Street in a northeasterly direction.
Brown Square	From Titcomb Street to Green Street in an easterly direction.
Center	Northerly from Middle Street to Liberty Street.
Charter	Easterly from State Street to Fair Street.
Dove	From Munroe Street to Merrimac Street in a northeasterly direction.
Elm	From Plum Street to Merrimac Street in a northerly direction.
Essex	Westerly from Fair Street to State Street.
Franklin	Northbound from Purchase Street to Water Street.
Fruit	From High Street to Fair Street in a northerly direction.
Green	Northerly from High Street to Merrimac Street.
Harris	Easterly from Green Street to State Street.
Hill	Westerly from Route 1 to a point 75 feet west (the current rear entrance to the DAV building on Parker Street).
Independent Street	Water Street to Liberty Street, in a southerly direction.
Liberty	Westerly from Center Street to State Street.
Merrill	From Merrimac Street to Congress Street.
Middle	Easterly from State Street to Fair Street.
Milk Street	Easterly from Lime Street to Bromfield Street.
Park	Northerly from High Street to Harris Street.
Parker	Easterly from Hill Street to Water Street.
Pike	Northerly from Liberty Street to Water Street.
Pleasant	Westerly from State Street to Summer Street.
Plum	From Olive Street to Elm Street in a westerly direction.
Prospect	Easterly from State Street to Federal Street.

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(Supp. No. 41)

Rawson	Southwesterly from High Street to Highland Avenue.
Salem	Southbound Water Street to Purchase Street.
Ship	From Water Street in a southwesterly direction.
Smith's Street	From Beck Street to Water Street in a northeasterly direction.
State	Southerly from Market Square to High Street.
Temple	From Federal Street to Fair Street traffic shall travel in a northwesterly direction.
Temple	Westerly from Fair Street to State Street.
Titcomb Street	Southerly from Pleasant Street to Washington Street.
Union	In an easterly direction from Marlboro Street.
Vernon Court	Northerly Vernon Street to High Street.

(Ord. of 8-29-88(1); Ord. of 11-14-88(2); Ord. of 1-30-89; Ord. of 11-27-89(1); Ord. of 3-12-90; Ord. of 5-23-94; Ord. of 10-11-94; Ord. of 4-27-98; Ord. of 8-13-01(2); Ord. of 7-19-04)

Secs. 13-122—13-135. Reserved.

DIVISION 4. STOP AND YIELD INTERSECTIONS⁷³

Sec. 13-136. Stop signs designated.

Any and all streets now or in the future designated as stop intersections shall be added, deleted or amended by order of the city council. A list of said streets and intersections shall be maintained by the clerk's office and posted on the appropriate parking webpage on the City of Newburyport website.

(Ord. of 11-9-15(2))

Sec. 13-137. Yield signs designated.

Any and all streets now or in the future designated as yield intersections shall be added, deleted or amended by order of the city council. A list of said streets and intersections shall be maintained by the clerk's office and posted on the appropriate parking webpage on the City of Newburyport website.

(Ord. of 11-9-15(2))

Sec. 13-138. Turning on red signals.

~~Vehicles are restricted from making a turn on red signals at the following intersections (M.G.L.A. c. 89 § 8).~~

Any and all intersections now or in the future restricted pursuant to this section shall be added, deleted or amended by order of the city council. A list of said intersections and restrictions shall be maintained by the clerk's office and posted on the appropriate parking webpage on the City of Newburyport website.

⁷³Editor's note(s)—An ordinance adopted Nov. 9, 2015, repealed the former Div. 4, §§ 13-136Editor's note(s)—, 13-137Editor's note(s)—, and enacted a new division as set out herein. The former Div. 3 pertained to stop intersections. See Code Comparative Table for a detailed history of derivation.

(Ord. of 11-9-15(2))

Secs. 13-139—13-150. Reserved.

DIVISION 5. TURNING LANES⁷⁴

Sec. 13-151. Left turns required.

~~Vehicles traveling on the following streets in the left lane of the roadway shall make the indicated left lane of the roadway shall make the indicated left turn:~~

Any and all streets now or in the future restricted pursuant to this section shall be added, deleted or amended by order of the city council. A list of said streets and restrictions shall be maintained by the clerk's office and posted on the appropriate parking webpage on the City of Newburyport website.

(Ord. of 10-26-15(1))

Sec. 13-152. Right turns required.

~~Vehicles traveling on the following streets in the right lane of the roadway shall make the indicated right lane of the roadway shall make the indicated right turn:~~

Any and all streets now or in the future restricted pursuant to this Section shall be added, deleted or amended by order of the city council. A list of said streets and restrictions shall be maintained by the clerk's office and posted on the appropriate parking webpage on the City of Newburyport website.

(Ord. of 10-26-15(1))

Secs. 13-153—13-165. Reserved.

DIVISION 6. STOPPING, STANDING AND PARKING⁷⁵

Sec. 13-166. Amendment, addition and deletion by order.

In order to efficiently and expeditiously address parking issues within the City of Newburyport, any and all amendments, additions and deletions to these sections contained in division 6 may be by order of the city council and, furthermore, the clerk's office shall maintain a list of said amendments, additions and deletions and post the same on the appropriate page of the City of Newburyport website.

(Ord. of 11-9-15(1); Ord. of 7-30-20(1))

⁷⁴Editor's note(s)—An ordinance adopted Oct. 26, 2015, amended Div. 5, §§ 13-151Editor's note(s)—, 13-152Editor's note(s)—, in its entirety to read as herein set out. Former Div. 5, pertained to similar subject matter.

⁷⁵Cross reference(s)—Off-street parking regulations, app. A, § VII.

State law reference(s)—Violation of parking regulations, M.G.L. c. 90, § 20A.

Sec. 13-167. Designation of spaces; manner of parking.

- (a) The city council shall determine upon what streets angle parking shall be restricted and shall mark or sign such streets or cause the same to be marked or signed.
- (b) Upon the streets or parts of streets which have been marked or signed for angle parking, vehicles shall be parked with one (1) wheel within twelve (12) inches of the curb and at the angle to the curb indicate by such marks or official signs. The vehicle shall be marked so that all four (4) wheels of the vehicle shall be placed wholly within the painted lines provided.

(Rev. Ords. 1937, Ch. 31, Art. V, § 8)

Sec. 13-167.1. Designated parking space for mayor.

The following space shall be designated for exclusive use by the Mayor of the City of Newburyport:

Street	Restriction
Reserved	

(Ord. of 2-9-98; Ord. of 1-25-10(1))

Sec. 13-168. Parking restricted on certain streets.

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

Street	Restriction
Arlington	Westerly side from Highland Avenue for a distance of approximately 120 feet in a northerly direction.
Atkinson	No parking on the south side.
Atwood	North side a distance of approximately 150 feet in front of Jackman School.
Auburn and Greenleaf	On all sides around the traffic island at the intersection of Auburn and Greenleaf Streets.
Bartlett Mall	For its entire area. The only exception to this section shall be granted to the presiding justice of the superior court.
Beacon Avenue	Westerly side from Union Street to Pine Street.
Beck	Southwesterly side.
Beck	For a distance of 150 feet in from Federal Street northeasterly side.
Boardman	Southeasterly side between Merrimac and High Streets.
Boardman	Northwesterly side between Washington Street and Merrimac Street.
Brown Square	Northerly side from a point beginning approximately 100 feet from the beginning of the square (Titcomb Street end) and extending for 60 feet in an easterly direction.
Buck	For a distance of 75 feet from High Street on the easterly side.
Carter	No parking on southerly side from a point 80 feet west of Merrimac Street to Merrimac Street.
Carter	No parking on northerly side from a point opposite west side of Griffin Court to a point opposite west side of Cutters Court.
Center	Westerly side, from Water Street to Liberty Street.
Charles	West side Water Street to Purchase Street.

Charles	Southeasterly side for a distance of 500 feet southeasterly.
Cherry Street	Both sides from the intersection of Route 1 north and continuing approximately 452 feet in a northerly direction.
Congress	Southerly side from Buck Street to Kent Street.
Court Street	On the westerly side from High Street to Washington Street.
Curzon Mill Road	Northwesterly and southeasterly sides from Pine Hill Road to West Newbury town line.
Elm	Westerly side.
Elm	Easterly side in southerly direction for approximately 75 feet from Merrimac Street.
Essex	North side from a point 50 feet east of State Street to State Street.
Fair Street	No parking for a distance of six feet on the northerly side of the exit from the Sullivan building parking lot at the corner of Temple and Fair Streets on the westerly side of the street.
Fair Street	Parking for Salvation Army business only, between the hours of 8:00 a.m. and 6:00 p.m., weekdays, excepting holidays: Westerly side of Fair Street from northerly edge of driveway at 2 Fair Street to Water Street.
Ferry Road	Both sides from Spring Lane to 133 Ferry Road (Chase residence).
Ferry Wharf	Both sides in a southeasterly direction from Market Square for a distance of approximately 600 feet.
Franklin Street	No parking Westerly side only of Franklin Street from Water Street for a distance of 100 feet running in a southerly direction.
Garden	North side from a point 40 feet east of State Street to State Street.
Green	East side from High Street to a point 135 feet north of High Street.
Green	East side from a point 50 feet south of Harris Street to a point 75 feet north of Harris Street.
Green	West side from a point 55 feet north of High Street to High Street.
Greenleaf	Southwesterly side of Greenleaf Street from Auburn Street to Pond Street.
Gypsy Hoyts Lane (Hoyts Gypsy Lane)	Both sides from Storey Avenue to Curzon Mill Road.
Hales Court	Both sides.
Hancock	Northeasterly side from Marlboro Street to Lunt Street.
Harris	Southwesterly side from Park Street in a northwesterly direction for a distance of 100 feet.
Harris	South side from Green Street to a point 35 feet east of Green Street.
Harris	North side from Green Street to a point 30 feet west of Green Street.
Harris	South side from Park Street to a point 110 feet east of Park Street (Bus stop).
Harrison	No parking on easterly side from a point 100 feet west of Water Street to Water Street.
High	High and State Street within 15 feet of intersection, all approaches.
High	North side from a point 110 feet east on State Street to a point 130 feet west of Green Street.
High	North side from the intersection of High and Winter Streets for a distance of 45 feet easterly
High	South side from a point 130 feet west of Green Street to a point 120 feet east of State Street.
High	Southeasterly direction from intersection of Carter Street for a distance of 105 feet.
High	No parking except for drop-off of students for a distance of 30 feet west of high school driveway.

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High Street	Beginning at the boundary line between 320 and 322 High Street and running in a southeasterly direction for a distance of thirty (30) feet.
Highland Avenue	Southerly side from Rawson Avenue to the easterly end of the Anna Jaques Hospital property line.
Highland Avenue	Northerly side from Rawson Avenue to the westerly end of the property known as #18 Highland Avenue.
Highland Avenue	No parking both sides from Toppans Lane for a distance of 125 feet.
Hill	Northerly and southerly sides from Route 1 to a point 75 feet westerly of Route 1.
Independent	Southeasterly side from Water Street to Middle Street.
Johnson Street	Easterly side from Low Street for a distance of 130 feet.
Kent	Easterly side in a southerly direction from Congress Street for a distance of 130 feet.
Lafayette	Both sides from Highland Avenue for a distance of 30 feet.
Lime	Between School and Purchase Streets.
Lime	Southwesterly side of Lime Street from Water to School Streets.
Lime	Northeasterly side from Prospect Street to Milk Street.
Lime	Southwesterly side of Lime Street from School Street to Milk Street.
Low	Both sides from Johnson Street to Graf Road.
Low	From Johnson Street to Toppans Lane on the north side.
Low	Northerly side from Storey Avenue for a distance of approximately 600 feet in an easterly direction.
Low	No parking on northerly and southerly side, from Route #1 to a distance of approximately 200 feet.
Low	From Toppans Lane to Hunter Drive on the north side. From Crow Lane to Hale Street on the south side.
Lunt	No parking on the westerly side.
Maple	Northeast side from Forrester Street to Chapel Street.
Margerie	Both sides for a distance of approximately 90 feet from Rawson Avenue.
Merrill	Northwesterly side from Merrimac Street to Congress Street.
Merrimac	Southwesterly side between Caldwell's Court and Olive Street.
Merrimac	From Central Wharf on Merrimac Street in a northwesterly direction a distance of 30 feet.
Merrimac	Both sides, Kent Street to Merrill Street.
Merrimac	North side opposite Strong Street.
Merrimac	South side Kent Street to Olive Street.
Merrimac	Southwesterly side of Merrimac Street between Dove and Warren Streets.
Merrimac	South side from a point 125 feet west of Green Street to Water Street.
Merrimac	Southerly side from Green Street in a westerly direction for a distance of 75 feet.
Merrimac	North side from a point 70 feet east of Green Street to a point 120 feet west of Green Street.
Merrimac	North side from a point 15 feet west of the fire station drive to Water Street.
Merrimac Street	On the north side from the easterly terminus of Pop Crowley Way for a distance of 375 feet in an easterly direction.
Merrimac Street	On the south side from the intersection of Boardman Street for a distance of 40 feet in an easterly direction.
Merrimac Street	At the exit of 129 Merrimac Street (Foundry Project) for a distance of 60 feet in a westerly direction which includes a 20-foot corner clearance at the exit driveway.

Middle	On the northeast side of Middle Street from State Street to Fair Street.
Middle	East side of Middle Street from Federal Street to State Street.
Milk	From Lime Street on southerly side for a distance of 250 feet.
Milk	Southerly side of Milk Street from Lime Street to Bromfield Street.
Mulliken Way	Both sides.
Murphy Avenue	East and west from Norman Avenue in a northerly direction for a distance of 100 feet.
Murphy Avenue	No parking on both sides with the exception of the area running for a distance of 100 feet from Low Street wherein there shall be no parking on both sides between the hours of 7:00 a.m. and 9:00 a.m. and 2:00 p.m. and 4:00 p.m., weekdays, excepting holidays.
Myrtle Avenue	Westerly side 180 feet from High Street in a southerly direction for 195 feet.
Norman Avenue	No parking between the hours of 7:00 a.m. and 9:00 a.m. and 2:00 p.m. and 4:00 p.m., weekdays, excepting holidays on the south side and north side from Murphy Avenue for a distance of 170 feet running in an easterly direction.
North Summer	Easterly side in a northerly direction for approximately 400 feet to the Richard Garage Building.
Northern Blvd.	From the Newbury line to the Point, northeasterly side.
Northern Blvd.	On the southwesterly side of Northern Blvd. from the Newbury line to Plum Island Point.
Olive	On the westerly side from Merrimac Street to Congress Street.
Olive	On the westerly side Olive Street, from Merrimac Street to Russia Street.
Opportunity Way	No parking on the northwesterly side of Opportunity Way starting at a point 585 ft from the corner of Malcolm K. Hoyt Road and Opportunity Way and running easterly for a distance of 250 feet.
	No parking on the southeasterly side of Opportunity Way from the corner of Malcolm K. Hoyt Road and Opportunity Way running easterly up to the existing cul-de-sac.
Park	East side from High Street to Harris Street.
Park	East side from High Street to Pond Street.
Parker	Northerly and southerly sides from Route 1 to a point 100 feet easterly of Route 1.
Parker Street	Northerly and southerly sides from Route 1 to Graf Road
Perkins Way	Both sides.
Pine Hill Road	Northwesterly and southeasterly sides from beginning to intersection of Curzon Mill Road.
Pleasant	North side from State Street to a point 40 feet west of State Street.
Pleasant	North side from a point 115 feet west of State Street to a point 210 feet west of State Street.
	South side from a point 150 feet west of State Street to a point 225 feet west of State Street.
Plum	Northerly and southerly sides.
Pond	North side from Greenleaf Street to a point 300 feet east of Greenleaf Street.
	North side from High Street to Park Street.
	South side from High Street to a point 60 feet west of High Street.
Prince Place	Both sides.
Prospect	On the northeast side of Prospect Street from State to Federal Street.

Rawson Ave.	Easterly side approximately 400 feet from a point opposite Margerie Street to Highland Avenue in a northerly direction.
	Westerly side from Farrell Street to Lois Street for a distance of approximately 510 feet.
Reservation Ter.	On easterly and westerly sides of Reservation Terrace from 71st Street to 55th Street, Plum Island.
Salem Street	Westerly side of Salem Street from the entrance to the James Steam Mill running in a southerly direction toward Purchase Street for a distance of 20 feet.
Sally Snyder Way	No parking on either side for the full length of the street to the designated parking area.
School	Thirty feet, both sides of School Street from Lime Street.
Spofford	Both sides of the street from the Intersection of Merrimac Street, northerly to the city boundary.
State	East side from a point 130 feet south of High Street to a point 50 feet south of Garden Street.
State	East side from Liberty Street to Water Street.
State	West side from a point 100 feet south of High Street to a point 215 feet north of High Street.
State	West side from Pleasant Street to a point 50 feet north of Pleasant Street.
State	West side from a point 430 feet north of Pleasant Street to Water Street.
State Street	Police parking only: Northwest side of State Street for a distance of 110 feet in a Southerly direction from the property line at 186 State Street to the Courthouse driveway.
State Street	No parking ten feet north and south of driveway at 158 State Street.
	No parking ten feet north and south of driveway at 160 State Street.
Storey	Eastbound side from the end of state highway Route 113 to the beginning of High Street (Kelleher housing development).
Strong	On the easterly side of Strong Street from Washington Street to a distance 50 feet from Merrimac Street.
Summit Place	No parking 7:00 a.m. to 3:30 p.m. when school is in session on both sides of the street from Toppans Lane in an easterly direction to a point adjacent to 11 & 14 Summit Place.
Sylvester	Both sides for a distance approximately 100 feet from Rawson Avenue.
Temple	On the northeast side of Temple Street from State Street to Federal Street.
Temple	Either side of Temple Street from State Street to Fair Street.
Temple	North side from a point 55 feet east of State Street to State Street.
Tilton	Northwesterly and southeasterly side for a distance of approximately 80 feet in from Rawson Avenue.
Titcomb	Easterly side one space south of police station driveway.
Toppans Lane	No parking 7:00 a.m. to 3:30 p.m. when school is in session on the westerly side for the entire length of Toppans Lane and easterly side from Low Street to Summit Place.
Toppans Lane	No parking 7:00 a.m. to 3:30 p.m. when school is in session on the easterly side from the intersection of Summit Place northerly for a distance of 75 feet.
Toppans Lane	No parking 30 feet north and south of Highland Avenue crosswalk.
Toppans Lane	No parking except for drop-off of students for a distance of 30 feet south of high school entrance.
Unicorn	Southeasterly side.

Unicorn	Northwesterly side from Pleasant Street to a distance of approximately 125 feet.
Union	Northerly side for its entirety.
Union	South side of Union Street beginning at a point opposite from the intersection of Woodwell Ave and Union Street and running in a westerly direction for a distance of 60 feet.
Vernon Street	South side of Vernon Street for a distance of 25 feet in an easterly direction from the Intersection of Vernon Court.
Warren	Easterly side in a northerly direction from Eagle Street to a distance of 100 feet.
Washington	South side from a point 90 feet west of Green Street to Green Street. No parking during school hours.
Water	North side from city line to Ship Street.
Water	North side from the Old Customs House to Merrimac Street.
Water	South side from Merrimac Street to a point approximately 150 feet north of State Street.
Water Street	No parking on the southerly side from Federal Street running in a westerly direction for a distance of 275 feet.
Whitcomb Lane	No parking both sides for the entire length of the lane.
Winter	Southeasterly side for a distance of approximately 100 feet from the corner of Washington Street.

(Ord. of 6-1-70; Ord. of 9-10-84; Ord. of 6-10-85; Ord. of 8-26-85(1); Ord. of 12-9-85; Ord. of 9-14-87(3); Ord. of 8-29-88(2); Ord. of 11-28-88(2); Ord. of 6-12-89; Ord. of 10-30-89; Ord. of 8-13-90; Ord. of 8-12-91; Ord. of 11-29-93; Ord. of 7-13-94; Ord. of 7-31-95; Ord. of 8-14-95(1); Ord. of 8-14-95(2); Ord. of 12-29-97; Ord. of 3-30-98; Ord. of 5-11-98(1); Ord. of 5-11-98(2); Ord. of 7-27-98(1); Ord. of 7-27-98(2); Ord. of 7-27-98(3); Ord. of 9-28-98; Ord. of 12-14-98; Ord. of 8-9-99; Ord. of 12-13-99(2); Ord. of 2-14-00; Ord. of 2-28-00; Ord. of 3-17-00; Ord. of 8-14-00; Ord. of 11-27-00; Ord. of 4-30-01; Ord. of 6-11-01(2); Ord. of 6-25-01; Ord. of 7-30-01; Ord. of 12-10-01(2); Ord. of 3-11-02; Ord. of 5-13-02; Ord. of 8-19-02; Ord. of 9-30-02(2); Ord. of 11-10-03; Ord. of 7-19-04; Ord. of 11-8-04(1); Ord. of 11-14-05; Ord. of 12-11-06; Ord. of 1-8-07; Ord. of 3-12-07; Ord. of 8-13-07(1); Ord. of 9-10-07; Ord. of 9-28-09(2); Ord. of 12-28-09(3); Ord. of 12-28-09(4); Ord. of 12-28-09(5); Ord. of 5-31-11; Ord. of 10-31-11(1); Ord. of 3-17-14(1); Ord. of 3-17-14(2); Ord. of 8-11-14(4); Ord. of 12-12-11; Ord. of 10-14-14(1); Ord. of 1-12-15(1); Ord. of 3-9-15(1); Ord. of 3-9-15(2); Ord. of 8-10-15)

Sec. 13-169. Bus stops; parking restricted.

- (a) No person shall park a vehicle other than a bus in a bus stop.
- (b) No person shall park a bus upon any street within a business district at any place other than a bus stop, when a nearby bus stop is available for use.
- (c) The following streets or portions of streets shall be designated as a bus stop:

Street	Extent
State Street	West side from Harris Street to the entrance of the parking lot at the corner of Harris and State Street.

(Rev. Ords. 1937, Ch. 31, Art. V, § 4; Ord. of 4-24-00; Ord. of 12-10-01(3); Ord. of 10-12-10(2))

Sec. 13-170. Police station parking.

Parking at the police station shall be restricted as indicated below:

Intersection	Restriction
Green Street	Westerly side, three spaces in front of police station; parking for police business only.

(Ord. of 4-8-02)

Editor's note(s)—Prior to the reenactment of § 13-170Editor's note(s)— by an ordinance adopted April 8, 2002, the former § 13-170Editor's note(s)— was deleted by an ordinance adopted Sept. 11, 1989. The deleted provisions pertained to designated bus stops.

Sec. 13-171. Service zones.

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

Street	Extent
Ashland	Easterly side from a point 25 feet from the intersection of High Street to a point 75 feet from the intersection of High Street.
Green Street	Westerly side adjacent to 26 Green Street for a distance of 60 feet. 9:00 a.m.—4:00 p.m. Monday through Friday.
Municipal Parking Lot	Alter size of existing service zone on easterly side to 175 feet allowing for appropriate space for existing handicapped parking sites.
Pleasant	Relocate service zone at Inn and Pleasant Streets by moving this zone easterly to allow for access to handicapped ramp. This service zone shall be 70 feet 8 inches long.
State	Easterly side from a point 421 feet north of Parker Street to a point 481 feet north of Parker Street between the hours of 7:00 a.m.—6:00 p.m. weekdays.
State	Easterly side from Middle Street northerly towards Liberty Street for a distance of approximately 50 feet.
State	Westerly side opposite Threadneedle Alley for a distance approximately 75 feet southerly direction.
Warren	Easterly side from a point 100 feet west of the intersection of Merrimac Street to a point 140 feet west of the intersection of Merrimac Street.

(Rev. Ords. 1937, Ch. 31, Art. V, § 6; Ord. of 1-30-84; Ord. of 12-28-92; Ord. of 7-12-99(1); Ord. of 8-9-99; Ord. of 12-10-01(4); Ord. of 4-28-03; Ord. of 11-8-04(2); Ord. of 12-14-15(1))

Sec. 13-171.1. Pick-up and drop-off areas.

- (1) A designated area located on the north side of Low Street from the Low Street entrance of the main parking lot to the exit of the circular driveway in front of the Rupert A. Nock Middle School and Edward G. Molin Upper Elementary, for the express purpose of allowing vehicles to stop temporarily for pick-up and drop-off of persons utilizing the middle school facilities. The driver of the vehicle must remain in the vehicle at all times while in this designated area. ~~There is a twenty five dollar (\$25.00) fine for violation of this section.~~

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(Supp. No. 41)

- (2) A designated area consisting of one (1) parking space on the ~~e~~East side of Summer Street at the entrance to St. Paul's Episcopal church, 35 Summer Street for the express purpose of allowing vehicles to stop temporarily for pick-up and drop-off of persons. ~~There is a twenty five dollar (\$25.00) fine for violation of this section.~~

Penalties for violation of this section are noted in chapter 1, section 1-18.

(Ord. of 11-8-04(3); Ord. of 11-29-04; Ord. of 10-31-11(2))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

Sec. 13-172. Taxicab stands.

- (a) No person shall park a vehicle other than a taxicab upon any street within a business district in any taxicab stand for a period of time longer than fifteen (15) minutes except while actually engaged in loading or unloading provided that such loading and unloading does not exceed a period of time longer than one-half hour.
- (b) No person shall park a taxicab upon any street within a business district at any place other than the taxicab stand or stands designated for the use of ~~his~~ their taxicab or taxicabs except while engaged, or while waiting for an opportunity to use a taxicab stand designated for ~~his~~ their use.
- (c) The following portions of streets are designated as taxicab stands:

Street	Taxicab Stand
Merrimac	At 42 Merrimac Street northerly for a distance of 60 feet.

(Rev. Ords. 1937, Ch. 31, Art. V, § 5)

Sec. 13-173. Mail box zones.

No person shall park a vehicle upon any section of a street designated as a service zone for the use of drive-up mail boxes in the following locations:

Street	Zone
Green	Southwesterly side for a distance of approximately 40 feet in a northerly direction between Brown Square and Pleasant Street.

(Ord. of 4-27-87; Ord. of 9-11-89; Ord. of 11-27-89(2))

Sec. 13-174. Parking limited—Generally.

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

Street	Zones
Atkinson Common (in front of)	From a point approximately 75 feet west of Plummer Avenue along front of Atkinson Common northwesterly side of High Street and thence along Moseley Avenue to Chase Street between the hours of 8:00 p.m. and 6:00 a.m.
Carter Street	Carter Street on the easterly side from High Street to a point 75 feet north of the corner of Eagle Street and Carter Street during school hours.

Green	For longer than 15 minutes on the northwesterly side of 31 Green Street for 1 space.
Greenleaf	Northeasterly side from Pond Street to Auburn Street between the hours of 8:00 p.m. and 6:00 a.m.
Hale Street	At the entrances to Little River nature trails between dusk and dawn. Dusk and dawn are defined as civil twilight, respectively.
Harris	For longer than 15 minutes on the northerly side 2 parking spaces in front of 2 Harris Street (Newburyport Health Center). This limitation to be effective only as long as Newburyport Health Center is located at 2 Harris Street.
High	Southwesterly side from Auburn Street for a distance of 100 feet west, between the hours of 8:00 a.m. to 4:00 p.m. on any day except Saturdays, Sundays and holidays.
High	One-hour parking, northerly side from Broad Street to Oakland Street, between the hours of 8:00 a.m. to 6:00 p.m.
High	For a period of no longer than 10 minutes on the northerly side from a point 20 feet east of Ashland Street to a point 60 feet east of Ashland Street.
High	South side from Toppans Lane to a point 170 feet in a westerly direction, while school is in session, 7:00 a.m. to 3:30 p.m.
Highland Avenue	One-hour parking, northeasterly side from Rawson Avenue in a southeasterly direction towards Toppans Lane for a distance of 525 feet between the hours of 8:00 a.m. to 8:00 p.m.
Low	Westerly side from a point commencing at the entrance to the Nock Middle School and continuing for approximately 300 feet between the hours of 7:00 a.m. and 4:00 p.m., weekdays only.
Low	Easterly side from a point commencing across from the Nock Middle School driveway closest to Hale Street and continuing for approximately 300 feet between the hours of 7:00 a.m. and 4:00 p.m. weekdays only.
Merrimac	One-hour parking, for longer than 1 hour between the hours of 7:00 a.m. and 5:00 p.m. during weekdays on both sides between Warren Street and Oakland Street.
Merrimac	Both sides, between Broad and Tyng Streets, during the period from 4:45 p.m. to 5:15 p.m. weekdays.
Prospect	On the north side beginning at a point 160 feet east of Lime Street and continuing east for 70 feet between the hours of 8:00 a.m. and 4:00 p.m. when school is in session.
Salem	One-hour parking, westerly side from Water Street to Purchase Street between the hours of 6:00 a.m. to 6:00 p.m.

