



**IN CITY COUNCIL**

**ORDERED:**

May 8, 2023

THAT the City Council of the City of Newburyport hereby approves the attached Intermunicipal Agreement between the Town of West Newbury and the City of Newburyport for Shared Animal Control Services.

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Councillor Heather L. Shand

**In City Council May 8, 2023:**

Motion to waive the rules, accept the late files, and refer to the recommended committees (ORDR00455 to Community Services) by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.



## IN CITY COUNCIL

**ORDERED:**

May 8, 2023

### CITY OF NEWBURYPORT AND TOWN OF WEST NEWBURY

#### INTERMUNICIPAL AGREEMENT FOR THE ADMINISTRATION OF SHARED ANIMAL CONTROL SERVICES

##### **Article 1. Purpose**

This agreement is entered into, pursuant to Massachusetts General Laws Chapter 40, Section 4A, by and between the City of Newburyport, as authorized by its City Council and approved by its Mayor, and the Town of West Newbury, as authorized by its Select Board.

WHEREAS, the City of Newburyport and the Town of West Newbury are each obligated to provide animal control services to their residents; and

WHEREAS, the City of Newburyport and the Town of West Newbury have determined that their residents can more efficiently and effectively be served with such services through a joint undertaking between the communities; and,

WHEREAS, the City of Newburyport and the Town of West Newbury have determined to join together to establish and administer a program of shared Animal Control Services.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

##### **Article 2. Definitions**

Participating Governmental Units: the City of Newburyport and the Town of West Newbury. Animal Control Services: Any and all services as required of an Animal Control Officer under applicable Massachusetts Laws and regulations, including but not limited to MGL Chapter 140, Section 151 et seq. and MGL Chapter 129, Section 15 et seq.

##### **Article 3. Term**

This Agreement shall take effect on the 1st day of July 2023 and shall remain in effect for two (2) years from the effective date. Either party may terminate the Agreement by providing at least six (6) months' notice prior to the start of a new fiscal year that it does not intend to participate in this Agreement.

#### **Article 4. Lead Party**

The City of Newburyport shall act as the "Lead Party" for the Participating Governmental Units, by employing the necessary officers and providing the necessary equipment, vehicles and kennel to perform said Animal Control Services. Said officers shall be considered employees of the City of Newburyport and be accorded all applicable benefits enjoyed by other Newburyport municipal employees as they are or shall be established. Each such officer must be a Massachusetts certified Animal Control Officer (excepting that new employees may acquire such certification within two years of the commencement of employment). Said certification must be maintained during the term of this Agreement. The office where such officers shall be primarily located will be in Newburyport.

#### **Article 5. Funding Contribution**

- A. The Lead Party shall establish for each fiscal year, subject to appropriation, the annual operating budget for the provision of shared Animal Control services (hereinafter "Budget"). The Budget shall include costs for Animal Control Officer and Assistant ACO Wages, Overtime, Clothing Allowance, Buildings & Grounds, Care of Animals, Dead Animal Removal, Fuel/Oil, Dues/Licenses, Health Insurance, Workers Comp, and FICA, as enumerated in Exhibit A: Shared Animal Control Services, Total Program Costs. The Town of West Newbury shall receive a credit for its provision of the ACO vehicle, including insurance, as provided in Article 8.
- B. The Municipalities shall share the cost of the total Budget in proportion to the percentages set forth in Exhibit A: Shared Animal Control Services, Total Program Costs.
- C. Twice a year during each year of this Agreement, the Lead Party shall prepare and distribute to West Newbury invoices, accompanied by an expense report summarizing the incurred costs of the program for the prior six months. Said invoices will be distributed by the Lead Party no later than January 31<sup>st</sup> for services rendered from July 1 through December 31 and no later than July 31<sup>st</sup> for services rendered from January 1 through June 30.
- D. By February 1<sup>st</sup> of each fiscal year, the designees of the Municipalities shall meet to agree on the proposed Budget for the next fiscal year. The Budget and Fee Structure shall be reviewed and adjusted, if necessary, in accordance with each Municipality's typical annual budget process.
- E. Notwithstanding any other provision in this Agreement to the contrary, the Municipalities agree that, following dissolution or termination of this Agreement, each shall be responsible for continuing their shared respective contribution for the Animal Control Officer's unemployment and/or workers' compensation benefits that may accrue while the Municipality was a party to this Agreement.
- F. Nothing herein shall prevent the parties from mutually agreeing in writing to change the funding contribution during the initial term or any extended term of this agreement, subject to available appropriation.

