

Town of Amherst

UNOFFICIAL RECORD OF VOTES OF THE TOWN COUNCIL

Monday, November 9, 2020

6:30 p.m.

Virtual Meeting

Members Participating Remotely: Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, Steinberg

Members Absent: Swartz

Others Participating Remotely: Town Manager Paul Bockelman, Vice Chancellor of University Relations John Kennedy, Vice Chancellor for Student Affairs and Campus Life Brandi Hephner LaBanc, Dean of Students Evelyn Ashley, Public Health Director Ann Becker, Associate Vice Chancellor for University Relations Nancy Buffone, Executive Director of Environmental Health and Safety and Emergency Management Jeff Hescocock, Associate Dean of Students Sally Linowski, and Executive Director of External Relations, University Events Tony Maroulis, Building Commissioner Rob Morra, Planning Director Chris Brestrup, Planning Board Chair Jack Jemsek, Wild Animal Bylaw Sponsors Rebecca Schwartz and Laura Hagen, and Clerk of the Council Athena O'Keeffe

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, this meeting of the Town Council is being conducted via remote participation.

All votes were taken by roll call.

Per MGL Chapter 30A Section 20(f), this meeting is being recorded and broadcast by Amherst Media.

President Griesemer called the meeting to order at 6:48 p.m.

5. Consent Agenda

Consent Agenda: The following items were selected because they were considered to be routine and it was reasonable to expect they would pass with no controversy. To remove an item from the consent agenda for discussion later in the meeting, ask that it be removed when the President lists the consent agenda items. The request to remove an item from the consent agenda does not require a second.

MOTION: To move the following items, and the printed motions thereunder and approve those items as a single unit:

- 6.a. Small Business Saturday[®] Proclamation
- ~~8.c. Adoption of the Master Plan~~ removed by Councilor DuMont
- 8.g. Suspension of Town Council Rules of Procedure rule 8.4 for agenda item 8.g.
- 8.g. Amend Council Order FY20-68: An Order Appropriating and Approving Borrowing for a Portion of the Town of Amherst FY2020 Capital Program – Elementary School Feasibility Study
- 9.a.1-4. Approval of Town Manager Appointments to the following multiple-member bodies:
 - ~~Community Safety Working Group~~ removed by Councilor DuMont
 - Council on Aging
 - Design Review Board
 - Munson Memorial Library Building Trustees
- 9.a.4. Designation of Special Municipal Employee (SME) status for the Community Safety Working Group
- 11.a. Approval of Minutes:
 - October 19, 2020 Town Council Meeting minutes

Motion by: Griesemer

Seconded by: De Angelis

ROLL CALL VOTE: 12-0 (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, Steinberg voted Yes; Councilor Swartz was absent)

6. Resolutions

a. Small Business Saturday® Proclamation

VOTED VIA CONSENT AGENDA:

MOTION: To adopt the Small Business Saturday® Proclamation, as presented.

8. Action Items

a. Appropriation outside the annual budget – Council Order FY21-05B Capital Improvement Program - Purchase of a new ambulance – First Discussion 11-09-20, Public Forum scheduled 11-16-20 Charter Sec. 5.6

b. Amendments to Zoning Article 14, Temporary Zoning – First Reading Charter Sec. 2.10(a)

c. Adoption of the existing Master Plan Charter Sec. 9.8

MOTION: To request that the Planning Board amend the February 3, 2010 Master Plan to reference any Climate Action Plan and any Housing Plan adopted by this or any future Town Council.

Motion by: Griesemer

Seconded by: De Angelis

The motion was withdrawn.

MOTION: To amend the motion to read:

To request that the Planning Board amend the Feb. 3, 2010 Master Plan to integrate any Climate Action Goals and Plans, Housing Plans, and other townwide plans, or parts thereof, adopted by this or any future Council.

Motion by: DuMont

Seconded by: Pam

ROLL CALL VOTE: 2-10 (Councilors DuMont and Pam voted Yes; Councilors Bahl-Milne, Brewer, De Angelis, Griesemer, Hanneke, Ross, Ryan, Schoen, Schreiber, and Steinberg voted No; Councilor Swartz was absent). **The motion failed.**

MOTION: To adopt, in accordance with Charter Sec. 9.8(b), the Master Plan that was adopted and approved by the Planning Board on February 3, 2010, as presented.