(Ord. of 12-13-82; Ord. of 1-29-90; Ord. of 8-13-90; Ord. of 12-28-92; Ord. of 10-31-94; Ord. of 11-14-94; Ord. of 11-25-96; Ord. of 8-14-00; Ord. of 5-13-02; Ord. of 9-30-02(2); Ord. of 9-8-08(3); Ord. of 1-25-10(2); Ord. of 10-12-10(3); Ord. of 9-9-13(2); Ord. of 9-9-13; Ord. of 8-11-14(5); Ord. of 3-9-15(3))

Sec. 13-175. Same—Two hours.

No person shall park a vehicle for longer than two (2) hours between the hours of 9:00 a.m. and 6:00 p.m. of any day except Sundays and holidays in the following described streets or parts thereof:

Street	Extent
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Ashland Street	Both sides in a northerly direction from High Street, east side to Stanley Avenue, west side to a point at the northern boundary of property known as 36 Ashland Street 8:00 a.m. to 8:00 p.m.
Charter	Its entire length.
Dawes Street	Both sides from Ashland Street to end of property at 16 Dawes Street 8:00 a.m.—6:00 p.m.
Essex	Its entire length.
Green	From Harris Street to Merrimac Street.
Green	From Pleasant Street to Merrimac Street.
High Street	Northerly side from Ashland Street for a distance northwesterly of approximately 135 feet.
Independent	Water to Liberty Street, northwesterly side.
Liberty	From State Street to Center Street.
Merrimac	Northwest side from west corner of Market Landing to the east side of Riverside Park.
Middle	From State Street to Center Street.
Pleasant	From State Street to Titcomb Street both sides exclusive of existing 30-minute parking restrictions.
Prospect	Southerly side from State Street to Fruit Street.
State	From Garden Street to Market Square.
Unicorn	Both sides from Pleasant Street to municipal parking lot.
Water	North side from Fair Street to a point 335 feet west of Fair Street.
Water Street	South side from Market Square to Center Street.

(Ord. of 7-28-80(1); Ord. of 11-27-89(2); Ord. of 5-8-95; Ord. of 8-9-99; Ord. of 5-30-00; Ord. of 8-13-01(2); Ord. of 10-28-02(2); Ord. of 4-28-03; Ord. of 9-8-03; Ord. of 2-25-13(2); Ord. of 9-9-13(3))

Sec. 13-176. Same—One hour.

No person shall park a vehicle for longer than one (1) hour in the following described streets or parts thereof:

Street	Extent
Atkinson	On the northwesterly side, and also on the southeasterly side 30 feet from Strong Street.
Beacon Avenue	Northeastbound and southwestbound drivers on Beacon Avenue at Oak Street.
Bromfield	Northerly side from Water Street to Purchase Street.
Bromfield	Southerly side from Purchase Street to Water Street.
Buck	Westerly side from High Street to Washington Street.
Center	Between Middle and Liberty Street in an easterly direction.
Congress	Southerly side from Olive Street to Buck Street, and northerly side from Olive Street to Kent Street.
Dove	Easterly and westerly sides from Munroe Street to Merrimac Street.
Eagle	Southerly and northerly sides from Kent Street to Charter Street.
Franklin	Southerly side of Franklin Street from Purchase Street to Water Street.
Garden	Both sides from State Street to Otis Place.
High	Northerly sides from Carter Street to Broad Street.
Highland Avenue	Northeasterly and southwesterly sides from a distance of 125 [feet] to a distance of 500 feet from Toppans Lane.
Lime	Westerly side from Water to School Streets.

Lime	Southeasterly side from Prospect Street to Purchase Street.
Market	Westerly side from Birch Street to Washington Street.
Merrill	Easterly and westerly sides from Congress Street to Merrimac Street.
Merrimac	Southerly side and northerly side between Titcomb and Green Streets.
Merrimac	Southwesterly side, beginning at the point at which the northwesterly side of Strong Street intersects Merrimac Street and ending at a point on the southwesterly side of Merrimac Street, 213 feet northwest of the point of beginning.
Merrimac	Northerly side, commencing at the corner of Summer Street and proceeding in an easterly direction for a distance of 300 feet.
Northern Blvd.	Westerly side of Northern Blvd., P.I., from 76th Street—150 feet in a southerly direction.
Oak Street	Northwestbound and southeastbound drivers on Oak Street at Beacon Avenue.
Ocean	Southerly and northerly sides from Warren Street to Carter Street.
Otis Place	Both sides.
Pleasant Street	North side from Hale's Court to the Post Office driveway.
Purchase	Southwesterly side between Lime and Salem Streets.
Purchase	Easterly side from Lime to Salem Streets.
Summit Place	Northwesterly side from High Street for a distance of approximately 500 feet.
Warren	Easterly side from Munroe Street to Merrimac Street, and westerly side from Eagle Street to Merrimac Street.
Washington	Northerly side from a point approximately 150 feet west of Green Street to a point approximately 195 feet west of Green Street.
Washington	Southerly side from Olive Street to Kent Street, and northerly side from Olive Street to Buck Street.
Water	Northeasterly side of Water Street from Federal Street to Ship Street.

(Ord. of 9-14-87(2); Ord. of 1-27-92; Ord. of 3-27-95; Ord. of 11-25-96; Ord. of 5-11-98(2); Ord. of 9-28-98; Ord. of 5-30-00; Ord. of 8-14-00; Ord. of 9-30-2(2); Ord. of 10-28-02(2); Ord. of 9-8-08(3); Ord. of 2-7-11(1); Ord. of 8-29-11(3) ; Ord. of 2-25-13(3); Ord. of 8-29-11(5); Ord. of 2-23-15)

Sec. 13-176.1. Same—Thirty minutes.

No person shall park a vehicle for longer than thirty (30) minutes in the following described streets or parts thereof:

Street	Extent
Green	Post office side, from end of post office driveway to intersection of Pleasant Street.
Pleasant Street	South side from the Post Office Driveway to Green Street.
Pleasant	North side, 3 spaces in front of City Hall.
Pleasant	Southwesterly side from Unicorn Street to Green Street.
Water Street	From a point 20 feet east of Independent Street to the west edge of the Water Street entrance to the Tannery parking lot and 1 space between Water Street entrance and exit of the Tannery parking lot: 8:00a.m.—4:00 p.m.

(Ord. of 11-27-89(2); Ord. of 5-8-95; Ord. of 7-29-96; Ord. of 2-9-98; Ord. of 4-8-02; Ord. of 6-13-05(1); Ord. of 10-17-11(2) ; Ord. of 2-25-13(4); Ord. of 9-9-13(3))

Sec. 13-176.2. Same—Fifteen minutes.

No person shall park a vehicle for longer than fifteen (15) minutes in the following described streets or parts thereof:

Street	Extent
Merrimac	One space on the north side directly in front of 226 Merrimac Street

(Ord. of 4-25-11(3))

Secs. 13-177—13-178.1. Reserved.

Editor's note(s)—An ordinance adopted February 7, 2011, repealed §§ 13-177—13-178.1, which pertained to central business district municipal parking lot, Tracey Place parking lot; State Street parking lot and derived from Ord. of 5-14-01(2); Ord. of 6-28-76(1); Ord. of 7-28-80(2); Ord. of 6-25-84(1); Ord. of 2-9-98.

Sec. 13-179. Handicapped parking.

No person, without a duly authorized handicapped vehicle registration or placard, as described in M.G.L. ~~A.~~ c. 90, § 2 shall park a vehicle in any of the following described parking spaces as designated by signs and symbols:

Beacon Avenue:

Two spaces on the southern side in an easterly direction at the entrance to Perkins Playground.

Boardman Street:

One (1) space at 17 Boardman, end unit.

Central business district, municipal parking lot:

Two (2) spaces behind the Unitarian Church.

Two (2) spaces on either end of the building known as One Merrimac Street.

Green Street:

Westerly side, one (1) space at the handicapped ramp entrance to City Hall.

Westerly side, one (1) space at the handicapped ramp entrance to the police station.

Westerly side, two (2) spaces adjacent to the Immaculate Conception Church.

Green Street Municipal Parking Lot:

One (1) space, southwest corner.

Harris Street:

One (1) space at intersection of State Street on north side adjacent to library children's room.

High Street:

One (1) space on the northerly side of High Street proximate to 102 High Street. Said space to expire on October 1, 2009.

Lime Street

One (1) space at 70 Lime Street until June 30, 2016.

Otis Place

One (1) space in front of 21 Otis Place.

Pike Street:

Two (2) spaces on the east side adjacent to the Salvation Army building.

Pleasant Street:

In front of the General Store.

In front of City Hall.

The first space after the driveway leading from the U.S. Post Office Building.

Plum Island Point Parking Lot:

Five (5) handicapped spaces.

Pop Crowley Way parking lot at Cashman Park Playground:

One (1) space in the parking lot on the northerly side of Pop Crowley Way meaning and intending said space to be the last space before the Way turns and runs in a southeasterly direction.

Purchase Street:

One (1) space in front of the Emma Andrews Library at 77 Purchase Street.

Riverside Park:

Two (2) spaces on the east side of the Park between the two access drives to the Newburyport Redevelopment Authority west lot.

State Street:

At the corner of State and Pleasant Streets.

Adjacent to the First & Ocean Bank.

State Street:

One (1) space at intersection of Harris Street adjacent to library main entrance walkway.

State Street:

One (1) space on the west side of State Street; said space is the first legal space on the south side of the Market Square nubbin.

State Street Parking Lot:

Two (2) van accessible spaces at the northeast corner of the municipal lot.

Titcomb Street:

One (1) space on the east side adjacent to the Garrison Inn.

Tracey Place:

Two (2) spaces at the northern end of lot.

Unicorn Street:

One (1) space on the westerly side of Unicorn Street in front of #22 Unicorn Street.

One (1) space on the east side of the south end, adjacent to Pleasant Street.

One (1) additional space creating side by side spaces located on the east side of the south end of Unicorn Street adjacent to Pleasant Street.

Waterfront Trust Lot

First space on the northwesterly side of the Waterfront Trust Parking Lot upon entry from Merrimac Street.

Woodland Street

One (1) space at 4 Woodland Street until July 1, 2016.

(Ord. of 11-27-89(2); Ord. of 2-28-94; Ord. of 12-12-94; Ord. of 3-27-95; Ord. of 9-30-96; Ord. of 2-9-98; Ord. of 7-27-98(4); Ord. of 7-12-99(1); Ord. of 5-14-01(3); Ord. of 6-11-01(3); Ord. of 9-12-05(2); Ord. of 10-31-05; Ord. of 8-13-07(2); Ord. of 10-14-08; Ord. of 11-24-08; Ord. of 8-9-10; Ord. of 2-7-11(2); Ord. of 8-29-11(4); Ord. of 9-24-12(1); Ord. of 4-29-13; Ord. of 8-12-13; Ord. of 7-14-14; Ord. of 7-15-14; Ord. of 10-14-14(2); Ord. of 1-12-15 (2); Ord. of 8-11-14(10))

Sec. 13-179.1. Temporary handicapped parking permit.

~~(a) Short title. This ordinance may be cited as the "Temporary Handicapped Parking Permit."~~

~~(b) Purpose and intent. Notwithstanding the restrictions promulgated in City Ordinance [section] 13-179 the City of Newburyport adopts the "Temporary Handicapped Parking Ordinance."~~

~~(1) From time to time citizens in the City of Newburyport suffer injury or other acute health episode of such magnitude that their quality of life, mobility and reasonable access to their homes is adversely affected;~~

~~(2) And that this lack of mobility is of a sudden onset and temporary in nature;~~

~~(3) And that the condition of these residents will improve sufficiently that a disabled veteran or handicapped registration plate or placard normally issued by the Commonwealth of Massachusetts is not a timely or suitable response to their condition;~~

~~(4) And that the City of Newburyport in many cases is laid out in such a manner that certain residents do not have off street parking;~~

~~(5) And that the acute nature of the health problem is such that immediate action is warranted;~~

~~(6) And that this ordinance is limited to the designation and use of a handicapped parking space as near as practicable to the resident's home for the express reason of aiding in their mobility during their recovery process.~~

~~Therefore let it be ordained that:~~

~~The city clerk may issue a temporary handicapped space specific parking permit not to exceed forty five (45) days.~~

The city clerk may, from time to time, in the sole judgment of that office permit a temporary handicapped parking space for the use of a resident at their home when:

~~(a) Limitations.~~

(1) The resident must demonstrate to the city clerk that their health issue prevents the use of regular on-street parking insomuch as it would limit the ability of the resident from reasonable access to their

home and their mobility is restricted for such necessities such as food shopping, pharmacy or medical visits;

- (2) And that the resident demonstrates they have no reasonable off-street parking available;
- (3) And that the hardship is for a limited duration and they would not be eligible for special registration plates;
- (4) And that the location of the space will be at their residence;
- (5) And that the vehicle for which the permit is requested is registered at that address;
- (6) Nothing in this section shall restrict vehicle bearing a valid disabled veteran or handicapped license plate or placard from using the designated space.

~~(b)~~ *Findings of the city clerk.*

- (1) The city clerk may on examining the circumstances declare a temporary handicapped parking space be made available as near as practicable to the residential address;
- (2) And that the resident will be provided with a special placard for that specific parking space;
- (3) And that parking space will be marked with signage for a period of forty-five (45) days;
- (4) The resident is restricted to using only that assigned space at their residence and is forbidden from using other designated handicap spaces;
- (5) The resident is not exempt and must follow and adhere to any snow emergency parking bans or other parking bans that may be called by the City of Newburyport from time to time.

~~(c)~~ *Enforcement.* This section shall be enforced in the same manner as all handicapped parking spaces.

(Ord. of 4-28-14(1))

Sec. 13-180. Resident parking.

Preamble. Resident parking zones may be established: (1) where a bona fide hardship exists caused by unique or special conditions; and/or (2) where the city has imposed one- or two- or four- hour parking limits on residential streets bordering commercial zones; and/or (3) where the residents of these residential districts suffer from unreasonable burdens in gaining access to their residences.

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

- (1) *Residential parking zone* shall mean a contiguous or nearly contiguous area containing public highways or parts thereof primarily abutted by residential property or residential and business property.
- (2) *Residential parking permit zone* shall mean a residential district where curbside parking on public highways is limited to not more than two (2) or four (4) consecutive hours between 8:00 a.m. and 6:00 p.m. Monday—Saturday from October 1 through April 30, and between 8:00 a.m. and 8:00 p.m. Monday—Saturday from May 1 through September 30, excepting Sundays and holidays throughout the year, and unless a parking permit authorized by this section has been validly issued for the parked vehicle.
- (3) *Resident only parking zones* shall mean a residential district where curbside parking on public highways is restricted to vehicles of residents that properly display a parking permit authorized by this section.
- (4) *Inn Street Mixed-Use Area* shall mean the contiguous area generally bounded by Market Square to the northeast, State Street to the southeast, Pleasant Street to the southwest, and the Inn Street Mall to

the northwest, and including all parcels within Assessor's Block 4, with the exception of Assessor's Parcels 4-1, 4-1-A, 4-2 (Inn Street Playground), and 4-30 (Inn Street Mall itself).

(b) *Posting of residential parking permit signs.*

- (1) Following the city's approval to designate a residential parking permit zone, parking signs shall be erected in the designated area.
- (2) The signs shall be of such character as to inform readily an ordinarily observant person that curbside parking on public highways in designated area is limited to not more than two (2) or four (4) consecutive hours, unless the vehicle properly displays a parking permit authorized by this section.
- (3) The signs for the resident only parking zones shall be of the same character as other parking signs and shall clearly show that parking is restricted to residents only.

(c) *Issuance of residential parking permits.*

- (1) Any person over the age of sixteen (16) who resides within the residential parking zone may apply for a residential parking permit by completing and signing an application designed to provide the following information:
 - a. The name and residential address of the owner of the vehicle;
 - b. The name, residential address and driver's license number of the principal operator of the vehicle;
 - c. The make, model, color and registration number of the vehicle;
 - d. The number of vehicles whose owners or principal operators reside at the applicant's residence and the number of off-street parking spaces available for such vehicles within the residential parking permit zone.
- (2) Reserved.
- (3) No residential parking permit shall be issued for a vehicle whose owner or principal operator does not reside within the residential parking permit zone or which is not registered in the Commonwealth of Massachusetts unless such registration is not required.
- (4) Whenever the parking clerk or ~~his~~their designee shall find that the applicant qualifies under the provisions of this section for a residential parking permit, ~~he~~they shall issue to the applicant one (1) residential parking permit for the vehicle described in the application.
- (5) The residential parking permit shall contain the following information:
 - a. The registration number of the vehicle;
 - b. The designation of the residential parking permit zone;
 - c. The expiration date of the permit which shall be December 31 of the year in which it is issued.

(d) *Renewal and transfer of permits.*

- (1) Upon submission of evidence to the parking clerk that ~~he or she is~~they are still qualified for a residential parking permit, a holder of a valid permit for the previous year shall be entitled to a new residential parking permit for the current year.
- (2) Upon surrender of ~~their~~his or her existing residential parking permit and completion of a new application, the holder of a valid residential parking permit shall receive a new parking permit to ~~be~~ transferred ~~ed~~ to another qualifying vehicle.

(e) *Use of residential parking permits.*

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- (1) A parking permit shall not guarantee or reserve a parking space nor shall it excuse the observance of any traffic or parking regulation other than the time limit on parking.
 - (2) It shall be a violation of this section to use a permit in any residential parking permit zone other than the one (1) for which the permit was issued.
 - (3) It shall be a violation of this section to obstruct access to driveways of residences in the parking zone.
 - (4) The parking permit does not excuse the resident from moving all vehicles from public streets during a declared snow emergency.
 - (5) Display of sticker; the sticker is to be placed on the front windshield, driver's side, lower left corner.
- (f) *Visitor parking permits.* The parking clerk shall also coordinate the issuance of one (1) portable visitor parking permit placards per household which shall be used by visitors of the residents of the zone. Visitor permits will not be replaced if lost. The visitor permit shall be used only while visitors are actually visiting the household to which the permits are issued. The permit must be fully visible and readable from the exterior of the vehicle. Such placards are to be displayed on the front dashboard, directly above the steering mechanism of the vehicle. Such placards shall be returned to the resident at the conclusion of the visit. Any abuse in the use of a visitor parking permit placard shall result in the revocation of the permit by the parking clerk.
- (g) *Designation of two-hour residential parking permit zones.*
- (1) *Zone 1:* Includes the following streets between State Street and Fair Street:
 - Charter Street.
 - Essex Street.
 - Garden Street.
 - Liberty Street.
 - Middle Street.
 - Otis Place.
 - Prospect Street.
 - Spring Street.
 - Temple Street.
 - (2) *Zone 2:* Includes the following streets between Fair and Federal:
 - Middle Street.
 - Temple Street.
 - Spring Street.
 - (3) *Zone 3:*
 - a. Fair Street, on the easterly side between Liberty Street and Water Street, and on the westerly side, between Liberty Street and southerly edge of driveway at 2 Fair Street.
 - (4) *Zone 4:* Includes the following streets or portions thereof designated:
 - a. Arlington Street, both sides from Highland Avenue to the northerly end of those properties known as #23 and #24 on each side of the street respectively.
 - b. Lafayette Street, both sides from Highland Avenue to the northerly end of those properties known as #18 and #25 on each side of the street respectively.

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- c. Cherry Street.
 - d. Hill Street.
 - e. Bricher Street.
 - f. Titcomb Street, both sides from the way known as Brown Square to Washington Street.
 - g. Green Street, on the west side running in a northerly direction from Washington Street for a distance of one hundred (100) feet.
 - ~~h. Washington Street, on the north side running in a westerly direction from Green Street for a distance of one hundred twenty (120) feet.~~
 - h. Pleasant Street, both sides from the property at 66 Pleasant Street to Titcomb Street.
 - i. Winter Street, beginning at the corner of Washington Street and proceeding southerly on Winter Street to High Street.
 - j. State Street, beginning at 184 State Street and proceeding southerly to the end of said State Street on the westerly side.
- (h) *Designation of four-hour residential parking permit zones.*
- (1) *Zone 5:* Includes the following streets or portions thereof designated:
 - a. State Street, on the westerly side from the intersection of Route 1 and State Street and continuing in a northerly direction approximately one thousand two hundred fifty (1,250) feet.
- (i) *Resident only parking.*
- Ashland Street.*
- Beginning at the lower corner of Ashland Court and proceeding northerly on the westerly side of Ashland Street to a point six (6) feet north of the property line between 2 Ashland Street and 345 Merrimac Street.
- Beginning at the lower corner of Ashland Court and proceeding northerly on the easterly side of Ashland Street to Merrimac Street.
- (j) *Inn Street Mixed-Use Area.* A bona fide hardship exists for residents of the Inn Street Mixed-Use Area caused by unique or special conditions there that preclude designation of a residential parking permit zone incorporating any of the adjacent streets, which are commercial in nature. Notwithstanding anything in this section to the contrary, the parking clerk or ~~his~~ their designee shall issue residential parking permits for use within the Green Street Parking Lot (Assessor's Parcel 3-28) by no more than four (4) households that reside within the Inn Street Mixed-Use Area.
- (1) Applicants under this subsection may apply, and renew or transfer such permits pursuant to subsections (c) and (d), respectively, but shall remain ineligible always for visitor parking permits pursuant to subsection (f).
 - (2) A parking permit under this subsection shall not guarantee or reserve a parking space within the Green Street Parking Lot, nor shall it excuse the permit holder from observance of any traffic or parking regulation other than the time limit on parking, or from having to move all vehicles from the Green Street Parking Lot as ordered by the city during a declared snow emergency.
 - (3) It shall be a violation of this section to use a parking permit issued under this subsection in any residential parking permit zone.
 - (4) The sticker is to be placed on the front windshield, driver's side, lower left corner.

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- (5) The parking clerk or ~~his~~their designee shall issue parking permits under this subsection on a first-come, first-served basis, or by lottery if more than four (4) complete applications are filed on the same day.

(Ord. of 7-13-94; Ord. of 10-30-95; Ord. of 3-25-96(1); Ord. of 3-25-96(2); Ord. of 6-12-06; Ord. of 11-29-10; Ord. of 2-7-11(3); Ord. of 8-8-11(3); Ord. of 8-29-11(3); Ord. of 4-9-12; Ord. of 9-24-12(2); Ord. of 10-28-13(2); Ord. of 12-9-13; Ord. of 11-25-13(3); Ord. of 2-10-14; Ord. of 8-11-14(6); Ord. of 5-12-14(4); Ord. of 8-29-11(5); Ord. 3-9-15(4); Ord. of 11-9-20(2))

Sec. 13-180.1. Paid parking permits.

Preamble. Resident parking permits may be issued to residents of Newburyport and employee parking permits to Downtown Business employees and employers.

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

- (1) *Paid parking lots:* Central Business District Lot, State Street Lot, Tracey Place Lot, Newburyport Redevelopment Authority East Lot, Newburyport Redevelopment Authority West Lot, Waterfront Trust Lot.
- (2) *All day parking lots:* Tracey Place Lot, Newburyport Redevelopment Authority East and West Lots.
- (3) *Resident:* A person who is sixteen (16) years of age or older and resides in the City of Newburyport.
- (4) *Senior Resident:* A person who is sixty-five (65) years of age or older and resides in the City of Newburyport
- (5) *Downtown employee:* An employer or employee of a Downtown Business.
- (6) *Downtown Business:* A business located in the area bounded by High Street, Federal Street, the Merrimack River and Winter Street.

- (b) *Posting of paid parking permit.*

- (1) The permit is to be placed on the vehicle pursuant to regulations issued by the parking clerk.

- (c) *Issuance of resident and employee paid parking permits.*

- (1) A resident or downtown employee may apply for a two-year parking permit for one (1) or more vehicles by completing and signing an application designed to provide the following information:
 - a. The name, age and residential address of the owner of the vehicle;
 - b. The name, residential address and driver's license number of the principal operator of the vehicle;
 - c. The make, model, color and registration number of the vehicle;
 - d. For downtown employees, proof of employment in a form established by regulations issued by the parking clerk which may include, but not be limited to, a letter from the employer on business letterhead and a verifying phone call.
- (2) For all permit applicants, whenever the parking clerk or ~~his~~their designee shall find that the applicant qualifies under the provisions of this section for a paid parking permit, ~~he~~they shall issue to the applicant one (1) paid parking permit for the one (1) vehicle described in the application.

- (d) *Transfer of permits.*

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- (1) Upon completion of a new application, the holder of a valid parking permit shall receive a new parking permit or authorization to transfer an existing permit to another qualifying vehicle at no additional cost.
- (e) *Use of parking permits.*
- (1) A parking permit shall not guarantee or reserve a parking space nor shall it excuse the observance of any traffic or parking regulation, including but not limited to time restrictions, other than the requirement to pay the hourly parking fee for use of paid parking lots with the exception of the Waterfront Trust Lot.
 - (2) The parking permit does not excuse the holder from moving all vehicles from public streets during a declared snow emergency.
 - (3) A downtown employee paid parking permit is only valid in the designated spaces in the all-day parking lots of the Tracey Place lot, Newburyport Redevelopment Authority East Lot and Newburyport Redevelopment Authority West Lot.
 - (4) Resident parking permits are valid in all the paid parking lots with the exception of the Waterfront Trust Lot.
- (f) *Cost, dates of issuance and prorations.*
- (1) The annual cost of said permits shall be established by order of the city council.
 - (2) The issuance date of the annual permits, discount incentive programs, amnesty periods, temporary parking permits and any proration of the permit cost shall be pursuant to regulations promulgated by the parking clerk.

(Ord. of 2-7-11(4); Ord. of 2-27-12; Ord. of 3-27-12)

Sec. 13-181. Parking lots.

- (a) No person shall park a vehicle between the hours of 8:00 a.m. to 6:00 p.m. Monday through Saturday, and Sunday between the hours of noon to 6:00 p.m. in the following described lots without first satisfying the payment required by the City of Newburyport.
 - (1) Tracey Place Lot.
 - (2) State Street Lot.
 - (3) Central Business District Lot.
 - (4) Newburyport Redevelopment Authority East Lot.
 - (5) Newburyport Redevelopment Authority West Lot.
 - (6) Waterfront Trust Lot.
- (b) In order to facilitate turn-over of parking spaces, no person shall park a vehicle for a period of time longer than three (3) consecutive hours between the hours of 8:00 a.m. to 6:00 p.m. Monday through Saturday, and Sunday between the hours of noon to 6:00 p.m. in the following described lots:
 - (1) State Street Lot.
 - (2) Central Business District Lot.
 - (3) Waterfront Trust Lot.

A person whose vehicle remains in one of the above-listed lots beyond the three (3) consecutive hour time limit will be subject to fines for violation of this section, even if payment is made for additional time.

