

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

AN ORDINANCE REGARDING ALTERATION AND MAINTENANCE OF THE PUBLIC RIGHT-OF-WAY INCLUDING, BUT NOT LIMITED TO STREETS AND SIDEWALKS

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

THE Code of Ordinances, City of Newburyport, Massachusetts, is amended to add the following:

Chapter 12 – Streets, Sidewalks, and Other Public Places

Article VII – Alterations and Maintenance

Section 12-200 – Purpose.

The intent of this section to create a transparent process for street and sidewalk projects.

Section 12-201 – Definitions.

The following definitions allow to this Article VII:

- 1) **“Alteration”** shall be defined consistently with applicable U.S. Department of Justice and U.S. Department Transportation regulations to mean a change that affects or could affect the usability of all or part of a public street, sidewalk, or within the right-of-way. Alterations include activities such as construction, reconstruction, rehabilitation, resurfacing, widening, grade changes, and projects of similar scale and effect. Some examples of alterations include but are not limited to:
 - a) Street resurfacing or reconstruction, curb and sidewalk installation or reconstruction, drainage and utility installation or reconstruction;
 - b) Crosswalk changes, intersection improvements, complete streets projects or traffic calming retrofits;
 - c) Changes in signage, signals, pavement markings, or anything that changes traffic flow or on-street parking patterns done in the context of an alteration.
- 2) **“Maintenance”** shall be defined consistently with applicable U.S. Department of Justice and U.S. Department Transportation regulations to mean as activities on public streets, sidewalks, or within the right-of-way that do not significantly affect the public's access to or usability of the road. Maintenance includes smaller scale repairs such as emergency work, pavement patching, crack filling and sealing,

sidewalk or curb repairs, minor drainage and utility repairs, re-painting of existing markings, and projects of similar scale and effect. Some examples of maintenance include but are not limited to:

- a) Sidewalk or curb reconstruction as part of the city sidewalk partnership replacement program;
- b) Right-of-way, utility, trench work or driveway opening permits approved separately by the Department of Public Services;
- c) Emergency work as determined by the Director of the Department of Public Services;
- d) Changes in signage, signals, pavement markings, or anything that changes traffic flow or on-street parking patterns done in the context of a maintenance.

Section 12-202 – Approval required.

- a) Alteration of a public street, sidewalk, or right-of-way requires approval by an Order by the City Council.
- b) Maintenance of a public street, sidewalk or within the right-of-way does not require City Council approval.

Section 12-203 – ~~Approval Process~~ Submittal Requirements.

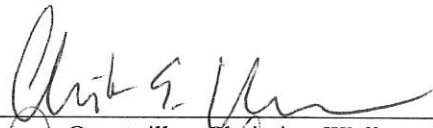
Prior to any alteration of a public street, sidewalk or within the right-of-way, the applicant (including, without limitation, when a City agency or officer is the applicant) shall submit in writing to the City Council the following:

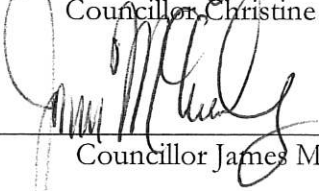
- a) Scope of work, sketch, approximate project schedule, project manager;
- b) Project cost estimates and funding sources;
- c) Construction abutter notification and public communication methods;
- d) Construction staging areas, pedestrian safety, detour routes, and police details;
- e) Location of proposed curb, sidewalk, limits of paving, materials, pavement markings, crosswalks, ADA ramps, signage, traffic-calming elements, complete streets elements, and utilities (if applicable);
- f) Trees being removed or planted

Section 12-204 – Annual Reporting and Planning.

By February 1st of each year, the Department of Public Services, the Planning Department, and any other applicable city department shall submit in writing to the City Council the following information:

- a) A list of street and sidewalk projects completed in the preceding fiscal year (including funds expended broken down by source);
- b) Any request-for-proposals and bid documents generated during the preceding fiscal year;
- c) Any grant submissions or award documents generated or received during the preceding fiscal year;
- d) An up-to-date, street and sidewalk project list for the current calendar year and proposed for the next calendar year that includes approximate scope, costs, and funding sources.



Councillor Christine Wallace, Ward 4


Councillor James McCauley, Ward 5

In City Council July 12, 2021:

Motion to refer to Neighborhood & City Services by Councillor Tontar, seconded by Councillor McCauley. So voted.

