# The Charter

# Chapter C

# CHARTER

**[HISTORY: Enacted by the General Court of the Commonwealth of Massachusetts by Acts of 2011, Ch. 140, approved 10-27-2011.[1] Amendments noted where applicable.]**

**Section 1.**

Upon the effective date of this act, the town of Ashburnham shall be governed by this charter. To the extent that this charter modifies or repeals existing general or special laws or that body of law which constitutes the town charter under Section 9 of Article LXXXIX of the Amendments to the Constitution of the Commonwealth, this charter shall govern. For the purposes of this charter, all references to officers, employees or other personnel shall apply equally to males and females regardless of the gender or pronoun used.

**Section 2.**

The board of selectmen of the town of Ashburnham shall appoint the town accountant, the water and sewer commissioners, the town counsel, the constables and the members of the historical commission, the arts commission and all other boards, committees and commissions except those appointed by the moderator or otherwise appointed in accordance with this charter. The moderator shall continue to appoint officials heretofore appointed by the moderator.

The executive powers of the town shall be vested in the board of selectmen and it shall serve as the chief policy making agency of the town. The board of selectmen shall continue to have and to exercise all of the powers and duties vested in boards of selectmen by the laws of the commonwealth or by vote of town meeting, except as otherwise provided in this charter.

**Section 3.**

The regional school committee members shall continue to be elected in conformity with the votes of the regional school district. All powers, rights and duties, now or hereafter conferred or imposed by law upon the regional school committee, shall be exercised and performed by the regional school committee. Nothing in this charter shall be construed to affect the powers and duties of the regional school committee as provided by law.

**Section 4.**

No member of the board of selectmen, the regional school committee or the advisory board, during the term for which such member was elected or appointed, shall be eligible either by election or appointment to hold any other town office. Any person appointed by the town administrator to any town office under this charter or any general or special law shall be eligible during the term of such office for appointment to any other town office, except that the town accountant shall not be eligible to hold the positions of town treasurer or town collector. The town administrator, subject to any applicable general law relating thereto, may assume the duties of any office which he is authorized to fill by appointment.

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1. **Editor's Note: Sec. 1 of this enactment repealed Ch. 428 of the Acts of 1986; and Sec. 2 of this enactment stated that "This act may be cited and known as the Ashburnham governmental charter."**

**Section 5.**

The board of selectmen, elected as provided in section 13, shall appoint, by majority vote, a town administrator as soon as practicable and for a definite term to be set by the selectmen. The town administrator shall be a person especially suited by education, training and experience to perform the duties of the office and shall be appointed without regard to his political affiliations or beliefs. The town administrator shall devote full-time to the office and shall not hold any other public office, elective or appointed, without prior approval of the board of selectmen, nor engage in any other business, occupation or profession during his term of office which would deprive him from devoting full-time to his duties during normal working hours. The town administrator need not be a resident of the town or of the commonwealth when appointed but he shall become a resident of the town of Ashburnham or of a town in the commonwealth within a 40 mile radius of Ashburnham during the first year of his term of office unless otherwise provided by the board of selectmen. The town administrator shall possess a college degree at the bachelor level and shall have had three years of full-time, paid experience in a supervisory administrative position, a portion of which, either full-time or part-time, shall have been in the public sector. A masters degree may substitute for not more than one year of such paid experience. The town administrator shall execute a bond in favor of the town for the faithful performance of his duties in such sum and with such surety or sureties as may be fixed or approved by the board of selectmen and the cost for such bond shall be paid by the town. The board of selectmen may enter into a formal contract with the town administrator for a probationary period of six months to be followed by a term or terms not to exceed three years per term. The board of selectmen shall cause the contract to be reviewed by legal counsel. The board of selectmen may establish a job description for the town administrator, which shall take precedence over any personnel by-laws of the town.

The town administrator shall receive such compensation for his services as the board of selectman shall determine but such compensation shall not exceed the amount appropriated therefor by the town.

**Section 6.**

If the office of the town administrator becomes vacant as a result of death, removal, resignation or otherwise or if the town administrator is granted a leave of absence exceeding two weeks, the board of selectmen, by affirmative vote of a majority of its members, shall appoint a qualified individual to serve as acting town administrator. Any vacancy in the office of the town administrator shall be filled as soon as possible by the board of selectmen.

**Section 7.**

Subject to approval by the board of selectmen, the town administrator may designate, by letter filed with the town clerk, a qualified officer or individual of the town to perform the town administrator's duties during a temporary absence or disability. If the town administrator fails to make such a designation, the board of selectmen may, by resolution, designate an officer or individual of the town to perform the duties of the town administrator until the town administrator shall return or his disability shall cease. In any case, the selectmen shall approve all warrants during the absence or disability of the town administrator.

