

MARBLEHEAD TOWN REPORT

**TOWN OF MARBLEHEAD
TOWN MEETING
MAY 4TH, 2009**

Pursuant to the warrant the inhabitants assembled at the Veterans Middle School Performing Art Center.

At 7:50 PM a quorum being present the Moderator called the meeting to order.

**ARTICLE 1 Articles in Numerical Order
VOTED**

That the articles be taken up in their numerical order.

**ARTICLE 2 Reports of Town Officers and Committees
VOTED**

To receive the report of the Town Accountant, the reports of the Town Officers, and Special Committees.

**ARTICLE 3 Lease Town Property
VOTED**

To allow the Board of Selectmen and School Committee to let or lease such land, buildings or structures owned by the Town on such terms as they may determine.

**ARTICLE 4 Accept Trust Property
VOTED**

That this article be indefinitely postponed.

**ARTICLE 5 Assume Liability
VOTED**

To see if the Town will assume liability in the manner provided by Section 29 of Chapter 91 of the General Laws as most recently amended by Chapter 5, Acts of 1995, for all damages that may be incurred by work to be performed by the Department of Public Works of Massachusetts for the improvement, development, maintenance and protection of tidal and non tidal rivers and streams, harbors, tidewaters, foreshores and shores along a public beach in accordance with Section II of

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Chapter 91 of the General Laws and authorize the Selectmen to execute and deliver a bond of indemnity therefore to the Commonwealth.

ARTICLE 6

Unpaid Accounts

VOTED

To appropriate the sum of \$646.00 to provide the payment of any unpaid accounts brought forward from previous years, to be transferred from the following grants, revolving funds or Article 44, May 2008 Annual Town Meeting - Expenses of Several Departments as follows:

Item 064 Police Indemnification	24.00
Item 191 Park Expense	32.00
Item 239 Harbor Expense	590.00

ARTICLE 7

Payment in Lieu of Tax ("PILOT") Agreement

VOTED

To approve the payment in lieu of Tax ("PILOT") Agreement between the Town of Marblehead and Adventcare, Inc. with respect to the property known as the Lafayette Rehabilitation and Skilled Nursing Facility and located at 25 Lafayette Street, Marblehead, Massachusetts.

ARTICLE 8

Available Funds Appropriate to Meet State Aid Revenue Cuts

VOTED

To appropriate the sum of \$138,107 from certified free cash to offset the reductions in fiscal year 2009 state aid revenue.

ARTICLE 9

Reductions in Fiscal 2009 Expenses of Several Departments

VOTED

That this article be indefinitely postponed.

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ARTICLE 10 Proposed Establishment of Other Post Employment Benefits Liability Trust Fund

VOTED

To accept the provisions of Chapter 479 of the Acts of 2008 **“AN ACT PROVIDING FOR THE ESTABLISHMENT OF OTHER POST EMPLOYMENT BENEFITS LIABILITY TRUST FUNDS IN MUNICIPALITIES AND CERTAIN OTHER GOVERNMENTAL UNITS.”**

ARTICLE 11 Walls and Fences

VOTED

That this article be indefinitely postponed.

ARTICLE 12 Transfer of a portion of the unexpended proceeds of Seawall Project Bond Anticipation Notes to Village School Project

VOTED

To transfer \$2,135,380.00 of the unexpended proceeds of outstanding bond anticipation notes of the Town issued pursuant to the vote of the Town passed May 9, 2007 (Article 52), which vote appropriated and authorized a borrowing of \$8,700,000 for the construction and/or reconstruction of the Ocean Avenue Causeway, to finance costs associated with the architectural, project management, and construction of the Village School project as authorized by the vote of the Town passed May 5, 2008 (Article 39), which vote appropriated and authorized a borrowing of \$21,766,933 for such project, and to reduce the amount authorized to be borrowed pursuant to such vote by the amount of such transfer.

ARTICLE 13 Revolving Funds

VOTED

To continue the authorization of the following revolving funds as required by M.G.L. C.44, s.53E 1/2 as recommended by the Board of Selectmen.

1. Historical Commission Gift Shop
 Revolving Fund in the amount of

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\$13,000 in fiscal 2010 for the use of the Historical Commission to be taken from Historical Commission revenues from the sale of items at the gift shop operated by said Commission; said appropriation to be used for expenses of operating said gift shop; and expended by the Commission.

2. Recreation and Park Revolving Fund in the amount of \$300,000 in fiscal 2010 for the use of the Recreation and Park Commission to be taken from revenues in connection with recreation programs and activities including teen center, program fees, rentals, miscellaneous sales, promotional fees, \$5.00 of out of town parking fees charged on weekends and various recreational fund raising events; said appropriation to be used for the expense of said activities including equipment and promotions; and expended by the Commission.
3. Council on Aging Revolving Fund in the amount of \$250,000 in fiscal 2010 for the use of the Council on Aging Board of Directors to be taken from revenues in connection with the meals on wheels, and nutrition programs, mini-bus donations, trips, miscellaneous programs, instructional classes, recreational programs, games and tournaments, luncheons and entertainment, and other activities including program fees, fund raising, rentals, miscellaneous sales and promotional fees; said appropriation to be used for the expense of said

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activities and trips, including equipment and promotions; and expended by the Council on Aging Board of Directors.

4. Dog Officer/Animal Control Officer Revolving Fund in the amount of \$20,000 in fiscal 2010 for the use of the Dog Officer to be taken from revenues in connection with fees, reimbursements, deposits and refunds of animal medical expenses including spay and neuter expenses, miscellaneous other sales and various fund raising events; said appropriation to be used for the expense of said programs and activities including medical bills, animal food, pet supplies and equipment, and promotional expenses; and expended by the Dog Officer/ Animal Control Officer.
5. RAD Program Revolving Fund in the amount of \$7,500 in fiscal 2010 for the use of the Police Chief to be taken from revenues in connection with tuition, fees, reimbursements, miscellaneous sales, gifts and donations of the RAD program; said appropriation to be used for the expense of said program including salaries and expenses including equipment.
6. School Tuition Revolving Fund in the amount of \$50,000 in fiscal 2010 for the use of the School Committee to be taken from revenues in connection with tuition's from nonimmigrant foreign students; said appropriation to

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be used for the expenses of instruction including salaries, instructional supplies and equipment.

7. Commercial Waste Revolving Fund in the amount of \$450,000.00 in fiscal 2010 for the use of the Board of Health to be taken from revenues in connection with commercial waste disposal receipts; said fund to be expended for the cost of solid waste disposal.
8. Conservation Fines Revolving Fund in the amount of \$10,000.00 in fiscal 2010 for the use of the Conservation Commission to be taken from revenues in connection with receipts collected from fines assessed by the commission; said fund to be expended for remediation of wetlands violations and for the care and maintenance of lands under the control and jurisdiction of the Conservation Commission.
9. Sump Pump Improvement Revolving fund in the amount of \$25,000 in fiscal 2010 for the use of Sewer and Water Commission; to be taken from revenues in connection with receipts collected from money received as a result of permitting fees; said fund to be expended for the aid in removal of sump pumps currently tied into the sewer system.
10. Special Education Revolving Fund in the amount of \$450,000 in fiscal 2010 for the use of the School Committee; revenues to be taken from tuition

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collected for special education students tuitioned in to the Marblehead Public Schools and from funds collected to pay for the other special education contracted services for out of district special education students being provided service through the North Shore Special Education Consortium and other approved special education public and private placements; said funds to be expended on costs directly related to the special education programs provided to these out of district students.

11. Storm Water By-Law Revolving Fund in the amount of \$10,000 in fiscal 2010 for the use of the Conservation Commission; to be taken from revenues in connection with receipts collected from application fees associated with the town's storm water management and erosion control regulations; said funds to be expended for expenses related to the enforcement and administration of the Storm Water By-Law.

ARTICLE 14

Fiscal 2009 School Budget Additional Appropriation VOTED

That this article be indefinitely postponed.

ARTICLE 15

Water and Sewer Commission Claims VOTED

To authorize the Water and Sewer Commission and the Board of Selectmen acting jointly to compromise any claims for damages or suits pending against the Town of Marblehead on account of acts which may have occurred during the construction of the water and sewer system.

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ARTICLE 16

Storm Drainage Construction

VOTED

That \$324,000.00 is appropriated from taxation for the construction and reconstruction of sewers for surface drainage purposes, including engineering services in connection therewith, to authorize the appropriate Town Officers to acquire by purchase, eminent domain or otherwise, any land or easement necessary; to be expended by the Water and Sewer Commission.

