

ORDERED:

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

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

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

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

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

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

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

including architectural features explicitly exempted from the height requirements of this Ordinance.

11. *Building line.* A line formed by the intersection of a horizontal plane at average outside grade level and a vertical plane at ground surface that coincides with the exterior surface of the building on any side. All yard requirements are to be measured to the building line **except where otherwise expressly provided in this Ordinance.**

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

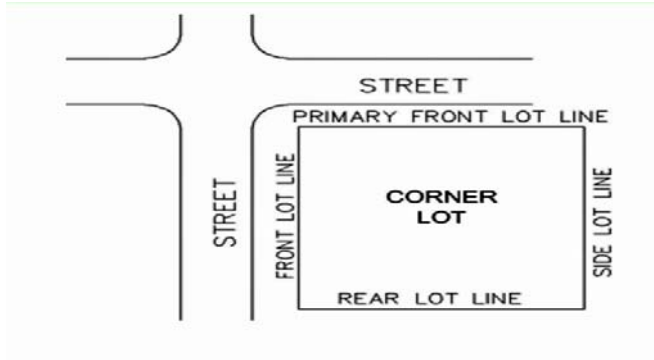
19. *Floor area, total.* The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for occupancy or the conduct of business **(i.e. with a minimum ceiling height of six (6) feet)**, and shall be measured between the inside face of exterior walls, or from the centerline of walls separating two (2) uses, but garage space, accessory building space, or cellar space is excluded, except if these areas are utilized by the **principal** use occupying or conducted within the lot and/or building.

Comment [AP1]: Clarifies what living spaces are considered "usable" for habitation (vs. storage) and therefore subject to applicable calculations.

21. Inspector of buildings. The **person appointed and confirmed to serve in such office under Section 5-41 of the Newburyport Code** ~~officially established zoning and building enforcement officer for the City of Newburyport.~~

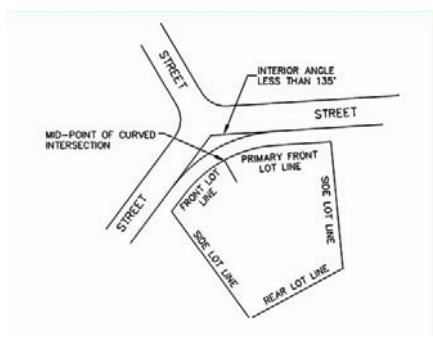
24. *Lot, corner.* A lot at the point of intersection of and abutting on two (2) or more intersecting streets, the interior angle of intersection of the street lot lines, or extended lot lines in **the** case of a curved street being not more than **one-hundred and thirty-five degrees (135°)**. For purposes of this **Ordinance chapter**, the yard adjacent to each street shall be considered a front yard; **provided**, however, this will not affect designation of the front lot line.

Corner Lot Diagrams: A corner lot ~~shall have~~ two front lot lines. The front lot line of greater length shall be known as the primary front lot line, **and the front lot line of lesser length shall be known as the secondary front lot line.** When an **unbuilt** corner lot has front lot lines of equal length, the owner shall designate a single front lot line as the primary front lot line, on the applicable plan and/or application. This shall be known as the primary front lot line.



Comment [AP2]: Correct this diagram to replace the label "front lot line" with "secondary front lot line," consistent with the written definition above.

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



Comment [AP3]: Adjust this diagram to depict the two front lot lines as distinct segments rather than a single curved arc.

25. *Lot coverage.* That percentage of the lot area which is devoted to building area (i.e. building "footprints"), ~~regardless of such building's building height.~~
26. *Lot line, front.* The property line dividing a lot from the adjacent a single street right-of-way. In the case of a corner lot the front lot line of greater length shall be known as the "primary front lot line," and the front lot line of lesser length shall be known as the "secondary front lot line." ~~When a corner lot has front lot lines of equal length, the owner shall designate a single front lot line as the primary front lot line, on the applicable plan and/or application.~~
27. *Lot line, rear.* The property line most nearly opposite and furthest from the front lot line, or the primary front lot line in the case of corner lots. In a wedge- or pie-shaped lot, the rear lot line is assumed to be where a line parallel to the front lot line can be drawn with a ten- (10-) foot dimension offset from the rear-most point parallel to the front lot line and intersecting two (2) adjacent side lot lines.