- (c) No campers or other vehicles designed to accommodate sleeping shall park in any lot described in subsection (a) above from 8:00 p.m. to 7:00 a.m. daily.
- (d) In the case of a declared snow emergency, vehicles may remain in any lot described in subsection (a) above for the duration of the snow emergency and for twenty-four (24) hours after the declaration of the end of the snow emergency without paying a parking fee. At the end of the declared snow emergency, any vehicle entering a paid parking lot without a paid parking permit shall pay the required parking fee.
- (e) Four (4) spaces on the westerly side of the Central Business District Lot shall be designated for police vehicles only, and the time limit and payment requirement shall not apply to police vehicles parked in these designated spaces.
- (f) The area known as Unicorn Street with the adjacent parking spaces shall become part of the Central Business District Lot.
- (g) No person shall park a vehicle for longer than one (1) hour in the four (4) spaces on the westerly side of the Waterfront Trust Lot immediately adjacent to the easterly side of the Brown's Wharf building (Map 48, Lot 25) and in the four (4) spaces at the northerly end of said lot adjacent to the boardwalk.

(Ord. of 8-31-98(1); Ord. of 2-7-11(5); Ord. of 10-28-13(1))

Sec. 13-182. Fishing pier parking lot.

Only authorized police and harbor master vehicles may park in the spaces adjacent to the east and west sides of the harbor master's building located at the north end of the fish pier.

(Ord. of 8-31-98(1))

Sec. 13-183. Overnight parking of trailers.

It shall be unlawful for any person to leave a trailer that is not properly connected to a registered motorized vehicle on any public way overnight.

(Ord. of 12-13-04(1))

Sec. 13-183a. Plum Island parking.

Any person who shall park a vehicle unlawfully on Plum Island shall be subject to a parking fine as noted in chapter 1, section 1-18 of fifty dollars (\$50.00). Handicap parking violations are specifically excluded from this section.

(Ord. of 7-30-20(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

Sec. 13-184. Handicapped parking regulations.

The City Council of the City of Newburyport accepts M.G.L. c. 40, § 21:

- (1) For requiring that designated parking spaces for vehicles either owned and operated by disabled veterans or by handicapped persons and bearing the distinctive number plates authorized by section 2

of chapter 90, or for vehicles transporting handicapped persons and displaying the special parking identification plate, authorized by said sections 2 of said chapter 90, or for vehicles bearing the official identification of a handicapped person issued by any other state, or any Canadian Province, be provided in public and private off-street parking areas.

- a. This section requires any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for business, shopping, malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has a right of access as invitees or licensees, to reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by said section 2 of said chapter 90 or for any vehicle transporting a handicapped person and displaying the special identification plate authorized by section two of chapter ninety or for any vehicle bearing the official identification of a handicapped person issued by any other state, or any Canadian Province, according to the following formula:

If the number of parking spaces in any such area is more than fifteen (15) but not more than twenty-five (25), one (1) parking space; more than twenty-five (25) but not more than forty (40), five (5) percent of such spaces but not less than two (2); more than forty (40) but not more than one hundred (100), four (4) percent of such spaces but not less than three (3), more than one hundred (100) but not more than two hundred (200), three (3) percent of such spaces but not less than four (4); more than two hundred (200) but not more than five hundred (500), two (2) percent of such spaces but not less than six (6); more than five hundred (500) but not more than one thousand (1,000), one and one-half (1½) percent of such spaces but not less than ten (10); more than one thousand (1,000) but not more than two thousand (2,000), one (1) percent of such spaces but not less than fifteen (15); more than two thousand (2,000) but less than five thousand (5,000), three-fourths (¾) of one (1) percent of such spaces but not less than twenty (20); and more than five thousand (5,000), one-half (½) of one (1) percent of such spaces but not less than thirty (30).

- b. Parking spaces designated as reserved under paragraph (a) shall be identified by the use of above-grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicles May be Removed at Owner's Expense". The spaces shall be as near as possible to a building entrance or walkway, shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person and shall be at least eight (8) feet wide, not including the ~~cross-hatch~~cross-hatch access aisle as defined by the architectural access board established in section 13A of chapter 22. The ~~cross-hatch~~cross-hatch access aisle abutting a handicapped parking space shall be considered part of the handicapped parking space to which it abuts to provide individuals who use wheelchairs or other mobility aids with sufficient space to enter and exit their vehicles. No person shall park in the cross hatched access aisle.
- (2) For prohibiting or regulating the standing or leaving of vehicles unattended within parking spaces designated as reserved for vehicles owned and operated by disabled veterans or handicapped persons and within certain other areas.
- a. This section prohibits leaving unauthorized vehicles within parking spaces, including the ~~cross-hatch~~cross-hatch areas, designated for use by disabled veterans or handicapped persons as authorized by clause one (1) or in such a manner as to obstruct a curb ramp designed for use by a handicapped person as a means of egress to a street or public way.
- b. The penalty for a violation made under this section is noted in chapter 1, section 1-18~~one hundred dollars (\$100.00) for the first offense and two hundred dollars (\$200.00) for each~~

~~subsequent offense~~; and the vehicle may be removed in accordance with section 22D. This penalty is not a surchargeable offense under section 113B of chapter 175.

(Ord. of 8-13-07(3); Ord. of 1-29-15(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

Editor's note(s)—An ordinance adopted August 13, 2007, did not specifically amend the Code. Therefore, such ordinance has been added as § 13-184 ~~Editor's note(s) — at the editor's discretion.~~

Sec. 13-185. Reserved.

DIVISION 7. SPEED LIMITS

Sec. 13-186. Twenty-five miles per hour.

- (a) *Purpose and intent.* The Commonwealth of Massachusetts under M.G.L. ~~A~~ c. 90, § 17A has ceded certain jurisdiction to the local authority to regulate twenty-five (25) mile per hour speed zones in existing "thickly settled" zones as defined by M.G.L. ~~A~~ c. 90, § 1. The local authority in the City of Newburyport is defined as the city council.

The public ways of the city have in many cases existed for centuries and are narrow, congested and lined with both residential and business structures that meet and exceed the definition of a "thickly settled" or "business" zone. It is therefore in the interest of public safety to the motoring public as well as those residents and visitors that use our streets to bike, walk or otherwise recreate to establish a uniform twenty-five (25) mile per hour speed limit uniformly all streets that meet this criteria unless otherwise posted.

- (b) *Definitions.* [The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Motor vehicles: All vehicles constructed and designed for propulsion by power other than muscular power including such vehicles when pulled or towed by another motor vehicle, except railroad and railway cars, vehicles operated by the system known as trolley motor or trackless trolley under Chapter 163 or Section 10 of Chapter 544 of the Acts of 1947, vehicles running only upon rails or tracks, vehicles used for other purposes than the transportation of property and incapable of being driven at a speed exceeding twelve (12) miles per hour and which are used exclusively for the building, repair and maintenance of highways or designed especially for use elsewhere than on the travelled part of ways, wheelchairs owned and operated by invalids and vehicles which are operated or guided by a person on foot; provided, however, that the exception for trackless trolleys provided herein shall not apply to sections 17, 21, 24, 24I, 25, and 26. The definition of "motor vehicles" shall not include motorized bicycles. In doubtful cases, the registrar may determine whether or not any particular vehicle is a motor vehicle as herein defined. If ~~they~~ he determines that it should be so classified, ~~they~~ he may require that it be registered under this chapter, but such determination shall not be admissible as evidence in any action at law arising out of the use or operation of such vehicle previous to such determination.

Police officer or officer: Any constable or other officer authorized to make arrest or serve process, provided ~~he is~~ they are in uniform or displays ~~his~~ their badge of office.

Thickly settled or business district: The territory contiguous to any way which is built up with structures devoted to business, or the territory contiguous to any way where the dwelling houses are situated at such distances as will average less than two hundred (200) feet between them for a distance of a quarter of a mile or over.

Way: Any public highway, private way laid out under authority of statute, way dedicated to public use, or way under the control of park commissioners or body having like powers.

- (c) *Acceptance.* Pursuant to M.G.L. ~~A~~ c. 4, § 4. the city council of the City of Newburyport hereby accepts the provisions of M.G.L. ~~A~~ c. 90, § 17C.
- (d) *Limitations.*
- (1) No person shall operate a motor vehicle on a public way in the City of Newburyport that is thickly settled or a business district that is not posted with regulatory speed (speed limit) signs in excess of twenty-five (25) miles per hour.
 - (2) Duly sworn police officers of the City of Newburyport or other police officers acting under authority of law shall be empowered to enforce this regulation on any public way meeting these requirements.
 - (3) Police officers shall notify the violator in a manner that is accepted by the Commonwealth of Massachusetts as proper notification.
 - (4) Police officers shall notify the violator in a manner that is accepted by the Commonwealth of Massachusetts as proper notification.
 - (5) The City of Newburyport shall post this speed limit on all public ways entering the city which are under the jurisdiction of the city, or at a location as near to an entry point that is under jurisdiction of the city to alert motorists of the speed limit.
- (e) *Enforcement.*
- (1) The City of Newburyport Police Department or officers of other agencies acting under authority of law are the enforcement authority of this section.
 - (2) Police officers shall notify the violator in a manner that is accepted by the Commonwealth of Massachusetts as proper notification.
 - (3) Police officers shall notify the violator in a manner that is accepted by the Commonwealth of Massachusetts as proper notification.
 - (4) Police officers, may in the alternative to issuing a Commonwealth of Massachusetts Uniform Traffic Citation, utilize a City of Newburyport Code of City Ordinance violation.
 - (5) Any person who violates any provision of this section shall be subject to a fine as noted in chapter 1, section 1-18, of up to one hundred dollars (\$100.00) when issued a Code of Ordinance violation.

(Ord. of 6-24-91; Ord. of 6-12-17(1))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

Sec. 13-187. Thirty miles per hour.

The speed limit shall be thirty (30) miles per hour on the following streets or portions thereof:

Low Street from Storey Avenue for a distance of .29 miles in both directions.

(Ord. of 8-11-14(7))

Sec. 13-188. Thirty-five miles per hour.

The speed limit shall be thirty-five (35) miles per hour on the following streets or portions thereof:

Low Street from Route 1 (Newburyport Turnpike) for a distance of 1.62 miles in both directions.

(Ord. of 8-11-14(7))

Sec. 13-189. Reserved.

DIVISION 8. COMMERCIAL TRUCKS

Sec. 13-190. Posted commercial truck routes.

The posted truck routes in Newburyport shall be:

- (1) Upalong/downalong streets: Storey Avenue, Ferry Road, High Street, Low Street, Merrimac Street, and Water Street.
- (2) Cross streets: Spofford Street, Hale Street, Graf Road, Parker Street, Green Street, and State Street.
- (3) Business park streets: Malcolm Hoyt Drive, Perry Way, New Pasture Road, Opportunity Way, Mulliken Way, Perkins Way, Stanley Tucker Drive, and Preble Road.

(Ord. of 11-9-20(1))

Sec. 13-191. Petitions to limit commercial trucks.

By order, a majority of the city council may authorize the department of public services to petition the Massachusetts Department of Transportation (MassDOT) to exclude from specific municipal ways in Newburyport commercial trucks over a specified gross vehicle weight (GVW), during specific hours or at all times. The department of public services shall maintain and cause to be posted on the city website a list of any municipal ways for which such a petition has been approved.

(Ord. of 11-9-20(1))

Secs. 13-192—13-195. Reserved.

ARTICLE V. PEDESTRIANS

Sec. 13-196. Hitchhiking.

It shall be unlawful for any person to stand in a roadway for the purpose of soliciting a ride from the operator of any motor vehicle.

(Rev. Ords. 1937, Ch. 31, Art. IV, § 1)

Chapter 14 UTILITIES⁷⁶

ARTICLE I. IN GENERAL

Secs. 14-1—14-19. Reserved.

Sec. 14-20. Water use restriction.

- (a) *Authority.* This section is adopted by the city under its police powers to protect public health and welfare and its powers under M.G.L. c. 40, sec. 21 et seq. and implements the city's authority to regulate water use pursuant to M.G.L. c. 41, sec. 69B. This section also implements the city's authority under M.G.L. c. 40, sec. 41A, conditioned upon a declaration of water supply emergency issued by the department of environmental protection.
- (b) *Purpose.* The purpose of this section is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a state of water supply conservation or state of water supply emergency by providing enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the city or by the department of environmental protection.
- (c) *Definitions.*

Person shall mean any individual, corporation trust, partnership or association, or other entity.

State of water supply conservation shall mean a state of water supply conservation declared by the city pursuant to subsection (d) of this section.

State of water supply emergency shall mean a state of water supply emergency declared by the department of environmental protection under M.G.L. c. 21G, sec. 15—17.

Water users or water consumers shall mean all public and private users of the city's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

⁷⁶Cross reference(s)—Administration, ch. 2Cross reference(s)—; buildings and building regulations, ch. 5Cross reference(s)—; plumbing regulations, § 5-81 et seq.; utility poles, § 5-196Cross reference(s)— et seq.; earth removal, § 5-226Cross reference(s)— et seq.; fire prevention and protection, ch. 7Cross reference(s)—; health and sanitation, ch. 8~~Cross reference(s)—~~; streets, sidewalks and other public places, ch. 12~~Cross reference(s)—~~; required utilities for subdivisions, app. B, § V, B.

State law reference(s)—Authority of cities to pass ordinances establishing sewers and regulating the use thereof, M.G.L. ~~A~~ c. 40, § 21(5), (6); sewers and drainage generally, M.G.L. ~~A~~ c. 83, §§ 1—24; authority of boards of health to require connections with sewers, M.G.L. ~~A~~ c. 83, § 11; creation of board of sewer commissioners, Acts of 1963, ch. 261.

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- (d) *Declaration of a state of water supply conservation.* The city, through its board of water commissioners, may declare a state of water supply conservation upon a determination by a majority vote of the board, that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a state of water conservation shall be given under subsection (f) of this section before it may be enforced.
- (e) *Restricted water use.* A declaration of a state of water supply conservation shall include one (1) or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under subsection (f).
- (1) *Odd/even day outdoor watering.* Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by users with even numbered addresses is restricted to even numbered days.
 - (2) *Outdoor watering ban.* Outdoor watering is not permitted.
 - (3) *Outdoor watering hours.* Outdoor watering is permitted during daily periods of low demand, to be specified in the declaration of a state of water supply conservation and public notice thereof.
 - (4) *Filling swimming pools ban.* Filling of swimming pools is prohibited.
 - (5) *Automatic sprinkler use ban.* The use of automatic sprinkler systems is prohibited.
- (f) *Public notification of a state water supply conservation—Notification of Massachusetts Department of Environment Protection (DEP).* Notification of any provision, restriction, requirement or condition imposed by the city as part of a state of water supply conservation shall be published in a newspaper, of general circulation within the city, or by such other means reasonably calculated to reach and inform all users of water of the state of water supply conservation such as the city's web site and by phone message reverse 911. Any restriction imposed under subsection (e) shall not be effective until such notification is provided. Notification of the state of water supply conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection (DEP).
- (g) *Termination of a state water supply conservation—Notice.* A state of water supply conservation may be terminated by a majority vote of the board of water commissioners upon a determination that the water supply shortage no longer exists. Public notification of the termination of a state of water supply conservation shall be given in the same manner required by subsection (f).
- (h) *State of water supply emergency—Compliance with DEP orders.* Upon notification to the public that a declaration of a state of water supply emergency has been issued by the department of environmental protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the department intended to bring about an end to the state of emergency.
- (i) *Penalties.* Any person violating this section shall be liable to the city in the amount defined in chapter 1, section 1-18 of fifty dollars (~~\$50.00~~) for the first violation and one hundred dollars (~~\$100.00~~) for each subsequent violation which shall insure to the city for such uses as the board of water commissioners may direct. Fines shall be recovered by indictment, or on complaint before the district court, or by non-criminal disposition in accordance with M.G.L. c. 40, sec. 21D. Each day of violation shall constitute a separate offense.

(Ord. of 7-12-99(2))

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18

Secs. 14-21—14-25. Reserved.

ARTICLE II. SANITARY SEWER SYSTEM⁷⁷

DIVISION 1. GENERALLY

Sec. 14-26. Definitions.

Unless the context specifically indicated otherwise, the meaning of terms used in this article shall be as follows:

Acts or the act shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended (33 U.S.C. 1251 et seq.).

Authorized representative of industrial user shall mean either:

- (1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;
- (2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively; or
- (3) A duly authorized representative of the individual designated above, if such representative is responsible for the overall operation of the facilities from which the discharge of wastewater originates.

BOD (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees centigrade expressed in terms of weight and concentration (milligrams per liter (mg/l)).

Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

Building sewer shall mean the extension from the building drain to the public sewer or other place of disposal.

Categorical user shall mean any industrial user which is subject to the categorical pretreatment standard.

City shall mean the City of Newburyport, in the County of Essex, Commonwealth of Massachusetts.

Combined sewer shall mean a sewer receiving both surface runoff and sewage.

Commission shall mean the board of sewer commissioners of the city, or its authorized deputy, agent or representative.

Domestic wastewater shall mean normal water-carried household and toilet wastes discharged from any improved property, excluding groundwater, surface water, or stormwater.

⁷⁷Editor's note(s)—An ordinance adopted July 10, 1989, deleted the provisions of Art. II and enacted new provisions in lieu thereof, codified herein as a new Art. II at the discretion of the editor. Previously, Art. II contained §§ 14-26Editor's note(s)—14-35, 14-51Editor's note(s)—14-62 and 14-76Editor's note(s)—14-89, which pertained to similar provisions and derived from an ordinance adopted Sept. 24, 1984, Arts. I—VIII and X.

EPA shall mean the Environmental Protection Agency of the U.S. Government.

Excessive shall mean amounts or concentrations of any constituent of a wastewater which, in the judgement of the city, will cause damage to any wastewater facility, which will be produced in excessive quantities in the sludge produced at the wastewater treatment plant, which will be harmful to a wastewater treatment process, which cannot be removed in the wastewater treatment works of the city or the degree required to meet the limited stream classification standard of the receiving water, which can otherwise endanger life, limb, the environment or public property, or which can constitute a nuisance.

Facilities shall include structures and conduits for the purpose of collecting, treating, neutralizing, or disposing of domestic wastewater and/or industrial or other wastewaters as are disposed of by means of structures and conduits including treatment and disposal works, necessary intercepting, outfall, and outlet sewers, and pumping stations integral to such facilities with sewers, equipment, furnishings thereof and other appurtenances connected therewith.

Garbage shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

Improved property shall mean any property located within the city upon which there is erected a structure intended for continuous or periodic habitation, occupancy, or use by human beings or animals and from which structure domestic wastewater and/or industrial wastes shall be or may be discharged.

Incompatible pollutant shall mean any pollutant, other than biochemical oxygen demand, suspended solids, pH, coliform bacteria, or additional pollutants identified in the permit, which the treatment works was not designed to treat and does not remove to substantial degree.

Industrial establishment shall mean any room, group of rooms, building or other enclosure used or intended for use in the operation of one (1) business enterprise for manufacturing, processing, cleaning, laundering, assembling or preparing any product, commodity or article or from which any process waste, as distinct from domestic wastewater, may be discharged.

Industrial user shall mean a manufacturing, processing, governmental entity, or other nonresidential facility (such as hospitals, commercial laundries, and tank and barrel cleaning operations) that discharges or has the potential to discharge non-sanitary wastes to a public sewer.

Industrial wastes shall mean the liquid or solid wastes from industrial processes, trade, or business as distinct from sanitary sewage.

Interference shall mean inhibition or disruption of the POTW; the POTW's treatment processes or operations; the POTW's processes for, use of or disposal of sludge or of sludge products, including ash. "Interference" includes an inhibition or disruption which causes or contributes to a violation of any requirement of the city's NPDES permit (including an increase in the magnitude or duration of a violation) or causes or contributes to the prevention of sewerage sludge or sludge product use or disposal by the city in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, or commonly known as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act and the Marine Protection Research and Sanctuaries Act.

Invert shall mean the bottom inside of the sewer pipe.

National categorical pretreatment standard or pretreatment standard shall mean the standards set forth in 40 CFR Subchapter N, parts 405—471, or any regulation containing pollutant discharge limits promulgated by the U.S. Environmental Protection Agency in accordance with section 307(b) and (c) of the act (33 U.S.C. 1347) which applies to a specific category of users.

National pollution discharge elimination system (NPDES) permit shall mean a permit issued pursuant to section 402 of the act (33 U.S.C. 1342).

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.

New source shall mean any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication of these regulations.

Owner shall mean any person vested with ownership, legal or equitable, sole or partial, or possession of any improved property.

Pass through shall mean the passage of pollutants through the POTW into receiving waters in quantities or concentrations which, alone or in conjunction with discharges from other sources, are a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Person shall mean any individual, firm, company, association, society, corporation, or group, or other entity.

pH shall mean the logarithm to the base 10⁻⁷ of the reciprocal of the concentration of hydrogen ions expressed in ~~grams~~ moles per liter of solution.

Pollutant shall mean any material or substance that may cause an alteration of the chemical, physical, biological or radiological integrity of the POTW or its receiving waters.

POTW (publicly owned treatment works) shall mean the treatment works operated by the city and its agents, including any devices and systems, whether owned by the city or under its control, used in the collection, storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature and also including without limiting the generality of the foregoing, the city's wastewater treatment plant and appurtenances, the sewers, pipes, pumping stations and other devices conveying wastewater to the treatment plant, and sludge processing systems whether operated by the city directly or by a contractor or agent of the city.

Pretreatment or treatment shall mean the reduction of the ~~amount~~ number of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes other means, except as prohibited by 40 CFR section 403.6(d).

Pretreatment requirements shall mean any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard imposed on a user.

Properly shredded garbage shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Property, parcel or lot shall mean an area of land as marked on the assessment drawings in the office of the city assessor.

Public sewer shall mean a sewer in which all owners of abutting properties have equal rights⁷ and is controlled by public authority.

Receiving water quality standards shall mean the Massachusetts Water Quality Standards, as provided by M.G.L. ~~A~~ c. 21, § 27.

Receiving waters shall mean any watercourse, river, pond, ditch, lake, aquifer, or other body of surface water or groundwater receiving discharge of wastewaters.

Sanitary sewer shall mean a sewer which carries sewage and to which stormwater, surface water, and groundwater are not intentionally admitted.

Septage shall mean the wastes, primarily of sewage origin, that are removed from a cesspool, septic tank, or similar receptacle.

Sewage shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water, or stormwater as may be present.

Sewage treatment plant shall mean any arrangement of devices and structures used for treating sewage.

Sewage works shall mean all facilities for collecting, pumping, treating and disposing of sewage.

Sewer shall mean a pipe or conduit for carrying sewage.

Shall is mandatory; *may* is permissive.

Significant industrial user shall mean any industrial user which:

- (1) Is subject to categorical standards.
- (2) Discharges a nondomestic waste-stream of twenty-five thousand (25,000) gallons per day (0.025 MGD) or more.
- (3) Contributes a nondomestic waste-stream which makes up five (5) percent or more of the average dry weather hydraulic or organic (BOD, TSS etc.) capacity of the treatment plant.
- (4) Has a reasonable potential, in the opinion of the POTW treatment plant (inhibition, pass through of pollutants), sludge contamination or endangerment.

Significant noncompliance shall mean:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by and magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(1);
- (2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(1) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3 (1) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).

Slug shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration or flows during normal operation.

Spill shall mean the release, accidental or otherwise, of any material not normally released to the facilities, which by virtue of its volume concentration or physical or chemical characteristics, creates a hazard to the facilities, their operation or their personnel. Such characteristics shall include, but are not limited to, volatile, explosive toxic, or otherwise unacceptable materials.

Storm drains or *storm sewer* shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering, and are referred to as nonfilterable residue in the laboratory test procedures prescribed by the EPA.

Toxic pollutant shall mean a pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA.

Unpolluted water shall mean water not containing any pollutants limited or prohibited by the effluent standards in effect, or water whose discharge will not cause any violation of receiving water quality standards.

User shall mean any person who contributes, causes, or permits the contribution of sewage into the sewage works.

Wastes shall mean substances in liquid, solid or gaseous form that can be carried in water.

Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently.

Well shall mean a private source of water utilized by a person.

(Ord. of 7-10-89, Art. I, §§ 1—54; Ord. of 11-26-90, § 1; Ord. of 2-26-07(3))

Sec. 14-27. Use of public sewers required.

- (a) It shall be unlawful to discharge to any natural outlet within the city or in any area under the jurisdiction of the city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.
- (b) The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may, in the future, be located a public sanitary sewer of the city, is hereby required at ~~his~~ their expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article, within ninety (90) days after date of official notice to do so, or as directed by the commission, provided that the public sewer is within one hundred (100) feet (30.5) meters of the property line, unless prevented by topographical or other engineering reasons.

(Ord. of 7-10-89, Art. II, §§ 1, 2)

Sec. 14-28. Sewer construction in new development.

- (a) The developer of subdivisions approved by the planning board after enactment of this article and within five hundred (500) feet of an existing sewer shall connect into the existing sewer. The cost of the sewer connection shall be borne by the developer.
- (b) If the requirements of (a), above, exist in the proposed subdivision, the developer shall provide sewers in the proposed streets or rights-of-way. The cost of installation of these sewers shall be borne by the developer.
- (c) Connection to each house, building or property erected, shall be in compliance with the provisions of this article. The cost of such connections shall be borne by the developer.
- (d) When a developer installs sewers in proposed streets or rights-of-way in anticipation of the extension of the sewer system, the cost of any subsequent building connections shall be borne by the developer.
- (e) The design of any proposed sewer construction under this section shall be approved by the commission prior to issuance of a permit.

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- (f) Subsequent to any construction provided by this section, no backfill shall be placed until the work has been inspected by the commission or its representative.

(Ord. of 7-10-89, Art. II, § 3)

Sec. 14-29. Protection from damage.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

(Ord. of 7-10-89, Art. V, § 1)

Sec. 14-30. Powers and authority of inspectors.

- (a) The commission and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, reviewing and copying records, reviewing procedures and testing in accordance with the provisions of this article. These provisions shall be liberally construed to permit an inspector to evaluate compliance with these regulations.
- (b) While performing the necessary work on private properties referred to in (a) above, the commission or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury to or death of city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in section 14-79.
- (c) The commission and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.
- (d) The duly authorized employee having responsibility for the overall operation of the pretreatment program within the Newburyport Sewer Department shall be the pretreatment coordinator. This authority shall include signing authority of the annual pretreatment report. In the absence of pretreatment coordinator, these responsibilities shall transfer to the Chief Operator of Newburyport Sewer Department.

(Ord. of 7-10-89, Art. VI, §§ 1—3; Ord. of 2-26-07(3))

Sec. 14-31. Enforcement.

- (a) *Suspension of wastewater treatment service and/or industrial sewer discharge permit; suspension order.* The commission may suspend the wastewater treatment service, and/or an industrial sewer discharge permit when such suspension is necessary, in the opinion of the commission, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW, causes the city to violate any condition of its NPDES permit, or causes the city to violate any federal or state law, regulation, or administrative rule or order.

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Any person notified of a suspension of the wastewater treatment service and/or the industrial sewer discharge permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the commission shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The commission shall reinstate the industrial sewer discharge permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the commission within fifteen (15) days of the date of occurrence.

- (b) *Revocation of permit.* Any user who violates the following conditions of this article or applicable state and federal regulations, is subject to having its permit revoked, after a hearing before the sewer commission:
- (1) Failure of a user to factually report the wastewater constituents and characteristics of its discharge;
 - (2) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;
 - (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
 - (4) Violation of conditions of the permit.
- (c) *Legal relief.* At any time, the city solicitor may commence an action for appropriate legal and/ or equitable relief in order to halt a discharge in violation of this article, the city's NPDES permit, or any federal or state law, regulation, or administrative rule or order; or otherwise, to enforce any provision of this article.