ARTICLE 17

Sewer Department Construction

VOTED

That the sum of \$691,899.00 is appropriated from sewer retained earnings to be expended by the Water and Sewer Commission for the construction or reconstruction of sewers for sanitary purposes and for sewage disposal, pump stations, original pumping station equipment, metering equipment, safety equipment, replacement of said equipment, engineering, consultants and surveys including revenue studies, and other general Sewer Department purposes, and to authorize the Board of Water and Sewer Commissioners to acquire by purchase, eminent domain or otherwise any lands or easements necessary.

ARTICLE 18

Water Department Construction

VOTED

That the sum of \$941,664.00 is appropriated from water retained earnings to be expended by the Water and Sewer Commission for the construction, reconstruction and extending of water mains, replacement of water meters, appurtenances, engineering, consultants, surveys including revenue studies, and other general Water Department purposes, and to authorize the Board of Water and Sewer Commissioners to acquire by purchase, eminent domain or otherwise any lands or easements necessary.

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ARTICLE 19

Purchase of Equipment of Several Departments VOTED

That the sum of \$468,730.00 be appropriated, and to meet this appropriation; \$25,614.62 is to be transferred from Article 32, 2004 Purchase of Equipment, \$27,500.00 to be transferred from Sewer Retained Earnings, \$36,000.00 to be transferred from the Cemetery Sale of Lots Fund and \$379,615.38 is to be raised by taxation. To include the following:

Police Department
2 Police Vehicles

Cemetery Department
1 Pick-up Truck (2)

Fire Department
1 Utility Vehicle

Park Department
1 Riding Mower
1 Dump Truck

Highway Department
2 Trucks with Sanders

Sewer Department
1 Utility Vehicle (1)

Tree Department
1 Stump Grinder

1. From Sewer Retained Earnings
2. From Cemetery Sale of Lots Fund

ARTICLE 20

Capital Improvements for Public Buildings VOTED

That the sum of \$176,594.00 be appropriated. \$160,000.00 to be raised by taxation and \$16,594.00 to be taken from the Cemetery Sale of Lots Fund.

Mary Alley Building
Install New Ceiling Tiles
Install New Light Fixtures
Paint Halls and 16 Offices

Abbot Public Library
Entrance Relocation
Carpet Cleaning

Community Center
Repair Roof

Fire Department
New Turnout Gear
Hoses and Nozzels

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Vine St. Garage
Repair Roof

Cemetery
Expansion of Lots

Hobb's Building
Replace Roof

Highway Department
New HVA Units
Replace Widows

Transfer Station
Replace Hopper

ARTICLE 21

Sidewalks

VOTED

That this article be indefinitely postponed.

ARTICLE 22

Collective Bargaining (Fire)

VOTED

That this article be indefinitely postponed.

ARTICLE 23

Collective Bargaining (Police)

VOTED

That this article be indefinitely postponed.

ARTICLE 24

Collective Bargaining (IUE/CWE - Local 1776)

VOTED

That this article be indefinitely postponed.

ARTICLE 25

**Proposed Reclassification and Pay Schedule
(Administrative)**

VOTED

That this article be indefinitely postponed.

ARTICLE 26

**Proposed Reclassification and Pay Schedule
(Season and Temporary Personnel)**

VOTED

That this article be indefinitely postponed.

ARTICLE 27

**Pay Schedule and Reclassification
(Traffic Supervisors)**

VOTED

That this article be indefinitely postponed.

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ARTICLE 28

Ratification of Salary By-Law

VOTED

To ratify certain actions taken by the Compensation Committee under section 3(e) of the 1955 Salary By-Law as last amended and amend the classifications of the positions as follows:

1. Reclassify positions in the Administrative Pay Schedule:
 - a. Assistant DPW Director from Group 53 to 54
 - b. Assistant Director of Accounting from Group 54 to Group 55.
 - c. Payroll Administrator from Group 52 to Group 53.
2. Reclassify and change job title in the Administrative Pay Schedule:
 - a. Town Engineer from Group 56 to Group 55 with the new title of Engineering and Conservation Administrator.

ARTICLE 29

Compensation - Town Officers

VOTED

That the yearly compensation of the Town Officer named in this article be as follows:

Town Clerk	\$66,899.52
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Said amount to be in full compensation for services as Town Clerk. All fees received by the Town Clerk in his official capacity to be accounted for to the Town Revenue Officer.

That the Town Clerk as elected and having served in that position or as a regular full-time employee for five consecutive years, and for each applicable additional five years on such basis, shall be paid longevity pay annually, in addition to his weekly salary.

Eligibility will be determined on November 30 each year and payment made to the official with the first regular

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payroll of December of that year. Only those in office on the determination date and qualified by their consecutive years of service, as described above, shall receive longevity pay for the calendar year.

Annual longevity Pay Schedule	Town Clerk
Not less than 5 years	\$300.00
Not less than 10 years	400.00
Not less than 15 years	500.00
Not less than 20 years	600.00
Not less than 25 years	700.00
30 years and over	800.00

ARTICLE 30

Financial Assistance for Conservation

VOTED

To authorize the Conservation Commission and other proper officers of the Town to apply for financial assistance from public and private sources to be expended by the Conservation Commission for the purchase of vacant land and any other purpose authorized by Section 8C of Chapter 40 of the General Laws as amended, or to reimburse the town for sums of money expended for such purposes, or both.

ARTICLE 31

Public consumption of Marijuana or

Tetrahydrocannabinol

VOTED

To amend Article 31 as follows:

After the word “consume” in the second line of paragraph 1, insert the following: **(hereinafter collectively referred to as “Consumption”)**

Voted to amend Chapter 119 of the Town Bylaw by adopting the following Article IV: Chapter 119 Peace and Good Order, PUBLIC CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL, as amended, as follows:

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Chapter 119 Peace and Good Order Article IV PUBLIC CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL

§ 119-4 A. Prohibition on Use

1. Not in a Motor Vehicle: No person shall smoke, ingest, or otherwise use or consume **(hereinafter collectively referred to as “Consumption”)** marijuana or tetrahydrocannabinol (as defined in G.L. c. 94C, §1) while in or upon any public building, vehicle controlled by the Town, recreational area, playground, park, beach, boat landing or launch, schoolhouse, school grounds, street, sidewalk, public way, passageway, bridge, stairs, parking lot, cemetery, bus stop, or any area or property owned or under the control of the Town, or any area accessible to the public.

2. In a Motor Vehicle: The consumption of marijuana or tetrahydrocannabinol is also prohibited in any motor vehicle in or on a public way whether or not the user is operating the vehicle or whether the vehicle is in operation at all.

§ 119 –4 B. Violations and Penalties

1. Whoever violates this Bylaw shall be punished by a fine of three hundred dollars (\$300) for each offense. Any penalty imposed under this Bylaw shall be in addition to any civil penalty imposed under G.L. c. 94C, §32L. If a violator fails to pay the fine issued, he or she may be subject to civil contempt proceedings.

§ 119 – 4 C. Enforcement

1. Violations of any provision of this Bylaw may be processed pursuant to Chapter 40, section 21 D of the general laws of the Commonwealth and shall be in amount set forth above. Enforcement of this Bylaw under the Non-Criminal Disposition process shall be carried out by the Police Chief, and duly sworn Police Officers who shall have full enforcement powers.

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- ARTICLE 32** **Regional Emergency Center Communications Center
VOTED**
That this article be indefinitely postponed.
- ARTICLE 33** **Sex Offender By-Law
VOTED**
That this article be indefinitely postponed.
- ARTICLE 34** **Support for Merger of North Shore Technical High
School and Essex Agricultural High School
VOTED**
That this article be indefinitely postponed.
- ARTICLE 35** **North Shore Technical High School Building Project
VOTED**
That this article be indefinitely postponed.
- ARTICLE 36** **North Shore Regional Vocational School District
VOTED**
To approve the gross operating and maintenance budget of the North Shore Regional Vocational School District and appropriate the sum of \$135,020.00 for the town's assessment of the same to be expended by the School Committee.
- ARTICLE 37** **Facilities Permit
VOTED**
That this article be indefinitely postponed.
- ARTICLE 38** **Proposed Demand Fee Level for Delinquent Taxes
VOTED**
To charge for each written demand issued by the Town Collector a fee of fifteen dollars (\$15.00) to be added to and collected as part of the tax, as authorized by Massachusetts General Laws Chapter 60, Section 15, effective as of July 1, 2009.