33. *Open space.* The space on a lot unoccupied by buildings, unobstructed to the sky, not devoted to streets, driveways or off-street parking or loading spaces, and expressed as a percentage of total lot area. Open space areas shall be used for landscape areas and for active or passive recreation including but not limited to non-roofed decks (one level only), patios, pools or athletic tennis courts.
36. *Parking space.* An delineated area, whether interior or exterior, that is intended or used for occupancy by a motor vehicle in compliance with this Ordinance.
41. *Setback.* ~~Setback is~~ The horizontal distance measured perpendicularly from the property lot line to the nearest building line wall.
46. *Structure.* A combination of materials, which may or may not constitute a building, requiring a permit to that is erected, placed, or constructed to form a configuration ~~and includes, but is~~. Structures include, but are not limited to, unroofed stadiums, platforms, radio towers, sheds, unroofed pens sheds, and storage bins (lidded or unlidded) and/or, mechanical equipment greater than four (4) six (6) feet in height, signs, swimming pools, and fences.
50. *Yard.* ~~An open space unobstructed from the ground up, on the same lot with a principal~~ The area within a lot extending along a lot line and inward to the building line. The size of a required yard setback shall be measured as the shortest distance between the building line and the lot line. Those portions of buildings or structures that ~~Structures which~~ are below the finished lot grade, including, but not limited to, basements, shall not be deemed to occupy required yards setbacks. Unroofed deck structures may project into applicable yard setbacks to the extent of up to fifty percent (50%) of the required lateral dimension.

Comment [AP4]: These changes would allow certain common-place elements as-of-right within yard setbacks without triggering the more restrictive dimensional setbacks typically applicable to primary and accessory structures.

Comment [AP5]: Moved to section VI-F as dimensional requirement, not a definition.

54. *Zoning Administrator.* The zoning code enforcement officer for the City of Newburyport, Massachusetts, duly appointed and confirmed under Section X-B of this Ordinance ~~Zoning board of appeals. The Zoning Board of Appeals of the City of Newburyport, Massachusetts.~~

~~54-55.~~ *Zoning board of appeals.* The Zoning Board of Appeals of the City of Newburyport, Massachusetts.

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

D. To ensure the long-term preservation of local farming and agricultural properties of sufficient size to maintain viable and sustainable businesses and operations

related thereto, and notwithstanding any provisions of this Ordinance to the contrary, the minimum Lot Area within the Agricultural/Conservation (Ag/C) District, regardless of use, shall be ~~400,000 square feet as indicated~~.

Comment [AP6]: Since the 400K sq.ft. requirement is already noted in the table itself this footnote (providing rationale) need not duplicate it, which, in turn, simplify future amendments to this numerical area requirement.

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

VI-F - Yard requirements (setbacks).