**Section 8.**

The board of selectmen may remove the town administrator from office in accordance with the following procedure:

(a) The board of selectmen shall adopt a preliminary resolution of removal, in writing, by an affirmative vote of a majority of its members. At least 30 days before such proposed removal shall become

effective, a copy of the preliminary resolution shall be sent to the town administrator, by certified and first class mail, to his address of record with the town. In the preliminary resolution, the board of selectmen may suspend the town administrator from duty.

(b) Within 10 days of receipt of service of such resolution, the town administrator may reply, in writing, to the resolution and request a public hearing. If the town administrator so requests, the board of selectmen shall hold a public hearing not earlier than 20 days but not later than 30 days after the filing of such request. Following the public hearing, if any, and otherwise at the expiration of 30 days following the filing of the preliminary resolution, the selectmen may adopt a final resolution of removal, after full consideration and by unanimous vote of the full membership of the board. Upon the adoption of a final resolution of removal, the selectmen may pay the town administrator severance pay in the amount equal to one month's pay for each full year of service to the town, but not more than an amount equal to three months' pay.

**Section 9.**

The board of selectmen, in conjunction with the town administrator, shall annually define goals and performance objectives for the ensuing year, which the board and the town administrator determine necessary for the proper operation and welfare of the town and to attain the policy objectives of the board provided, however, that the town administrator and the board of selectmen shall meet and set such goals and objectives after the expiration of six months of a town administrator's first year in office. The board of selectmen and town administrator shall further establish, in writing, a relative priority among the various goals and objectives.

The board of selectmen shall review and evaluate the performance of the town administrator on a formal basis once annually. The review and evaluation shall include, but not be limited to: the town administrator's progress and performance relative to the annual goals and objectives as described in this section; budgetary and financial administration; personnel administration, supervision and leadership; staff development; public relations; employee and labor relations; policy execution; and interaction with governmental officials and the town's board of selectmen, departments, committees and other boards. After each formal review and evaluation, the town's board of selectmen shall provide the town administrator with a written evaluation report and with an opportunity to discuss the review and evaluation with the board of selectmen and submit written comments in relation thereto.

**Section 10.**

In addition to the specific powers and duties provided in this charter, the town administrator shall have the following general powers and duties:

(a) The town administrator shall be responsible to the board of selectmen for the efficient administration of all departments, commissions, boards and offices placed in the town administrator's charge by this charter, the board of selectmen or vote of town meeting, except the board of selectmen, the regional school committee, the municipal light board, the advisory board, the library trustees, the moderator and other boards, committees, commissions or officers, the discretionary powers of which are granted by statute.

(b) With the approval of the board of selectmen, the town administrator may, in accordance with this charter and unless expressly prohibited by general law: reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, in whole or in part; establish such new departments, commissions, boards or offices as he deems necessary; and transfer the powers and duties of one department, commission, board or office to another.

(c) The town administrator may approve, upon the recommendation of department heads, the appointment and removal of all officers and employees of the town, subject to chapter 31 of the General Laws. Department heads shall select, on merit and fitness alone, all department employees for such recommendation. The town administrator shall appoint on merit and fitness alone and may remove, subject to said chapter 31, all officers and employees of the town who are not otherwise appointed or elected under this charter. Town officers and employees not subject of said chapter 31 shall not be removed by the town administrator except after 10 days' notice in writing, setting forth the cause of such removal.

(d) Notwithstanding section 108 of chapter 41 of the General Laws, but subject to chapter 31 of the General Laws, the town administrator shall fix the compensation of all town officers and employees subject to appointment by him, except department heads and any employees under a written contract with the town. Compensation, changes in compensation or benefits or contract renewals may be recommended by the town administrator and shall become effective upon a majority vote of the board of selectmen.

(e) The town administrator shall attend all regular meetings of the board of selectmen except meetings at which his removal is being considered.

(f) The town administrator shall keep full and complete records of his office and shall render a full report of all operations during the period which the report covers and such a report shall be submitted as often as may be required by the selectmen but at least annually. Upon request, the members of the board of selectmen shall have full access to these records, unless such access is restricted by statute, provided, however, that the board shall not disclose any confidential or privileged information protected by law.

(g) The town administrator shall keep the board of selectmen fully advised as to the needs of the town and shall recommend to the selectmen for adoption such measures requiring action by them or by the town as he deems necessary or expedient.

(h) The town administrator shall have jurisdiction over the rental and use of all town property and shall be responsible for the maintenance and repair of all town buildings. He shall be responsible for the preparation of plans and the supervision of work on existing buildings or the construction of new buildings.

(i) The town administrator shall be responsible for the purchase of all supplies, materials and equipment, except books and educational materials for schools and books and other media for libraries, and shall approve the award of all contracts for all departments of the town. He shall make purchases for departments not under his supervision only upon requisition duly signed by the head of such department.

(j) The town administrator shall administer, either directly or through a person or persons appointed by him in accordance with this charter, all general and special laws applicable to the town, all town by-laws and all regulations established by the board of selectmen.