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ARTICLE 39

Amend Zoning By-Law COUNTED VOTE

For	Against
306	3

To amend the zoning by law as follows: (bold text added)

- a. Article II Definitions 200-7 Meaning of words. DECK first sentence *which presently reads* “An unroofed outdoor area whether of wood or other material, whose floor is more than two feet above mean grade.” *To read instead* “An unroofed outdoor **structure** whether of wood or other material, **with a** floor **which** is more than two feet above **existing grade at any point.**”
- b. Article 200-9 Interpretation of zone district boundaries D. Shoreline and Harborfront District Boundaries *Add a new paragraph* **(5) In any shoreline district the side yard setback requirement shall be applied to the property line(s) that is most perpendicular to the direction of the shoreline.**

ARTICLE 40

Smart Growth Overlay District UNANAMOUSLY VOTED

To propose that the Town of Marblehead vote to amend the Marblehead Zoning Bylaw by adding a new § 200-44 entitled “Smart Growth Overlay District” to read as follows:

§200-44. Smart Growth Overlay District (SG)

A. Purposes. The purposes of Smart Growth Overlay Districts are:

- (1) To promote low impact, green, and sustainable development that is pedestrian friendly.
- (2) To ensure high quality site planning, architecture and landscape design that is consistent with SG’s visual character and identity of the Town of Marblehead.

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- (3) To establish development standards that ensure context-sensitive design and creative site planning in the reuse of existing buildings and construction of new buildings.
- (4) To provide for diversified housing stock at a variety of costs in close proximity to the local bus lines, including affordable housing, that meets the needs of the Town's population and promotes diversity.
- (5) To generate positive tax revenue, and to benefit from the financial incentives provided by M.G.L. Ch. 40R, while providing the opportunity for housing choice among households of varying incomes, ages and sizes.

B. Scope and Authority. A SG is established pursuant to the authority of M.G.L. Ch. 40R and 760 CMR 59.00, and shall be deemed to overlay the parcels as shown on the Zoning Map of the Town of Marblehead, as amended. At the option of the owner, development of land within a SG may be undertaken by means of a Plan Approval pursuant to the zoning controls set forth in this § 200-44 or by complying with all applicable zoning controls set forth in the Zoning Bylaw of the Town of Marblehead (Underlying Zoning). When a building permit is issued for any Development Project for which Plan Approval has been granted, all of the land shown on the Plan which was submitted pursuant to Section 200-44K of this By-Law shall be developed pursuant to this Section 200-44 and shall not be developed pursuant to the Underlying Zoning. Development Projects proposed pursuant to this § 200-44 shall be subject to all other applicable local, state and federal regulations.

C. Establishment and Delineation of Smart Growth Overlay Districts. There are two Districts identified as SG Pleasant Street District (assessor map 129 parcel 20) and SG Vinnin Square District (assessor map 1 parcel 1).

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The boundaries of the two Districts are delineated as SG Pleasant Street District and SG Vinnin Square District on the Zoning Map.

- D. Definitions.** All definitions are as they appear in Section 200-7 of the Marblehead Zoning Bylaw in effect as of the date of adoption of this Bylaw, (INSERT DATE OF BYLAW ADOPTION) 2009, with the exception of the following terms:

CONSTRUCTION, START OR COMMENCEMENT
NONCONFORMING BUILDING OR LOT
NONCONFORMING USE
SITE PREPARATION

As used in this § 200-44, the following terms shall have the meanings set forth below. To the extent that there is any conflict between this § 200-44 and M.G.L. Ch. 40R and / or 760 CMR 59.00, *et seq.*, the latter shall control:

AFFORDABLE HOMEOWNERSHIP UNIT – An Affordable Housing unit required to be sold to an Eligible Household in accordance with the requirements of this Bylaw.

AFFORDABLE HOUSING – Housing that is affordable to and occupied by Eligible Households.

AFFORDABLE HOUSING RESTRICTION – A deed restriction of Affordable Housing meeting the requirements in M.G.L. Ch. 184 § 31 and the requirements of this Bylaw.

AFFORDABLE RENTAL UNIT – An Affordable Housing unit required to be rented to an Eligible Household in accordance with the requirements of this Bylaw.

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APPLICANT – A landowner or other petitioner that files a Plan for a Development Project subject to the provisions of the SG.

APPROVING AUTHORITY – The Planning Board of the Town of Marblehead acting as the authority designated to review projects and issue approvals under this Bylaw.

AS-OF-RIGHT DEVELOPMENT – A Development Project allowable under this Bylaw without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject to the Plan Review requirement of this Bylaw shall be considered an As-of-Right Development.

DHCD – The Massachusetts Department of Housing and Community Development (DHCD) or any successor agency.

DESIGN STANDARDS – The document entitled Marblehead Smart Growth Overlay District Design Standards, as amended, approved by DHCD May 1, 2009 pursuant to M.G.L. Chapter 40R, § 10. The Design Standards are applicable to all Development Projects within a SG that are subject to Plan Review by the Approving Authority.

DEVELOPMENT LOT – One or more Lots meeting the dimensional requirements of this Bylaw which are designated as a Development Lot on a Plan for a Development Project proposed within a SG and for which Plan Approval is required under the provisions of this Bylaw. The lots comprising a Development Lot need not be in the same ownership but within the application review period the Applicant must demonstrate site control of all land shown on the Plan.

DEVELOPMENT PROJECT – A residential or mixed-use development undertaken under this § 200-44. The

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limits of a Development Project shall be identified on the Plan which is submitted to the Approving Authority for Plan Review.

ELIGIBLE HOUSEHOLD – An individual or household whose annual income is below eighty percent (80%) of the area-wide Median Household Income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

HOUSEHOLD INCOME, MEDIAN – The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).

MIXED-USE DEVELOPMENT PROJECT – A development that includes a building or buildings with a minimum of 25% of the floor area on the street level devoted to one or more Non-Residential use. A minimum of 50% of the total gross floor area in a Mixed-Use Development Project shall be devoted to residential uses.

MONITORING AGENT– A qualified housing organization designated by the Marblehead Board of Selectmen with the power to monitor and to enforce compliance with the provisions of this Bylaw related to Affordable Housing units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Affordable Housing units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Affordable Housing unit in a SG.

MULTI-FAMILY DEVELOPMENT PROJECT – A residential development that contains a building or buildings(s) with more than three Dwelling Units.

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NON-RESIDENTIAL USE – A use that is listed as an allowed Retail and Consumer Service Use or an allowed Institutional and Recreational Use in the B1 Zoning District, without need for a special permit, in the Zoning Bylaws, Table 1 Land Use Regulations, in effect as of the date of adoption of this § 200-44.

OFFICE – A place of business of a professional organization or the administration facility of a commercial or industrial organization.

PLAN – Plans depicting a proposed Development Project for all or a portion of the SG and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of this Bylaw and the Design Standards.

PLAN APPROVAL – The Approving Authority's authorization for a proposed Development Project based upon a finding of compliance with this Bylaw and Design Standards after the conduct of a Plan Review.

PLAN REVIEW – The review procedure established by § K of this Bylaw and administered by the Planning Board of the Town of Marblehead as the Approving Authority.

RENOVATION – Physical improvement that adds to the value of the real property. Painting, ordinary repairs, and other normal maintenance do not constitute a renovation.

SETBACK – Please refer to ARTICLE V Dimensional Regulations § 200-15. B.(3) of the Marblehead Zoning Bylaw in effect as of the date of adoption of this Bylaw.

SG or DISTRICT – The Smart Growth Overlay District, an overlay zoning district adopted pursuant to M.G.L. Ch. 40R, in accordance with the procedures for zoning adoption and amendment as set forth in M.G.L. Ch. 40A

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and approved by the Department of Housing and Community Development pursuant to M.G.L. Ch. 40R and 760 CMR 59.00.

UNDERLYING ZONING – The zoning requirements adopted pursuant to M.G.L. Ch. 40A that are otherwise applicable to the geographic area in which the SG is located, as said requirements may be amended from time to time.

UNDULY RESTRICT – A provision of the SG or a Design Standard that adds unreasonable costs or unreasonably impairs the economic feasibility of a proposed Development Project in a SG.

UNRESTRICTED UNIT – A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.

ZONING BYLAW – The Zoning Bylaw of the Town of Marblehead, Massachusetts, adopted in accordance with and pursuant to the provisions of M.G.L. Ch. 40A.

ZONING MAP – The Zoning Map of the Town of Marblehead, Massachusetts, adopted in accordance with and pursuant to the provisions of M.G.L. Ch. 40A.