(Ord. of 7-10-89, Art. VII, §§ 1—3)

Sec. 14-32. Fees and charges.

- (a) *Sewer user charge.* Pursuant to Section 10 of Chapter 261 of the Acts of 1963, as amended by Chapter 66 of the Acts of 2014, the board of the water and sewer commission may in its discretion prescribe for the users of the sewer system or systems such annual rentals or charges based on the benefits derived therefrom it may deem proper, subject, however, to such rules and regulations as may be fixed by a vote of the city council.
- (b) *Service charge for monitoring, analytical testing and reporting.* Any category of user subject to pretreatment standards and requirements will be charged for monitoring and analytical testing and reporting conducted by the sewer department. The service charge will be calculated by allocating each user or industrial user a proportional share of the total cost of the pretreatment program taking into consideration the number of sampling site visits and the number and type of analytical tests required.
- (c) *Connection permit and inspection fee.* A connection permit and inspection fee for each residential building sewer permit and for each initial industrial or commercial sewer permit and connection application shall be paid to the city at the time the application is filed.

(Ord. of 7-10-89, Art. IX, §§ 1—4; Ord. of 11-26-90; Ord. of 5-30-17(1))

Sec. 14-33. Penalties generally.

- (a) *Written notice of violations.* Any person found to be violating any provision of this article, except section 14-30, shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

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- (b) *Civil penalties.* Any person who is found to have failed to cease all violations as defined in (a) above, whether intentionally, unintentionally or accidentally, or who violates any provision of this article or a rule or regulation of the sewer commission, may, after a hearing before the sewer commission, be assessed a civil penalty of at least one thousand dollars (\$1,000.00) and up to five thousand dollars (\$5,000.00) per day. In addition, any violation of this article or a rule or regulation of the sewer commission shall be punishable by a fine of fifty dollars (\$50.00) per day as noted in chapter 1, section 1-18. Each day in which any such violation shall continue shall be deemed a separate violation for purposes of both the civil penalty and fine provisions of this section. Exceeding daily pretreatment standards will be deemed a separate violation as to each effluent characteristic listed in this article or regulated by federal or state categorical pretreatment standards. Any other discharge which violates the pretreatment standards shall be deemed a separate violation.
- (c) *Liability for expenses, loss or damages.* Any person violating any of the provisions of this article shall become liable to the city for any expense, loss, or damage occasioned by the city by reason of such violation.
- (d) *Penalty provisions additional.* The penalty provisions of this section are in addition to, and not in lieu of, the other remedies available to the city as set forth in this article and federal and state law.

(Ord. of 7-10-89, Art. VIII, §§ 1—3; Ord. of 8-28-89; Ord. of 11-26-90, § 9)

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

Sec. 14-34. Authority of commission.

In exercising its authority to halt or prevent discharges under section 14-74(1) or enforce applicable penalties, the commission will follow the guidelines of 40 CFR 403.8.

(Ord. of 7-10-89, Art. VIII, § 4)

Sec. 14-35. Lien; collection of overdue service or sewer use charges.

The commission, pursuant to a filing by the city of a certificate of acceptance of conditions for the issuance of a sewer charge lien with the county registry of deeds, may place a lien upon the property or premises for which sewer user charges, service charges, fines, fees or penalties, as provided for in sections 14-33 through 14-36, are more than sixty (60) days overdue. Notwithstanding such lien, any overdue sewer user charge or service charge may be collected through any legal means, including the shutting off of a sewer connection, which may be deemed advisable.

(Ord. of 7-10-89, Art. VIII, § 5)

Sec. 14-36. False statements, certifications, tampering with monitoring devices, etc.

Any person who knowingly makes false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this article, or permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this article, shall be penalized according to the established enforcement and penalty provisions of this article.

(Ord. of 7-10-89, Art. VIII, § 6)

Sec. 14-37. Publication of significant violators.

Pursuant to 40 CFR 403.8 the commission will annually publish a list of all users who have significantly violated the pretreatment standards and requirements in the preceding twelve (12) months. A significant violation shall mean a violation of the pretreatment standards and requirements for a period of forty-five (45) days after

notification of noncompliance; a violation which is part of a pattern of noncompliance over a twelve-month period; a violation which involves a failure to accurately report noncompliance to the sewer commission; or a violation which causes the commission to exercise its emergency authority.

(Ord. of 11-26-90, § 10)

Secs. 14-38—14-50. Reserved.

DIVISION 2. BUILDING SEWERS AND CONNECTIONS

Sec. 14-51. Permit.

- (a) *Required.* No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the commission. Any person proposing a new discharge into the system or a substantial change in the volume or character of pollutants that are being discharged into the system shall notify the commission at least forty-five (45) days prior to the proposed change or connection, and in the case of industrial users, apply or reapply for an industrial sewer discharge permit under section 14-83.
- (b) *Classes.* There shall be two (2) classes of building sewer permits:
 - (1) For residential service; (attachment I) and
 - (2) For all other service; (attachment II).

In either case, the owner or ~~his~~his ~~their~~ agent shall make application on a special form furnished by the commission.

- (c) *Conditions or changes.* After said notification, the Commission may deny or condition any new changes or increased discharges where such discharges do not meet applicable Pretreatment Standards and requirements set forth in 40 CFR Chapter I, Subchapter N, parts 405—471 or where such contributions would cause the sewage treatment plant to violate its NPDES permit.

(Ord. of 7-10-89, Art. III, §§ 1, 2; Ord. of 11-26-90, § 2)

Editor's note(s)—Attachments I and II, referred to in § 14-51 Editor's note(s)—(b) and attached to the ordinance of July 10, 1989, from which this article derives, are not printed herein, but are on file and available for reference in the office of the city clerk.

Sec. 14-52. Liability for costs, expenses; indemnification.

All costs and expenses incident to the installation and connections of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(Ord. of 7-10-89, Art. III, § 3)

Sec. 14-53. Separate sewers for each building; exception.

A separate and independent building sewer shall be provided for every building; except where one (1) building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one (1) building sewer.

(Ord. of 7-10-89, Art. III, § 4)

Sec. 14-54. Use of old sewers.

Old building sewers may be used in connection with new buildings only when they are found, on examination and testing by the commission, to meet all requirements of this article.

(Ord. of 7-10-89, Art. III, § 5)

Sec. 14-55. General specifications for building sewers.

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM), and Water Pollution Control Federation (WPCF) Manual of Practice No. 9 shall apply.

(Ord. of 7-10-89, Art. III, § 6)

Sec. 14-56. Lifting devices for sewage.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(Ord. of 7-10-89, Art. III, § 7)

Sec. 14-57. Discharge of surface runoff, groundwater prohibited.

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(Ord. of 7-10-89, Art. III, § 8)

Sec. 14-58. Conformance to technical requirements for connections.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the commission before installation.

(Ord. of 7-10-89, Art. III, § 9)

Sec. 14-59. Request for inspection; supervision of connection.

The applicant for the building sewer permit shall notify the commission when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the commissioner or its representative.

(Ord. of 7-10-89, Art. III, § 10)

Sec. 14-60. Protection, restoration of excavations.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(Ord. of 7-10-89, Art. III, § 11)

Sec. 14-61. Meter required for well water.

In the event a well is a source of a person's water and the person is connected to the public sewer, such person shall install and connect a meter, at ~~his~~their expense, from which the city may monitor the use of the sewer.

(Ord. of 7-10-89, Art. III, § 12)

Secs. 14-62—14-70. Reserved.

DIVISION 3. SEWER USE REGULATIONS

Sec. 14-71. Unpolluted discharges—Prohibited in sanitary sewers.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

(Ord. of 7-10-89, Art. IV, § 1)

Sec. 14-72. Same—Use of sewers.

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the commission. Industrial cooling water or unpolluted process waters may be discharged, on approval of the commission, to a storm sewer, or natural outlet.

(Ord. of 7-10-89, Art. IV, § 2)

Sec. 14-73. Certain discharges prohibited in public sewers.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers.

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- (1) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
 - (2) Any waters or wastes containing toxic or poisonous solids, pollutants, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere (or significantly contribute to interference) with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant.
 - (3) Any waters or wastes having a potential to produce to produce a pH lower than 6.0 or in excess of 9.0 unless specifically permitted by the commission, provided said permission does not conflict with the categorical pretreatment standard, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
 - (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
 - (5) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees F. (54 degrees C.).
 - (6) Any liquid or vapor in such quantities as to cause the temperature at the sewage treatment plant to exceed one hundred four (104) degrees F. (40 degrees C.).
 - (7) Any substance which will cause the commission to violate its NPDES and/or state permit or the receiving water quality standards, or otherwise violate any federal or a state law, regulation, or administrative rule or order.
 - (8) Any substance which may cause the system effluent or any other product of the system such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the sludge disposal process.
 - (9) In no case, shall a substance discharged to the system cause the commission to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used. In no case, shall a substance discharged to the sewer system cause the commission to incur additional expense for the handling, treatment or disposal of wastewaters or sludge because of the nature or characteristics of the discharged substance.

(Ord. of 7-10-89, Art. IV, § 3; Ord. of 11-26-90, § 3)

Sec. 14-74. Restricted discharges.

No person shall discharge or cause to be discharged the following described substances, materials. water or wastes:

- (1) Any sewage containing pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, cause or significantly contribute to interference, create a toxic effect in the receiving waters or sludge of the sewage treatment plant or to exceed the limitation set forth in a categorical pretreatment standard or national requirement. A pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the act (33 U.S.C. 1347).

- (2) Any water or waste containing fats, wax, grease or oils, whether emulsified or not having a maximum concentration in excess of two hundred milligrams per liter (200 mg/L) or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees F. (0 and 65 degrees C.).
- (3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the commission.
- (4) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
- (5) Any waters or wastes containing heavy metals, objectionable or toxic substances, or wastes containing materials identified in the composite sewage which exceed the following limits which are hereby established by the commission:

Parameter	Day (mg/L)
Arsenic	1.53
Cyanide (total)	0.65
Cadmium	0.055
Silver	0.5
Lead	0.6
Chromium	3.0
Copper	1.90
Mercury	0.033
Nickel	0.62
Zinc	2.02
Total suspended solids	300
BOD	375
pH	6.0 minimum to 9.0 maximum

The city may develop or revise these limitations as may be necessary to enforce the general discharge provisions of this article. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

Mass limitations may be imposed on users and industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate. Except where expressly authorized to do so by an applicable categorical pretreatment standard, no industrial user shall ever increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a categorical pretreatment standard.

- (6) Any waters or wastes containing phenols or other waste or odor-producing substances in such concentrations exceeding limits which may be established by the commission as necessary, after treatment of the composite sewage, to meet the requirement of the state, federal, or other public agencies or jurisdiction for such discharge to the receiving waters.
- (7) Any radioactive wastes or isotopes of such ~~half-life~~ half-life or concentration as may exceed limits established by the commission in compliance with applicable state or federal regulations
- (8) Materials which exert or cause interference with the sewage treatment plant including but not limited to:

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- a. Unusual concentrations of inert suspended solids, (such as, but not limited to, Fullers' earth, lime slurries, and limit residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
 - b. Excessive discoloration (such as but not limited to, dye substances and vegetable tanning solutions).
 - c. Any pollutant including BOD, oxygen demanding pollutants or chlorine demand requirement of a flow rate and/or concentration which will cause or has the potential to cause interference with the sewage treatment plant.
 - d. Unusual volume of flow or concentration of wastes constituting "slugs" ~~as defined herein.~~
- (9) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes ~~employed, or employed or~~ are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge of the receiving waters.

(Ord. of 7-10-89, Art. IV, § 4; Ord. of 11-26-90, § 4; Ord. of 9-25-00)

Sec. 14-75. Priority of conflicting provisions.

Upon the promulgation of the national categorical pretreatment standards for a particular industrial subcategory, the national standard, if more stringent than limitations imposed under this article for sources in the subcategory, shall immediately supersede the limitations imposed under this article. The superintendent shall notify all affected users of the applicable reporting requirements under section 14-84. State requirements and limitations on discharges shall apply in any case where they are more stringent than national requirements and limitations or those in this article.

(Ord. of 7-10-89, Art. IV, § 5)

Sec. 14-76. Discretionary authority of commission.

- (a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in sections 14-73 and 14-74 or have a deleterious effect upon the sewage works, processes, equipment, or receiving waters or sludges, or which causes the city to violate any condition of its NPDES permit, or which cause the city to violate any federal or state law, regulation or order, or which otherwise create a hazard to life or constitute a public nuisance, the commission may, in addition to the remedies set forth in sections 14-31 through 14-36:
 - (1) Modify the industrial sewer discharge permit;
 - (2) Require pretreatment to an acceptable condition for discharge to the public sewers;
 - (3) Require control over the quantities and rates of discharge;
 - (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of section 14-82 of this division; and/or
 - (5) Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements.
- (b) If the commission permits the pretreatment or equalization of waste flows, the design, installation, or modification of the plants and equipment shall be subject to the review and approval of the commission, and subject to the requirements of all applicable codes, ordinances, regulations, and laws.

(Ord. of 7-10-89, Art. IV, § 6)

Sec. 14-77. Interceptors.

- (a) Grease, oil, and sand interceptors shall be provided when, in the opinion of the commission, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients. All interceptors shall be of a type and capacity approved by the ~~commission, and~~ commission and shall be located as to be readily and easily accessible for cleaning and inspection.
- (b) All interceptors shall be cleaned on a daily basis. A preventative maintenance schedule shall be developed by the board of sewer commissioners to ensure that proper cleaning and maintenance shall be performed on a daily basis. Said schedule shall be posted in a conspicuous place at each site and shall also be available for inspection by commissioners or their designee.

(Ord. of 7-10-89, Art. IV, § 7; Ord. of 9-13-93)

Sec. 14-78. Maintenance of pretreatment facilities.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at ~~his~~ their expense.

(Ord. of 7-10-89, Art. IV, § 8)

Sec. 14-79. Control manhole; holding tank; primary flow measurement device.

When required by the commission, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastewater. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the commission. The manhole shall be installed by the owner, at ~~his~~ their expense, and shall be maintained by ~~him~~ them so as to be safe and accessible at all times to the city personnel. Users that discharge wastes per section 14-73(3) will be required to install a holding tank at their expense, so that representative sampling of the effluent may be taken by the city's engineers for analysis. A primary flow measurement device must be installed in such a manner that it is the final collection point for wastes before joining sanitary discharge points entering the city sewerage system.

(Ord. of 7-10-89, Art. IV, § 9)

Sec. 14-80. Monitoring discharges.

All industries discharging into a public sewer shall perform such monitoring of their discharges, as the commission and/or other duly authorized employees of the city may reasonably require, including installation, use, and maintenance of monitoring equipment, keeping records and making the results of such monitoring available to the commission.

(Ord. of 7-10-89, Art. IV, § 10)

Sec. 14-81. Measurements, tests, analyses.

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, EPA test methods listed in 40 CFR 136, or suitable procedure adopted by the EPA, and shall be determined at the control manhole provided, or upon suitable samples taken at the control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the twenty-four-hour, flow proportioned representative characteristics of the user's discharge, and the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. The particular analyses involved will determine whether a twenty-four-hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls whereas pH, oil, grease, chromium (+6) or volatile compound measurements are determined from periodic grab samples.

(Ord. of 7-10-89, Art. IV, § 10)

Sec. 14-82. Special agreements authorized.

No statement contained in this division shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character, within the limits imposed by national categorical pretreatment standards or state standards, may be accepted by the city for treatment, subject to payment therefor, by the industrial concern.

(Ord. of 7-10-89, Art. IV, § 11)

Sec. 14-83. Industrial sewer discharge permit.

All industrial or commercial users shall obtain an industrial sewer discharge permit (attachment III). All new facilities or facilities under new ownership shall obtain an industrial sewer discharge permit before connecting to or contributing to the sewage works. Industrial or commercial users required to obtain an industrial sewer discharge permit shall complete and file with the city an application in the form prescribed by the city. Existing industrial or commercial users shall apply for a sewer permit within thirty (30) days after the effective date of this article, and proposed new users shall apply at least ninety (90) days prior to connecting to or contributing to the sewer system. Permits shall be issued for a specific time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. An industrial or commercial user shall apply for permit reissuance a minimum of one hundred eighty (180) days prior to the expiration of the applicant's existing permit. The terms and conditions of the permit may be subject to modification by the commission during the terms of the permit as discharge standards or requirements are modified or other just cause exists. The industrial or commercial user shall be informed of any proposed changes in ~~his~~their permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance. Industrial sewer discharge permits are issued to a specific user for a specific operation. An industrial sewer discharge permit shall not be reassigned or transferred or sold to a new owner, any category of new user, different premises, or a new or changed operation without the approval of the commission. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit.

(Ord. of 7-10-89, Art. IV, § 12)

Editor's note(s)—Attachment III to the ordinance from which this article derives is not included ~~herein, but~~ herein but is on file and available for reference in the office of the city clerk.

Sec. 14-84. Records, reports.

- (a) *Required.* All significant industrial users including those not subject to categorical pretreatment standards and requirements are required to submit to the commission records and reports as required and defined by 40 CFR 403.12 and as revised from time to time and state regulations, and to comply with other reasonable requests for information from the commission or its representatives. All reports submitted to the city must be signed by an authorized representative of the industrial user as defined herein. Such reports include but are not limited to:
- (1) Baseline report (including compliance schedule) due within one hundred eighty (180) days after the effective date of an applicable categorical pretreatment standard, or one hundred eighty (180) days after the final administrative decision made upon a category determination submission under 40 CFR 403004), whichever is later.
 - (2) Report on compliance with categorical pretreatment standard deadline due within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new user, following commencement of the introduction of wastewater into the sewage treatment plant.
 - (3) Semiannual monitoring reports due during the months of June and December, unless required more frequently by the commission, its representatives, or in the categorical pretreatment standard.
 - (4) Periodic reports on continued compliance.
 - (5) Notice of slug loading or any other condition of violation, due immediately and by the fastest available means.
 - (6) Continuous pH measurement records, if the user stores, uses or discharges any materials with a potential to alter the pH of the sewer discharge to a degree of violation.
 - (7) Records pertaining to changes in the level or nature of business activity, production capacity, staffing or other activity which significantly alters the amount of wastewater produced, or the characteristics of the discharge.
 - (8) Records of on-site storage (inventories) for all toxic or hazardous substances present at the facility, including the type and maximum quantity for each material located on the premises.
 - (9) Records of generation rates and disposal shipments for all special and hazardous wastes, including residual substances produced or concentrated by any wastewater pretreatment systems or processes.
 - (10) Training records and other documentation of qualifications for all personnel involved in the handling of hazardous wastes, special wastes and wastewater pretreatment residuals.
 - (11) Purchasing records and logs for certain materials which have a bearing on the proper operation and maintenance of any wastewater pretreatment system. Such materials may include purchased acids, bases, polymers, filtration aids, media replacement cartridges, etc. The city may also request the documentation of material throughput for any compounds or substances determined to be of particular concern because of interference, inhibition, pass-through, toxicity or safety to the public treatment works, the workers or the environment.
 - (12) Water consumption records, such as meter readings, log books, line drawings and process schematics which describe the water using processes, the sources and final discharge points for water, including any itemization of water used in sanitary, process, cooling or product uses.

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- (13) Water treatment additive dosage calculations and records, particularly any toxic additives such as biocides and antifouling agents.
 - (14) Wastewater collection and treatment operation and maintenance records.
 - (15) Records of any related permits, such as direct discharge permits for cooling water disposal, hazardous waste permits, etc.
 - (16) Laboratory analysis records of effluents discharged into the city sewer and any materials hauled off-site for resource recovery or disposal.
 - (17) Records of any and all enforcement actions, notices of violation, compliance schedules, pretreatment system approval letters, etc.
 - (18) Documentation of design flows, capacities, rated efficiencies and settings for all pollution control devices and systems, including, but not limited to, the wastewater pretreatment system components such as pumps, tanks, mixers, clarifiers, filter presses, centrifuges, and pH meters, recorders, flow meters and primary flow measurement devices.
- (b) *Confidentiality.* Information and data obtained from reports and other information supplied by any category of users shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate that the release of such information would divulge trade secrets or secret processes. Any user or industrial user able to make that demonstration is entitled to have those portions of reports and other requested information which would reveal trade secrets and secret processes withheld from the public but other governmental entities may receive such information upon written request. Wastewater constituents and characteristics will not be recognized as confidential information under any circumstances.

(Ord. of 7-10-89, Art. IV, § 13; Ord. of 11-26-90, §§ 5—7)

Sec. 14-85. Notification of discharges.

All categorical and noncategorical users shall notify the commission immediately of all discharges that may cause potential problems to the sewage treatment plant including any slug loadings by the industrial user.

(Ord. of 11-26-90, § 8)

Sec. 14-86. Submission of records and reports.

All categories of users not subject to the categorical pretreatment standards and requirements are required to submit to the commission records and reports as required and defined by 40 CFR 403.12(h) and state regulations and to comply with other reasonable requests for information from the commission.

(Ord. of 11-26-90, § 8)

Sec. 14-87. Compliance with standards.

All industrial users subject to categorical pretreatment shall comply with federal standards and the existing categorical pretreatment standards as set forth in 40 CFR Chapter I, Subchapter N, parts 405—471.

(Ord. of 11-26-90, § 8)

Sec. 14-88. Retention of monitoring reports and records.

All industries required to perform monitoring and required to maintain monitoring reports and records shall maintain and retain said records for a period of three (3) years or until completion of any ongoing litigation in which the industrial user may be involved.

(Ord. of 11-26-90, § 8)

Sec. 14-89. Certification of reports.

All industrial user reports must be signed by an authorized representative of the industrial user, defined herein. All reports must be certified by the authorized representative under oath as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Ord. of 11-26-90, § 8)

Chapter 15 VEHICLES FOR HIRE⁷⁸

ARTICLE I. IN GENERAL

Secs. 15-1—15-25. Reserved.

ARTICLE II. TAXICABS⁷⁹

Sec. 15-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Licenses: The word "license" as used in this article shall be construed to mean the permission granted by the city council to the operator of any vehicle registered and used in the taxi business.

⁷⁸Cross reference(s)—Licenses, permits and business regulations, ch. 9 ~~Cross reference(s)~~; Streets, sidewalks and other public places, ch. 12; ~~Cross reference(s)~~; traffic and motor vehicles, ch. 13. ~~Cross reference(s)~~.

⁷⁹Editor's note(s)—An ordinance adopted August 14, 2006, amended article II in its entirety to read as herein set out. Former article II, §§ 15-26 Editor's note(s)—15-41, pertained to similar subject matter, and derived from Ord. of 3-8-82, §§ 25-1—25-8, 25-10—25-19.

State law reference(s)—Authority of city to license and regulate taxicabs, M.G.L. c. 40, § 22, and case notes thereunder.

Owner: The term "owner" as used in this article shall be construed to mean the person, firm, corporation, or association having ownership, control, or leasehold of any vehicle used or licensed to be used in the taxi business.

Operator: The term "operator" as used in this article shall be construed to mean the person driving or having control or possession of said motor vehicle while the same is being used as a taxi.

Permits: The word "permit" as used in this article shall be construed to mean the permission granted by the city council to the owner of any vehicle used in the taxi business to engage in the taxi business and to use the particular motor vehicle so registered in the taxi business.

Taxi or taxicabs: The term "taxi or taxicab" shall mean any motor vehicle used for the transportation of passengers for hire, the destination and route of which are under the direction and control of the passenger; except that this article shall not apply to the following:

- (1) A limousine service, which provide designated luxury or executive vehicles by prior appointment for discrete ~~functions,~~functions.
- (2) Limousine services whose operator is limited to the transport of passengers by prior appointment from locations within the City of Newburyport to destinations located outside of the city or the reverse.
- (3) A limousine, executive, or livery services which provides transportation of passengers by prior appointment with an agreed upon hourly ~~rate, or~~rate or signed contract from locations within the city to destinations outside the city.

(Ord. of 9-11-06)

Sec. 15-27. Authority of taxi inspector.

~~The taxi inspector,~~The taxi inspector shall be an officer of the Newburyport Police Department assigned by the city marshal. Said officer, in addition to his/her regular duties, shall exercise control over taxicab operations to the extent set forth in this article. The taxi inspector shall investigate all local ~~ordinances,~~codes pertaining to taxis.

(Ord. of 9-11-06)

Sec. 15-28. Taxi inspector procedures.

If the taxi inspector determines that any violation of this article has occurred, the inspector may take one (1) or more of the following enforcement actions.

- (1) Issue a defective equipment notice to the owner and/or operator of the taxi requiring correction of the defect within twenty-four (24) hours. Notice of correction must be provided to the Newburyport Police Department within this twenty-four-hour period to avoid automatic suspension of the taxi permit.
- (2) Remove the permit from the taxi in violation until the violation is corrected and proof of correction is provided to the taxi inspector.
- (3) Suspend any permit or license, after providing notice and an opportunity to respond to the affected permittee or licensee, with any such suspension appealable to the taxi commission.
- (4) Recommend that the city council suspend or revoke any permit or license to conduct business in the City of Newburyport.

(Ord. of 9-11-06)

Sec. 15-29. Permits and inspections required.

- (a) No person, firm or corporation shall engage in the taxicab business in the ~~City of Newburyport~~ without first having obtained a permit for each taxi to be used from the city clerk. The clerk shall not issue a permit or renew a permit until ~~he/she/they~~ haves received both:
- (1) Written authorization from the city council.
 - (2) Written notification from the taxi inspector or ~~his/her~~ their designee that the taxi meets all criteria contained in this article.
- (b) Taxi permits may not be transferred from one (1) vehicle to any other vehicle except when the following actions have been performed in advance of the transfer:
- The city clerk has been provided with the identification and certificate of insurance related to the transferee vehicle.
- The city clerk has been provided with written notification from the taxi inspector (or designee) that the transferee vehicle meets all criteria contained in this article.
- (c) No taxi permit shall be issued to any taxi owner or entity controlled by that owner or its principals when the effect of the issuance would be to provide that owner with greater than one-half (½) of the total outstanding taxi permits.

(Ord. of 9-11-06)

Sec. 15-30. Licenses required.

- (a) No person shall operate any vehicle used as a taxicab business in the City of Newburyport without first having obtained a license from the city clerk.
- (b) When a licensee changes ~~his/her~~ their address, ~~he/she/they~~ will, within seven (7) days of such change, notify the city clerk in writing.
- (c) The city clerk shall issue a taxi operator's license for any individual who shall satisfy the following criteria:
- (1) Provide evidence of possession of a valid motor vehicle operator's license.
 - (2) Provide written notification from the owner of a permitted taxi that the potential licensee has been offered employment as a taxi operator.
 - (3) Provide written recommendation from the city marshal or ~~his/her~~ their designee, which will not be issued by the police department prior to the performance by the police department of a criminal and motor vehicle records examination of the applicant. A taxi operator's license shall not be authorized for any individual who is shown to have any of the following disqualifications:
 - a. The individual has three (3) or more convictions for moving violations, in this or any state, in the past twelve (12) months.
 - b. The privilege of the individual to operate a motor vehicle has been suspended or revoked in this or any state in the past twenty-four (24) months, for any reason related to operation of a motor vehicle.
 - c. The individual has been convicted of a felony or a violation of parole or probation in the past seven (7) years. A court disposition of a "continued without a finding" is considered a conviction.

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- d. The individual has been convicted of a misdemeanor or violation of a restraining order in this state or any other state in the past two (2) years.
 - e. The individual has been convicted of a sex offense, is a registered sex offender, or awaiting classification as a sex offender.
 - f. The city marshal or ~~his/her~~their designee shall have the authority to immediately suspend the taxi operator's license or any individual who performs any act or makes any statement which creates an imminent threat or risk to the safety of any person. In the event of a suspension for this reason, the person whose license has been suspended shall have the right to appeal to the city council pursuant to the applicable provisions of this article.