- (1) Except for fences, walls, ~~and~~ accessory structures, and specific features as described below or elsewhere in this Ordinance, no building or ~~sub-surface~~ structure, nor any above-grade ~~or~~ portion thereof, including, without limitation, decks extending upward by more than thirty (30) inches above existing grade, shall be permitted within the required front, side, or rear setback areas. Otherwise, unroofed deck structures may project into applicable yard setbacks to the extent of up to fifty percent (50%) of the required lateral dimension.
- (2) Where a side or rear yard is adjacent to a street, the side or rear yard requirement shall be the same as the distance specified for front yard setback.
- (3) Where a side or rear yard of a structure is adjacent to a park, cemetery, or other permanently protected public open space, all but ten (10) feet of the required yard may be measured from the center of said open space.
- (4) Mechanical equipment greater less than four (4) ~~six (6)~~ feet in height and otherwise permitted within the required, side, or rear yard shall be screened from view with fencing and/or landscaping.
- (5) No advertising display or other type of sign, merchandise, vending machines, or charitable donation collection boxes shall be located within any required front, side, or rear yard. Business structures or uses shall not display or advertise goods for sale purposes or display coin-operated vending machines of any type in any location which would infringe upon the required yard areas specified in this ordinance.
- (6) Structures, such as fences, and landscape walls, may project into be located within required side and rear yards provided that they do not exceed seven (7) feet in height. Corner lots and locations adjacent to driveways shall comply with the requirements of Section VI-J and VI-K. In all other instances fences, landscape walls, and other hardscape features may project into be located within required front yards provided they do not exceed four (4) feet in height above existing grade. Structures of any kind such as, without limitation, sheds, swimming pools, and mechanical equipment greater than four (4) feet in height above existing grade shall be prohibited in the front yard setback.

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Comment [AP7]: Moved here from definition of #50 “Yard.”

Comment [AP8]: This change provides consistency with definition of structure (# 46) above.

Comment [AP9]: Response to question from Glenn Richards:

Yes, this would include HVAC units.

Comment [AP10]: Response to question from Glenn Richards:

As drafted, this was not intended to address the “little libraries” that are popping up around the City, and we defer to the City Council as to whether these installations are of concern and/or should be addressed more specifically here. As currently written this provision could be interpreted to both apply to, and prohibit, such installations where they are normally placed in front yards.

(7) Porches, porticos, stoops, ~~external~~ exterior stairways or steps attached to a principal structure, whether roofed or unroofed, may ~~extend project~~ into up to fifty percent (50%) of the required front yard setback, provided, however, that no such projection shall exceed more than thirty percent (30%) of the width of that façade of the principal structure to which such feature is attached.

(8) Any accessory structure not requiring a building permit under the State Building Code shall require that the owner or applicant obtain a "Letter Permit" from the Zoning Administrator to ensure compliance with applicable provisions of this Ordinance including, without limitation, setbacks, height, and lot-coverage requirements hereof.

(9) An accessory building attached to a principal building shall comply in all respects with the yard requirements of this ~~e~~Ordinance for the principal building, and shall not interfere in any way with access to parking spaces in off street parking areas.

(10) A detached accessory building or structure within the side or rear-yard setbacks shall conform to the following provisions, in addition to any other provisions of this Ordinance. It shall ~~be~~:

a. ~~be~~ set back from all streets by the public way the required front yard distance for the district in which it is located;

b. ~~be set back~~ at least six (6) feet from any side and rear lot line ~~or~~ and also at least ten (10) feet from any lawfully existing principal building or structure located on an abutting lot ~~property~~; and

c. ~~be separated from the principal building or structure on the subject lot a minimum of three (3) feet; and~~

d. ~~cover no more of the ground than an building area measuring 528 square feet and have no wall length exceeding more than not exceed twenty-two (22) feet by~~ twenty-four (24) feet ~~in dimension~~, nor shall it exceed fifteen (15) feet in height.

e. Garages or other such accessory structures, whether attached or detached, that exceed the above dimensions shall conform to the height, front, side and rear yard setback requirements within Section VI-I and any other requirements applicable to accessory buildings or structures in the zoning district where located.

f. In-ground and above-ground pools shall be located in the side or rear yard only, and not in the front setback, and are subject ~~only~~ to the six (6) foot lot-line setback restrictions as herein stated but need not be located at least ten (10) feet from any lawfully existing principal building or structure located on an abutting lot.

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

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

Accessory buildings or structures used for accessory purposes in all residential (R) districts beyond those permitted in section VI-F shall not exceed a height of twenty (20) feet.