- E. Permitted Uses.** The following uses shall be permitted in the following Districts As-of-Right upon Plan Approval, and at residential densities specified in Table G. Table of Dimensional and Density Requirements:

Table E. Allowable Uses		
Residence Uses	SG Pleasant Street District	SG Vinnin Square District
Multi-Family Development Project	No ¹	Yes
Mixed Use Development Project	Yes	Yes
¹ The Approving Authority may grant a waiver pursuant to § L of this Bylaw to allow a Multi-Family Development Project in the SG Pleasant Street District upon a finding that the inclusion of a non-residential use at the street level would Unduly Restrict opportunities for development.		

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F. Prohibited Uses or Activities in the SG.

- (1) Any use prohibited by the Underlying Zoning in effect as of the date of adoption of this Bylaw.
- (2) Any use not listed in § E of this Bylaw is expressly prohibited.
- (3) Non-Residential Uses permitted as-of-right pursuant to the Underlying Zoning are permitted pursuant to this Bylaw as part of a Mixed Use Development Project.

G. Dimensional and Other Requirements.

- (1) New buildings within the SG shall be subject to the bulk, dimensional and density requirements in Table G. Table of Dimensional and Density Requirements:

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Table G. Table of Dimensional and Density Requirements.								
District	Min. Lot Area (sq. ft.)	Max. Residential Density (units/acre)	Min. Frontage (linear ft.)	Min. Front Setback (linear ft.)	Min. Side Setback (linear ft.)	Min. Rear Setback (linear ft.)	Min. Open Area (%)	Max . Ht. (ft.)
SG Pleasant Street District	10,000	51	35	N	(1)	(1)	N	50
SG Vinnin Square District	10,000	30	35	N	(1)	(1)	(2)	42
Notes: N – None (1) – Except as to any boundary abutting any other business district, six feet; as to any boundary abutting any residential district, nine feet. May be reduced at the discretion of the Approving Authority. (2) – One square foot of open land area (in addition to the areas of required parking spaces for such lot) for each two square feet of gross floor area.								

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- (2) Building Renovation. Renovation of existing buildings may maintain existing building footprints, and may only expand such footprints insofar as such expansion is in compliance with the required dimensional requirements for new buildings.
- (3) Portions of the Lot in the SG Vinnin Square District are located in the Town of Swampscott and in the City of Salem. If a Development Project proposed in the SG Vinnin Square District includes development in another municipality, allowable density in the Town of Marblehead will be calculated based on the area of land within the Town of Marblehead.
- (4) Fractional Units. When the application of the allowable densities specified in Table G. Table of Dimensional and Density Requirements results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.
- (5) Signage. Commercial signage proposed within a Mixed-Use Development Project shall be subject to the procedures and requirements of the Marblehead Sign By-Law, Chapter 148 of the Marblehead General By-Laws, in effect as of the date of adoption of this Bylaw.
- (6) Noise. An Application proposing the installation of exterior venting air conditioners, ventilators, blowers and similar equipment shall be required to demonstrate to the Approving Authority that the noise produced by such equipment will not be in excess of 60 decibels at 20 feet in any direction, or the distance to the nearest building having a residential use, whichever is the lesser. Upon construction and occupancy, noise from the Development Project, including resulting from air

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conditioners, ventilators, blowers and similar equipment, shall at all times comply with this requirement.

- (7) Stormwater. Proposed Development Projects shall be subject to Marblehead By-law chapter 195 Stormwater Management and Erosion Control, in effect as of the date of adoption of this § 200-44, as applicable.

H. Off-Street Parking.

- (1) Off-street parking in the Districts shall be provided in order to meet or exceed the following minimum requirements:

Table H. Off-Street Parking Minimum Required Parking		
Use	Vinnin	Pleasant
Dwelling Unit (1 bedroom)	2.0 spaces	1.0 spaces
Dwelling Unit (2 bedrooms)	2.0 spaces	1.5 spaces
Dwelling Unit (3 bedrooms)	2.0 spaces	2.0 spaces
Dwelling Unit (4 bedrooms)	2.0 spaces	2.5 spaces
Non-residential Use	1.0 space /300 square feet	1.0 space /500 square feet

- (2) Fractional Spaces. When the application of the minimum required parking standards in this § H results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.
- (3) Location of parking. Any surface parking lot shall be located at the side or rear of a building, relative to any public right-of-way or public open space. In no case shall surface parking for new construction be permitted within the required front setbacks. Sub-surface parking that requires blasting may be disallowed if the Approving Authority finds, based on the results of a geotechnical

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analysis, that it is not possible to mitigate any extraordinary adverse impact of blasting on nearby properties.

- (4) The Approving Authority may grant a Plan Approval making such modifications in the parking standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed use and will not result in or worsen parking or traffic problems in or in proximity to the SG. The Approving Authority may impose conditions of use or occupancy appropriate to such modifications.
- (5) Shared use of required parking. At the discretion of the Approving Authority, shared use may be made of required parking spaces by intermittent use establishments such as churches, assembly halls, or theaters whose peak parking demand is only at night or on Sundays and by other uses whose peak demand is only during the day. In order for such shared parking to be eligible to satisfy required off-street parking standards in whole or in part, prior to Plan Approval a formal agreement shall be made in writing by the owners of the uses involved concerning the number of spaces involved, substantiation of the fact that such shared use is not overlapping or in conflict, and the duration of the agreement. Required spaces shall be within 300 feet of the main entrance to the principal buildings served by the shared parking.
- (6) The Approving Authority may require additional visitor parking beyond the maximum required spaces per unit if deemed appropriate given the design, layout, use and/or density of the proposed Development Project.

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- (7) Construction Standards. Each parking space shall be at least nine feet wide and 20 feet long and shall be designed with appropriate means of vehicular access to a street as well as maneuvering areas. Access and maneuvering areas shall not be obstructed or used for the parking of motor vehicles. Parking shall be designed and constructed to comply with all applicable disability access requirements including but not limited to the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (AAB).

I. Design Standards. To ensure that new development shall be of high quality, and shall meet the standards envisioned by the Town of Marblehead in adopting this Bylaw, the Approving Authority shall adopt the Marblehead Smart Growth Overlay District Design Standards as approved by DHCD on May 1, 2009 governing the issuance of Plan Approvals for Development Projects within the SG and shall file a copy with the Town Clerk. In addition to the standards set forth in this Bylaw, the physical character of Development Projects within the SG shall comply with such Design Standards. In the event of any conflict between this Bylaw and the Design Standards, this Bylaw shall govern and prevail.

- (1) The Approving Authority may adopt, by simple majority vote, amendments to the Design Standards.
- (2) Before adopting any amendment to the Design Standards, the Approving Authority shall submit the proposed amendment to DHCD for approval. Any amendment to the Design Standards shall not take effect until approved by DHCD and filed with the Town Clerk.
- (3) Any amendment to the Design Standards must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage

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entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. DHCD may, at its discretion, require any amendment to the Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.

- (4) An application for Plan Approval that has been submitted to the Town Clerk pursuant to Section 200-44 K shall not be subject to any Design Standard that has not been approved by DHCD and filed with the Town Clerk.

J. Affordable Housing.

- (1) Number of Affordable Housing units. Twenty percent (20%) of all Dwelling Units constructed in a Development Project shall be Affordable Housing units provided, however, that twenty-five percent (25%) of all rental dwelling units in a Development Project shall be Affordable Housing units. For Development Projects in which all of the Dwelling Units are limited to occupancy by elderly persons and/or by persons with disabilities, twenty-five percent (25%) of the Dwelling Units shall be Affordable Housing units, whether the Dwelling Units are rental or ownership units.
- (2) Fractional Units. When the application of the percentages specified in sub-section J(1) results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.
- (3) Affordable Housing units shall comply with the following requirements:

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- (a) The monthly rent payment for an Affordable Rental Unit, including utilities and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, with price determined assuming a Family size equal to the number of bedrooms in the unit plus one unless other affordable program rent limits approved by DHCD shall apply;
 - (b) For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a Family size equal to the number of bedrooms in the Dwelling Unit plus one; and
 - (c) Affordable Housing units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
- (4) Design and construction.
- (a) Design. Affordable Housing units must be comparable in initial construction quality and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Affordable Housing units must have access to all on-site amenities. The total number of bedrooms in the Affordable Housing units shall be at least proportionate to the total number of bedrooms in all units in the Development Project.
 - (b) Timing. All Affordable Housing units must be constructed and occupied not later than concurrently with construction and occupancy

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of Unrestricted Units. For any Development Project that is approved in phases, the proportion of Affordable Housing units shall be consistent across all phases.