Motion by: Griesemer

Seconded by: Hanneke

ROLL CALL VOTE: 9-2-1 (Councilors Bahl-Milne, Brewer, De Angelis, Griesemer, Hanneke, Ross, Ryan, Schreiber, and Steinberg voted Yes; Councilor DuMont and Pam voted No; Councilor Schoen Abstained; Councilor Swartz was absent)

d. Prohibiting the Use of Wild and Exotic Animals in Traveling Shows and Circuses Bylaw – First Reading Charter Sec. 2.10(a)

e. Wage and Tip Theft Bylaw – Second Reading, Charter Sec. 2.10(a)

MOTION: To adopt the Wage and Tip Theft Bylaw as a General Bylaw of the Town, as follows:

3.XX WAGE AND TIP THEFT

PENALTIES FOR VIOLATION OF THE WAGE AND TIP THEFT BYLAW

Noncriminal Disposition for first violation: warning notice to the Employer which will specify the violation and the appropriate penalties in the event of future violations. (enforcement by: Board of License Commissioners, Human Rights Director, or Police Department)

Noncriminal Disposition for second, and subsequent violations: \$300 per violation (enforcement by: Board of License Commissioners, Human Rights Director, or Police Department)

See Section G.4 for non-monetary penalties

A. Purpose

The purpose of this Bylaw is to ensure that Employers operating in the Town of Amherst comply with state and federal wage and tip laws and to require Employers to notify Employees in writing of their rights.

B. Definitions

1. “Administrative Citation” means a civil citation issued by the attorney general pursuant to M.G.L. Ch. 149 Sec. 27C, a civil citation issued by the Department of Labor pursuant to 29 U.S.C. Sec. 201 et seq. and/or 29 C.F.R. Sec. 578, any other civil citation for violation of M.G.L. Ch. 149 or c. 151 and/or 29 U.S.C. Sec. 201 et seq. issued by any other federal, state, or local administrative agency, or penalties, fines, or findings of violations of Amherst’s Wage and Tip Theft, Responsible Employer, or Tax Relief Bylaws.
2. “Adverse Action” means denying a job or promotion; demoting, terminating, or failing to rehire after a seasonal interruption of work; threatening, penalizing, retaliating, or engaging in unfair immigration practices; filing a false report with a government agency; changing an Employee’s status to a non-Employee; or otherwise discriminating against any person for any reason prohibited by this Bylaw. “Adverse Action” for an Employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and conditions of employment.
3. “Compensation” means payment owed to an Employee by reason of employment including, but not limited to, salaries, wages, Tips, overtime, commissions, Piece Rate, bonuses, rest breaks, promised or legislated paid leave, and reimbursement for Employer expenses. For reimbursement of Employer expenses, and Employer shall indemnify the Employee for all necessary expenditures or losses incurred by the Employee in direct consequence of the discharge of the Employee’s duties, or of the Employee’s obedience to the directions of the Employer, even though unlawful, unless the Employee, at the time of obeying the directions, believed them to be unlawful.
4. “Employ” means to suffer or permit to work.
5. “Employee” means any individual who performs services for and under the control and direction of an Employer for wages or other remuneration, including but not limited to fulltime Employees, part-time Employees, and temporary workers. An Employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged Employer.
6. “Employer” means any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work:
 1. in the Town of Amherst;
 2. under a contract to which the Town of Amherst or one of its Departments is signatory;
 3. under an agreement with the Town for tax relief; or
 4. who otherwise maintains a commercial presence in the Town of Amherst.
7. “Front Pay” means the Compensation the Employee would earn or would have earned if reinstated to the Employee’s former position.
8. “Pay Day” means a specific day or date established by the Employer on which wages are paid for hours worked during a Pay Period.
9. “Payment Interval” means the amount of time between established Pay Days. A Payment Interval may be daily, weekly, bi-weekly, semi-monthly, or monthly.
10. “Pay Period” means a defined time frame for which an Employee will receive a paycheck. A Pay

Period may be daily, weekly, bi-weekly, semi-monthly, or monthly.

11. "Piece Rate" means a price paid per unit of work.
12. "Respondent" means an Employer or person who is alleged or found to have committed a violation of this Bylaw.
13. "Successor" means any person to whom an Employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the Employer's business, a major part of the property or interest, whether real or personal, tangible or intangible, of the Employer's business. For purposes of this definition, "person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.
14. "Tip" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the Employee receiving the Tip.
15. "Town" means the City known as the Town of Amherst.