(Ord. of 9-11-06)

Sec. 15-31. Mandatory self-reporting of taxi operator motor vehicle and criminal violations.

Any person holding a taxi operator's license shall report each and every driver's license suspension/revocation, prosecution, and any criminal or motor vehicle offense to the city clerk within seven (7) days of conviction or prosecution. In the event of suspension for this reason, the person whose license has been suspended shall have a right of appeal to the city council pursuant to the applicable provisions of this article.

(Ord. of 9-11-06)

Sec. 15-32. Fees and terms for permits/licenses.

All permits and licenses granted under this chapter shall continue and remain in full force and effect for a period from the first day of October each year until midnight on the September 31 of the year in which said permit or license was granted. The fees for such permits are defined in Appendix B.

- ~~(1) The fee for a permit shall be fifty dollars (\$50.00) each year or any part of a year for each taxicab payable in advance of the application for a permit.~~
- ~~(2) The fee for a license shall be twenty five dollars (\$25.00) per year or any part of a year.~~
- ~~(3) The fee for restoration of any permit that has been suspended or revoked shall be fifty dollars (\$50.00).~~

(Ord. of 9-11-06; Ord. of 10-26-15(2))

Sec. 15-33. Permit/license suspension or revocation and hearing.

The city council shall have the authority to suspend or revoke any permit or license issued pursuant to this article in the event that the commission finds that the permittee or licensee has violated any provision of ~~the this code ordinance.~~

Prior to the suspension or revocation of any permit or license, the city council shall notify the affected permittee or licensee of the pending suspension or revocation and the reason, ~~therefore for it.~~ The city council shall also provide the affected permittee or licensee with a reasonable opportunity to be heard by the city council prior to the suspension or revocation.

(Ord. of 9-11-06)

Sec. 15-34. Application for renewal of permit or licenses.

All applications for renewal of permits or licenses must be filed with the city clerk no later than the first day of August of any year in order to keep the renewal privilege. The city clerk may issue renewal permits or licenses at any time thereafter.

(Ord. of 9-11-06; Ord. of 10-26-15(2))

Sec. 15-35. Transfer of permits.

- (a) No permit held by a corporation, association, partnership, individual, or other entity may be transferred without the consent of the city council.
- (b) Any permit transfer, ~~red~~ other than in accordance with the foregoing procedure, or without the approval of the city council, shall be void and such permit shall be surrendered to the city clerk.

(Ord. of 9-11-06)

Sec. 15-36. Expiration of permit.

No person, firm or corporation holding a permit to operate a taxicab hereunder, which said taxicab is not in actual operation as such for a permit of thirty (30) consecutive days, shall continue to hold the permit for such taxicab and shall deliver up the same permit to the city clerk and such permit shall forthwith terminate and expire.

(Ord. of 9-11-06)

Sec. 15-37. Insurance.

No permit shall be issued to any taxi until the applicant ~~shall~~ has ~~have~~ filed with the city clerk satisfactory proof of personal injury and property damage liability insurance coverage for each permitted tax for the full time period of the permit. The personal injury coverage shall not be less than one hundred thousand dollars (\$100,000.00) for injury to one person with a total coverage of not less than three hundred thousand dollars (\$300,000.00) for each accident. The property damage coverage shall be not less than fifty thousand dollars (\$50,000.00) per occurrence.

If the required insurance coverage terminates, expires, or is suspended, the permit shall be immediately terminated and expire and must immediately be returned to the city clerk. All required insurance policies shall contain a provision, which will provide for automatic notification by the insurer to the City of Newburyport of the cancellation or expiration of the policy. Said notice shall be mailed to the city clerk.

(Ord. of 9-11-06)

Sec. 15-38. Rates for tax fares.

- (a) Taxicab rates shall be in such amounts as are set from time to time by the city council and are on file in the city clerk's office.
- (b) The rates charged to passengers by the taxi company shall be standard for all who are in the business of operating a taxi service within the city ~~limits of Newburyport~~. Any changes in the fare schedule (within the city) require prior approval of the city council.

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- (c) There will be no charge for any bag, suitcase, or ordinary light traveling baggage, weight not to exceed fifty (50) pounds.
 - (d) A ten (10) percent discount shall be afforded to any passenger who is age sixty (60) or over.
 - (e) The operator of the taxicab shall, upon request by any passenger, issue a receipt for the amount charged. Such receipt should indicate the name of the taxi company, the vehicle number, the amount of the fare charged, and the date of service.

(Ord. of 9-11-06)

Sec. 15-39. Posting of rates.

Each taxicab shall keep its actual rates posted in a conspicuous place on the interior of the vehicle and in view of the passengers.

(Ord. of 9-11-06)

Sec. 15-40. Marking.

- (a) Roof light: ~~Each~~ taxicab shall have a roof light attached to the roof of said taxicab with the word "TAXI" inscribed thereon and illuminated whenever the taxi is in service.
- (b) There shall be no other lights on taxicabs, except those required by law and the aforementioned roof light.
- (c) Other markings: Each taxicab shall have the company's name, telephone number, and vehicle number permanently displayed on ~~the~~ both sides thereof in letters not less than three (3) inches in height with a contrasting color to the taxi's color.

(Ord. of 9-11-06)

Sec. 15-41. Maximum number of taxicabs.

Permits for not more than fifteen (15) taxicabs can be in force at any time. Each permit shall authorize the operation of one (1) taxicab only. Each permit shall authorize the operation of one (1) taxicab only. One of these permits shall be reserved at all times and made available only to a taxicab which is of different size, construction, and equipment to allow for access and egress of ~~the~~ handicapped individuals, including passengers utilizing electric wheelchairs, without requiring such passengers to be removed from the wheelchair. Notwithstanding any other provision of this article, the vehicle to, which is issued a taxi permit dedicated to handicapped accessibility, may be a vehicle designated to carry up to nine (9) passengers.

(Ord. of 9-11-06)

Sec. 15-42. Reciprocity with other municipalities.

Taxicabs which are duly licensed in other municipalities may deliver passengers from outside the ~~c~~City of ~~Newburyport~~ to destinations within the city.

(Ord. of 9-11-06)

Sec. 15-43. Operator's license to be displayed.

Each operator of any taxicab shall keep his/her taxi operator's license which shall contain a clear photograph of the operator in a conspicuous place and in plain view of the passengers.

(Ord. of 9-11-06)

Sec. 15-44. Plates and permits.

Each person holding a permit under this chapter shall have attached two (2) number plates issued by the Massachusetts Registry of Motor Vehicles for "TAXI" cabs. These plates shall be attached to the front and rear of the vehicle.

The permit issued by the city shall be permanently attached to the right rear of the taxicab. This permit shall contain the assigned number from the city on it.

(Ord. of 9-11-06)

Sec. 15-45. Taxi condition.

(a) All taxis shall be maintained in a safe, clean, and sanitary condition at all times.

(b) Taxi will be ~~equipped~~ equipped with a first aid kit and fire extinguisher.

(Ord. of 9-11-06)

Sec. 15-46. Smoking in taxicab.

While engaged in the transportation of passengers no one (driver or passengers) will be allowed to smoke in the taxicab.

(Ord. of 9-11-06)

Sec. 15-47. Penalty.

Any person who violates the provisions of ~~Article II Taxicabs this article~~ shall be fined as noted in chapter 1, section 1-18, two hundred fifty dollars (\$250.00) for each offense.

(Ord. of 9-11-06)

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

Chapter 16 LOCAL HISTORIC DISTRICT

Sec. 16-1. Purpose.

The purpose of this chapter is to aid in: (a) the preservation and protection of the distinctive characteristics and architecture of buildings and places significant in the history of the City of Newburyport; (b) the maintenance

and improvement of their settings; and (c) the encouragement of new building designs compatible with the existing architecture.

(Ord. of 10-9-07, § 1)

Sec. 16-2. Definitions.

~~The terms defined in this section shall be capitalized throughout this chapter.~~ Where a defined term has not been capitalized, it is intended that the meaning of the term be the same as the meaning ascribed to it in this section, unless another meaning is clearly intended by its context. As used in this chapter, the following terms shall have the following meanings:

Abutter. Any property located directly adjoining or facing across a public way the applicant's property.

Alteration, to alter. The act or the fact of rebuilding, reconstruction, restoration, replication, removal, demolition, and other similar activities.

Building. A combination of materials forming a shelter for persons, animals, or personal property.

Certificate. A certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, all as set forth in this chapter.

Commission. The historic district commission or commissions as established in this chapter and as may be established in the future.

Construction, to construct. The act or the fact of building, erecting, installing, enlarging, moving and other similar activities.

District. The local historic district as established in this chapter and as may be established in the future consisting of one (1) or more district areas.

Exterior architectural feature. Such portion of the exterior of a building or structure as is open to view from a public way or ways, public park or public body of water, including but not limited to architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

Person aggrieved. The applicant; an owner of adjoining property; an owner of property within the same district area; ~~any~~ any owner of property within one hundred (100) feet of said district area; and any charitable corporation in which one of its purposes is the preservation of historic places, structures, buildings or districts.

Structure. A combination of materials other than a building, including but not limited to a sign, fence, wall, terrace, walk or driveway.

Temporary structure or building. A building not to be in existence for a period of more than two (2) years or ~~a~~ a structure not to be in existence for a period of more than one (1) year. The Commission may further limit the time periods set forth herein as it deems appropriate.

(Ord. of 10-9-07, § 2; Ord. of 5-26-09)

Sec. 16-3. District(s).

The district or districts shall consist of one or more district areas as listed in section 16-13. appendices, of this chapter.

(Ord. of 10-9-07, § 3)

Sec. 16-4. Commission.

- (a) The district shall be overseen by a commission consisting of five (5) members, to be appointed by the mayor and confirmed by the city council, one (1) member initially to be appointed for one (1) year, two (2) for two (2) years, and two (2) for three (3) years, and each successive appointment to be made for three (3) years.
- (b) The commission shall include, if possible, ~~one (1) member from two (2) nominees solicited from the Historical Society of Old Newbury (HSON);~~ ~~one (1) member from two (2) nominees solicited from the chapter of the American Institute of Architects covering Newburyport;~~ one (1) member from two (2) nominees of the Board of Realtors covering Newburyport; one (1) member from the Newburyport Planning Board, Zoning Board or Historical Commission; and one (1) ~~property owner of real property from within~~ located within the district. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named insufficient nominations have been made, the mayor may proceed to make appointments as ~~he they or she~~ desires, with confirmation by the city council.
- (c) The mayor may appoint up to four (4) alternate members to the commission with confirmation by the city council. Each alternate member shall have the right to act and vote in the place of one (1) regular member should such regular member be absent from a meeting or be unwilling or unable to act or vote. Said alternate members shall initially be appointed for terms of two (2) or three (3) years, as determined by the mayor, and for three-year terms thereafter.
- (d) Each member and alternate member shall continue to serve in office after the expiration date of ~~his or her~~ their term until a successor is duly appointed.
- (e) Meetings of the commission shall be held at the call of the ~~chairman~~, at the request of any two (2) regular members, or in such other manner as the commission shall determine in its rules and regulations.
- (f) A simple majority of the commission shall constitute a quorum.

(Ord. of 10-9-07, § 4)

Sec. 16-5. Commission powers and duties.

- (a) The commission shall exercise its powers in administering this chapter and regulating the ~~construction and alteration~~ construction of any structures or buildings within the district, as set forth under the procedures and criteria established in this chapter. In exercising its powers and duties hereunder, the commission shall pay due regard to the distinctive characteristics of each building, structure, and district area.
- (b) A majority of the commission may adopt, and from time to time amend, reasonable Rules and Regulations not inconsistent with the provisions of this chapter or M.G.L. c. 40C, setting forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, hearing procedures and other matters. The commission shall file a copy of any such rules and regulations with the office of the city clerk.
- (c) A majority of the commission, after a public hearing duly posted and advertised at least fourteen (14) days in advance in a conspicuous place in City Hall and in a newspaper of general circulation within the city, may adopt, and from time to time amend, guidelines which set forth the designs for certain exterior architectural features which are, in general, suitable for the issuance of a certificate. No such design guidelines shall limit the right of an applicant for a certificate to present other designs to the commission for approval.
- (d) The commission shall at the beginning of each fiscal year hold an organizational meeting and elect a ~~chairman~~, a vice ~~chairman~~ and a secretary, and shall file notice of the result of such elections with the office of the city clerk.

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- (e) The commission shall keep a permanent record of its resolutions, transactions, decisions, and determinations, and also of the vote of each member participating therein.
 - (f) The commission shall undertake educational efforts to explain to the public at large and ~~property to~~ owners of real property the merits and functions of a district.
- (Ord. of 10-9-07, § 5)

Sec. 16-6. Alterations and construction prohibited without a certificate.

- (a) Except as this chapter provides, no building or structure or part thereof within a district shall be constructed or altered in any way that affects the exterior architectural features as visible from a public way, public park or public body of water, unless the commission shall first have issued a certificate with respect to such construction or alteration.
 - (b) No building permit for construction of a building or structure or for alteration of an exterior architectural feature within a district and no demolition permit for demolition or removal of a building or structure within a district shall be issued by the city or any department thereof until a certificate as required under this ~~ordinance code~~ has been issued by the commission.
- (Ord. of 10-9-07, § 6)

Sec. 16-7. Procedures for review of applications.

- (a) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, of non-applicability or of hardship, as the case may be. The application, addressed to the appropriate local historic district, City Hall, Newburyport, MA, 01950, shall be accompanied by such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.
 - (b) The commission shall determine within fourteen (14) days of the filing of an application for a certificate whether said application involves any exterior architectural features which are within the jurisdiction of the commission.
 - (c) If the commission determines that an application for a certificate does not involve any exterior architectural features, or involves an exterior architectural feature which is not subject to review by the commission under the provisions of this chapter, the commission shall forthwith issue a certificate of non-applicability.
 - (d) If the commission determines that such application involves any exterior architectural feature subject to review under this chapter, it shall hold a public hearing on the application, except as may otherwise be provided in this chapter. The commission shall hold such ~~a~~ public hearing within forty-five (45) days from the date of the filing of the application. At least fourteen (14) days before said public hearing, public notice shall be given by posting in a conspicuous place in City Hall. Such notice shall identify the time, place and purpose of the public hearing. Concurrently, a copy of said public notice shall be mailed to: (1) the applicant, ~~to~~ (2) the owners of all abutting properties, ~~of all properties within the district,~~ and of other properties deemed by the commission to be materially affected thereby, all as they appear on the most recent, applicable tax list; (3) ~~to~~ the planning board; (4) ~~to~~ any person filing a written request for notice of hearings, such request to be renewed yearly in December; and (5) to such other persons as the commission shall deem entitled to notice.
- (1) Notwithstanding the foregoing, ~~a~~ public hearing on an application for a certificate need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing

on an application for a certificate may be waived by the commission if the commission determines that the exterior architectural feature involved, or its category, is so insubstantial in its effect on the district that it may be reviewed by the commission without a public hearing. ~~If the commission hearing application for a certificate, in which case the commission shall mail notice of such its decision to dispense dispenses~~ with a public hearing on ~~an such~~ application shall be given to the owners of all adjoining property and of other property deemed by the commission to be materially affected thereby, as above provided, and ten (10) days shall elapse after the mailing of such notice before the commission may act upon such application.

- (e) Within sixty (60) days after the filing of an application for a certificate, or within such further time as the applicant may allow in writing, the commission shall issue a certificate or a disapproval. In the case of a disapproval of an application for a certificate, the commission shall set forth in its disapproval the reasons for such disapproval. The commission may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material and similar features which, if made and filed with the commission in a subsequent application, would make the application acceptable to the commission.
- (f) The concurring vote of a majority of the members present shall be required to issue a certificate.
- (g) In issuing certificates, the commission may, as it deems appropriate, impose certain conditions and limitations, ~~and may require including without limitation, by requiring~~ architectural or plan modifications, in all cases consistent with the intent and purpose ~~of~~ this chapter.
- (h) If the commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the district, the commission shall issue a certificate of appropriateness.
- (i) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a certificate of hardship, the commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant, and also whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this chapter. If the commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and further that approval thereof may be made without such substantial detriment or derogation, the commission shall issue a certificate of hardship.
- (j) The commission shall send a copy of its certificates and disapprovals to the applicant, and also shall file a copy of its certificates and disapprovals with the office of the city clerk and the building commissioner. The date of issuance of a certificate or disapproval shall be the date of the filing of a copy of such certificate or disapproval with the office of the city clerk.
- (k) If the commission should fail to issue a certificate or a disapproval within sixty (60) days of the filing of the application for a certificate, or within such further time as the applicant may allow in writing, then the commission shall thereupon issue a certificate of hardship due to its failure to act timely.
- (l) Each certificate issued by the commission shall be dated and signed by its chairman or such other person designated by the commission to sign such certificates on its behalf.
- (m) A person aggrieved by a determination of the commission may, within twenty (20) days of the issuance of a certificate or disapproval, file a written request with the commission for a review by a person or persons of competence and experience in such matters, acting as arbitrator and designated by the Merrimack Valley Regional Planning Commission. The finding of the person or persons making such review shall be filed with the city clerk within forty-five (45) days after the request, and shall be binding on the applicant and the

commission, unless a further appeal is sought in the Superior Court as provided in M.G.L.A. c. 40C, § 12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the arbitrator has been filed with the office of the city clerk.

(Ord. of 10-9-07, § 7; Ord. of 5-26-09)

Sec. 16-8. Criteria for determinations.

- (a) In deliberating on applications for certificates, the commission shall consider, among other things: (1) the historic and architectural value and significance of the site, building or structure; (2) the general design, proportions, detailing, mass, arrangement, texture, and material of the exterior architectural features involved; and (3) the relation of such exterior architectural features to similar features of buildings and structures in the surrounding area.
- (b) In the case of new construction or additions to existing buildings or structures, the commission shall consider the appropriateness of the scale, shape and proportions of the building or structure both in relation to the land area upon which the building or structure is situated and in relation to buildings and structures in the vicinity. The commission may in appropriate cases impose dimensional and setback requirements in addition to those otherwise required by applicable statute or ordinance.
- (c) When ruling on applications for certificates on solar energy systems as defined in M.G.L.A. c. 40A, § 1A, the commission shall consider the policy of the Commonwealth of Massachusetts to encourage the use of solar energy systems and to protect solar access.
- (d) The commission shall not consider interior arrangements or architectural features not subject to public view from a public way.

(Ord. of 10-9-07, § 8)

Sec. 16-9. Exclusions.

- (a) The commission shall exclude from its purview the following:
 - (1) Temporary ~~buildings, structures or signs~~ structures or buildings subject, however, to conditions pertaining to the duration of existence and use, location, lighting, removal and similar matters as the commission may reasonably specify.
 - (2) Storm windows, screen windows, screen doors, and window-mounted air conditioners.
 - (3) The color of paint.
- (b) Upon request the commission shall issue a certificate of non-applicability with respect to construction or alteration in any category not subject to review by the commission in accordance with the ~~above~~ above provisions of this chapter.
- (c) Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within a district which does not involve a change in design, material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, ~~nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of this Ordinance.~~

(Ord. of 10-9-07, § 9)

Sec. 16-10. Categorical approval.

The commission may determine from time to time after a public hearing, duly advertised and posted at least fourteen (14) days in advance in a conspicuous place in City Hall and in a newspaper of general circulation in Newburyport, that certain categories of exterior architectural features, structures or buildings under certain conditions may be constructed or altered without review by the commission without causing substantial derogation from the intent and purpose of this chapter.

(Ord. of 10-9-07, § 10)

Sec. 16-11. Enforcement and penalties.

- (a) The commission shall determine whether a particular activity is in violation of this chapter or not, and the commission shall be charged with the enforcement of this chapter.
- (b) The commission, upon a written complaint of any resident of Newburyport, or owner of property within Newburyport, or upon its own initiative, shall institute any appropriate action or proceedings in the name of the City of Newburyport to prevent, correct, restrain or abate violation of this chapter. In the case where the commission is requested in writing to enforce this chapter against any person allegedly in violation of same and the commission declines to act, the commission shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefore, within ~~twenty-one~~twenty-one (21) days of receipt of such request.
- (c) Whoever violates any of the provisions of this chapter shall be punishable by a fine of ~~up to three hundred dollars (\$300.00)~~as noted in chapter 1, section 1-18 for each offense. Each day during any portion of which such violation continues to exist shall constitute a separate offense.
- (d) The commission may designate the Building Commissioner of the City of Newburyport to act on its behalf and to enforce this chapter.

(Ord. of 10-9-07, § 11)

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

~~Sec. 16-12. Validity and separability.~~

~~The provisions of this chapter shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall continue to be in full force and effect.~~

~~(Ord. of 10-9-07, § 12)~~

Sec. 16-~~12~~3. Appendices.

Appendix 1: Fruit Street Historic District

The Fruit Street District shall be a district area under this chapter. The location and boundaries of the Fruit Street District are defined and shown on a map which is attached hereto, which map is a part of this chapter. The delineation of the district area boundaries is based upon the parcel boundaries as shown on the city assessors map labeled Fruit Street Historic District, dated October~~7~~7 2007.

(Ord. of 10-9-07, § ~~12~~3)

Chapter 17 STORMWATER MANAGEMENT

ARTICLE I. IN GENERAL

Sec. 17-1. Authority.

This chapter is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to M.G.L. c. 83, §§ 1, 10, and 16, as amended by St. 2004, c. 149, §§ 135-140, and pursuant to the regulations of the Federal Clean Water Act (40 CFR 122.34).

(Ord. of 9-24-10)

Sec. 17-2. Purposes, objectives and intent.

Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to the municipal storm drainage system is necessary for the protection of the city's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. The purposes, objectives and intent of this chapter are as follows:

- (a) *Detection and elimination of illicit discharges, connections and/or obstructions.*
 - (1) To prevent pollutants from entering the city's municipal separate storm sewer system (MS4) and Waters of the Commonwealth of Massachusetts;
 - (2) To prohibit illicit discharges, connections and obstructions to the MS4;
 - (3) To require the removal of all such illicit discharges, connections and/or obstructions;
 - (4) To comply with state and federal statutes and regulations relating to stormwater discharges; and
 - (5) To establish the legal authority to ensure compliance with the provisions of this chapter through inspection, monitoring, and enforcement.
- (b) *Control of construction and post-construction run-off.*
 - (1) To protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control construction-site stormwater runoff and post-construction stormwater discharges, which can adversely affect public safety, public and private property, surface water, groundwater resources, drinking water supplies, recreation, and aquatic habitats. In addition, this chapter is intended to ensure and promote compliance with US Environmental Protection Agency (EPA) stormwater management regulations pertaining to municipal separate storm sewer systems (MS4s);
 - (2) To establish minimum construction-site and post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff generated from new development and redevelopment;
 - (3) To require practices that eliminate soil erosion and sedimentation resulting from land disturbance activities;

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- (4) To encourage the use of nonstructural stormwater management practices or "low-impact development practices", wherever practicable;
 - (5) To establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety; and
 - (6) To prevent pollutants from entering the city's municipal separate storm sewer system (MS4).

(Ord. of 9-24-10)

Sec. 17-3. Definitions.

Active groundwater dewatering system. Any groundwater dewatering system that is not achieved by means of gravity only (i.e., use of mechanical or pumping apparatus).

Applicant. Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth of Massachusetts or the federal government to the extent permitted by law requesting a stormwater management permit for proposed land disturbances.

Authorized enforcement agency. (See "department of public services.")

Best management practice (BMP) An activity, procedure, restraint, or structural or nonstructural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

Certified professional in erosion and sediment control (CPESC). A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

Clearing. Any activity that removes the vegetative surface cover.

Department of public services (DPS). For the purposes of this chapter, the department of public services (DPS) shall be the "authorized enforcement agency." The department of public services (under the direction of the director of public services), its employees, officers, or agents are designated to enforce the provisions of this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions relative thereto on behalf of the city.

Development. The modification of land to accommodate a new use or expansion of use, usually involving construction.

Director of public services. For the purposes of this chapter, the director of public services shall be the "enforcement officer." The director of public services shall be the city's authorized agent to enforce the provisions of this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions relative thereto on behalf of the city.

Discharge of pollutants. The addition from any source of any pollutant or combination of pollutants into the municipal storm drainage system or into the waters of the United States or Commonwealth of Massachusetts from any source.

Enforcement officer. (See "director of public services.")

Erosion. The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

Erosion and sediment control plan. A document containing narrative, drawings, and details developed by a Massachusetts Registered Professional Engineer (P.E.) or a Certified Professional in Erosion and Sediment Control

(CPESC), which includes BMPs, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbances. The plan is required as part of the application for a stormwater management permit.

Grading. Changing the level or shape of the ground surface.

Groundwater. Water beneath the surface of the ground.

Illicit connection. A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drainage system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this chapter.

Illicit discharge. Direct or indirect discharge to the municipal storm drainage system that is not composed entirely of stormwater, except as exempted in section 17-9. The term does not include a discharge in compliance with a NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to section 17-9.

Impervious surface. Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

Land disturbance. Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

Massachusetts Stormwater Management Policy. The policy issued by the department of environmental protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act M.G.L. c. 131 § 40 and Massachusetts Clean Waters Act M.G.L. c. 21, § 23-56. The policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site. In January 2008, this policy was incorporated into the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00 et seq).

Municipal separate storm sewer system (MS4) or municipal storm drainage system. The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the city.

National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit A permit issued by United States Environmental Protection Agency or jointly with the state that authorizes the discharge of pollutants to waters of the United States.

Non-stormwater discharge. Discharge to the municipal storm drainage system not composed entirely of stormwater.

Operation and maintenance plan A plan setting up the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ~~insure~~ensure that it continues to function as designed.

Owner A person with a legal or equitable interest in property.

~~*Ordinance.* Refers to chapter 17, stormwater management ordinance of the "Code of Ordinances of the City of Newburyport, Massachusetts"~~

~~*Owner.* A person with a legal or equitable interest in property.~~

Person. An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

Point source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

Pollutant. Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth of Massachusetts. Pollutants shall include without limitation:

- (a) Paints, varnishes, and solvents;
- (b) Oil and other automotive fluids;
- (c) Nonhazardous liquid and solid wastes and yard wastes;
- (d) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- (e) Pesticides, herbicides, and fertilizers;
- (f) Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (g) Dissolved and particulate metals;
- (h) Animal wastes;
- (i) Rock, sand, salt, soils;
- (j) Construction wastes and residues; and
- (k) Noxious or offensive matter of any kind.

Pre-construction. All activity in preparation for construction.

Process wastewater Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Redevelopment. Development, rehabilitation, expansion, demolition, or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

Runoff. Rainfall, snowmelt, or irrigation water flowing over the ground surface.

Sediment. Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

Sedimentation. The process or act of deposition of sediment.

Site. Any lot or parcel of land or area of property where land disturbances are, were, or will be performed.

Soil. Any earth, sand, rock, gravel, or similar material.

Stormwater. Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

Stormwater management plan. A plan required as part of the application for a stormwater management permit.

Stormwater. Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

Stream. A body of running water, including brooks, creeks, and other water courses, which moves in a definite channel in the ground due to a hydraulic gradient. A portion of a stream may flow through a culvert, is

naturally obscured, or beneath a bridge. A stream's flow may be intermittent (i.e., does not flow throughout the year), or perennial.

Surface water discharge permit. A permit issued by the department of environmental protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

Toxic or hazardous material or waste. Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Watercourse. A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Waters of the Commonwealth of Massachusetts. All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, ~~coastal~~ coastal waters, and groundwater.

Wastewater. Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

Wetlands. Coastal and freshwater wetlands, including wet meadows, marshes, swamps, and bogs, as defined and determined pursuant to M.G.L. c. 131, § 40 and 310 CMR 10.00 et seq.