#### **Article 6 Financial Safeguards**

Under the provisions of M.G.L. Chapter 40, §4A, the City of Newburyport Director of Public Health shall provide to the Town of West Newbury periodic financial statements that shall include: accurate and comprehensive records of the services performed under this agreement; the costs incurred; and the reimbursements and contributions received. Such reports shall be compiled and distributed by the Finance Department with the invoices referenced in Article 5. In addition, all bills and payrolls submitted for work done under this regional agreement shall be plainly marked to indicate that the work was done under the authority of this agreement.

The accounting records of the Newburyport Animal Control Services, working under the direction of the Newburyport Director of Public Health, shall be subject to the City's annual audit process and shall be subject to periodic audit by the Newburyport City Auditor as is current practice.

#### **Article 7 Hours of Services and Service Requirements**

The City of Newburyport shall provide Animal Control Services under this Agreement on an as-needed basis, seven days a week, twenty four hours a day. Animal Control Services shall be provided on an equal basis between the communities.

#### **Article 8 Vehicle Usage**

The Town of West Newbury shall provide a 2021 Ford F150. This vehicle shall be made available for the use of the Animal Control Officers. Collision and liability insurance for the vehicle shall continue to be paid by the Town of West Newbury. The City of Newburyport shall be responsible for the maintenance and upkeep of West Newbury's vehicle. The City shall maintain records of all vehicle maintenance and, within its periodic expense reports provided to the Town of West Newbury per Article 5.C., shall provide a record of maintenance undertaken within the prior reporting period.

#### **Article 9 Fines**

Any fines, exempting boarding fees, collected will be collected on behalf of and returned to the Participating Governmental Unit from within the municipal boundaries of which the animal was taken, or in the case of an animal not taken, returned to the Participating Governmental Unit in which the animal resides or is kept.

#### **Article 10 Indemnification**

In the event that any claims, demands, suits, causes of action, costs, and expenses arise with respect to the services provided pursuant to this agreement, and to the extent permitted by Massachusetts General Laws chapter 258 and other applicable law, a Participating Governmental Unit shall indemnify, defend and hold harmless the other participating Government Unit from and against any such claims, demands, suits, causes of actions, costs and expends, including reasonable attorneys' fees and legal costs, but only to the extent that they arise from or relate to the negligent acts or omissions of the first Participating Governmental Unit, or its agents, servants, or employees, or from or in relation to actions

taken by the Animal Control Officer on behalf of or at the direction of the first Participating Governmental Unit. By entering into this Agreement, neither of the parties has waived any governmental immunity or limitation of liability or damages which may be extended to them by operation of law. This Agreement is for the benefit of the parties hereto and is not intended to confer third party beneficiary status on any other person or entity.

#### **Article 11 Operation of Animal Shelter Facilities**

The City of Newburyport shall maintain and operate an Animal Shelter Facility under the following terms and conditions.