C. Town Human Rights Director Requirements and Responsibilities

1. On a biannual basis, the Town Human Rights Director shall review Wage and Tip Theft complaints filed with the Town or with the Attorney General, of which the Director is aware, and provide advice to the Town Manager on the implementation and effectiveness of the Wage and Tip Theft Bylaw.
2. The Town Human Rights Director shall coordinate any response to complaints filed that is required by the Bylaw or otherwise allowed by law.
3. The Town Human Rights Director may offer referrals to appropriate state agencies to Employees affected by wage and tip theft in Amherst.
4. The Town Human Rights Director, working with the Human Rights Commission, may offer education and guidance to Employees and Employers regarding wage and tip theft in Amherst and elsewhere.
5. The Town Human Rights Director, working with the Human Rights Commission, shall publish an annual report detailing:
 - a. The number of wage and tip theft complaints received by the Town and the actions taken in response to such complaints, including how many complaints resulted in findings of violations, where available;
 - b. Civil and criminal judgments issued by the state and federal courts, Administrative Citations, and final administrative orders, including but not limited to Debarments, against Employers operating in the Town of Amherst pursuant to M.G.L. Ch. 149 and M.G.L. Ch. 151, if known; and
 - c. Any recommendations for revision of the Wage and Tip Theft Bylaw.
6. On a biannual basis, the Town Human Rights Director shall request to meet with the Office of the Attorney General concerning the rate, type, and scope of complaints involving Employers operating in the Town and the role of the Town, including coordination, with respect to issues of wage and tip theft in the Town.

D. Notice and Posting Requirements

1. The Town shall create and distribute or otherwise make available to all Employers a Wage and Tip Theft Bylaw Rights Poster giving notice of the rights afforded by federal and state Law, as well as this Bylaw. To the extent possible, the Town shall build on posters in multiple languages that are available from the Attorney General's office.
 - a. The Wage and Tip Theft Bylaw Rights Poster shall give notice of:
 1. The right to be paid all Compensation owed by reason of employment on an established regular Pay Day at no longer than monthly intervals as guaranteed under the terms of this Bylaw;
 2. The right to be protected from retaliation for exercising in good faith the rights protected by this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or

- federal laws regulating the payment of Compensation;
3. The right to file a worker's compensation claim; and
 4. The right to file a complaint with the Town or Attorney General or bring a civil action for violation of the requirements of this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation including an Employer's failure to pay all Compensation owed by reason of employment, and an Employer or other person's retaliation against an Employee or other person for engaging in an activity protected by this Bylaw.
- b. Employers shall display the Wage and Tip Theft Bylaw Rights Poster in English, Spanish, and any language spoken by at least one-third of Employees at the workplace in a conspicuous and accessible place at every workplace or job site where any of their Employees work. If display of the Wage and Tip Theft Bylaw Rights Poster is not feasible, including situations when the Employee works remotely or does not have a regular workplace or job site, Employers shall provide the Wage and Tip Theft Bylaw Rights Poster on an individual basis, in English, Spanish, and any language spoken by at least one-third of Employees at the workplace in physical or electronic format.
2. The Town shall create and distribute or otherwise make available a model Notice of Employment Information, which shall be used by an Employer and shall include but not be limited to the items below.
- a. An Employer's written or electronic Notice of Employment Information shall include the following items:
 1. Name of Employer and any trade ("doing business as") names used by the Employer;
 2. Physical address of the Employer's main office or principal place of business and, if different, a mailing address;
 3. Telephone number and, if applicable, email address of the Employer;
 4. Employee's rate or rates of pay, and, if applicable, eligibility to earn an overtime rate or rates of pay;
 5. Employer's Tip policy, with an explanation of any Tip sharing, pooling, or allocation policies;
 6. Pay basis (e.g. hour, work shift, day, week, commission);
 7. Employee's established Pay Day;
 8. A written good faith estimate of the Employee's work schedule including the median number of hours the Employee can expect to work each work week, and whether the Employee will be expected to work on-call shifts.
 - b. Employers shall give written or electronic Notice of Employment Information to Employees in English, Spanish, and any language spoken by at least one-third of Employees at the workplace.
 - c. Employers shall give this written or electronic Notice of Employment Information to Employees at time of hire and, for those Employees who work for the Employer as of the effective date of this Bylaw, within 90 days of the effective date of this Bylaw.
 - d. Employers shall revise the written or electronic Notice of Employment Information before any change to the employment information contained in the Notice of Employment, or as soon as practicable for retroactive changes to such employment information. For the written or electronic good faith estimate of the Employee's work schedule in Subsection 2.a.8. above, the Employer is required to revise the notice once every year and when there is a significant change to the work schedule due to changes in the Employee's availability or to the Employer's business needs.
 - e. Failure to give this written or electronic Notice of Employment Information shall be a violation of this Bylaw and, should a complaint relative to Compensation be filed by an Employee with the Attorney General or other appropriate state or federal agency, the Town shall provide certified copies of any findings of violation to such agency.
3. On each Pay Day, Employers shall give written or electronic notice to each Employee containing the following information:
- a. All hours worked with regular and overtime hours shown separately;
 - b. All rates of pay whether paid on hourly, salary, commission, Piece Rate or combination thereof,

or other basis during the Pay Period. Workers paid on rate other than hourly or salary are entitled to a detailed printed accounting of commissions, Piece Rate or other methods of payment earned during the Pay Period;