(Ord. of 9-24-10)

Sec. 17-4. Applicability.

- (1) *Municipal separate storm sewer system (MS4) and Waters of the Commonwealth of Massachusetts.* This chapter shall apply to flows entering the city's municipal separate storm sewer system (MS4) and Waters of the Commonwealth of Massachusetts.
- (2) *Construction and post-construction activities.* Any construction activity, including clearing, grading, and excavation that will disturb equal to or greater than ten thousand (10,000) square feet of land or will disturb less than ten thousand (10,000) square feet of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than ten thousand (10,000) square feet of land in the City of Newburyport. After the initial common plan construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool or parking area, etc.), would stand alone as a new common plan for purposes of calculating area disturbed to determine if a stormwater management permit is required. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or the original purpose of the site.

(Ord. of 9-24-10)

Sec. 17-5. Administration.

The authorized enforcement agency (hereinafter referred to as the department of public services), under the direction of the enforcement officer (hereinafter referred to as the director of public services) shall administer,

implement and enforce this chapter, and any rules and regulations adopted there under. Any powers granted to or duties imposed upon the department of public services may be delegated in writing by the director of public services to employees or agents of the department of public services.

(Ord. of 9-24-10)

Sec. 17-6. Regulations.

The department of public services may adopt and periodically amend rules and regulations, not inconsistent herewith, to effectuate the purposes of this chapter. Said regulations may include, but shall not be limited to provisions regarding: Administration; application requirements and fees; permitting procedures and requirements; design standards; surety requirements; inspection and site supervision requirements; waivers and exemptions; and enforcement procedures. Said regulations shall be adopted within ninety (90) days of the effective date of this chapter in consultation with the stormwater advisory committee appointed by the mayor which must include a representative from the department of public services, the office of planning and development and the health department. Failure by the department of public services to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not have the effect of suspending or invalidating this chapter.

(Ord. of 9-24-10)

Sec. 17-7. Enforcement.

The department of public services shall enforce this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions on behalf of the city, and may pursue all civil and criminal remedies for such violations pursuant thereto.

- (1) *Civil relief.* If a person violates the provisions of this chapter and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, the department of public services may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- (2) *Orders.*
 - a. The department of public services may issue a written order to enforce the provisions of this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions hereunder, which may include requirements to:
 - (i) Cease and desist from construction or land disturbance until there is compliance with this chapter, and an approved stormwater management permit, including the stormwater management plan and the erosion and sediment control plan;
 - (ii) Repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan;
 - (iii) Perform monitoring, analyses, and reporting; and
 - (iv) Remediate adverse impact resulting directly or indirectly from malfunction of the stormwater management system.
 - (v) Elimination of illicit discharges, connections and/or obstructions to the MS4;
 - (vi) Performance of monitoring, analyses, and reporting;
 - (vii) That unlawful discharges, practices, or operations shall cease and desist; and

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- (viii) Remediation of contamination in connection therewith.
- b. If the department of public services determines that abatement or remediation of contamination or adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed by the violator or property owner.
- (3) *Criminal Penalty.* Any person who violates any provision of this chapter and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, shall be punished by a fine of three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues to occur by failure to comply with an order or notice from the department of public services shall constitute a separate violation.
- (4) *Noncriminal disposition.* As an alternative to criminal prosecution or civil action, the city may elect to utilize the noncriminal disposition procedure set forth in M.G.L. c. 40, § 21D and adopted by the city as a general ordinance¹ in which case the department of public services of the city shall be the enforcing person. The penalty for ~~the any 1st violation of this chapter~~ (failure to comply with an order or notice from the department of public services) ~~shall be one hundred dollars (\$100.00). The penalty for the 2nd violation shall be two hundred dollars (\$200.00). The penalty for the 3rd and subsequent offenses shall be three hundred dollars (\$300.00).~~ shall be punishable by a fine as established in chapter 1, section 1-18. Each day or part thereof that such violation occurs or continues to occur shall constitute a separate offense.
- (5) *Entry to perform duties under this chapter.* To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the department of public services, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this chapter and regulations and may make or cause to be made such examinations, surveys or sampling as the department of public services deems reasonably necessary.
- (6) *Appeals.* Decisions or orders of the director of public services and department of public services shall be final. Further relief of a decision made under this chapter shall be reviewable in Superior Court in an action filed in accordance with M.G.L. c. 249, § 4.

(Ord. of 9-24-10)

Cross reference(s) – General provisions ch. 1- fines schedule § 1-18.

ARTICLE II. NON-STORMWATER DISCHARGES, CONNECTIONS AND OBSTRUCTIONS

Sec. 17-8. Prohibited activities.

- (a) *Illicit discharges.* No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth of Massachusetts.
- (b) *Illicit connections.* No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drainage system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

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- (c) *Obstruction of municipal storm drainage system.* No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drainage system without prior written approval from the department of public services.

(Ord. of 9-24-10)

Sec. 17-9. Exemptions.

The following exemptions are applicable to section 17-8:

- (a) Discharge or flow resulting from fire fighting activities.
- (b) The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drainage system:
- (1) Waterline flushing;
 - (2) Flow from potable water sources;
 - (3) Springs;
 - (4) Natural flow from riparian habitats and wetlands;
 - (5) Diverted stream flow;
 - (6) Rising groundwater;
 - (7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater (i.e., residential sump pumps);
 - (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
 - (9) Discharge from landscape irrigation or lawn watering;
 - (10) Water from individual residential car washing;
 - (11) Discharge from dechlorinated residential, public or semipublic swimming pool water (less than one ppm chlorine) and the pool is drained in such a way as not to cause a nuisance;
 - (12) Discharge from street sweeping;
 - (13) Dye testing, provided verbal notification is given to the department of public services prior to the time of the test;
 - (14) Non-stormwater discharge permitted under a NPDES permit or a surface water discharge permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the department of environmental protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
 - (15) Discharge for which advanced written approval is received from the department of public services as necessary to protect public health, safety, welfare or the environment.

(Ord. of 9-24-10)

Sec. 17-10. Emergency suspension of municipal storm drainage system access.

The department of public services may suspend municipal storm drainage system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the department of public services may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

(Ord. of 9-24-10)

Sec. 17-11. Notification of spills.

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or Waters of the Commonwealth of Massachusetts, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the fire and police departments, health department, and the department of public services. In the event of a release of nonhazardous material, the reporting person shall notify the department of public services no later than the next business day. The reporting person shall provide to the department of public services written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

(Ord. of 9-24-10)

***ARTICLE III. CONSTRUCTION AND POST CONSTRUCTION STORMWATER
MANAGEMENT OF NEW DEVELOPMENTS AND REDEVELOPMENTS***

Sec. 17-12. Permit required.

No person may undertake any construction activity (as defined in subsection 17-4(2), "applicability"), including clearing, grading, and excavation that will disturb equal to or greater than ten thousand (10,000) square feet of land or will disturb less than ten thousand (10,000) square feet of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than ten thousand (10,000) square feet of land in the City of Newburyport without a stormwater management permit from the department of public services pursuant to this chapter and regulations promulgated hereunder.

(Ord. of 9-24-10)

Sec. 17-13. Exemptions.

The following exemptions are applicable to section 17-12:

- (1) Construction activities waived from permit coverage under the NPDES General Permit for Stormwater Discharges from Construction Activities.

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- (2) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;
 - (3) Maintenance of existing landscaping, gardens or lawn areas associated with a ~~single-family~~ single-family dwelling that will not alter existing terrain or drainage patterns;
 - (4) The construction of fencing that will not alter existing terrain or drainage patterns;
 - (5) Construction of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns;
 - (6) As authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the activities identified in section 17-8(a) that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Stormwater Regulations (310 CMR 10.00 et seq.) as reflected in an order of conditions issued by the conservation commission are exempt from compliance with chapter 17, article II.
 - (7) Emergency work to protect life, limb, or property.

(Ord. of 9-24-10)

Sec. 17-14. Waivers.

The following exemptions are applicable to section 17-12:

- (a) The director of public services may waive strict compliance with any requirement of section 17-12 or the rules and regulations promulgated hereunder, where:
 - (1) Is in the public interest; and
 - (2) Is not inconsistent with the purpose and intent of this chapter; and
- (b) Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this chapter to the subject project and/or property does not further the purposes or objectives of this chapter, or that other means to accomplish the same purposes will be provided. Under no circumstances shall economic hardship be the sole basis for granting of a waiver from the provisions of this chapter or the regulations promulgated hereunder.
- (c) All waiver requests shall be reviewed by the director of public services and if necessary, discussed with other city departments.

(Ord. of 9-24-10)

Sec. 17-15. Surety.

The department of public services may require the permittee to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other security. The form and amount of any surety shall be deemed sufficient in the opinion of the department of public services, based on the scale and nature of the subject project, to ensure that all work will be completed in accordance with the permit. If the project is phased, the department of public services may release part of the bond as each phase is completed in compliance with the permit. The bond may not be fully released until the department of public services has received any final inspection reports, and a satisfactory final inspection has been conducted, as required by section 17-12 and any permits issued thereunder. At such time the department of public services shall issue a notice of

compliance and return any surety being held. Regulations adopted under section 17-6 may include additional information on the calculation of surety.

(Ord. of 9-24-10)

~~**ARTICLE IV SEVERABILITY**~~

~~**Sec 17-16 Severability**~~

~~The provisions of this chapter are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid for any reason, such invalidity shall not affect the other provisions or application of this chapter, and all other provisions shall continue in full force and effect.~~

~~(Ord. of 9-24-10)~~

Newburyport, Massachusetts, Code of Ordinances
APPENDIX A ZONING ORDINANCE OF THE CITY OF NEWBURYPORT

APPENDIX B
FEE SCHEDULE OF THE CITY OF NEWBURYPORT¹

SECTION I. TITLE AUTHORITY AND PURPOSE

I-A Short title.

This Appendix shall be known and may be cited as the "Fee Schedule of the City of Newburyport, Massachusetts," hereinafter referred to as "Fee Schedule."

State law reference(s)—Authority of cities as to fee schedules, M.G.L. c. 40A; petitions to determine validity of zoning laws, M.G.L. c. 240, § 14A.

I-B Authority.

This Appendix is adopted pursuant to the authority granted by M.G.L. c. 40A and amendments thereto, hereinafter called the "setting the fee schedule," and as they may be further amended from time to time.

SECTION II. FEE SCHEDULE

Chapter 3 - Animals

Sec. 3-27. (a) Licensing of dogs and kennels.

The license fees for dogs shall be as follows by April first of each year:

- (1) Neutered males and spayed females \$10.00
- (2) Unneutered males and unspayed females \$15.00

Senior citizens (aged 65 and over) who show proof of age shall be entitled to a license without paying said fees for their dogs, provided, however, that any applicable late fees shall still apply.

Sec. 3-27. (b) Licensing of dogs and kennels.

Kennel license fees shall be as follows:

- (1) Four (4) dogs \$10.00
- (2) Five (5) to ten (10) dogs \$15.00
- (3) Eleven (11) or more dogs \$100.00

Chapter 4 – Boats, Docks and Waterways

Sec. 4-73. (c) (2) Fees and permits for commercial fish pier

A fee shall be assessed by the harbor master at five cents (\$0.05) per pound for each pound in excess of twenty thousand pounds (20,000) of fish per day.

Sec. 4-207. Fees.

Commercial shellfish licenses are subject to resident, non-resident and rack fees as defined below:

- (1) Residents License \$100.00
- (2) Non-Residents License \$200.00
- (3) Rack Fee \$2.00 per rack

Chapter 5 - Buildings and Building Regulations

Sec. 5-62. Fees.

Fees for building permits for buildings and structures adopted in section 5-61 shall be pursuant as defined below. Exemptions are defined in Section 5-62.

- (1) First one thousand dollars (\$1,000) of cost estimate \$100.00
- (2) Each additional one thousand (\$1,000) of estimate or part thereof..... \$200.00

Sec. 5-111. Permit fee cost for plumbing.

Plumbing Permit Fee

Residential	Fee
Permit fee:	\$20.00
Inspection fee:	\$30.00
Charge for each fixture:	\$5.00
Replacement hot water heater:	\$30.00
Commercial	Fee
Permit fee:	\$30.00
Inspection fee:	\$30.00
Charge for each fixture:	\$10.00
Replacement hot water heater:	\$40.00

Sec. 5-112. Permit fee cost for gas.

Gas Permit Fee

Residential	Fee
Permit fee:	\$20.00
Inspection fee:	\$30.00
Appliance fee:	\$5.00
Replacement hot water heater:	\$30.00
Commercial	Fee
Permit fee:	\$30.00
Inspection fee:	\$30.00
Appliance fee:	\$10.00
Replacement hot water heater:	\$40.00

Sec. 5-113. Permit fee cost for sheet metal.

Sheet Metal Permit Fee

Residential	Fee
Permit fee:	\$75.00
Inspection fee:	\$30.00
Re-inspection fee:	\$35.00
If work started before a permit:	\$150.00
Commercial	Fee
Permit fee:	\$150.00
Inspection fee:	\$30.00
Re-inspection fee:	\$35.00
Charge for each fixture:	\$10.00
If work started before a permit:	\$300.00

Sec. 5-151. Permit fee cost for electrical permit.

Electrical Permit Fee Schedule

Residential	
New Construction (includes service)	Fee is based on the projected building cost as shown on the building permit. First \$50,000 \$150.00 Each additional \$1,000.00 or fraction thereof \$1.00
Additions/renovations (service not included)	\$50.00 for the permit plus \$3 for each plug, switch, light, appliance, special equipment, etc.= fee
Services—New, changed, or altered	Overhead (includes 1 st panel or main circuit breaker enclosure) \$45.00 Underground (includes 1 st panel or main circuit breaker enclosure) \$85.00 Each additional panel \$20.00
Garages	Attached \$60.00 Detached \$100.00
Commercial/Industrial	
New construction	Fee is based on the projected building cost as shown on the building permit. First \$100,000 \$300.00 Each additional \$1,000.00 or fraction thereof \$1.00
Additions/renovations (service not included)	\$60.00 for the permit plus \$3 for each (service not included) plug, switch, light, appliance, special equipment, etc.= fee
Services—New, changed, or altered	Each 200 amps or fraction thereof \$50.00 (includes 1 st panel or main circuit breaker enclosure) Each additional panel \$20.00
Miscellaneous	Burglar/fire alarm systems residential \$45.00
	Burglar/fire alarm systems commercial \$85.00
	Central heat or A/C residential \$45.00
	Central heat or A /C commercial \$85.00
	Swimming pool above ground \$55.00
	Swimming pool inground \$85.00
	Hot water heater replace residential \$30.00
	Hot water heater replace commercial \$40.00
	Utility lighting retrofit \$65.00
	Tel/data systems \$85.00
	Remove and reinstall for siding \$55.00
	Gas piping grounding \$30.00

Chapter 7 – Fire Prevention and Protection

Sec. 7-4. Annual master box connection fee.

Each fire alarm user shall, on or before July 1 of each year remit a fee of three hundred dollars (\$300.00) for each master box connection to the municipal fire alarm system.

Sec. 7-28. Fees.

The fee for keeping or storage of flammables or explosives as regulated by M.G.L. c. 148, § 13 shall be as follows:

Fee for storage of Class A, B and C Liquids

1 gallon to 10,000	\$ 50.00
10,001 gallons to 25,000	100.00
25,001 gallons to 50,000	200.00
50,001 gallons and over	300.00

Chapter 9 – Licenses, Permits and Business Regulations

Sec. 9-1. Lodging house licenses.

- (1) Lodging houses² \$2.00
- (2) Bed and Breakfast \$20.00

Sec. 9-42. License fee for pool and billiard tables and bowling alleys.

Annual license fee for owners of establishments with pool, billiard tables and bowling alleys shall be as follows:

- (1) Pool and Billiard tables..... \$5.00
- (2) Bowling alleys \$5.00

Sec. 9-82. License fee for pawn brokers.

Annual license fee for pawn brokers shall be as follows:

- (1) Annual fee before November 1st..... \$50.00
- (2) Annual fee on or after November 1st..... \$25.00

Sec. 9-111. Definitions.

Registered party shall mean a party that no later than the last day of February has requested in writing from the city clerk notice of transient vendor license applications for that calendar year, and paid an annual notice processing fee of \$10.00

Sec. 9-131. Fees for transient vendors, including food trucks.

Annual license fee for transient vendors shall be as follows:

- (1) Transient vendors, excluding food trucks.....\$1,000.00
- (2) Food trucks..... \$1,500.00

² Lodging houses defined under M.G.L. c. 140, § 23 and defined for a period as defined in § 4.

Sec. 9-133. Application fee for transient vendors.

- (1) Application processing fee..... \$50.00
- (2) Additional fee for notification to registered party..... \$1.00

Sec. 9-162. Fee: issuance for hawker and peddler.

- (1) License fee..... \$46.00

Sec. 9-170. (e) Limitations. Solicitor’s identification card

- (1) Application fee for Identification Card..... \$50.00

Sec. 9-177. Retail Stores License procedure.

No retail store shall operate between 11:00pm and 5:00am without a license.

- (1) Annual license fee to operate between 11pm and 5am..... \$15.00

Chapter 11 – Parks and Recreation

Sec. 11-7. Fees for parks and playgrounds.

	Group/Hourly Rate							
Athletic Fields and Courts	A	B*	C	D	E	F**	G**	H**
Cashman Park Ballfield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Ballfield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Soccer Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cherry Hill Soccer Field Parcel A	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cherry Hill Soccer Field Parcel B	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park Track	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park Infield	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bradley Fuller Park North Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Woodman Park Multi-use Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Cashman Park Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Bartlet Mall Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00

	Group/Hourly Rate							
Athletic Fields and Courts	A	B*	C	D	E	F**	G**	H**
Cashman Park Basketball Court	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
G.W. Brown School Playground Basketball	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Perkins Park Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Woodman Park Basketball Courts	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Moseley Woods Lawn	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Founders Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Pepe Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower, Hawkes Field	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Atkinson Common Tennis	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Small Parks	A	B	C	D	E	F*	G*	H*
Brown Square	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cornelius Doyle Triangle	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Joppa Park	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Moulton Square	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Washington Park (Eppa Way, Pond Street, High Street)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
270 Water Street (Perkins Park)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Patrick Tracy Square (Tracy Place)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Newburyport Skate Park (Nock Schoolyard)	N/C	\$5.00	\$15.00	N/C	N/A	\$25.00	\$100.00	\$200.00
Mid to Large Parks	A	B	C	D	E	F*	G*	H*

	Group/Hourly Rate							
Athletic Fields and Courts	A	B*	C	D	E	F**	G**	H**
Atkinson Common, Upper (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Atkinson Common, Lower (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Atwood Park/Garrison Gardens	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	N/A
Bartlet Mall (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cashman Park (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Clipper City Rail Trail (any segments)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Cushing Park (other than athletic fields or courts)	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Inn Street Mall	N/C	N/A	N/A	N/C	N/A	\$25.00	\$100.00	\$200.00
March's Hill	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00
Market Landing Park	[per Newburyport Waterfront Trust]							
Market Square Bullnose	N/C	N/A	N/A	N/C	N/A	\$25.00	\$100.00	\$200.00
Moseley Woods Pavilion	N/C	N/A	N/A	N/C	N/C	\$25.00	\$100.00	\$200.00

* Up to 50% of the fee may be waived in exchange for in-kind services at the sole discretion of the parks commission.

** Any charitable non-profit registered as a 501c3 may apply for a fee reduction or waiver from the parks commission. The parks commission is under no obligation to offer any reduction or waiver. Any reduction or waiver is at the sole discretion of the parks commission.

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

(8) *Group H*: Special events held by individuals or groups with greater than two-hundred (200) attendees For Groups B, C, and D (recurring field use), a fee to utilize the concession stand/restroom at Atkinson Common, Lower, shall be fifty dollars (\$50.00) per month. Group E, F, G, and H (special events), may request use of the restrooms for a one-time fee of one-hundred dollars (\$100.00)

Chapter 12 – Streets, Sidewalks and Public Places

Sec. 12-1.3. Signs in public ways.

(c) Regulations for permanent signs. The applicant shall pay an application fee to the city clerk of one hundred and fifty dollars (\$150.00), except that such fee shall be waived for an application filed by a city officer or employee.

Sec. 12-1.3. Signs in public ways.

(d) Regulations for temporary signs. (2) (c) Banners. Applicant for a banner shall pay a deposit fee to the city clerk of twenty-five dollars (\$25.00) for each banner, except that such fee shall be waived for an application filed for a city sponsored event.

(d) Regulations for temporary signs. (3) (d) Moveable signs. A moveable sign permit shall require payment of an annual fee to the city of fifty dollars (\$50.00). Each permit shall start on the first day of April and expire on March 31. The permit fee for new businesses opening during the annual period shall be prorated at a rate of \$5.00 a month.

Sec. 12-1.5. (f) Signage, merchandising and beautification on public ways.

To place an A-frame sign in a public way, the applicant shall first obtain a license, by submitting a written application to the city clerk as directed by that official, and pay a biennial licensing fee of one hundred dollars (\$100.00) per A-frame sign.

Sec. 12-70. (b) Drain layers/utility contractors license.

The fee for each drain layers/utility contractors license shall be in the amount of five hundred dollars (\$500.00) per year.

Sec. 12-101. Cemetery fees established.

Fees set forth are for services performed by the city in the Highland and Old Hill Cemeteries of the city.

- (1) Digging of graves and rental of lowering devices and greens..... \$200.00
- (2) Purchase of single grave \$150.00

Chapter 15 – Vehicles for Hire

Sec. 15-32. Fees and terms for permits/licenses

All permits and licenses granted under Chapter 15 shall be subject to the following fees:

- (1) The fee for a permit shall be fifty dollars (\$50.00) each year or any part of a year for each taxicab payable in advance of the application for a permit.
- (2) The fee for a license shall be twenty-five dollars (\$25.00) per year or any part of a year.
- (3) The fee for restoration of any permit that has been suspended or revoked shall be fifty dollars (\$50.00).

**APPOINTMENTS
SECOND READING**

SECOND READING APPOINTMENTS

- APPT242_05_10_2021 Katie Nye 8 Russell Terr. Human Rights Comm. 5/31/2024
- APPT243_05_10_2021 Charles Carroll 25 Hill St. Council on Aging 5/31/2026
- APPT244_05_10_2021 Richard A. Eaton 4 Horton St. Council on Aging 5/31/2026
- APPT245_05_10_2021 Barry J. McBride 5 Pine St. Asst. Wiring Inspector 5/31/2022
Salisbury

In City Council May 10, 2021:

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

ORDERS

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

2021

City Council Meetings 7:30 PM Remote or in the Council Chambers, City Hall.

January 11, 2021
January 25, 2021

February 08, 2021
February 22, 2021

March 08, 2021
March 29, 2021

April 12, 2021
April 26, 2021

May 10, 2021
May 24, 2021

Monday (May 31, 2021 – Memorial Day)

June 07, 2021
June 22, 2021
June 28, 2021

Special City Council Meeting-FY 2022 Operating Budget

July 12, 2021

August 09, 2021
August 30, 2021

September 13, 2021
September 27, 2021

October 12, 2021
October 25, 2021

Tuesday Monday (October 11, 2021–Columbus Day)

November 08, 2021
November 29, 2021

December 13, 2021

Jared J. Eigerman

In City Council May 10, 2021:

Motion to approve by Councillor Eigerman, seconded by Councillor Zeid. Roll call vote. 11 yes. Motion passes.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 4, 2021

A RESOLUTION CONGRATULATING ALL NEWBURYPORT STUDENTS ON THEIR 2020-2021 SCHOOL YEAR ACCOMPLISHMENTS WITH SPECIAL RECOGNITION OF CAROLINE WALSH, THIS YEAR'S NEWBURYPORT HIGH SCHOOL GRADUATING CLASS VALEDICTORIAN AND DREESE FADIL THIS YEAR'S NEWBURYPORT HIGH SCHOOL GRADUATING CLASS SALUTATORIAN

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

WHEREAS, The City of Newburyport highly values education as the ultimate investment in our collective futures

WHEREAS, The City's students have worked extremely hard throughout this school year to achieve excellence in all pursuits and deserve recognition for doing so

WHEREAS, The City seeks to recognize the achievements of the all of the City's students and the hard work of all those who work towards educating our children

NOW, THEREFORE, BE IT RESOLVED that:

1. Recognition of achievements. The City of Newburyport acknowledges and recognizes all students for their hard work and dedication towards their studies, extracurricular activities, sports, volunteer, work and all other pursuits especially in light of challenges presented by COVID-19
2. Sincere Congratulations. The City of Newburyport congratulates all students who will receive an award
3. Special Congratulations. The City of Newburyport offers special congratulations **Caroline Walsh**, Newburyport High School's Class of 2021 Valedictorian AND **Dreese Fadil**, Newburyport High School's Class of 2021 Salutatorian for their superior academic achievement.
4. Expression of Gratitude. The City of Newburyport wishes to extend its gratitude and appreciation to teachers, administrators, staff, coaches and other staff who work towards the

education of our children, particularly in light of a school year full of challenges presented by COVID-19.

5. Best Wishes. The City of Newburyport wishes the entire Class of 2021 its best as its students move onto their next endeavors and pursuits. Know that the entire City is behind you and proud of you.

Councillor Sharif I. Zeid

Councillor Joseph H. Devlin

In City Council May 10, 2021:

Motion to move to a date certain, May 24, 2021, by Councillor Zeid, seconded by Councillor Devlin.
Roll call vote. 11 yes. Motion passes.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 24, 2021

THAT, \$3,850,000 is appropriated to pay costs of the Phillips Drive Neighborhood Roadway and Drainage Improvements Project including the payment of all costs incidental and related thereto, and that to meet this appropriation, the Treasurer with the approval of the Mayor, is authorized to borrow said amount under and pursuant to M.G.L. c. 44, §7(1), or pursuant to any other enabling authority, and to issue bonds or notes of the City therefor; and that the Mayor and the Treasurer are authorized to take any other action necessary or convenient to carry out this vote. Any premium received upon the sale of any bonds or notes approved by this order, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Councillor Byron J. Lane

Councillor Charles F. Tontar



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY

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

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: May 18, 2021
Subject: Phillips Drive Borrowing Request

I am pleased to submit a borrowing request for the Phillips Drive Neighborhood Roadway and Drainage Improvements Project. Over the past eleven months, the City has been working with the engineering firm, BSC Group, to develop plans to address decades of drainage issues that have long-plagued this neighborhood.

On April 14, 2021, BSC presented their 75% design plans and provided an updated cost estimate for the work to be completed. The full set of plans, cost estimate and other information on the project can be found on the City's website at: <https://www.cityofnewburyport.com/department-of-public-services/engineering-division/pages/phillips-drive-neighborhood-drainage>. As a follow-up to the public presentation, a neighborhood site visit was conducted with residents, BSC and City officials on May 14, 2021.

At 75% design, the construction cost estimate is \$3,850,000, which includes a 20% contingency. It is my anticipation that the funding amount as shown on the loan order will likely require further amendment as we approach final design in the next month or two.

As indicated in the FY22-26 Capital Improvement Program, the debt service for the roadway and drainage improvements, approximately 65% of the project cost, will be come from the General Fund (non-exempt), while the debt service for the waterline replacements, approximately 35% of the project cost, will be funded by the Water Enterprise Fund.

I thank you for your consideration of the critically important and long overdue project.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

WHEREAS a comprehensive list of approved crosswalks was adopted by Order of the City Council on November 15, 2015; and

WHEREAS High Street was repaved and the existing crosswalks were not reinstated; and

WHEREAS a crosswalk at High Street and Myrtle Ave is an approved crosswalk (at intersection 40) and was not replaced after the repaving.