- I. OPERATIONS:
  - A. The Animal Shelter Facility shall be accessible to the citizens of each Participating Governmental Unit for the retrieval of impounded animals during normal business hours, Monday through Wednesday 8AM to 4PM, Thursday 8 AM to 7 PM, and Friday 8 AM to 12 PM by appointment. Weekend hours will be provided by appointment only. Notice shall be posted conspicuously and in a readily accessible format in the main municipal building of both Participating Governmental Units which states the hours of operation and an emergency telephone number for use by residents to retrieve their pets. Such information shall also be made available on each respective Participating Governmental Unit website. The animal shelter shall be able to accept impounded animals 24 hours a day, 365 days a year.
  - B. Newburyport will provide daily supervision, food, water and humane care to animals boarded at the shelter.
  - C. All Animal Control Officers will log in each time they enter the Animal Shelter Facility. The sign-in sheets will be submitted monthly to the Director of Public Health.
  - D. The Animal Shelter Facility is to be solely used for the impounding of animals and to be used by Animal Control Officers only. There shall be no entry of other persons in the shelter without the consent of the City of Newburyport Director of Public Health.
  - E. Newburyport will be responsible for the Animal Shelter Facility cleaning/sanitizing supplies, maintenance, heat, water, electric and other utility costs incurred in connection with the operation of the Facility.
  - F. Newburyport will be responsible to keep the Animal Shelter Facility and associated kennels maintained, clean, and sanitary on a daily basis. Excreta and food waste shall be removed from primary enclosures daily and from under enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the animals contained in the enclosures, and to reduce disease, hazards, insects, pests, and odors. The condition of the kennels and quality of care is to be of a high caliber and performed to the standards established by the City of Newburyport Director of Public Health.

- G. Boarding facilities shall include a sheltered kennel unit with cages and/or runs that protect the animals from precipitation, and extreme hot (100°F or greater) and cold (45°F or less) conditions. Except in emergency situations, as determined by the Newburyport Animal Control Officer, no more than one adult animal shall be kept per cage.
  - H. Newburyport will be responsible for ensuring that an ill or injured animal is treated promptly by the respective Participating Governmental Unit's contracted licensed veterinarian, depending on the nature and/or seriousness of the illness or injury, and that any prescribed medication is promptly obtained and administered.
- II. FEES:
- A. Owners who reclaim animal(s) shall make payment to the City of Newburyport prior to reclaiming their animal(s) for all boarding fees (\$35.00 per day for each animal) and all other fees related to shelter services provided per day per animal.
  - B. Newburyport shall provide invoices, collect monies and keep records of all required fees received from owners. Invoices provided to owners who are retrieving their animal shall include the date that the animal was delivered to the shelter, the per day shelter rate, the number of days that the animal was sheltered, medical bills as applicable, and total fee due and collected.
  - C. Each Participating Governmental Unit shall be responsible for the direct costs to care for the animals which originate from said community, including but not limited to flea treatments and any veterinary costs. For the purposes of this agreement, "veterinary costs" shall include rabies vaccinations, health evaluation, treatment of minor curable diseases and euthanasia.
  - D. Each Participating Governmental Unit shall pay any additional costs associated with the transport and removal of animals from their community if an animal is not claimed or is injured.
  - E. Newburyport may add a surcharge of up to ten (10) percent (not to exceed \$25.00) to medical bills to cover certain incidental costs relating to transportation of an animal to a veterinarian's office, telephone expenses incurred in connection with medical treatment, and any special care involved. Bills must support all medical charges and receipts bearing the name of the veterinarian or firm from whom they were obtained.
  - F. Fees for animals that are unclaimed by the owner at the end of the maximum seven (7) day holding period shall be paid by the Participating Governmental Unit where the animal originated.

G. All fees and receipts from boarding and all other services related to the shelter shall be submitted monthly to the City of Newburyport Health Department.

III. RECORD KEEPING: Each Participating Governmental Unit's Animal Control Officers shall maintain an impound record on each animal delivered to the Animal Shelter Facility. The impound record will be prepared and filled out by the appropriate Animal Control Officer and delivered to the Facility with the animal.

Upon discharge, one (1) copy of the animal's completed record shall be provided to the person claiming the animal and one (1) copy of each discharged animal's record shall be provided to Newburyport. If the agreement is terminated, all impound records shall be transmitted to the appropriate town.