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

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

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

Comment [AP11]: Awaiting guidance from legal counsel on this provision (i.e. staff level “waiver” of a dimensional standard related to traffic engineering/safety).

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

Solely outside of the Downtown Overlay District (DOD), where awnings require review and approval as provided under Section XXVII of this Ordinance, aawnings for business

or industry ~~will be~~ **shall be** allowed **by right** in any district. They may extend from the building a maximum of five (5) feet and the lowest point of the awning or supporting structure must be at least seven (7) feet, six (6) inches above the average finished grade of the area which the awning is intended to shelter. The awning may contain the name of the business or industry, but no other advertising.

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

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

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

1. Generally. It shall be the duty of the ~~Inspector of Buildings~~**inspector of buildings**, or ~~their~~**his** duly authorized agents, to cause any plans, buildings, or premises to be examined or inspected to determine that they are not in violation of provisions of this ~~Ordinance~~**ordinance**. The ~~Zoning Administrator~~**zoning administrator** shall have the independent authority and duty to cause any plans, buildings, or premises to be examined and determine compliance with any and all provisions of this Ordinance. In the case of any disagreement between the ~~Inspector of Buildings~~**inspector of buildings** and the ~~Zoning Administrator~~**zoning administrator** regarding an interpretation of this ~~O~~**o**rdinance, the ~~Zoning Administrator~~**zoning administrator**'s decision shall control.
2. *Violations.* Where the ~~Inspector of Buildings~~**inspector of buildings**, in the course of ~~his~~**their** duties, determines that any plans, buildings, or premises are in violation of the provisions of this ~~O~~**o**rdinance, he shall so inform the ~~Zoning~~**zoning**

~~Administrator zoning administrator~~. In such case, or if the **Zoning Administrator zoning administrator** in the course of ~~their~~**his or her** duties determines that any plans, buildings, or premises are in violation of the provisions of this ~~Ordinance ordinance~~, the **Zoning Administrator zoning administrator** shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such action, and the penalties and remedies which may be invoked by the ~~City city~~, and the violator's right of appeal; all as provided for by this **Section X-C section**.

On the serving of notice by the ~~Zoning Administrator zoning administrator~~ to the owner for any violation of any provisions of this ~~Ordinance ordinance~~, a new certificate of occupancy shall be required for any further use of such building or premises.

3. *Records.* The **Inspector of Buildings and Zoning Administrator inspector of buildings** shall maintain ~~a~~ permanent public records of all matters considered and all actions taken by ~~their respective his or her~~ offices, ~~or by the zoning administrator~~. All such records, as well as the permanent public record of all matters considered and all action taken pursuant to this ~~Z zoning~~ **O ordinance**, or chapters 5, 12 or 16 of the Newburyport Code, by any city official, board, commission, or department and maintained by it, shall be deemed to form a part of the records of the **Inspector of Buildings and Zoning Administrator inspector of buildings**.

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

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

The **Zoning Administrator and Inspector of Buildings shall each** prepare a monthly report for the City Council, which ~~inspector of buildings and the zoning administrator shall each prepare a monthly report for the city council. Said~~ report

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

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

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

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

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

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

An application for a building permit and/or certificate of occupancy for any industrial use in any district ~~believed by the building inspector~~ determined by either the Inspector of Buildings or the Zoning Administrator to be potentially in conflict with the performance standards shall be accompanied by a plan in quadruplicate of the proposed construction or development, including a description of the proposed machinery operations and products and specifications for the mechanisms and techniques to be

used in restricting the emission of dangerous and objectionable elements. One (1) copy of said plans and descriptions shall be filed with the Inspector of Buildings~~building inspector~~, one (1) with the Zoning Administrator~~zoning administrator~~, one (1) with the Director of Planning and Development~~Planning Board~~planning board and one (1) with the City Council~~city council~~. ~~The fee for such applications shall include the cost of the special reports required herein.~~