NOW, THEREFORE, BE IT ORDAINED BY THE NEWBURYPORT CITY COUNCIL that the crosswalk at the intersection of High Street and Myrtle Avenue shall be reinstated under the following conditions:

1. Said crosswalk shall be located on High Street at approximately forty (40) feet from Myrtle Avenue.
2. There shall be an ADA compliant curb cut and ramp at both ends of said crosswalk.
3. The crosswalk shall be repainted.

Councillor James J. McCauley

ORDINANCES

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

AN ORDINANCE TO AMEND SECTION V-E OF THE NEWBURYPORT ZONING ORDINANCE AS TO THE DEFINITION OF USE # 613 “OPEN STORAGE”:

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

THAT the definition of use # 613 (Open Storage) in Section V-E of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

Open s <u>Storage / Warehousing</u>	613	<u>Enclosed storage or o</u> Open storage (properly screened from public view by means of a buffer as described in site plan standards) of raw materials, finished goods or equipment. Junk yards <u>and retail storage warehousing with public access</u> are specifically excluded <u>per section V-F</u> .
---	-----	--

AND FURTHER, THAT said use # 613 (Open Storage) as listed in Section V-D of the Zoning Ordinance (Table of use regulations) be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

~~Open s~~Storage / Warehousing

AND FURTHER, THAT the parking requirements for said use # 613 listed within Section VII-B of the Zoning Ordinance, entitled “Parking requirements” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

~~Open s~~Storage / Warehousing 613 1 per company vehicle plus 1 per employee

Councillor Heather L. Shand

In City Council March 29, 2021:

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

In City Council May 10, 2021:

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

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

April 26, 2021

AN ORDINANCE TO DESIGNATE A SAFETY ZONE ON MERRIMAC STREET ADJACENT TO LOWER ATKINSON COMMON

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

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

DIVISION 8. - SAFETY ZONES

Sec. 13-192. - Established.

The City of Newburyport establishes Safety Zones under the provisions of M.G.L. c. 90, § 18B that regulate statutory speed limits to twenty (20) miles per hour in these designated areas. Regulatory speed limit signs, including Safety Zone speed limit signs, are required to conform to the Manual on Uniform Traffic Control Devices, per M.G.L. c. 85 § 2.

Sec. 13-193. - Designated.

The following portions of streets are located in designated safety zones:

<u>Street</u>	<u>Extent</u>
<u>Merrimac Street</u>	<i>Between the intersection with Moulton Street and the intersection with Plummer Avenue, in both directions of travel</i>
<u>Street</u>	<u>Extent</u>
<u>Plummer Avenue</u>	<i>- Between the intersection with Merrimac Street and approximately 125 feet south on Plummer Avenue, in both directions of travel</i>

Submitted,

Councillor Christine E. Wallace

Councillor James J. McCauley

Councillor Charles F. Tontar

In City Council April 26, 2021:

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

In City Council May 10, 2021:

Motion to approve 1st reading by Councillor McCauley, seconded by Councillor Wallace. Motion to amend to include 125 ft on Plummer Ave. in both directions by Councillor Wallace, seconded by Councillor Vogel Roll call vote. 11 yes. Motion passes. Motion to approve 1st reading as amended by Councillor McCauley, seconded by Councillor Wallace. Roll call vote. 11 yes. Motion passes.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

IN CITY COUNCIL

May 10, 2021

AN ORDINANCE TO ESTABLISH THE CITY OF NEWBURYPORT AS A MUNICIPALLY AGGREGATED COMMUNITY

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

Add to Chapter 14, a New Article III – “Municipal Electrical Aggregation” to read as follows:

ARTICLE III. - Municipal Electrical Aggregation

Sec. 14-90. – Purpose and Authority

The City of Newburyport publicly declares that it is a municipally aggregated community for the purpose of entering into an electric supply contract on behalf of its residential and business communities.

The ordinance is intended to enable the City of Newburyport to combine the purchasing power of its residents and businesses so that it can provide them with an alternative electricity supply. The authority to do so is promulgated by Massachusetts Law (M.G.L. c. 164, § 134).

Sec. 14-91. – Authority of Mayor to Enter into an Electrical Supply Contract

The Newburyport City Council authorizes the Mayor to negotiate and enter into an electric supply contract in consultation with the City’s Energy Advisory Committee and the City’s Electrical Aggregation Consultant, engaged pursuant to the Newburyport Electrical Aggregation Plan, subject to all of the requirements of this Article.

Sec. 14-92. – Required Contract Terms

The contract shall be:

- (1) negotiated for the lowest price to end users, on a kilowatt-hour basis, including all supplemental charges,
- (2) consistent with the Massachusetts Renewable Energy Standard, established under the Massachusetts Electric Utility Restructuring Act of 1997 and the Green Communities Act of

2008, as both may be amended, and all regulations and guidelines promulgated by the Commonwealth thereunder,

- (3) consistent with the Newburyport Electrical Aggregation Plan, as approved by the City Council and subsequently the Commonwealth,
- (4) for a term not to exceed thirty-six (36) months, and
- (5) in the best interests of electricity consumers in the City.

Councillor Heather L. Shand

Councillor Charles F. Tontar

Councillor Christine E. Wallace

In City Council May 10, 2021:

Motion to waive Rule 2B to go beyond 11:00pm by Councillor Vogel, seconded by Councillor Wallace. Roll call vote. 11 yes. Motion passes.

Motion to approve 1st reading by Councillor Tontar, seconded by Councillor Vogel.

Friendly amendment by Councillor Zeid, seconded by Shand accepted by Councillors Tontar and Vogel:

Sec 14.93

Upon execution of a contract, a list of the offers that were made available to the City including, but not limited to, the cost per kilowatt hour and contract length will be provided to the City Council via a communication.

Along with the submission of the annual budget, The City Council shall be provided an annual report indicating the current status of the market including the National Grid's (or other prevailing provider's) standard rate and information related to the savings or excesses paid by consumers in the City of Newburyport.

Friendly amendment by Councillor Zeid, seconded by Devlin accepted by Councillors Tontar and Vogel:

Sec 14.94

Annually, residents of Newburyport shall be notified in writing on the City's website of the City's negotiated rate, National Grid's (or other prevailing provider's) rate, any surcharge being imposed by the City, and their right to opt-in or opt-out of the program.

Motion to amend Sec 14.95 to require two-thirds vote by Councillor Zeid, seconded by Councillor Devlin. Roll call vote. 4 yes (SZ, JD, AK, JM), 7 no. Motion fails.

Motion to approve 1st reading amended by Councillor Tontar, seconded by Councillor Vogel. Roll call vote. 9 yes, 2 no (JD, JM). Motion passes.



MASSACHUSETTS RENEWABLE ENERGY REQUIREMENT

By law, all electric supply products are required to include a mandatory minimum percentage of clean/renewable energy resources. For example, products sold in 2021 must include a minimum of 49% clean energy resources that are located within the New England region (the “MA Requirement”). The total MA Requirement consists of several different state initiatives, each with different objectives and different resource types that qualify. Currently, the MA Requirement equals the sum of the Clean Energy Standard (inclusive of RPS Class I), the Clean Energy Standard for existing resources (CES-E), and RPS Class II. The table below provides a detailed breakdown of the different categories and the minimum requirements of each category through 2022.

(% of electricity sales)

Year	Clean Energy Standard (CES) [1]				RPS Class II [3]	RPS Class II Waste Energy [3]	MA Renewable Energy Requirement *	Other Mandates (Excluded)**	
	"Clean Generation"			"Clean Existing Generation"				APS [4]	CPES [5]
	RPS Class I [2]	Other "Clean Generation"	Total CES	CES-E					
2019	14%	4%	18%		2.7%	3.5%	24.2%	4.75%	0.0%
2020	16%	4%	20%		3.2%	3.5%	26.7%	5.00%	1.5%
2021	18%	4%	22%	20%	3.6%	3.5%	49.1%	5.25%	3.0%
2022	20%	4%	24%	20%	3.6%	3.5%	51.1%	5.50%	4.5%

* MA Renewable Energy Requirement ("MA Requirement") = (CES) + (CES-E) + (RPS Class II) + (RPS Class II Waste Energy)

** The state Department of Public Utilities excludes APS and CPES from its definition of "MA Renewable Energy Requirement"

Code of Massachusetts Regulations (CMR):

[1] Clean Energy Standard ("CES") – 310 CMR 7.75

[2] Renewable Energy Portfolio Standard – RPS Class I – 225 CMR 14.00

[3] Renewable Energy Portfolio Standard – RPS Class II – 225 CMR 15.00

[4] Alternative Energy Portfolio Standard ("APS") – 225 CMR 16.00

[5] Clean Peak Energy Portfolio Standard ("CPES") – 225 CMR 21.00

Current, predominant resource types by category:

Category

Resource Types

RPS Class I

wind, solar, landfill gas

CES Clean Generation

wind, solar, landfill gas

CES-E

nuclear and large hydro

RPS Class II

hydroelectric, landfill gas

Many Community Choice Power Supply Programs offer products that exceed the MA Requirement. Where such products are offered, the product description on the Program's website page will display the percentage and the type (e.g., RPS Class I, National Wind, etc.) of "voluntary" renewable energy resources acquired *over and above* the MA Requirement.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 24, 2021

AN ORDINANCE TO AMEND CHAPTER 5 OF THE MUNICIPAL CODE RELATING TO PLUMBING AND GAS FEES

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

THAT Chapter 5 Article IV of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in italicized~~, and additions double-underlined and italicized:

Sec. 5-111. – Permit fee cost for plumbing

Residential	Fee
Permit fee:	\$20.00 <u><i>\$40.00</i></u>
Inspection fee:	\$30.00 <u><i>\$45.00</i></u>
Charge for each fixture:	\$5.00 <u><i>\$10.00</i></u>
Replacement hot water heater:	\$30.00 <u><i>\$60.00</i></u>
Re-Inspection fee	<u><i>\$45.00</i></u>
Commercial	Fee
Permit fee:	\$30.00 <u><i>\$40.00</i></u>
Inspection fee:	\$30.00 <u><i>\$45.00</i></u>
Charge for each fixture:	\$10.00

Replacement hot water heater:	\$40.00 <u>\$75.00</u>
Re-Inspection fee	<u>\$45.00</u>

Sec. 5-112. – Permit fee cost for gas

Residential	Fee
Permit fee:	\$20.00 <u>\$40.00</u>
Inspection fee:	\$30.00 <u>\$45.00</u>
Appliance fee:	\$5.00
Replacement hot water heater:	\$30.00 <u>\$60.00</u>
Re-Inspection fee	<u>\$45.00</u>
Commercial	Fee
Permit fee:	\$30.00 <u>\$40.00</u>
Inspection fee:	\$30.00 <u>\$45.00</u>
Appliance fee:	\$10.00
Replacement hot water heater:	\$40.00 <u>\$50.00</u>
Re-Inspection fee	<u>\$45.00</u>

Councillor Tontar

COMMITTEE ITEMS

Committee Items- May 24, 2021
Ad Hoc Committee on Economic Development

COMM262_08_31_2020- Gasbarro Ltr re: Awareness

From: Chris Gasbarro [chris@emberbrandfire.com]
Sent: Friday, August 28, 2020 9:46 AM
Cc: Byron Lane; fcousins@newburyportchamber.org; Donna Holaday; bruce@vogelatlarge.com; Jared Eigerman; csullivan@institutionforsavings.com
Subject: [Ext]Awareness only: Newburyport Business owner view

external e-mail use caution opening

I share the below, not as complaint, but as awareness and if needed “I will be part of the solution”

I want to applaud, support the efforts of your leadership in several areas of governance - I know these are difficult times, and COVID wasn't part of the job description - thank you.

To set-up my comments, here's some evidence:

- there are 175+ non-restaurant businesses with 5+ employees beyond the 1st level of State Street (the 2nd + floors of town, side streets) of our city
- 30+ of those business are lead by Entrepreneurs under the age of 40
- My firm has furlowed and laid off 60% of our workforce - 10 team members in the last 5 months, and currently maintain 6 current headcount, 4 days remote - technically what ember does is ILLEGAL in MA and other states - getting people together for meeting (we've luckily pivot'd)
- Ember, my firm spent \$42,578 in Meals & Entertainment, Coffee Shops, Minuteman printing, Richdale, Garrison Inn and other NBPT business in FY'19 - we're currently at \$1,400 for FY20
- We have shrunk our lease by 50% with our landlord - as we navigate a COVID/work remote world.
- 50% of my time during COVID has been in paperwork (PPP Loan applications, Banking solutions/capital, UI for team members, HR matters of fatigue and mental welfare, COVID office mitigation/guidance) - not focused on running the basic side of the business - servicing clients, marketing, etc

Our Business Community is a very complex WEB - and this is a POV....from the B2B side of our community

IDEAS/REQUESTS:

- **Diversified / competitive Internet Provider** - with the move to more people online, and only Xfinity operating in most of town (noFIOS) - this has created a) Price monopoly b) service interruption/less bandwidth - more people are online with 5x more bandwidth

traffic. Tough to run a business paying \$400 for Business class wifi, with a remote team dialing into our intranet - and it's 30% less performance than 5 months ago - and we can't price shop

- There are several inclusions in the current Xfinity/Comcast Contract through 10/5/25 - I would encourage the Ad Hoc Cable Advisory committee to evaluate/reposition resources to accelerate online-learning/work remote of COVID - Fiber for State Street (instead of Municipality?) - The contract was entered into most likely without the pandemic affects forecasted/Bandwith demands - I hope the committee is thinking/evaluating how to best address the needs of our city, business, community within the framework of contract. Much as I've had to renegotiate contracts and shown flexibility with my clients - so to should be city's contract that maintains a significant infrastructure.
- Forward Think on an Economic Development Strategy - to retain, grow and attract business. While the narrative is, many businesses are struggling, yes, AND some are struggling on how to expand (raise capital, bank loan, never scaled before and don't know what to do). Strive to become a more competitive small business hub that has ALL the features and Benefits the next 3 years of business is going to look for (people won't be driving to Boston, emerging young entrepreneurs)
 - It is far easier to get a \$500,000 loan for a home from a Bank, than it is to get a \$100,000 line of revolving credit or low-interest capital loan - especially if your industry is flagged (hospitality in particular)
 - Portsmouth commercial real estate is at or lower than Newburyport rates, and has access to greater and more well educated and diverse workforce (education, multi-cultural, multi-state)
 - The YOUNGER entrepreneurs (I'm not including myself) are incredible thinkers, connectors - harness their energy and talents - this is a time to AGE-DOWN and invite a new community of businesses to our city that is very attractive to them! <https://thenbptstudio.com> - and invite them to lead and participate! Also can expand our diversity of ownership age and multicultural demographic
 - Compliment and connect them with business leaders to help navigate and position newburyport (6 CEO's/COO's of very established MA \$400M+ companies live in Newburyport, and are not traveling as much and not connected to the community)
- Think beyond the restaurants - Great work on helping restaurants - however, once it gets cold - the coffee shops are more frequented by business/employee's on a November Tuesday AM, than a tourist/transient. And this Fall, there's going to be FAR LESS of them around, unless we start to strategize. I have 9 less women coming to my office in Newburyport, who frequented the Fatface and Jewelers more so than restaurants because they had to get home to families by 5:30 than grab a bite/drink. Develop a strategy to encourage the workforce to feel comfortable returning to work in Newburyport. Give businesses resources to overcome the want to work remote, that is mainly rooted in fear/safety and "I'd rather go to Portsmouth than Newburyport if I go in for 1 day". **Heck, while I want a forgivable loan...what I really want is more productive employee's collaborating and feeling good!**

- o Testing - much like the NBA, MLS, MLB, UFC have expansive testing (daily, no cost to players) - could Newburyport/Chamber lead free testing for NBPT business employees (much like a animal rescue mobile spay/neutuer clinic)
- o Industry Days - the restaurant industry has this as a staple, NBPT's friday night shopping in december - why not create a Tuesday afternoon that rewards people with NBPT employees to get discounts rewards
- o Day/Child Care subsidized - the #1 reason for a working parent to work remote, is the Hybrid schooling/day care system has been disrupted - and they have to be a home. A) lure more daycare options for down town to support the working community or b) INVEST more in Newburyport Youth Services - with a Business focus (take kids from outside our community - kudos to NYS - they are doing great)

In the meeting industry we track "delegate" spending and REVPAR (revenue per available Hotel Room) - the reason why cities crave to host the Olympics, and Conventions or a Fidelity meeting - is the average person spend 3x-6x more on discretionary items in their travels daily. They not only rent the hotel room for \$250 - but they often spend \$400 daily in shopping, entertaining and other ventures. I would encourage you really think about the **economic value of a newburyport business employee** coming to work 150 days a year, anywhere in our city (Story ave area is just as economically important as The Tannery). These people have proved they are a predictable and reliable and higher impact economic driver than a tourist.

I'm aware of the small business relief grants (5 or fewer employees) and some committee work to help offer some guidance - all good work and appreciated and making impact. AND if more opportunity, success, growth is wanted by the city - or just to maintain our community - it requires more of that..and different, long term thinking, action and planning.

As I walk up State Street everyday, the painted Jersey Barriers are a fresh and visible reminder of how the city partnered with restaurants with great outcomes for all parties. I ask there to be more thinking and action like that for all business typesand a visible metaphor of the Jersey Barrier is manifested for the other 175+ B2B non-restaurants businesses in our city.

Chris Gasbarro
Resident of Newburyport - 30 Daniel Lucy Way
Business Owner - 59 State Street

To the attention of the Mayor, Chamber of Commerce Leadership and Ward leadership/City council members)

Chris Gasbarro
Owner & President

CHRIS @EMBERBRANDFIRE.COM
617.828.2399
59 STATE STREET
NEWBURYPORT, MA 01950

check out our latest extraordinary gatherings
VIDEO: <https://vimeo.com/showcase/ember>
WEB www.emberbrandfire.com
INSTAGRAM [instagram.com/emberbrandfire](https://www.instagram.com/emberbrandfire)
FACEBOOK [facebook.com/emberbrandfire](https://www.facebook.com/emberbrandfire)

at ember we amplify brand passion through extraordinary gatherings

In City Council August 31, 2020:

Motion to Waive Rules and Allow Late Files by Councillor Zeid, seconded by Councillor Connell. So voted.

Committee Items- May 24, 2021

Budget & Finance

Budget & Finance *In Committee:*

ODNC074_04_12_2021

Council Salaries with Supporting Memo

TRAN096_05_10_2021

Gen. Budget Cont. \$17,815.35 to POL Sal. Ofcr.\$14,192,
POL Ofcr. OT \$2500, POL Accred. Allow. \$707, POL Longevity \$416.35

ORDR247_05_10_2021

Health Insurance Reserve Fund

CITY OF NEWBURYPORT



 IN CITY COUNCIL

ORDERED:

April 6, 2021

AN ORDINANCE TO AMEND THE SALARY OF ELECTED OFFICIALS

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

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

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

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

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

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

Councillor Jared Eigerman

Councillor Charles Tontar

In City Council April 12, 2021:

Motion to refer to Budget & Finance by Councillor Tontar, seconded by Councillor Khan. Roll call vote. 9 yes, 1 no (SZ), 1 absent (JE). Motion passes.

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

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

1. Consumer Price Index (CPI)

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

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

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

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

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

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

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

2. Comparison to Other North Shore Cities

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

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

3. Salaries proportional to the Mayor's salary.

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

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



CITY OF NEWBURYPORT FY 2021 TRANSFER/APPROPRIATION REQUEST

Department: Mayor's Office
Submitted by: Donna D. Holaday, Mayor **Date Submitted:** 5/10/2021

Transfer From:

Account Name:	<u>GEN Budget Contingency</u>	Balance:	<u>\$ 189,748.25</u>
Account Number:	<u>01129007-57805</u>	Category:	<u>\$ 193,196.31</u>
Amount:	<u>\$17,815.35</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

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

Transfer To:

Account Name:	<u>POL Sal Officers</u>	Balance:	<u>\$ 392,827.21</u>
Account Number:	<u>01210001-51142</u>	Category:	<u>\$ 668,114.25</u>
Amount:	<u>\$14,192.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

Additional funding is needed for the newly settled collective bargaining agreement between the City of Newburyport and the New England Police Benevolent Association Local 31 - Superior Officers Union (SOU) retroactive to July 1, 2020. See attached memo and tentative agreement.

Transfer To:

Account Name:	<u>POL Officer Overtime</u>	Balance:	<u>\$ 54,006.99</u>
Account Number:	<u>01210001-51301</u>	Category:	<u>\$ 668,114.25</u>
Amount:	<u>\$2,500.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

See above.

Transfer To:

Account Name:	<u>POL Accreditation Allowance</u>	Balance:	<u>\$ (993.17)</u>
Account Number:	<u>01210001-51413</u>	Category:	<u>\$ 668,114.25</u>
Amount:	<u>\$707.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

See above.

Transfer To:

Account Name:	<u>POL Longevity</u>	Balance:	<u>\$ (280.68)</u>
Account Number:	<u>01210001-51401</u>	Category:	<u>\$ 668,114.25</u>
Amount:	<u>\$416.35</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

See above.

Donna D. Holaday, Mayor:

Donna D. Holaday

Date: 5/4/21

Ethan R. Manning, Auditor:

Ethan R. Manning

Date: 5/4/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



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

To: President and Members of the City Council

From: Donna D. Holaday, Mayor

Date: May 4, 2021

Subject: New England Benevolent Association Local 31 – Superior Officers FY21 – FY23

The Administration has agreed to terms for a new, three-year collective bargaining agreement with the Newburyport Benevolent Association Local 31 – Superior Officers bargaining unit. The contract would go into effect retroactively from July 1, 2020 through June 30, 2023, subject to appropriation of funding for the first year of the contract by the City Council.

Included with this memo is a transfer request that appropriates funding for the first year of the contract by the City Council. Also included with this memo is the tentative agreement that outlines the terms and changes in the new agreement. A copy of the previous contract which expired on June 30, 2020 is available on the Human Resources website of the City Website: <https://www.cityofnewburyport.com/human-resources/pages/union-contracts>. The Administration worked diligently and collaboratively with the NEBPA Local 31 to agree to terms for a new contract.

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

Thank you for your consideration.



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
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WWW.CITYOFNEWBURYPORT.COM

To: Members of NEPBA Local 31

From: Matt Coogan, Chief of Staff
Ethan Manning, Finance Director

Date: April 29, 2021

Re: Memorandum of Agreement

The following is a summary of the agreement that has been reached in principle between the City of Newburyport and the New England Benevolent Association Local 31 – Superior Officers.

Here are the details of the changes that have been agreed to by both parties:

Article 4 (Stability of Agreement):

Add Section 2 as follows: "The failure of the Employer to insist, in any one or more incidents, upon performance of any of the terms, or conditions of this Agreement shall not be considered as a waiver or relinquishment of the rights of the Employer or of the Union to future performance of any such term or condition, and the obligations of the Union, and the Employer to such future performance shall continue in full force and effect."

Article 5 (Dues Deduction):

Replace Article 5 with the following:

"The CITY agrees to deduct SOU dues from the SOU members who voluntarily agree in writing to have their dues deducted and to mail said dues with a list of names from whom dues have been deducted to the New England Police Benevolent Association. In accordance with M.G.L. 150E, the CITY agrees to deduct an agency fee from those who voluntarily agree to pay such fee in writing from all employees who elect to remain nonmembers and mail said fee with a list of names from whom the fee has been deducted to the New England Police Benevolent Association. The Agency Fee for non-members shall be ninety percent (90%), of the weekly dues. The Union agrees to indemnify the City for any damages or costs in complying with this Article."

Article 6 (Grievance and Arbitration Procedure):

Add the following language in bold to Step 4:

STEP 4 If the grievance is not resolved in Step 3, the union, within 30 days may demand arbitration to the American Arbitration Association. The Union will provide the City with a copy of the arbitration demand.

Article 9 and 11: Change references in in Articles 9 and 11 to “Article 12, Section 10” to “Article 12, Section 9.”

Article 14 (Wages) Section 3:

	COLA
FY21	2.00%
FY22	2.00%
FY23	2.00%

New wage including proposed and education increases:

			2%	2%	2%
		Current	FY21	FY22	FY23
Sergeant					
Base		\$77,473.00	\$79,022.46	\$80,602.91	\$82,214.97
Associate	10%	\$85,221.00	\$86,925.42	\$88,663.93	\$90,437.21
Bachelor	20%	\$92,968.00	\$94,827.36	\$96,723.91	\$98,658.39
Master/JD	25%	\$96,842.00	\$98,778.84	\$100,754.42	\$102,769.51
Lieutenant					
Base		\$89,095.00	\$90,876.90	\$92,694.44	\$94,548.33
Associate	10%	\$98,004.00	\$99,964.08	\$101,963.36	\$104,002.63
Bachelor	20%	\$106,913.00	\$109,051.26	\$111,232.29	\$113,456.94
Master/JD	25%	\$111,368.00	\$113,595.36	\$115,867.27	\$118,184.62

Article 15 (Special Assignments and Outside Details):

Union members will be compensated for special assignments and outside details at the same rate of pay as negotiated in the Patrolman’s CBA.

Article 16 (Clothing Allowance):

Increase of \$100 per each year of contract. \$1,000 would be provided on the second pay period of July, and the remainder upon submission of receipts for uniform purchases and/or dry cleaning.

Article 17 (Education Incentive Program):

Replace Section with following:

SECTION 1:

The City of Newburyport recognizes the importance of higher education for Superior Officers. Accordingly, any permanent full-time Superior Officer who has or obtains an eligible degree from an accredited degree program shall receive educational benefits as follows for their highest level of education:

Education Degree or Credits Earned	Percentage Pay
Associates Degree or 60 credits earned toward a Baccalaureate in an approved program	10%
A Baccalaureate degree in an approved program	20%
Master's degree in an approved program, Law Degree (Juris Doctor)	25%

The education incentive will be compensated as a percentage increase to base pay as outlined in the pay scale set forth in Article 14 (Wages) as part of the employees' bi-weekly compensation. The education incentive shall be deemed regular compensation for the purposes of computing overtime, court-time, sick pay, injured pay, holiday pay, vacation pay, or any other form of paid leave and is part of regular compensation for pension-retirement.

SECTION 2:

The City acknowledges that all SOU members with conferred degrees prior to the signing date (date to be determined) of this agreement, have approved degrees and remain eligible for educational benefits under this article.

SECTION 3:

After ratification of this contract (date to be determined), members of the SOU pursuing a new degree (associates, bachelors, masters) may pursue degrees beyond criminal justice and law enforcement at the discretion of the Administration. Eligible degrees include those in the fields of Sociology, Psychology, Counseling, Communications, Leadership, and Business Administration. A degree in a field not expressly listed, that could potentially contribute to better police management and effectiveness, must be approved in writing by the City Marshal and the Mayor prior to enrollment in order to be eligible for compensation under education incentive article. Additionally, employees enrolling in a new program must adhere to the following:

- a. Employees must provide a written letter of intent to enroll in a program.
- b. Enrollment must be signature approved in advance by both the City Marshal and the Mayor.
- c. Employees must provide either a copy of their diploma, an official copy of transcripts denoting credits or degree conferred, or an official letter from the registrar's office confirming the conferred degree in the approved area of study.
- d. The base pay increase will be made immediately upon presentation of the required documentation to the City. The start date for the increase shall be the date of conferment of the approved degree.

- e. If an official letter states the degree will not be conferred until a future date, the pay increase will not be made until additional confirmation of degree conferment is provided.