- (5) Affordable housing restriction. Each Affordable Housing unit shall be subject to an Affordable Housing Restriction which is recorded with the Essex County Registry of Deeds or Land Court Registry District of Essex County. The Affordable Housing Restriction shall provide for the implementation of the requirements of this Bylaw. All Affordable Housing Restrictions must include, at minimum, the following:
- (a) Description of the Development Project, including whether the Affordable Housing unit will be rented or owner-occupied.
 - (b) A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project without specific unit identification.
 - (c) The term of the Affordable Housing Restriction shall be the longest period customarily allowed by law but shall be no less than thirty (30) years.
 - (d) The name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Affordable Housing Restriction. In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the Marblehead Board of Selectmen or by DHCD such duties

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- shall devolve to and thereafter be administered by a qualified housing entity designated by the Marblehead Board of Selectmen.
- (e) Reference to a housing marketing and resident selection plan, to which the Affordable Housing unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. If approved by DHCD, the housing marketing and selection plan may provide for preferences in resident selection. The plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size.
 - (f) A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan.
 - (g) Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set.
 - (h) A requirement that only an Eligible Household may reside in an Affordable Housing unit and that notice of any lease or sublease of any Affordable Housing unit to another Eligible Household shall be given to the Monitoring Agent.
 - (i) Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent.
 - (j) Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and the Town of Marblehead, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household.

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- (k) Provision that the restriction on Affordable Rental Units in a rental Development Project or rental portion of a Development Project shall run with the rental Development Project or rental portion of a Development Project and shall run in favor of the Monitoring Agent and the Town of Marblehead, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household.
 - (l) Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Monitoring Agent , in a form specified by that agent certifying compliance with the provisions of this Bylaw and containing such other information as may be reasonably requested in order to ensure affordability.
 - (m) A requirement that residents in Affordable Housing units provide such information as the Monitoring Agent may reasonably request in order to ensure affordability eligibility and compliance.
 - (n) Designation of the priority of the Affordable Housing Restriction over mortgages and other restrictions.
- (6) Administration. The Monitoring Agent shall ensure the following:
- (a) Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed.
 - (b) Income eligibility of households applying for Affordable Housing units is properly and reliably determined.
 - (c) The housing marketing and resident selection plan conforms to all requirements and is properly administered.
 - (d) Sales and rentals are made to Eligible Households chosen in accordance with the

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- housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given.
 - (e) Affordable Housing Restrictions meeting the requirements of this section are recorded with the Essex County Registry of Deeds or Land Court Registry District of Essex County.
- (7) The housing marketing and selection plan may make provision for payment by the Applicant of reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households, to conduct the housing lottery, and to monitor and enforce compliance with affordability requirements over time.

K. Administration. The Approving Authority shall adopt and file with the Town Clerk administrative rules relative to the application requirements and contents for Plan Review. Such administrative rules may be included as a separate section within the approved Design Standards. Such administrative rules and any amendment thereto must be approved by the Massachusetts Department of Housing and Community Development. The Plan Review process encompasses the following, as may be supplemented by the administrative rules:

- (1) Pre-application review. The Applicant is encouraged to participate in a pre-application review with the Approving Authority at a regular meeting(s) of the Approving Authority. The purpose of the pre-application review is to obtain the advice and direction of the Approving Authority prior to filing the application, including determining whether additional technical analyses listed in § K(2)(c) may be required. At the pre-application review the Applicant shall outline the proposal and seek preliminary feedback from the Approving Authority, other municipal review entities, and other members of the public. The Applicant is also encouraged to request a site visit by the Approving

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Authority and/or its designee in order to facilitate pre-application review.

(2) Application procedures.

- (a) An application for Plan Approval shall be filed by the Applicant with the Town Clerk and a copy of the application including the date of filing certified by the Town Clerk shall be filed forthwith with the Approving Authority. The Applicant shall also file the required number of copies of the application with the Building Inspector and with the Approving Authority. Said filing shall include any required forms provided by the Approving Authority.
- (b) As part of any application for Plan Approval, the Applicant must submit the following documents to the Approving Authority and the Administering Agency:
 - (1) Evidence that the Development Project complies with the cost and eligibility requirements of § J (3). Affordable Housing;
 - (2) Development Project plans that demonstrate compliance with the requirements of § J (4). Affordable Housing; and
 - (3) A form of Affordable Housing Restriction that satisfies the requirements of § J (5). Affordable Housing.
- (c) As part of any application for Plan Approval, the Applicant may be required to submit one or more of the following technical analyses to the Approving Authority:
 - (1) Surface and water pollution. A report on the impact of stormwater runoff on adjacent and downstream surface water bodies, subsurface groundwater and the water table.

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- (2) Soils. The potential dangers of erosion and sedimentation caused by the operation and maintenance of the proposed development.
 - (3) Geotechnical Analysis. If sub-surface blasting is proposed an analysis by a certified geotechnical engineer shall be required in accordance with M.G.L. Ch. 148 showing whether such blasting will have any extraordinary adverse impacts on nearby property.
 - (4) Traffic impact. A report on existing street capacities, estimated average daily traffic generation, composition, peak hour levels and directional flows resulting from the proposed development, proposed methods to mitigate the estimated traffic impact and methodology and sources used to derive existing data and estimations.
 - (5) Sample board. Identification of all major exterior materials, colors and finishes.
 - (6) Noise. Documentation as necessary to demonstrate that the noise produced by exterior venting air conditioners, ventilators, blowers and similar equipment will not be in excess of 60 decibels at 20 feet in any direction, or the distance to the nearest building having a residential use, whichever is the lesser.
- (d) Review fees. The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Approving Authority. Such fees shall be held by the Town of Marblehead in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Approving Authority in reviewing the Plan application. Any surplus funds remaining after the completion of such review, including any

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- interest accrued, shall be returned to the Applicant forthwith.
- (e) Upon receipt by the Approving Authority, applications for Plan Approval shall be distributed to the Board of Selectmen, Board of Health, Fair Housing Committee, Building Inspector, Conservation Commission, Zoning Board of Appeals, Department of Public Works, the Fire and Police Departments and the Water and Sewer Commission. Any reports from these parties shall be submitted to the Approving Authority within sixty (60) days of filing of the application.
 - (f) Within thirty (30) days of filing of an application with the Approving Authority, the Approving Authority or its designee shall evaluate the proposal with regard to its completeness and shall submit an advisory report in writing to the Applicant certifying the completeness of the application. Where an application is found to be incomplete, the Approving Authority or its designee shall provide a statement outlining required items that were missing from the application. The Approving Authority or its designee shall forward to the Applicant, with its report, copies of all recommendations received to date from other boards, commissions or departments.
- (3) Public hearing. The Approving Authority shall hold a public hearing and review all applications according to the procedure specified in M.G.L. Ch. 40R § 11.
- (4) Prior to the granting of any Plan Approval for a Development Project, the Applicant must demonstrate, to the satisfaction of the Monitoring Agent or, in the event that a Monitoring Agent has not yet been named, to the satisfaction of the Approving Authority, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or

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federal guidelines for affordability applicable to the Town of Marblehead.

(5) Plan Approval decision.

- (a) The Approving Authority shall make a decision on the application for Plan Approval by a simple majority vote and shall file said decision with the Town Clerk, within 120 days of the receipt of the application by the Town Clerk. The time limit for public hearings and taking of action by the Approving Authority may be extended by written agreement between the Applicant and the Approving Authority. A copy of such agreement shall be filed with the Town Clerk.
- (b) Failure of the Approving Authority to take action within 120 days or extended time, if applicable, shall be deemed to be an approval of the application.
- (c) An Applicant who seeks approval because of the Approving Authority's failure to act on an application within the 120 days or extended time, if applicable, must notify the Town Clerk in writing, within fourteen (14) days from the expiration of said time limit for a decision, of such approval and that a copy of that notice has been sent by the Applicant to parties in interest by mail and that each such notice specifies that appeals, if any, shall be made pursuant to M.G.L. Ch. 40R and shall be filed within twenty (20) days after the date the Town Clerk received such written notice from the Applicant that the Approving Authority failed to act within the time prescribed.
- (d) The Approving Authority's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the Plan Approval

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- application. The written decision shall contain the name and address of the Applicant, identification of the land affected and its ownership, and reference by date and title to the plans that were the subject of the decision.
- (e) The decision of the Approving Authority, together with the detailed reasons therefore, shall be filed with the Town Clerk, the Board of Appeals and the Building Inspector. A copy of the decision shall be mailed to the Applicant and to the owner if other than the Applicant by the Approving Authority certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the Approving Authority. A notice of the decision shall be sent to parties in interest and to persons who requested a notice at the public hearing.
 - (f) Effective date. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If the application is approved by reason of the failure of the Approving Authority to timely act, the Town Clerk shall make such certification on a copy of the application. A copy of the decision or application shall be recorded with the title of the land in question in the Essex County Registry of Deeds or the Essex Land Registry District, and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The responsibility and the cost of said recording and transmittal shall be borne by the Applicant.
- (6) Criteria for approval. The Approving Authority shall approve the Development Project upon finding that it

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complies with the requirements of the SG and applicable Design Standards.