- c. Tip Compensation;
- d. Pay basis (e.g. hour, shift, day, week, commission);
- e. Gross wages; and
- f. Itemized list of all deductions for that Pay Period.

E. Employer records

1. Each Employer shall maintain payroll records that document each Employee's name, address, date of birth if under 18 years of age, occupation, dates of employment, rate or rates of pay, , time of day and day of the week that each Employee's work week begins, hours worked each day and each work week, total daily or weekly earnings at straight-time rate, total overtime earnings for weeks in which overtime was worked, date of payment and the dates of Pay Period covered, total payment for each Pay Period, total Tips for each Pay Period if applicable, all additions or deductions for each Pay Period and a record of the additions or deductions from pay. Such records shall be retained for a period of 3 years from the date of the applicable Pay Period, or for such longer period required by law.

2. If, following a request from the Town to produce such records, an Employer fails to make the same available, the Town may report the same to the Attorney General and may take whatever additional action as may be necessary and appropriate under this Bylaw.

F. Retaliation Prohibited

1. In accordance with law, no Employer or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.

2. In accordance with law, no Employer or any other person shall take any Adverse Action against any person because the person has exercised in good faith the rights protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation. Such rights include but are not limited to:

- a. The right to make inquiries about the rights protected under law relative to wages and hours;
- b. The right to inform others about their rights under state and federal law relative to compensation, and their right to notice of these rights under this Bylaw;
- c. The right to file a worker's compensation claim;
- d. The right to inform the person's Employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of state and federal law relative to compensation, and their right to notice of these rights under this Bylaw;
- e. The right to file an oral or written complaint with the Town for a violation of this Bylaw or with the Attorney General's Office or to bring a civil action for an alleged violation of M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation;
- f. The right to cooperate with the Town in its investigations of complaints filed under this

Bylaw;

- g. The right to testify in a proceeding under or related to this Bylaw; and
- h. The right to oppose any policy, practice, or act that is unlawful under M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.

3. No Employer or any other person shall communicate to a person exercising rights protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation directly or indirectly the willingness to inform a government Employee that the person is not lawfully in the United States, or to report, or to make an

implied or express assertion of a willingness to report, suspected citizenship or immigration status of an Employee or a family member of the Employee to a federal, state, or local agency because the Employee has exercised a right under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.

4. Standard of proof. A finding by the Attorney General of retaliation under state or federal law shall be sufficient to show retaliation under this Bylaw.

5. The protections afforded under this Bylaw shall apply to any person who mistakenly but in good faith alleges violations of this Bylaw.

G. Enforcement, Violations, and Penalties

1. The Board of License Commissioners and the Town Human Rights Director shall be authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this Bylaw or to obtain compliance with this Bylaw.

2. The Town Human Rights Director and the Police Department shall have the power to investigate violations of Section D of this Bylaw, and, to the extent consistent with law, with Section E and F of this Bylaw, pursuant to their own initiative or upon receipt of a report or complaint filed by an Employee or any other person.

3. Filing and Receipt of Complaints:

a. Any complaint or other communication about a violation of this Bylaw, if the complainant decides to file with the Town, shall be filed with the Town Human Rights Director. The Town Human Rights Director shall notify the Town of Amherst Procurement Officer, the Board of License Commissioners, Amherst Police Chief, and the Attorney General's Office of the complaint, as appropriate.

b. A complaint or other communication to the Human Rights Director about a violation of this Bylaw or state or federal laws regulating the payment of Compensation shall be deemed sufficiently filed, regardless of whether the complaint or communication makes explicit reference to the Bylaw.

c. The Town shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. However, with the authorization of such person or when otherwise required by law, the Town may disclose the Employee's or person's name and identifying information as necessary to enforce this Bylaw or for other appropriate purposes.

