

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

February 27, 2023

AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED BUILDINGS AND BUILDING REGULATIONS

EMERGENCY PREAMBLE

Whereas, Chapter 5, Buildings and Building Regulations, Article III, Building Construction Standards Section 5-62, Fees, of the City Code of Ordinances requires that the fee for a building permit shall be payable to the office of the City Treasurer/Collector by the owner before such a permit is issued; and

Whereas, from time to time it may be in the public interest and for good cause shown to provide for the deferment of payment of the required building permit fee; and

Whereas, providing for the creation of affordable housing is in the public interest and is a priority of the City of Newburyport, and allowing for an alternate fee payment schedule may facilitate and accomplish creation of affordable housing in the best interest of the City; and

Whereas, the current building permit payment requirement may have an immediate and detrimental impact on the creation of affordable housing in the City; and

Whereas, enactment of this emergency ordinance amendment shall address the immediate protection of affordable housing in the City.

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

Chapter 5	Buildings and Building Regulations
Article III	Building Construction Standards
Section 5 - 62	Fees

THAT Chapter 5 Article III, Section 5 - 62 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:

The 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 annually by order of the city council and published in the municipal fee schedule on file with the city clerk, 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.

Provided however, the city council may, for good cause shown, defer the payment of said fees until any required inspection shall be performed pursuant to 780 CMR.

Councillor Heather L. Shand



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

MEMORANDUM

TO: Honorable Members of the Newburyport City Council

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

CC: Sean R. Reardon, Mayor
Andrew Levine, Chief of Staff
Ethan Manning, Director of Finance
Greg Earls, Building Commissioner

RE: Temporary Deferment of Building Permit Fee – 166 Route 1 (Haley’s 40R Project)

DATE: February 23, 2023

The purpose of this memo is to provide a brief summary and rationale for the basis of expedited action by the Council at your February 27, 2023 regular meeting in relation to the following items also included/referenced within the Council packet:

1. An emergency preamble
2. An Ordinance amending our Code to allow for fee waivers in specific cases
3. An Order deferring payment of the required fee in this specific instance – a Building Permit Fee for 166 Route 1 (*otherwise known as the Haley’s 40R Smart Growth District development project*)

The 166 Route 1 (*Haley’s 40R*) development project has already been approved by the Newburyport Planning Board and no other zoning approvals are needed for this project, which represents the third such project permitted within the City’s 40R Smart Growth District, all of which have been undertaken by MINCO.

The City has benefited greatly from the new 40R Smart Growth District and these three projects, which are being constructed in sequence following market needs and available development financing. All three projects are rental projects and include no less than twenty-five percent (25%) of the units as so-called “affordable housing” as that term is interpreted and applied by state regulations and the Department of Housing and Community Development (DHCD) in particular. Based upon the high affordable housing requirement within the District as well as the rental model of MINCO’s development projects, the City is not only facilitating the creation of much needed affordable housing units within a new transit-oriented neighborhood, but the City has also benefited recently from a so-called “safe harbor” status under MGL 40B, due to the incremental progress the City is making towards the creation of qualifying new affordable units.

While MINCO would like to undertake construction of the Haley’s 40R development project immediately following the completion of their 3 Boston Way building, recent fluctuations in the markets have made it difficult to secure necessary materials and infrastructure for its completion. For example, they are still after many months awaiting

delivery of an electrical transformer. MINCO's ability to proceed with construction of the Haley's 40R development is therefore limited by the ability to finance this work simultaneously at the present time. They must first complete the 3 Boston Way project. MINCO has been an excellent partner in the development of new residential and mixed-use projects within the City's Smart Growth District, and in particular the creation of affordable housing units.

MINCO has applied for building permits to construct this Haley's 40R project in recent days. Obtaining this permit prior to March 3, 2023 would also allow the City to maintain our current "safe harbor" status under MGL 40B. This is because developers must obtain building permits within one year of local Smart Growth District plan approvals by DHCD's timelines. This next step has been delayed due to factors outside of MINCO's direct control, which do not threaten the timely completion of the project. Given the timeframes involved, the uniqueness of the circumstances here, and the financing constraints MINCO must work within, it would appear beneficial to the City to grant MINCO's request for a postponement or deferment of the sizable fee required for issuance of a Building Permit in a project of this magnitude. MINCO has not requested a waiver of the fee, but rather approval to submit the required fee closer to their start of actual construction. The City's Finance Director has confirmed that delaying the receipt of these funds would not affect the City's financial position. The Building Inspector is also comfortable with this approach as the City will have multiple approval points of the project in the future and the Developer must pay the full fee prior to receiving those further approvals.

MINCO has been able to expedite the development of architectural plans for submission to the Building Commissioner, but with only a few days left before March 3, 2023, the Building Commissioner does not have the ability to accept such a deferment on payment of the fee without Council approval of same. The proposed Ordinance amendment would incorporate a standard provision whereby the Council could waive or defer the payment of a codified fee under appropriate circumstances. The related Order would then authorize this specific instance of a deferred fee payment so that our collective progress in creation of affordable units can proceed as soon as is reasonably feasible, in line with the City's Smart Growth principles for the appropriate location of denser housing developments within the City.

Thank you in advance for your consideration.