- (7) Criteria for conditional approval. The Approving Authority may impose conditions on a Development Project as necessary to ensure compliance with this § 200-44 and applicable Design Standards, or to mitigate any extraordinary adverse impacts of the Development Project on nearby properties, insofar as such conditions are compliant with the provisions of M.G.L. Ch. 40R and applicable regulations and do not Unduly Restrict opportunities for development. The Approving Authority may require construction of an approved Development Project to be phased for the purpose of coordinating the Development Project with any mitigation required to address extraordinary adverse Development Project impacts on nearby properties.
- (8) Criteria for denial. The Approving Authority may deny an application for Plan Approval pursuant to this Bylaw if the Board finds one or more of the following:
 - (a) The Development Project does not meet the conditions and requirements set forth in the SG and applicable Design Standards.
 - (b) The Applicant failed to submit information and fees required by the SG and necessary for an adequate and timely review of the design of the Development Project or potential Development Project impacts.
 - (c) It is not possible to adequately mitigate significant adverse Development Project impacts on nearby properties by means of suitable conditions.
- (9) Time limit. A Plan Approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within two (2) years after the decision issues, which time shall be extended by the time required

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to adjudicate any appeal from such approval. Said time shall also be extended if the project proponent is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase Development Project.

- (10) Appeals. Pursuant to M.G.L. Ch. 40R, § 11, any person aggrieved by a decision of the Approving Authority may appeal to the Superior Court, the Land Court department, or the Housing Court department within twenty (20) days after the Plan decision has been filed in the office of the Town Clerk.

- L. Waivers.** The Approving Authority may at its discretion authorize waivers in the Plan Approval with respect to the dimensional and other standards set forth in this § 200-44 and in the Design Standards upon a finding that such waiver will allow the Development Project to achieve the density, affordability and/or physical character allowable under this Bylaw. However, the Approving Authority may not waive any portion of the Affordable Housing requirements in § J. Affordable Housing except insofar as such waiver results in the creation of a number of Affordable Housing units in excess of the minimum number of required Affordable Housing units.
- M. Fair Housing Requirement.** All Development Projects within the SG shall comply with applicable federal, state and local fair housing laws.
- N. Annual Update.** On or before July 31 of each year, the Board of Selectmen shall cause to be filed an Annual Update with the Department of Housing and Community Development (DHCD) in a form to be prescribed by DHCD. The Annual Update shall contain all information required in 760 CMR 59.07, as may be amended from time to time, and additional information as may be

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required pursuant to M.G.L. Ch. 40S and accompanying regulations. The Town Clerk shall maintain a copy of all updates transmitted to DHCD pursuant to this Bylaw, with said copies to be made available upon request for public review.

- O. Notification of Issuance of Building Permits.** Upon issuance of a residential building permit within the SG, the Building Inspector shall cause to be filed an application to the DHCD in a form to be prescribed by DHCD, for authorization of payment of a one-time density bonus payment for each residential building permit pursuant to M.G.L. Ch. 40R. The application shall contain all information required in 760 CMR 59.06 (2), as may be amended from time to time, and additional information as may be required pursuant to M.G.L. Ch. 40S and accompanying regulations. The Town Clerk shall maintain a copy of all such applications transmitted to DHCD pursuant to this Bylaw, with said copies to be made available upon request for public review.
- P. Date of effect.** The effective date of this Bylaw shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of M.G.L. Ch. 40A § 5 and M.G.L. Ch. 40R; provided, however, that an Applicant may not proceed with construction pursuant to this Bylaw prior to the receipt of final approval of this Bylaw and accompanying Zoning Map by both the Department of Housing and Community Development and the Office of the Massachusetts Attorney General.
- Q. Severability.** The provisions of this section are severable. If any provision of this section is held invalid, the other provisions shall not be affected but shall remain in full force.

And to further amend the Zoning Bylaw § 200-8 (A) to add to the list of Zone districts the following:

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“SG Smart Growth Overlay District”

- Or take any other action relative thereto.
- ARTICLE 41** **Landfill Regulatory Compliance Activities**
VOTED
That the sum of \$242,400.00 is appropriated to be expended by the Board of Health for continued water quality monitoring, soil gas monitoring, risk assessment, engineering and any other services related to the Old Landfill; \$114,600 to be raised by taxation and \$127,800 subject to a proposition 2 ½ capital outlay expenditure override.
Provided; that the appropriation in the amount of \$127,800 shall not take effect until the Town votes to exempt from the limitations on total taxes imposed by G.L.c.59, section 21C (Proposition 2 ½) amounts required for said capital outlay expenditures.
- ARTICLE 42** **Disposal Area Remediation/Stoneybrook Rd.**
VOTED
That the sum of \$505,000.00 is appropriated to be expended by the Board of Health for disposal area remediation as it relates to Stoneybrook Road and private property(s) on Stoneybrook Rd., some of which abut land owned by the Town of Marblehead; provided; that this vote shall not take effect until the Town votes to exempt from the limitations on total taxes imposed by G.L.c.59, section 21C (Proposition 2 ½) amounts required for said capital outlay expenditures.
- ARTICLE 43** **Litchmans Terrace Open Space**
VOTED
To transfer the care, custody, management and control of a portion of the following described parcel of land known as Parcel 29 on Marblehead Assessor’s Map 136 which is owned by the Town of Marblehead to the Marblehead Conservation Commission for Open Space Purposes. Said entire parcel of land is described as a certain parcel of land owned by the Town of Marblehead containing 1.153 acres and lying between a proposed

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road off Turner Road to the northwest and Litchman is bounded as follows:

NORTHWEST by said proposed road (45 feet in width) off Turner Road;

NORTHEAST by land now or Bryan C. and Sara W. Segee (12 Turner Road), Steven J. Elliott and Jane L. Knight (10 Turner Road), Sharon A. Trainor (76 Green Street), Linda W. Boynton (72 Green Street), Vlad Farfel (68 Green Street) and Robert L. and Michele McKay (66 Green Street);

SOUTHEAST by Litchman Terrace;

SOUTHWEST by land now or formerly of Paul and Sophia Moroz (24 Taft Street), Joanne N. Jauron (22 Taft Street), Lewis W. II and Kristine E. Farrar (20 Taft Street), Martha M. Stiles (18 Taft Street), William J. and Constance M. Willis (16 Taft Street) and Louise M. Antonioli (14 Taft Street)

The parcel of land described above is identified by the term "Reservation" on a plan entitled "Town of Marblehead, Turner Estate, Lot Plan" dated October 22, 1941, R. O. Burlingham, Town Engineer, recorded with Essex South District Registry of Deeds, Plan Book 73, Plan 82. The "Reservation" parcel shown on the 1941 plan has been modified by the layout of Litchman Terrace in 1969 as shown on plan entitled "Town of Marblehead, Litchman Terrace Layout (In Part)" dated September 24, 1968, George H. Clark, Jr., Town Engineer, on file in the Office of the Town Engineer, Marblehead, MA 01945.

Said portion of land to be transferred to the Conservation Commission shall include the above description but shall not include a portion of the parcel of land which consists of a 40-ft wide strip of land running parallel to and adjacent to Litchman Terrace as shown on Plan entitled "Town Land off Litchman Terrace, Marblehead, MA 01945" dated January 2009 on file in the Office of the Town Engineer, Marblehead, MA 01945. Said strip of land to be excluded contains about 4,000 square feet

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(0.09 acres) and is to remain under the care, custody, management and control of the Marblehead Board of Selectmen.

ARTICLE 44

Land Acquisition, Naugus Avenue VOTED

That this article be indefinitely postponed.

ARTICLE 45

School Department Computer, Support Equipment, and Technology Infrastructure VOTED

That this article be indefinitely postponed.

ARTICLE 46

Schools Construction and or Renovation Program VOTED

That this article be indefinitely postponed.