4. Additional Penalties

a. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of a remedy by the Town shall not preclude enforcement through other lawful means.

b. The Board of License Commissioners may, after notice and a hearing, deny, revoke, or suspend any license or permit, including renewals and transfers, of any party who has been found in violation of this Bylaw or has been subject to a criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation, should said Board determine that the actions of the party are inconsistent with the terms or conditions of any license or permit.

c. The Board of License Commissioners may require any licensee or prospective licensee who has been found in violation of this Bylaw or has been subject to a criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation to provide a wage bond. Wage bonds shall be fixed as follows:

1. For the first year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount of 3 times the amount imposed upon the judgment for wage law violation.

2. For the second year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount of 2 times the amount imposed upon the judgment for wage law violation.

3. For the third year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount imposed upon the judgment for wage law violation.
 4. No bond may be required after the third year provided that the licensee is not subject to further judgment for wage law violation. Any new violation shall cause the 3-year clock to reset, and the bond may be imposed as provided in this Subsection C.
- d. Prospective licensees shall disclose any criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation for wage law violation within the preceding 3 years, and, if so, said prospective licensees may be required to comply with the provisions of Subsection C, above, based upon the year in which the judgment was imposed, be subject to additional reporting requirements or other conditions to ensure that Employees are properly compensated for their work in accordance with law.

H. Requirements for Successors-In-Interest

The requirements of this Bylaw, including any sanctions imposed hereunder, applicable to any Employer shall also be applicable to, and effective against, any successor Employer that (1) has at least 1 of the same principals or officers as the prior Employer; and (2) is engaged in the same or equivalent trade or activity as the prior Employer.

I. Other legal requirements

1. This Bylaw defines requirements for Employer notification to Employees performing work within Town limits concerning Compensation and claims with respect thereto and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for more stringent requirements with respect to Compensation obligations. Nothing in this Bylaw shall be interpreted or applied so as to create any power or duty in conflict with federal or state law, and such laws shall supersede any inconsistent provisions set forth herein. This Bylaw shall not be construed to preclude any person aggrieved from seeking judicial review of any final decision or order made under this Bylaw.
2. Each day or portion thereof a violation of this bylaw exists shall constitute a separate offense. If more than 1 provision of this bylaw is violated, each condition violated or Employee aggrieved shall constitute a separate offense.
3. Each provision of this Bylaw shall be construed as separate to the extent that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

Motion by: De Angelis

Seconded by: Scheon

ROLL CALL VOTE: 12-0 Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, Steinberg; Councilor Swartz was absent

f. Responsible Employer: Public Construction Contracts and Agreements for Tax Relief Bylaw – Second Reading, *Charter Sec. 2.10(a)*

MOVED: To rescind in its entirety General Bylaw 3.4 – Responsible Employer for Public Construction Projects and to adopt the Responsible Employer: Public Construction Contracts and Agreements for Tax Relief Bylaw as a General Bylaw of the Town, as follows:

3.XX – RESPONSIBLE EMPLOYER: PUBLIC CONSTRUCTION CONTRACTS AND AGREEMENTS FOR TAXRELIEF

A. Purpose

The purpose of this Bylaw is to ensure that the Town of Amherst awards contracts for goods and services and public construction and grants tax relief agreements only to responsible contractors and

sponsors who certify their compliance with wage and hour laws and to provide a means of enforcement through written contracts at the outset of awards and appropriate remedies.

B. Definitions

1. "Amherst Resident" means any person domiciled in Amherst, in accordance with the Amherst Home Rule Charter, Sec. 1.7.
2. "Contractor" means:
 - a. any bidder or proposer;
 - b. any person that has furnished or seeks to furnish supplies or services under a contract with a public agency or with a person under a contract with a public agency.
 - c. construction manager;
 - d. general contractor, other lead or prime contractor, or any entity functioning in any such general contractor capacity;
 - e. Subcontractor, as defined by this Bylaw.
3. "Sponsor" means the recipient of Tax Relief.
4. "Subcontractor" means:
 - a. any person who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than a subcontractor.
 - b. Trade contractor;
 - c. a subcontractor not subject to M.G.L. Ch. 149 Sec. 44F, and any other contractor, subcontractor of any tier, or other person that is engaged to perform construction work under the bidder or contractor for projects subject to M.G.L. Ch. 149 Sec. 44A(2) or M.G.L. Ch. 30 Sec.39M proposers or contractor under M.G.L. Ch. 149A.
5. "Person of Color" means:
 - a. African-American - All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
 - b. Hispanic - All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.
 - c. Asian American - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands;
 - d. Indigenous, American Indian or Native American - All persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization; or
 - e. Eskimo or Aleut - All persons having origins in the original peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.
6. "Tax Relief" means any form of tax relief granted by the Town under a Tax Incentive Financing ("TIF") Agreement (M.G.L. Ch. 40 Sec. 59), or pursuant to any other provision of law or regulation authorizing the Town to grant tax relief. Tax Relief, as defined, shall not include relief granted under M.G.L. Ch. 59 Sec. 5. .
7. "Veteran" means a person who has served in any branch of the United States Armed Forces and was not dishonorably discharged.