IV. DISCHARGE:

A. Claimed animals: Each Participating Governmental Unit will require the person claiming the animal to show identification (preferably a driver's license). In the case of a dog, a certificate of license is required of all dogs six (6) months of age or older for release.

In the event of non-licensure of a dog, the owner or person claiming the dog will be required to show proof of licensure prior to release by the Animal Control Officer. The Animal Control Officer will not be responsible for ensuring licensure of the dog.

In addition, the Animal Control Officer will provide the person claiming the animal with a full disclosure of any medical treatment rendered by a veterinarian and/or the Animal Shelter Facility and by whom it was rendered and a complete identification of any prescription or non-prescription medicine(s) administered to the animal while in custody. Finally, the Animal Shelter Facility must obtain the signature and the driver's license number of the person to whom the animal is released on the Impound Record.

B. Unclaimed animals: Unless requested by the Newburyport Director of Public Health or West Newbury Police Chief to retain the animal for a longer period (2 to 4 additional days), animals will be picked up on or immediately following the seventh (7th) day of confinement by the Animal Control Officer. The written notice to extend shelter services from the Newburyport Director of Public Health or West Newbury Police Chief must accompany the reports to the city or town. The shelter may place such animals as are deemed suitable up for adoption in accordance with MGL Chapter 140, section 136A.

## **Article 12 Miscellaneous**

a. This agreement may be amended in writing by vote of both of the Participating Governmental Units. Should additional municipalities seek to join this program of shared Animal Control Services, the terms agreed to herein, including apportionment of expenses, for such additional municipalities shall be negotiated and approved by both of the Participating Governmental Units.

- b. This agreement represents the entire understanding of the parties with respect to its subject matter.
- c. This agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- d. If any of the provisions of this agreement is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under such provision, provided, however, that the remainder of the Agreement shall be enforced.

TOWN OF WEST NEWBURY

CITY OF NEWBURYPORT

By Town Manager

By Mayor

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\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Duly authorized by unanimous 3-0 vote

of Select Board on April 24, 2023



**Exhibit A: Shared Animal Control Services, Total Program Costs**

<b><u>Estimated Costs</u></b>		
	<b><u>FY2024</u></b>	<b><u>FY2025</u></b>
Animal Control Officer*	50,384	51,770
Assistant ACO	12,500	12,750
Overtime	3,600	3,600
Clothing Allowance	800	825
Building & Grounds	2,000	2,000
Care of Animals	2,750	2,750
Dead Animal Removal	100	100
Fuel/Oil Vehicle	1,500	1,500
Dues/Licenses	100	100
Health Insurance	7,416	7,713
Workers Comp	578	601
FICA (Medicare) Taxes	731	751
<b>Sub-Total Newburyport Costs</b>	<b><u>82,459</u></b>	<b><u>84,459</u></b>
West Newbury Vehicle	2,181	1,963
<b>Sub-Total West Newbury Costs</b>	<b><u>2,181</u></b>	<b><u>1,963</u></b>
<b>Total Program Cost</b>	<b><u>84,640</u></b>	<b><u>86,422</u></b>
<b><u>65/35 split based on actual costs</u></b>		
	<b><u>FY2024</u></b>	<b><u>FY2025</u></b>
<b><u>West Newbury's Share</u></b>		
Direct Costs	2,181	1,963
Assessment (Estimated**)	27,443	28,285
<b>Total West Newbury</b>	<b>29,624</b>	<b>30,248</b>
<b>% of Total Program Cost</b>	<b>35.0%</b>	<b>35.0%</b>
<b><u>Newburyport's Share</u></b>		
Direct Costs	82,459	84,459
Less: Payment from WNBY	-27,443	-28,285
<b>Total Newburyport</b>	<b>55,016</b>	<b>56,174</b>
<b>% of Total Program Cost</b>	<b>65.0%</b>	<b>65.0%</b>

\*Current employee is Teamsters Grade A, Hire Date 11/12/2019.

\*\*Newburyport will invoice West Newbury for actual costs incurred as of December 31 and June 30 for all expenses indicated above.