ARTICLE 47

Fiscal 2009 Expenses of Several Departments VOTED

That this article be indefinitely postponed.

ARTICLE 48

Available Funds Appropriated to Reduce the Tax Rate VOTED

That the sum of \$4,222,169.00 be appropriated for the use of the Assessors in making the Tax Rate.

From Free Cash	\$3,892,169.00
From Electric Surplus	<u>330,000.00</u>
	\$4,222,169.00

ARTICLE 49

Expenses of Several Departments Item 1 Moderator VOTED:

That the sum of \$100.00 be and hereby is appropriated for the Moderator as follows:

Item	1	Officials Expense	\$100.00
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ARTICLE 49

Expenses of Several Departments Items 2 3 4 5 6 Selectmen

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VOTED:

That the sum of \$428,871.00 be and hereby is appropriated for the Selectmen as follows:

Item 2	Officials Expense	\$ 5,500.00
Item 3	Salaries & Wages	322,208.00
Item 4	Expense	92,163.00
Item 5	Zoning Board Legal Services	7,000.00
Item 6	Out of State Travel	<u>2,000.00</u>
		\$428,871.00

ARTICLE 49

Expenses of Several Departments

Items 7 8 9 Finance Committee

VOTED:

That the sum of \$13,747.00 be and hereby is appropriated for the Finance Committee as follows:

Item 7	Salaries & Wages	\$ 7,987.00
Item 8	Expense	5,585.00
Item 9	Local Travel	<u>175.00</u>
		\$13,747.00

ARTICLE 49

Expenses of Several Departments

Item 10 Reserve Fund

VOTED:

That the sum of \$144,000.00 be and hereby is appropriated for the Reserve Fund.

ARTICLE 49

Expenses of Several Departments

Items 12 13 Finance Department

VOTED:

That the sum of \$866,046.00 be and hereby is appropriated for the Finance Department as follows:

Item 12	Salaries & Wages	\$ 619,841.00
Item 13	Expense	<u>246,205.00</u>
		\$ 866,046.00

ARTICLE 49

Expenses of Several Departments

Items 17 18 19 20 Assessor

VOTED:

That the sum of \$202,439.00 be and hereby is appropriated for the Assessor as follows:

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Item 17	Officials Expense	\$ 300.00
Item 18	Salaries & Wages	167,954.00
Item 19	Expense	33,985.00
Item 20	Local Travel	<u>200.00</u>
		\$ 202,439.00

ARTICLE 49

Expenses of Several Departments

Items 29 30 Town Counsel

VOTED:

That the sum of \$64,932.00 be and hereby is appropriated for the Town Counsel as follows:

Item 29	Salaries & Wages	\$ 2,000.00
Item 30	Expense	<u>62,932.00</u>
		\$ 64,932.00

ARTICLE 49

Expenses of Several Departments

Item 35 Parking Clerk

VOTED:

That the sum of \$10,484.00 be and hereby is appropriated for the Parking Clerk Department as follows:

Item 35	Expense	\$ 10,484.00
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ARTICLE 49

Expenses of Several Departments

Items 39 40 Town Clerk

VOTED:

That the sum of \$154,725.00 be and hereby is appropriated for the Town Clerk as follows:

Item 39	Salaries & Wages	\$147,188.00
Item 40	Expense	<u>7,537.00</u>
		\$154,725.00

ARTICLE 49

Expenses of Several Departments

Items 43 44 Election and Registration

VOTED:

That the sum of \$33,565.00 be and hereby is appropriated for the Election and Registration as follows:

Item 43	Salaries & Wages	\$ 12,950.00
Item 44	Expense	<u>20,615.00</u>
		\$ 33,565.00

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ARTICLE 49

Expenses of Several Departments

Item 50 Planning Board

VOTED:

That the sum of \$1,675.00 be and hereby is appropriated for the Planning Board as follows:

Item 50	Expense	\$1,675.00
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ARTICLE 49

Expenses of Several Departments

Items 55 56 57 Public Buildings

VOTED:

That the sum of \$183,131.00 be and hereby is appropriated for the Public Buildings as follows:

Item 55	Salaries & Wages	\$ 81,631.00
Item 56	Expense	101,100.00
Item 57	Local Travel	<u>400.00</u>
		\$183,131.00

ARTICLE 49

Expenses of Several Departments

Item 59 Town Report

VOTED:

That the sum of \$4,300.00 be and hereby is appropriated for the Town Report to be expended by the Board of Selectmen.

ARTICLE 49

Expenses of Several Departments

Item 60 Town Audit

VOTED:

That the sum of \$42,000.00 be and hereby is appropriated for the Town Audit to be expended by the Board of Selectmen.

MARBLEHEAD TOWN REPORT

ARTICLE 49

Expenses of Several Departments

Items 62 63 64 Police Department

VOTED:

That the sum of \$3,148,050.00 be and hereby is appropriated for the Police Department as follows:

Item 62	Salaries & Wages	\$2,945,651.00
Item 63	Expense	192,399.00
Item 64	Indemnification of Officers	<u>10,000.00</u>
		\$3,148,050.00

ARTICLE 49

Expenses of Several Departments

Items 68 69 Fire Department

VOTED:

That the sum of \$2,806,014.00 be and hereby is appropriated for the Fire Department as follows:

Item 68	Salaries & Wages	\$ 2,670,916.00
Item 69	Expense	<u>135,098.00</u>
		\$2,806,014.00

ARTICLE 49

Expenses of Several Departments

Items 73 74 75 Building Inspection

VOTED:

That the sum of \$442,698.00 be and hereby is appropriated for Building Inspection as follows:

Item 73	Salaries & Wages	\$429,943.00
Item 74	Expense	9,755.00
Item 75	Local Travel	<u>3,000.00</u>
		\$442,698.00

ARTICLE 49

Expenses of Several Departments

Item 80 Sealer of Weights and Measures

VOTED:

That the sum of \$150.00 be and hereby is appropriated for the Sealer of Weights and Measures as follows:

Item 80	Expense	\$150.00
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ARTICLE 49

Expenses of Several Departments

Item 86 Animal Inspector

VOTED:

MARBLEHEAD TOWN REPORT

That the sum of \$2,400.00 be and hereby is appropriated for the Animal Inspector as follows:

Item 86	Salaries	\$2,400.00
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ARTICLE 49

Expenses of Several Departments

Item 101 **School Department**

VOTED:

That the sum of \$27,421,550.00 be and hereby is appropriated for the School Department.

ARTICLE 49

Expenses of Several Departments

Items 105 106 107 **Engineer**

VOTED:

That the sum of \$125,172.00 be and hereby is appropriated for the Engineer as follows:

Item 105	Salaries & Wages	\$114,277.00
Item 106	Expense	10,395.00
Item 107	Local Travel	<u>500.00</u>
		\$125,172.00

To meet this appropriation, \$3,000.00 is to be transferred from Wetland Filing Fees and \$122,172.00 to be taken from Taxation.

ARTICLE 49

Expenses of Several Departments

Items 112 113 **Highway**

VOTED:

That the sum of \$758,578.00 be and hereby is appropriated for the Highway as follows:

Item 112	Salaries & Wages	\$672,644.00
Item 113	Expense	<u>85,934.00</u>
		\$758,578.00

ARTICLE 49

Expenses of Several Departments

Item 116 **Rebuild, Maintain or Hot Top Streets**

VOTED:

That the sum of \$33,750.00 be and hereby is appropriated to rebuild or hot top certain streets and said work to be done under the direction of the Director of

MARBLEHEAD TOWN REPORT

Public Works and said sum of money to be expended by the Director of Public Works.

ARTICLE 49

Expenses of Several Departments

Item 117 Snow Removal

VOTED:

That the sum of \$100,000.00 be and hereby is appropriated for the use of the Director of Public Works to cover all expenses incidental to snow removal.

ARTICLE 49

Expenses of Several Departments

Item 118 Street Lighting

VOTED:

That the sum of \$128,820.00 be and hereby is appropriated for the Street Lighting in accordance with Section 58, Chapter 164 of the Massachusetts General Laws.