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

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

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

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

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

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

No vote to adopt any such Zoning Ordinance or amendment shall be taken until a report with recommendations by the Planning Board~~planning board~~ has been submitted to the City Council~~city council~~, or twenty-one (21) days after said hearing have elapsed without submission of such report or recommendations. After such notice, hearing and report, or after twenty-one (21) days shall have lapsed after such hearing without submission of such report, ~~the City Council~~~~city council~~ may adopt, reject or amend any such proposed Ordinance. If the City Council~~city council~~ fails to vote to adopt any proposed Ordinance or amendment within ninety (90) days after such hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as above provided.

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

Comment [AP12]: Duplicate phrase removed.

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

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

No claim of invalidity of this Ordinance~~zoning ordinance~~ arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceeding and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity

unless within ~~ninety (90) one hundred and twenty (120)~~ days after adoption of this Ordinance or amendment legal action is commenced and notice specifying the court, parties, invalidity claimed, and date of filing is filed, together with a copy of the petition with the ~~City Clerk~~ city clerk within seven (7) days after commencement of the actions.

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

XXII – RESERVED.

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

XXV – RESERVED.

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

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

Advisory reports: Pursuant to M.G.L. c. 44, § 53G, and to aid the SPGA in its review, the ~~applicant owner~~ shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant ~~selected~~ **deemed necessary** by the SPGA in its reasonable discretion to investigate and prepare a written report upon the existing condition and feasibility of preservation of the historic building or structure proposed for demolition (Conditions Report). The SPGA shall engage such architect, engineer, or specialist

~~no later than ten (10) calendar days by vote at any time~~ after ~~its having~~ opened the required public hearing on the matter. Said Conditions Report shall include an estimate of the reasonable cost to rehabilitate the relevant building or structure to meet the requirements of the State Building Code as it applies to historic buildings or structures. The Conditions Report required in connection with the proposed demolition of an historic building or structure shall not be waived by any City board, commission, or officer, including, without limitation by variance.

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

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

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

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

Advisory reports: Pursuant to M.G.L. c. 44, § 53G, and to aid the SPGA in its review, the ~~applicant owner~~ shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant ~~selected by the SPGA in its reasonable discretion~~ deemed necessary to

investigate and prepare a written report upon the existing conditions and feasibility of preservation of the relevant historic exterior architectural features (Conditions Report). Said Conditions Report shall include an estimate of the reasonable cost of all work required to preserve, rehabilitate, or restore the relevant historic exterior architectural features. The SPGA shall engage such architect, engineer, or specialist ~~no later than ten (10) calendar days~~ **by vote at any time** after ~~its having~~ **opened** the required public hearing on the matter, unless the Conditions Report required in connection with the proposed demolition of historic exterior architectural features is waived by unanimous vote of the SPGA.

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

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

Comment [AP13]: Additional clarifying language suggested by Glenn Richards to parallel language in the section above (previous page).

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

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

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

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

AND FURTHER, THAT subsection 2 of Section XXVIII-D of the Zoning Ordinance entitled "Definitions" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

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

Comment [AP14]: The original draft amendment sought to codify interpretation and application of the existing ordinance provisions with clearer and more explicit language (same effect, but with greater clarity for all reading the Ordinance). Legal counsel has confirmed that the current DCOD Ordinance can be read as to encompass exterior framing, siding and the underlying sheathing.

There has been substantive debate as to whether or not the City/Council policy is to protect older sheathing, or use it as a regulatory "trigger" for board review given that sheathing would not be visible to the public. The Ordinance already allows replacement of siding, which is visible to the public.

With this change replacement of sheathing would be permitted as-of-right and clarified as such within the DCOD.

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

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

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

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

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

Comment [AP15]: This new provision addresses the relocation of historic buildings or structures rather than their demolition.

Councillor Jared J. Eigerman

Councillor Heather L. Shand

Councillor Christine E. Wallace