C. Municipal Construction Contracts

1. Whenever the Town of Amherst is procuring construction services subject to the provisions of M.G.L. Ch. 149, Ch. 149A, or Ch. 30 Sec. 39M, Sections B, C.2, C.3, C.4, C.5, C.6, and C.7 of this Bylaw shall be incorporated into the procurement documents and shall be made part of the specifications and contract. Any person, company, or corporation shall acknowledge, in writing, receipt of the

requirements and obligations set forth in this Bylaw with their bid or proposal.

2. As a condition for bidding or subcontracting, all Contractors shall verify under oath and in writing at the time of bidding, submittal in response to an RFP, or prior to entering into a contract or subcontract at any tier that they comply with the following conditions for bidding or subcontracting, and, for the duration of the project, shall comply with the following obligations:
 - a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years.
 - b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws.
 - c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage included with the Contractor's submitted bid, application process, or prior to commencing any work, to be maintained as a public record.
 - d. The Contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification).
 - e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages.
 - f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority and any other applicable law relating to health and hospitalization.
 - g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts and are equally qualified, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties.
 - h. The Contractor shall endeavor to provide employment in the amount of 15.3% of the Contractor's hours worked on the project to People of Color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, or has no additional hires to make in connection with the project, the Contractor shall certify to the Town, under oath, that compliance with this section was not possible or practicable under the particular circumstances applicable to the Contractor, and submit documentation detailing efforts to meet these requirements.
 - i. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing workforce hiring commitments in Sections C.2.g and C.2.h above.
 - j. The Contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a weekly basis with the certified payrolls and shall be a public record.
 - k. The Contractor shall submit weekly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes each employee's full name, address, identifying number, gender and whether the person is a Person of Color, and which tabulates hours worked for females, People of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10

card for every employee attached to the first certified payroll they submit on which the employee appears.

3. A proposal or bid submitted by any Contractor that does not certify compliance with the requirements and obligations set forth in Section C.2. of this Bylaw for bidding shall be rejected. 4. No subcontract for work outside the scope of M.G.L. Ch. 149 Sec. 44F shall be awarded to a Subcontractor that does not comply with the requirements and obligations set forth in Section C.2. of this Bylaw, except as otherwise provided by law.

5. All Contractors who obtain contracts on projects subject to M.G.L. Ch. 149 Sec. 44A(2), Ch. 149A, or Ch. 30 Sec. 39M shall comply with each of the requirements and obligations set forth in this Bylaw for the entire duration of their work on the project, and an officer of each separate Contractor shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.

6. Any Contractor that fails to comply with any one of obligations set forth in this Bylaw for any period of time shall, at the sole discretion of the Town, and in accord with any applicable contract, be subject to 1 or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the Town in the amount of 5% of the dollar value of the contract.

7. In addition to the remedies outlined in Section C.6 above, a Contractor, to the extent consistent with law and terms of the contract with the Town, shall be equally liable for the violations of its Subcontractors except for violations arising from work performed pursuant to subcontracts that are subject to M.G.L. Ch. 149 Sec. 44F. Any Contractor or Subcontractor that has been determined by the Town or by any court or agency to have violated any of the obligations set forth in this Bylaw shall, to the extent consistent with law, be barred from performing any work on any future projects for 6 months for a first violation, 3 years for a second violation, and permanently for a third violation.

D. Requirements for The Grant of Tax Relief

1. In addition to any other conditions that may be required in connection with Tax Relief granted by the Town, each Tax Relief Agreement ("Agreement") entered into between the Town and the Sponsor shall be subject to and shall include, to the extent consistent with law, the definitions set forth in Section B. and the mandatory conditions set forth in Sections D.2., D.3., and E. below.