Article 23 (Duration of Agreement):

Modify dates to reflect the new term of the agreement, July 1, 2020 to June 30, 2023. Upon the signing of an agreement, wage increases shall be retroactive to July 1, 2020.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 10, 2021

WHEREAS Massachusetts General Laws Chapter 40, Section 5B allows municipalities to create multiple stabilization funds, assign different purposes to each, and

WHEREAS healthcare cost trends continue to outpace annual revenue growth, and

WHEREAS health insurance premiums vary from year-to-year depending on a number of factors, including but not limited to, provider price inflation, utilization rates, prescription costs, and regulatory changes, and

WHEREAS healthcare costs temporarily went down in 2020 due to the COVID-19 pandemic, which allowed for “premium holidays” to be offered by insurers, and

WHEREAS the City of Newburyport anticipates receiving a one-month “premium holiday” during fiscal year 2022 as a one-time credit that most likely will not be offered in future years and placing all or a portion of that credit into a reserve fund would help to mitigate budgetary increases in subsequent fiscal years.

NOW, THEREFORE, the CITY COUNCIL of the CITY OF NEWBURYPORT hereby establishes, by a two-thirds vote, a Health Insurance Stabilization Reserve Fund in accordance with Massachusetts General Laws Chapter 40, Section 5B. Said fund shall be utilized for the mitigation of the impacts of year-to-year fluctuations in health insurance spending on the annual operating budget by appropriating monies into or out of the fund based on annual cost projections. Appropriations into the Fund are done by a majority vote of the City Council, while appropriations out of the Fund require a two-thirds vote of the City Council.

Councillor Sharif I. Zeid

In City Council May 10, 2021:

Motion to refer to Budget & Finance by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 11 yes. Motion passes.

Committee Items- May 24, 2021

Neighborhood & City Services

COMM327_05_10_2021 Late File

Hale Street Fence/Wall at Squires Glen

May 10, 2021

To: Mayor Donna D. Holiday;
To: Anthony Furnari, Director of Public Safety

From: Committee on Neighborhood & City Services

Memo RE: Hale St at Squires Glen

On 5/4/21 the Committee for Neighborhood & City Services held a meeting with an agenda item to discuss the current status and proposed options for the area at Hale St and Squires Glen Rd. As can be seen from the photo (below) there is currently a temporary fence along this stretch and there has been considerable degradation to the cement retaining wall.



At our meeting over 2 dozen residents attended, and 15 spoke out at public comment. The consistent message was that the residents felt this area was unsafe for their children to walk to school, and the temporary fence was a detriment to the neighborhood as this is the main entrance/exit to the development (100+ homes). The ask was that these items needed immediate attention including closure of the fence discussion, with the installation of an architectural style fence covering the last section of this fence run (est 100ft).

The NCS committee is requesting DPS provide an updated quote for the architectural fence and to provide work estimates for repairing the cement wall.

The recommendation of the NCS committee is to request the administration prioritize the repairs to the cement structure and the installation of the architectural fence, to allocate funds for these actions from the operational maintenance budget, and to target completion prior to 10/31/21.

Thank you,
Neighborhood and City Services Committee
Councillor Barry N. Connell, Chair
Councillor James J. McCauley
Councillor Christine E. Wallace

Committee Items-May 24, 2021

Public Safety

In Committee:

ORDR250_05_10_21

Merrimac St. Striping Plan

ODNC077_05_10_2021

Merrimac St Parking Restrictions

Removal from Committee Form

Instructions: Remit to rjones@cityofnewburyport.com; pbarker@cityofnewburyport.com by Tuesday, 5 PM preceding Council meeting

Committee Name: Public Safety For CC meeting May 10, 2021

Committee Chair: McCauley

	Measure Identifier	Measure Title	Amended in Committee? (if yes, attach final version)	Consent Agenda or Regular Agenda?
1.	ORDR 250 05-10-21	Merrimac St Striping Plan	Yes	consent
2.	ODNC77 05-10-21	Merrimac St Parking Restrictions	Yes	consent
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 10, 2021

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

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

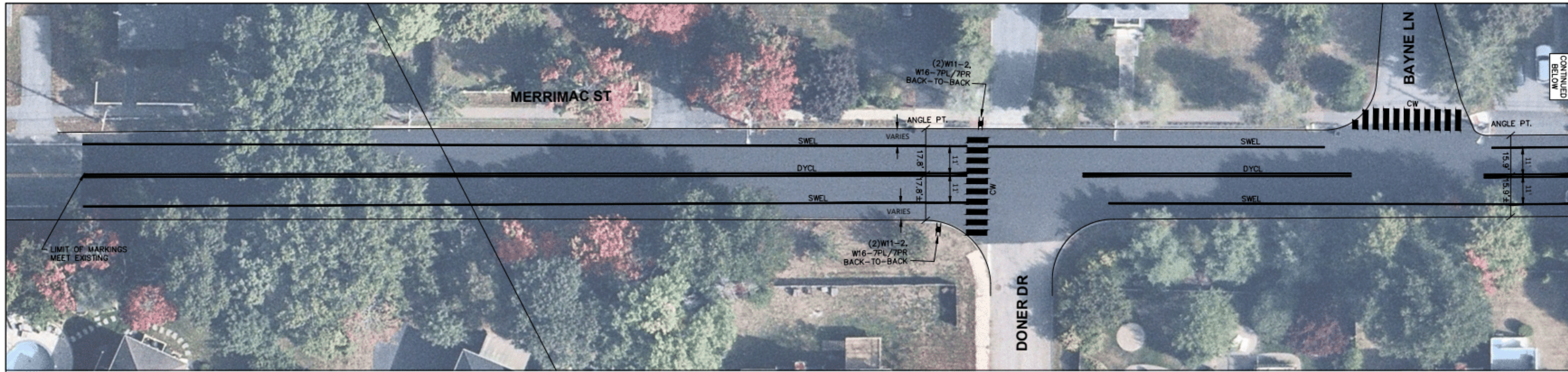
WHEREAS, the Newburyport Code provides at Section 13-46 that the City Council is authorized, and as to those signs and signals required under such code it shall be its duty, to place and maintain or cause to be placed and maintained all official traffic signs, signals, markings and safety zones;

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

Councillor James J. McCauley

In City Council May 10, 2021:

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



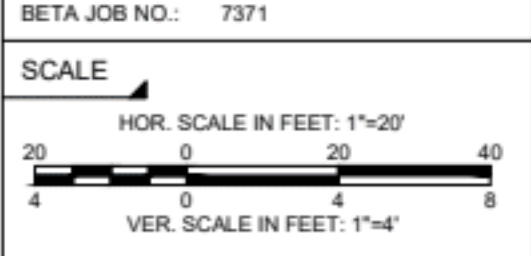
PREPARED BY
 REGISTERED PROFESSIONAL
 SUBCONSULTANT
 AERIAL IMAGERY SOURCE: NEARMAP
 AERIAL IMAGERY DATE: SEPTEMBER 2020

PROJECT
Merrimac Street

TITLE
Pavement Marking and Signing Plan

NO.	REVISIONS	DATE

DRAWN BY: TAD
 DESIGNED BY: TAD
 CHECKED BY: DJ
 ISSUE DATE: 11/06/2020
 BETA JOB NO.: 7371



SHEET NO.
1 OF 4

5/18/2021 1:39 PM T:\PROJECTS\10001\ROADWAY\1169_MERRIMAC ST STRIPING AND SAFETY\ZONE 202\DESIGN\CONCEPT REVISED PLANS\RECREATED STRIPING PLAN FOR DPR2 PLOTTING 1.DWG



- NOTES:**
- CROSSWALKS SHOWN AT LOCATIONS OF EXISTING CROSSINGS OR WHEELCHAIR RAMPS
 - ALL CROSSWALKS SHOULD PROVIDE ACCESSIBLE RAMPS IN COMPLIANCE WITH ADA AND AAB STANDARDS
 - CROSSWALK WARNING SIGNS SHOULD BE UPDATED IN ACCORDANCE WITH THE 2009 MUTCD
 - CROSSWALK WIDTHS SHALL BE 8' UNLESS NOTED OTHERWISE.



- NOTES:**
- SEE 2009 MUTCD FOR SPECIFICATIONS
 - ARROWS AND WALKING MAN SYMBOL SHALL FACE AS ENTERING THE ROADWAY

PAVEMENT MARKINGS AND SIGNING SYMBOLS

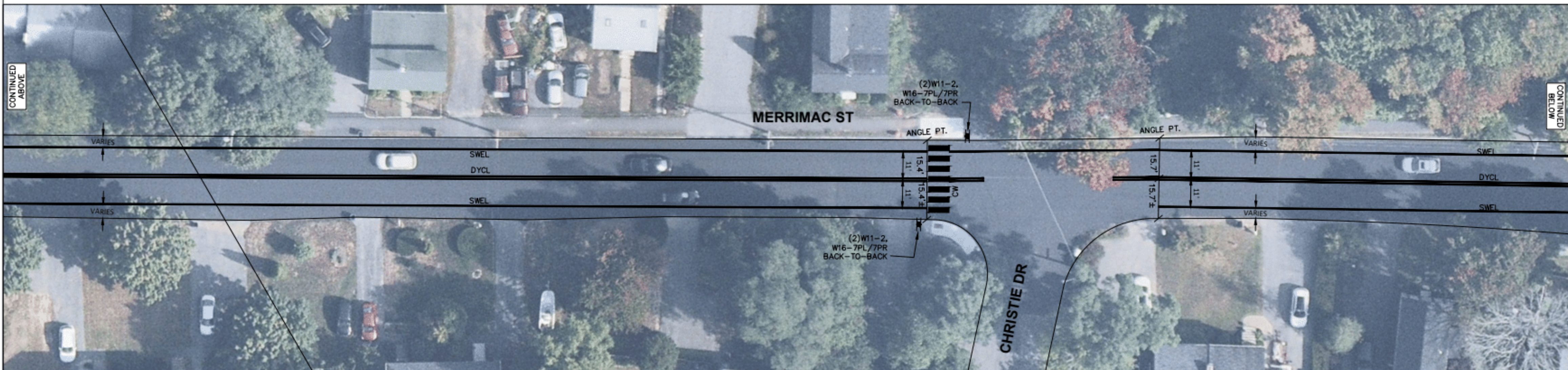
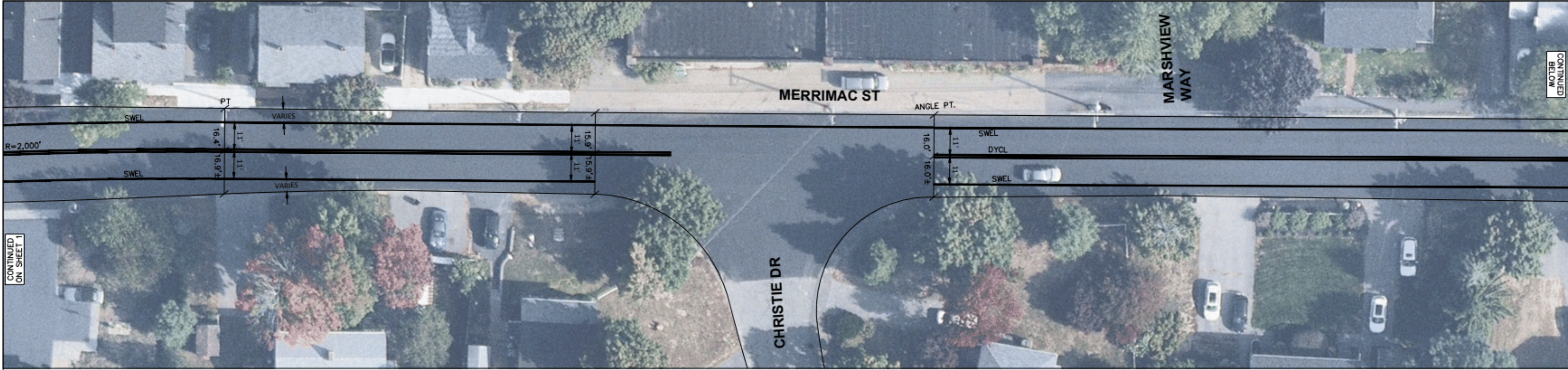
- PROPOSED**
- CW CROSSWALK - SEE DETAIL
 - SL STOP LINE - 12" WHITE LINE
 - SWEL SOLID WHITE EDGE LINE - 4"
 - DYCL DOUBLE YELLOW CENTER LINE - 2 @ 4"
 - SYCL SINGLE YELLOW CENTER LINE



- ALL EXISTING SIGNS AND SIGN POSTS WITHIN THE PROJECT LIMITS SHALL BE RETAINED UNLESS OTHERWISE NOTED ON PLANS.
- ALL EXISTING PAVEMENT MARKINGS THAT CONFLICT WITH THE PROPOSED PAVEMENT MARKINGS SHALL BE REMOVED BY AN APPROVED METHOD.
- ALL PROPOSED SIGN POSTS SHALL BE P-5 TYPE (TELESCOPIC POST).
- UNLESS OTHERWISE PROVIDED FOR IN THE MUTCD, ALL SIGNS SHOULD BE 90° TO THE CURB AND FACING THE FLOW OF TRAFFIC.
- ALL R&R SIGNS SHALL BE MOUNTED ON NEW POSTS.
- SIGNS TO BE MOUNTED NEAR THE CURB LINE IN AREAS WITHOUT SIDEWALK SHALL BE SET BACK 6" FROM THE EDGE OF THE SIGN PANEL TO THE CURB LINE. NO SIGN SHALL OVERHANG THE CURB LINE.
- ALL SIGNS SHALL BE MOUNTED TO PROVIDE A 7' MINIMUM CLEARANCE BETWEEN THE BOTTOM OF THE SIGN AND FINISHED GRADE.
- UNLESS NOTED OTHERWISE, PARKING STALLS FOR PIONEER PARK SHALL BE 9'x18' AT A 52° ANGLE. ADA STALLS SHALL BE THE SAME DIMENSIONS WITH A 9' WIDE UNLOADING AISLE BETWEEN THE TWO SPACES.

DRAFT BY CITY ENGINEERING DEPT.
Rev 2 5-17-21

5/18/2021 2:22 PM Z:\DPS\1000 ROADWAY\1169 MERRIMAC ST STRIPING AND SAFETY\ENGINEER\DESIGN\REVISED PLANS\REVISED STRIPING PLAN FOR DPS2 PLOTTING 1.DWG



PREPARED BY
 REGISTERED PROFESSIONAL
 SUBCONSULTANT

AERIAL IMAGERY SOURCE: NEARMAP
 AERIAL IMAGERY DATE: SEPTEMBER 2020

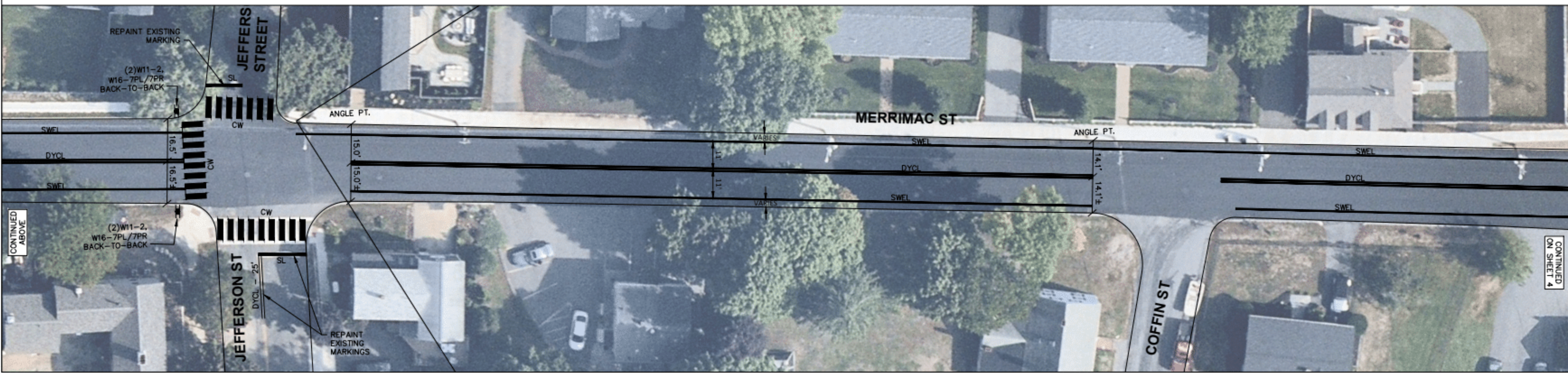
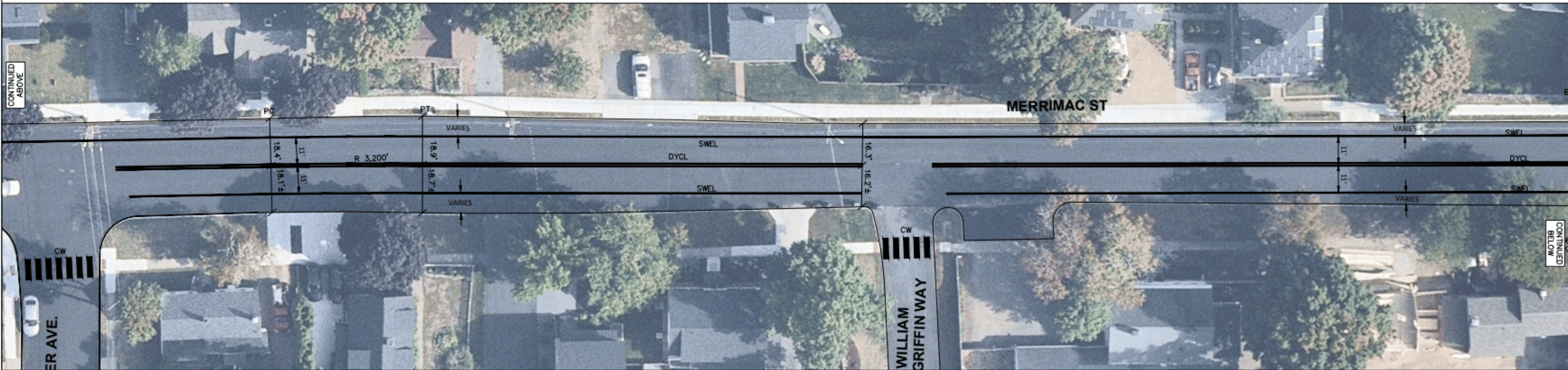
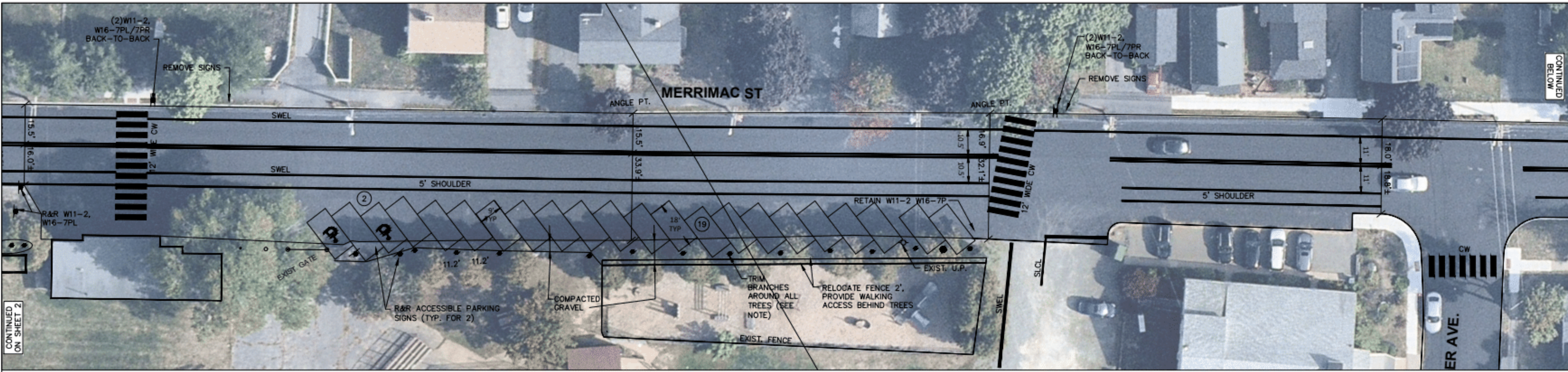
PROJECT
Merrimac Street

TITLE
**Pavement Marking and
 Signing Plan**
 DRAFT BY CITY
 ENGINEERING DEPT.
 Rev 2 5-17-21

NO.	REVISIONS	DATE

DRAWN BY: TAD
 DESIGNED BY: TAD
 CHECKED BY: DJ
 ISSUE DATE: 11/06/2020
 BETA JOB NO.: 7371
 SCALE
 HOR. SCALE IN FEET: 1"=20'
 VER. SCALE IN FEET: 1"=4'
 SHEET NO.
2A OF 4

5/19/2021 1:50 PM \\S:\DPS\1000 ROADWAY\1168 MERRIMAC ST STRIPING AND SAFETY ZONE 2021\DESIGN\DESIGN\REVISED PLAN AN\RECREATED STRIPING PLAN FOR DRS2\PLOTTING 1.DWG



PREPARED BY _____

REGISTERED PROFESSIONAL _____

SUBCONSULTANT _____

AERIAL IMAGERY SOURCE: NEARMAP
AERIAL IMAGERY DATE: SEPTEMBER 2020

PROJECT

Merrimac Street

TITLE

Pavement Marking and Signing Plan

DRAFT BY CITY ENGINEERING DEPT
Rev 2 5-17-21

NO.	REVISIONS	DATE

NO. REVISIONS DATE

DRAWN BY: TAD

DESIGNED BY: TAD

CHECKED BY: DJ

ISSUE DATE: 11/09/2020

BETA JOB NO.: 7371

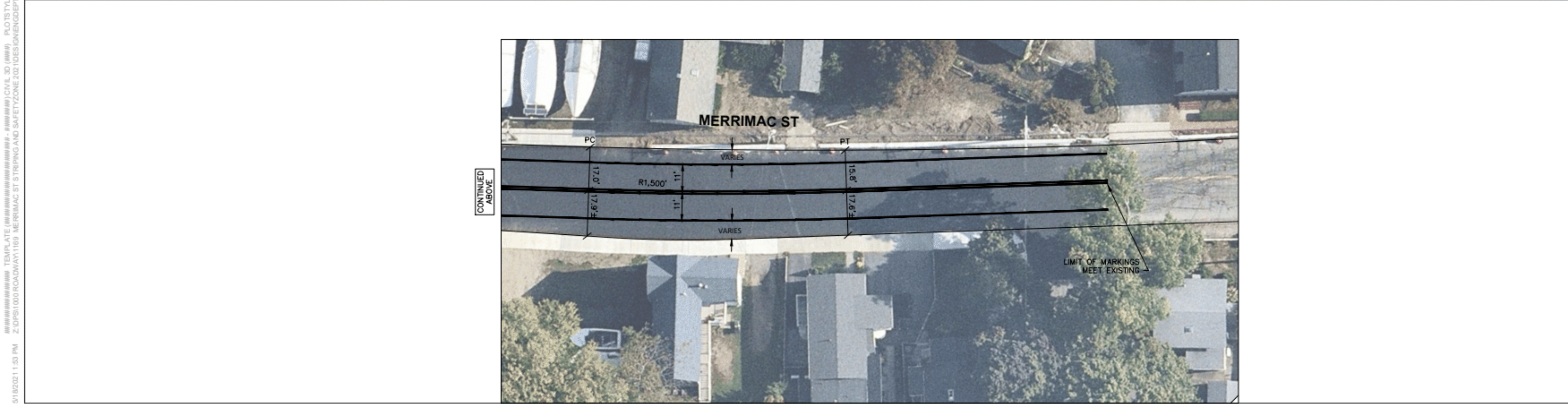
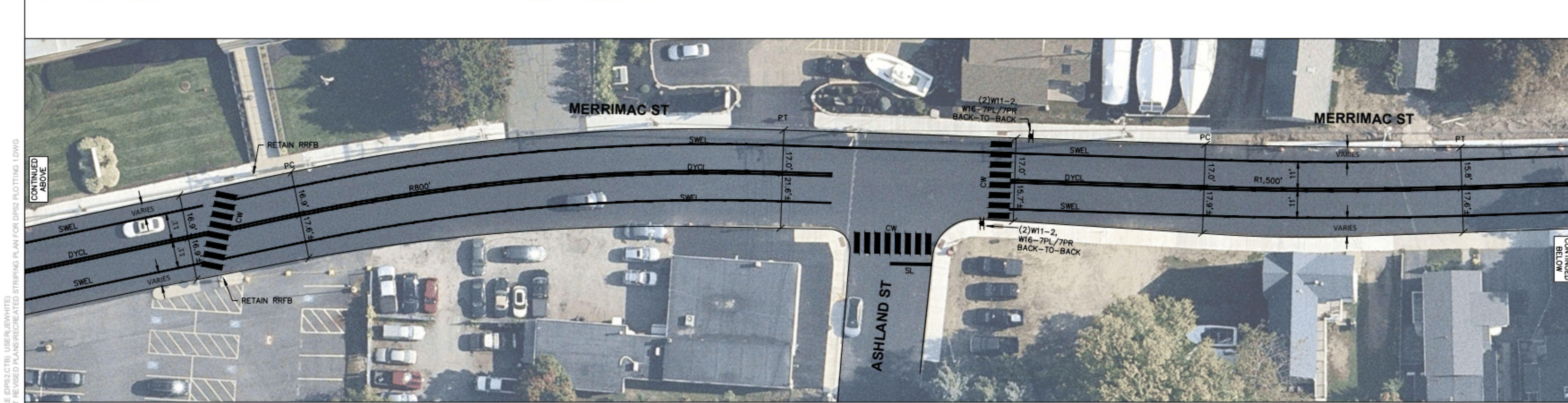
SCALE

HOR. SCALE IN FEET: 1"=20'

VER. SCALE IN FEET: 1"=4'

UNLESS OTHERWISE NOTED OR CHANGED BY REPRODUCTION

SHEET NO. **3 OF 4**



5/18/2021 1:53 PM Z:\DPS\1000 ROADWAY\1109_MERRIMAC ST STRIPING AND SAFETY\ZONE 202\DESIGN\ENDDPT REVISED PLANS\CREATED STRIPING PLAN FOR DPSZ PLOTTING 1.DWG
 USER:JEWWHITE
 PLOTSTYLE:DPSSZ202.ctb
 CIVIL 3D (RMT)

PREPARED BY _____

REGISTERED PROFESSIONAL _____

SUBCONSULTANT _____

AERIAL IMAGERY SOURCE: NEARMAP
AERIAL IMAGERY DATE: SEPTEMBER 2020

PROJECT

Merrimac Street

DRAFT BY CITY
ENGINEERING DEPT
Rev 2 5-17-21

TITLE

**Pavement Marking and
Signing Plan**

NO.	REVISIONS	DATE

DRAWN BY: TAD

DESIGNED BY: TAD

CHECKED BY: DJ

ISSUE DATE: 11/06/2020

BETA JOB NO.: 7371

SCALE

HOR. SCALE IN FEET: 1"=20'

VER. SCALE IN FEET: 1"=4'

UNLESS OTHERWISE NOTED OR CHANGED BY REPRODUCTION

SHEET NO.

4 OF 4

CITY OF NEWBURYPORT



 IN CITY COUNCIL

ORDERED:

May 10, 2021

AN ORDINANCE TO LIMIT ON-STREET PARKING ON MERRIMAC STREET DURING GAME TIMES AT THE LOWER ATKINSON COMMON FIELDS

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

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

Sec. 13-174. - Parking limited—Generally.

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

<i>Street</i>	<i>Zones</i>
<u><i>Merrimac Street</i></u>	<u><i>Northerly side from Plummer Avenue to Moulton Street during field events at the Lower Atkinson Common Fields</i></u>
<u><i>Merrimac Street</i></u>	<u><i>Southerly side from Moulton Street for a distance of approximately 150 feet east during game times at the Lower Atkinson Common Fields</i></u>

Please note: the customized parking signs to be placed on the street should read: No Parking during Games

Submitted,

Councillor Christine E. Wallace

Approve: _____
Donna D. Holaday, Mayor

Attest: _____
Richard B. Jones, City Clerk

Date: _____

In City Council May 10, 2021:

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