In City Council October 25, 2021:

Motion to approve on 1st reading by Councillor Connell, seconded by Councillor McCauley.
Motion to amend by Councillor Wallace, seconded by Councillor McCauley to modify Sec. 12-202 1c to read: "Changes in signage, signals, pavement markings, or anything that changes traffic flow or on-street parking patterns done in the context of an alteration.", the insertion of 12-202 2c that would add "Emergency work as determined by Department of Public Services.", to add to Sec. 12-202 2d which would read: "Changes in signage, signals, pavement markings, or anything that changes traffic flow or on-street parking patterns done in the context of a maintenance.", and in Sec. 12-204 2i to replace the word "approval" with the word "review". Motion to continue to November 8th by Councillor Vogel, seconded by Councillor Connell. Motion withdrawn. Motion to refer back to Neighborhood and City Services with the condition to come out on November 8th by Councillor Connell, seconded by Councillor Vogel. Roll call vote 5 yes (BC, AK, HS, CT, BV), 6 no. Motion fails. Motion to postpone to a date certain, November 8th, by Councillor Zeid, seconded by Councillor Shand. Roll call vote 7 yes, 4 no (JD, BL, JM, JE). Motion passes.

In City Council November 8, 2021:

Motion to move to a date certain, November 29, 2021, by Councillor McCauley, seconded by Councillor Shand. So voted.

In City Council November 29, 2021:

Motion to approve on 1st reading on the floor from 11/8/2021 by Councillor Connell, seconded by Councillor McCauley. Motion to strike "approval process" and insert "submittal requirements" in Sec. 12-203 by Councillor Vogel, seconded by Councillor Shand. Roll call vote. 7 yes, 4 no (BL, JM, BC, JD). Motion passes. Motion to approve as amended by Councillor Khan, seconded by Councillor Tontar. Roll call vote. 7 yes, 4 no (AK, CT, HS, BC). Motion passes.

In City Council December 13, 2021:

Motion to approve on second reading by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 7 yes, 4 no (HS, CT, BC, AK). Motion passes.

Approve: _____
Donna D. Holaday, Mayor

Attest: _____
Richard B. Jones, City Clerk

Date: _____



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

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2021 DEC 22 AM 11:55

60 PLEASANT STREET - P.O. Box 550

NEWBURYPORT, MA 01950

978-465-4413 PHONE

978-465-4402 FAX

To: President Eigerman & City Councilors

Re: Veto of Ordinance 84: Alteration and Maintenance of the Public Right-of-Way Including, but not limited to Streets and Sidewalks

Date: December 22, 2021

Although I appreciate the modifications made to this original ordinance submitted in July of 2021, the final document continues to violate the Charter which expressly prohibits the City Council for interfering with Administration and directing operations. The reason for this prohibition is the mayor, as chief executive officer, understands the depth of operations of the city and is responsible for the oversight and function. The mayor works closely with DPS each year to identify the roads and streets prioritized for paving and repairs based on assessments developed by Beta Engineering and other factors including needed infrastructure upgrades (water, sewer and gas), impact of winter season and equitable work distributed among the wards. The Beta Engineering assessment should be posted for public review with the understanding it is not the final determinative factor.

One of the greatest concerns regarding this ordinance is the failure to recognize and understand the complexity of securing contractors from a very limited pool and maintaining work flow. To illustrate this, the City contracts with a paving company that begins work and needs to make an "alteration" resulting in work stoppage, communication must then be sent to the City Council for approval and the order is sent to committee for review. This typically takes two readings or a month- where do you think this contractor will be? Obviously in another community and maybe unable to return during the season.

The City Council has not thought this through and your process of review was greatly flawed. It is highly disrespectful to create such a sweeping change to a major department's operations without discussion with the mayor or the impacted department. It was only after criticism that councilors finally obtained input from the director and deputy director.

There is no question that roads and sidewalks continue to be a priority but there were significant capital needs that had to be balanced with appropriation of funding, i.e., school buildings, senior community center, trucks that passed inspections, IT and so much more. We have made great advances and the work will continue but the City Council needs to recognize their role as the legislative body of the city and stay out of operations.

Donna D. Holaday, Mayor