2. It shall be a special and material condition of this Agreement that any construction manager, general contractor or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person that is engaged to perform the construction work during the term of this Agreement (hereinafter, collectively and individually, the "Contractor") on the property that is the subject of the Agreement shall comply with the following qualifications and conditions at all times during their performance of work on the property:

a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years;

b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws;

c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage to the Town with the Contractor's submitted bid, application, or prior to commencing any work, to be maintained as a public record;

d. The Contractor shall properly classify employees as employees rather than independent contractors using applicable federal and state law and shall treat them accordingly for purposes of

prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification);

e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages;

f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority;

g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts and equally qualified, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties;

h. The Contractor shall endeavor to provide employment in the amount of 15.3% of the Contractor's hours worked on the project to People of Color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, or has no additional hires to make in connection with the project, the Contractor shall certify to the Town, under oath, that compliance with this section was not possible or practicable under the particular circumstances applicable to the Contractor and submit documentation to the Town detailing efforts to meet these requirements;

i. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing compliance with these requirements;

j. The Contractor shall make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a monthly basis with the certified payrolls and shall be a public record;

k. The Contractor shall submit to the Town monthly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes the employees full name, address, identifying number, gender and whether they are a Person of Color, and which tabulates hours worked for females, People of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears; and

l. The Sponsor shall provide the Town with a list of all the expected Contractors to work on the project prior to the start of any work on the property subject to the Agreements. The list shall include the name of the primary contact of each Contractor, the Contractor's address, and the Contractor's phone number or email address. The signatory to the Agreement shall provide the Town with an updated list within 14 days of any additional or replacement Contractors performing work on the project and a final all-inclusive list to the Town within 30 days of the conclusion of the project.

3. When seeking Tax Relief granted by the Town, the Sponsor shall certify as part of the request or application process that any Contractor or Subcontractor previously determined by the Town or by any court or agency to have violated any of the requirements set forth in Sections C., D.2., and E. of this Bylaw for the previous 5 years shall not be hired to perform work on the project.

E. Noncompliance and Complaints – Grant of Tax Relief

1. If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of the foregoing qualifications and conditions with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Agreement and any

certification by the state was intended to advance. In such an event, the Tax Relief granted by this Agreement shall be terminated upon written notice by the Town to the Sponsor, and the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement. Where required, the Town shall petition the appropriate state agency or body for revocation of the certification or approval of the grant of Tax Relief and, upon notice of revocation, the tax relief provided by this Agreement shall be terminated, and, to the extent consistent with law, the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement.

2. In the event the Sponsor challenges the Town's efforts to invoke the forfeiture/clawback provisions of this Agreement or to obtain revocation by the state, or challenges any decision to revoke any certification or approval of the grant of Tax Relief by the state, the Sponsor shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under the Agreement while any such challenge remains pending. The Sponsor shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under this Agreement while its challenge remains pending. The Sponsor shall promptly provide to the Town documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the Sponsor is unsuccessful in its challenge, the funds in the account shall be paid to the Town. The Sponsor's obligations under this subsection shall be judicially enforceable. It is the intent of the parties to this Agreement that Amherst Residents are third party beneficiaries of this Agreement, and that it may be enforced in a civil proceeding brought by not less than 10 taxable inhabitants.

F. Requirements for Successors-In-Interest

The requirements of this Bylaw, including any remedies imposed herein, that are applicable to any Contractor or Sponsor shall also be applicable to, and effective against, any successor Contractor or Sponsor that (1) has at least 1 of the same principals or officers as the prior Contractor or Sponsor; and (2) is engaged in the same or equivalent trade or activity as the prior Contractor or Sponsor.

Motion by: De Angelis

Seconded by: Hanneke

ROLL CALL VOTE: 12-0 (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, and Steinberg voted Yes; Councilor Swartz was absent)

g. Amend Council Order FY20-68: An Order Appropriating and Approving Borrowing for a Portion of the Town of Amherst FY2020 Capital Program – Elementary School Feasibility Study

VOTED VIA CONSENT AGENDA:

MOTION: To suspend Town Council Rules of Procedure Rule 8.4 for the current agenda item.