ARTICLE 49

Expenses of Several Departments

Items 126 127 128 Waste Collection

VOTED:

That the sum of \$1,861,615.00 be and hereby is appropriated for the Waste Collection as follows:

Item 126	Salaries & Wages	\$ 281,609.00
Item 127	Expense	1,578,494.00
Item 128	Local Travel	<u>1,512.00</u>
		\$1,861,615.00

ARTICLE 49

Expenses of Several Departments

Items 132 133 Drains

VOTED:

That the sum of \$101,494.00 be and hereby is appropriated for the Drains as follows:

Item 132	Salaries & Wages	\$ 96,344.00
Item 133	Expense	<u>5,150.00</u>
		\$101,494.00

ARTICLE 49

Expenses of Several Departments

Items 141 142 143 Cemetery

VOTED:

MARBLEHEAD TOWN REPORT

That the sum of \$316,333.00 be and hereby is appropriated for the Cemetery as follows:

Item 141	Officials Expense	\$ 300.00
Item 142	Salaries & Wages	294,187.00
Item 143	Expenses	<u>\$ 21,846.00</u>
		\$316,333.00

To meet this appropriation, \$259,333 is to be raised by taxation, and \$57,000 to be transferred from Cemetery Perpetual Care.

ARTICLE 49

Expenses of Several Departments

Items 148 149 Tree

VOTED:

That the sum of \$282,020.00 be and hereby is appropriated for the Tree Department as follows:

Item 148	Salaries & Wages	\$230,442.00
Item 149	Expense	<u>51,578.00</u>
		\$282,020.00

ARTICLE 49

Expenses of Several Departments

Items 153 154 155 157 158 Health Department

VOTED:

That the sum of \$146,740.00 be and hereby is appropriated for the Health Department as follows:

Item 153	Officials Expense	\$ 400.00
Item 154	Salaries & Wages	127,185.00
Item 155	Expense	13,055.00
Item 157	Local Travel	2,100.00
Item 158	HAWC	<u>4,000.00</u>
		\$146,740.00

ARTICLE 49

Expenses of Several Departments

Item 162 Mental Health

VOTED:

That the sum of \$60,000.00 be and hereby is appropriated for the Mental Health Department as follows:

Item 162	Contractual Services	\$ 60,000.00
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MARBLEHEAD TOWN REPORT

ARTICLE 49

Expenses of Several Departments

Items 164 165 Council on Aging

VOTED:

That the sum of \$184,874.00 be and hereby is appropriated for the Council on Aging as follows:

Item 164	Salaries & Wages	\$182,015.00
Item 165	Expense	<u>2,859.00</u>
		\$184,874.00

ARTICLE 49

Expenses of Several Departments

Items 175 176 177 178 Veterans Benefits

VOTED:

That the sum of \$76,408.00 be and hereby is appropriated for the Veterans Benefits as follows:

Item 175	Salaries & Wages	\$ 55,065.00
Item 176	Expense	1,243.00
Item 177	Local Travel	1,100.00
Item 178	Benefits	<u>19,000.00</u>
		\$ 76,408.00

ARTICLE 49

Expenses of Several Departments

Items 185 186 187 Library

VOTED:

That the sum of \$942,218.00 be and hereby is appropriated for the Abbot Public Library as follows:

Item 185	Salaries & Wages	\$701,340.00
Item 186	Expense	240,778.00
Item 187	Local Travel	<u>100.00</u>
		\$942,218.00

ARTICLE 49

Expenses of Several Departments

Items 190 191 192 Park Department

VOTED:

That the sum of \$745,292.00 be and hereby is appropriated for the Park and Recreation as follows:

Item 190	Salaries & Wages	\$527,609.00
Item 191	Expense	171,590.00
Item 192	Facility Expense	<u>46,093.00</u>
		\$745,292.00

MARBLEHEAD TOWN REPORT

ARTICLE 49

Expenses of Several Departments

Item 210 Memorial & Veterans Day

VOTED:

That the sum of \$1,950.00 be and hereby is appropriated for Memorial and Veterans Day, said sum of money to be expended by the Board of Selectmen.

ARTICLE 49

Expenses of Several Departments

Items 214 215 Maturing Bonds and Interest

VOTED:

That the sum of \$4,422,955.00 be and hereby is appropriated for the Maturing Bonds and Interest as follows:

Item 214	Maturing Debt	\$ 2,820,000.00
Item 215	Interest	<u>1,602,955.00</u>
		\$4,422,955.00

To meet this appropriation, \$338,693.00 is to be transferred from Bond Premium Reserved for Appropriation and \$4,084,262.00 to be raised by taxation.

ARTICLE 49

Expenses of Several Departments

Item 217 Contributory Retirement

VOTED:

That the sum of \$1,902,903.00 be and hereby is appropriated for the Contributory Retirement Fund.

ARTICLE 49

Expenses of Several Departments

Item 218 Medicare

VOTED:

That the sum of \$425,000.00 be and hereby is appropriated for Medicare, to be expended by the Finance Director.

ARTICLE 49

Expenses of Several Departments

Item 219 Workmen's Compensation

VOTED:

That the sum of \$250,000.00 be and hereby is appropriated to be added to the Workmen's

MARBLEHEAD TOWN REPORT

Compensation Trust Fund (and allowed to accumulate from year to year) to be expended by the Finance Director to pay expenses of Workmen's Compensation.

ARTICLE 49

Expenses of Several Departments

Item 221 Group Insurance

VOTED:

That the sum of \$9,812,084.00 be and hereby is appropriated for Group Insurance to be expended by the Finance Director.

ARTICLE 49

Expenses of Several Departments

Item 222 Other Insurance

VOTED:

That the sum of \$475,888.00 be and hereby is appropriated for Other Insurance, to be expended by the Board of Selectmen.

ARTICLE 49

Expenses of Several Departments

Item 223 Salary Reserve

VOTED:

That the sum of \$110,770.00 be and hereby is appropriated for Salary Reserve, to be expended by the Board of Selectmen.

To meet this appropriation \$32,063.00 to be taken from sewer retained earnings, \$32,063 to be taken from water retained earnings and \$46,644 to be raised by taxation.

ARTICLE 49

Expenses of Several Departments

Item 224 Non-Contributory Retirement

VOTED:

That the sum of \$142,567.00 be and hereby is appropriated for Non-Contributory Retirement, to be expended by the Finance Director/Town Accountant.

ARTICLE 49

Expenses of Several Departments

Item 225 Energy Reserve

VOTED:

MARBLEHEAD TOWN REPORT

That the sum of \$485,040.00 be and hereby is appropriated for Energy Reserve, to be expended by the Board of Selectmen.

ARTICLE 49

Expenses of Several Departments

Items 227 228 230 Sewer Department

VOTED:

That the sum of \$3,216,152.00 be and hereby is appropriated for the Sewer Department as follows:

Item 227	Salaries & Wages	\$589,798.00
Item 228	Expense	524,090.00
Item 230	South Essex Sewer District	<u>2,102,264.00</u>
		\$3,216,152.00

To meet this appropriation, \$3,216,152.00 is to be transferred from sewer receipts.

ARTICLE 49

Expenses of Several Departments

Items 231 232 235 Water Department

VOTED:

That the sum of \$2,845,785.00 be and hereby is appropriated for the Water Department as follows:

Item 231	Salaries & Wages	\$ 579,840.00
Item 232	Expense	497,247.00
Item 235	Metropolitan Water	<u>1,768,698.00</u>
		\$2,845,785.00

To meet this appropriation, \$2,845,785.00 is to be transferred from water receipts.

ARTICLE 49

Expenses of Several Departments

Item 236 Municipal Light Department

VOTED:

That the income from sales of electricity to private consumers, from electricity supplied to municipal buildings and electricity supplied for municipal power during the current fiscal year be appropriated for the Municipal Light Plant, the whole to be expended by the manager of the Municipal Lighting Plant, under the direction and control of the Municipal Light Board for

MARBLEHEAD TOWN REPORT

the expense of the plant for said fiscal year as defined in Section 57 of Chapter 164 of the General Laws; and said Municipal Light Board is hereby further authorized to pay from income of the plant for the fiscal year such amounts as may be expended for extensions, reconstruction enlargements, or additions and sell or trade apparatus that has worn out its usefulness and is unfit for requirements during the fiscal year.

ARTICLE 49

Expenses of Several Departments

**Items 238 239 240 241 Harbor Department
VOTED:**

That the sum of \$710,901.00 be and hereby is appropriated for the Harbor Department as follows:

Item 238	Salaries & Wages	\$300,834.00
Item 239	Expense	297,857.00
Item 240	Bonds and Interest	47,250.00
Item 241	Outlays	<u>64,960.00</u>
		\$710,901.00

To meet this appropriation, \$710,901 is to be transferred from harbor receipts.

ARTICLE 50

Supplemental Expenses of Several Departments

VOTED

That this article be indefinitely postponed.

At 10:35 PM the Moderator dissolved the 2009 Annual Town Meeting.