VOTED VIA CONSENT AGENDA:

MOTION: To amend an order previously adopted, Council Order FY20-68, by inserting the words shown in **bold** and deleting the language in ~~strikethrough~~:

~~That~~**Be it ordered that** the Town ~~appropriate~~**of Amherst hereby appropriates** the amount sum of Seven Hundred ~~and~~ Fifty Thousand **Dollars** (\$750,000) ~~Dollars~~ for the purpose of paying costs of the Feasibility Study ~~coming~~**described in and resulting** from the **Town's** Statement of Interest **submitted** for ~~the~~ Fort River School, **located at** 70 Southeast Street, Amherst, MA, inclusive of studying a consolidation option involving ~~the~~ Wildwood School, **located at** 71 Strong Street, Amherst, including the payment of all costs incidental or related thereto, and for which the Town of Amherst may be eligible for a grant from the Massachusetts School Building Authority ("MSBA"), said amount to be expended under the direction of ~~the~~ Amherst School Building Committee. ~~To~~; **to** meet this appropriation the Treasurer, with the approval of the Town Manager, ~~is~~ authorized to borrow said amount under and pursuant to ~~M.G.L. Chapter~~ **c. 44,**

or pursuant to any other enabling authority, ~~and to issue bonds or notes of the Town therefor, and further, any premium received by the Town upon the sale of any bonds or notes approved by this vote, less any such premium applied to costs of issuance of such bonds or notes, may be applied to project costs approved by this vote with a reduction of borrowing authority therefore by a like amount in accordance with M.G.L. Chapter 44, Section 20. The;~~ **the Town of Amherst acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town of Amherst incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town of Amherst, and that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Feasibility Study Agreement that may be executed between the Town of Amherst and the MSBA; and, further, that any premium received upon the sale of any bonds or notes approved by this vote, 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 G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.**

So that the order reads:

“Be it ordered that the Town of Amherst hereby appropriates the sum of Seven Hundred Fifty Thousand Dollars (\$750,000) for the purpose of paying costs of the Feasibility Study described in and resulting from the Town's Statement of Interest submitted for the Fort River School, located at 70 Southeast Street, Amherst, MA, inclusive of studying a consolidation option involving the Wildwood School, located at 71 Strong Street, Amherst, including the payment of all costs incidental or related thereto, and for which the Town of Amherst may be eligible for a grant from the Massachusetts School Building Authority (“MSBA”), said amount to be expended under the direction of Amherst School Building Committee; to meet this appropriation the Treasurer, with the approval of the Town Manager is authorized to borrow said amount under and pursuant to G.L. c. 44, or pursuant to any other enabling authority; the Town of Amherst acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town of Amherst incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town of Amherst, and that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Feasibility Study Agreement that may be executed between the Town of Amherst and the MSBA; and, further, that any premium received upon the sale of any bonds or notes approved by this vote, 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 G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.”

9. Appointments

a. Town Manager Appointments

(1) Design Review Board

VOTED VIA CONSENT AGENDA:

MOTION: To approve the following Town Manager appointment to the Design Review Board, effective immediately, as filed with the Town Clerk on November 2, 2020, and recommended by the Town Services and Outreach Committee report of November 5, 2020:

- For a term to expire June 30, 2021:
 - Janet Marquardt, representative of the Historical Commission

(2) Council on Aging

VOTED VIA CONSENT AGENDA:

MOTION: To approve the following Town Manager appointments to the Council on Aging, effective immediately, as filed with the Town Clerk on November 2, 2020, and recommended by the Town Services and Outreach Committee report of November 5, 2020:

- For a term to expire June 30, 2021:
 - Charles (Chad) Fuller
- For a term to expire June 30, 2023:
 - Mila Montemayor

(3) Munson Memorial Building Trustees

VOTED VIA CONSENT AGENDA:

MOTION: To approve the following Town Manager appointments to the Munson Memorial Building Trustees, effective immediately, as filed with the Town Clerk on November 2, 2020, and recommended by the Town Services and Outreach Committee report of November 5, 2020:

- For a term to expire June 30, 2021:
 - Alexander Neifer
- For a term to expire June 30, 2023:
 - Susan Crutch

(4) Community Safety Working Group

MOTION: To approve the following Town Manager appointments to the Community Safety Working Group effective immediately, as filed with the Town Clerk on November 5, 2020, and recommended by the Town Services and Outreach Committee report of November 5, 2020:

- For a term to last the length of the Working Group's efforts:
 - Tashina Bowman
 - Deborah Ferreira
 - Pat Ononibaku
 - Brianna Owen
 - Elisha Walker
 - Paul Wiley

Motion by: DuMont

Seconded by: Ryan

ROLL CALL VOTE: 12-0 (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, and Steinberg voted Yes; Councilor Swartz was absent)

VOTED VIA CONSENT AGENDA:

MOTION: To designate Special Municipal Employee (SME) status for the Community Safety Working Group.

11. Approval of Minutes

a. Approval of minutes

VOTED VIA CONSENT AGENDA:

MOTION: To approve the following Town Council minutes as presented:

- October 19, 2020 Town Council Meeting minutes

The Council adjourned at 10:47 p.m.