(k) The town administrator shall have authority, subject to the approval of the board of selectmen, to prosecute, defend and compromise all litigation to which the town is a party and shall be the designated executive officer of a public employer in the town, in accordance with section 1 of chapter 258 of the General Laws, for the purpose of processing claims against the town.

(l) The town administrator shall be the board of selectmen's agent for collective bargaining and shall negotiate within parameters as may be established by the board. The town administrator may employ

special counsel to assist him in the performance of these duties. Any grievance filed by a collective bargaining unit group shall be brought to the attention of the board of selectmen by the town administrator.

(m) The town administrator shall assist the capital planning committee in preparation of the town's capital plan.

(n) The town administrator shall attend all town meetings and shall be permitted to speak when recognized by the moderator.

(o) The town administrator shall be responsible for the implementation of town meeting votes and shall report annually, in writing, to the town meeting on the status of incomplete implementation of any prior town meeting vote.

(p) The town administrator shall be accessible and available for consultation to the chairmen of boards, committees and commissions of the town, whether appointed or elected, and shall make all data and records of his office accessible and available to the chairmen as they may request in connection with their official duties.

(q) The town administrator shall perform such other duties, consistent with his office, as may be required of him by the by-laws of the town or by vote of the board of selectmen or of town meeting.

(r) The town administrator shall act as grant coordinator for the town. He shall collect and distribute information concerning grants, establish uniform procedures for grant applications, prepare and assist in developing grant proposals and monitor all town grants to ensure fiscal and program compliance. Any grant that may add personnel or increase the operating costs of the town in a current or future year shall be approved by the board of selectmen prior to the submission thereof.

(s) The town administrator shall act as the town's insurance coordinator. He shall be responsible for ensuring: that all pertinent policies are in effect; that adequate insurance coverage is provided; that claims are properly processed; and that cost benefit analysis is conducted on existing policies and propose changes thereto. He shall render an annual report to the board of selectmen on all claims made and any losses sustained.

(t) The town administrator shall plan, organize and supervise the operational audits of the activities of town departments to evaluate the efficiency of resource utilization and the effectiveness of governmental services. Audit areas may include staffing, scheduling, vehicle management, and any other area requested by the board of selectmen.

(u) The town administrator shall ensure that the town maintains a professional personnel system by monitoring the effectiveness of policies, procedures and practices as required by law and in accordance with proper personnel practices. He shall ensure that the recruitment, selection, promotion, transfer, discipline and removal of employees is conducted in accordance with applicable state and federal laws and with personnel by-laws and policies of the town adopted pursuant thereto.

(v) The town administrator shall facilitate crisis intervention in emergency situations working with the key officials of the town including the chair of the board of selectmen, the police chief, the fire chief, the department of public works, the water-sewer superintendent, the superintendent of schools and the town counsel.

**Section 11.**

The town administrator may, without notice, cause the examination of the affairs of any division or

department under his supervision or of the job-related conduct of any officer or employee thereof. The town administrator shall have access to all town books and papers for information necessary for the proper performance of such examination. The town administrator shall promptly transmit any findings of wrongdoing to the board of selectmen.

**Section 12.**

Upon the expiration of the term of the town clerk in office on the effective date of this act, or if such office shall become vacant before the expiration of such term, the town administrator shall appoint the town clerk with the approval of the board of selectmen. The town administrator shall appoint, with the approval of the board of selectmen, the town treasurer, the tax collector, the assessors, the commission of trust funds, the industrial commission, the energy conservation and fuel allocation board, the council on aging, the conservation commission, the board of registrars, the zoning board of appeals, the election officials, the parks and recreation commission, and all other town officials whose appointment or election is not specifically provided for in this section. Unless otherwise specified by general or special law, members of all boards, commissions, committees and councils appointed by the town administrator shall be appointed for a specific term of office, not to exceed five years, provided, however, that for each such board, commission, committee and council, the term of at least one member shall expire each year. The town administrator shall appoint and may remove, subject to the approval of the board of selectmen and to chapter 31 of the General Laws, department heads, officers and subordinates and employees for whom no other method of appointment is provided in this charter. The town administrator's evaluations of all department heads shall be approved by the board of selectmen.

**Section 13.**

The registered voters of the town of Ashburnham shall, in accordance with applicable law, town by-law and vote of the town, continue to elect the following:

(a) The moderator;

(b) The board of selectmen;

(c) The regional school committee members;

(d) The planning board;

(e) The board of health;

(f) The library trustees; and

(g) The municipal light board.

**Section 14.**

At least 90 days prior to the annual town meeting, the town administrator shall submit to the board of selectmen a careful, detailed and written estimate of the probable expenditures of the town government for the ensuing fiscal year, stating the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the town and specifically showing the amount necessary to be provided for each fund and department, together with a statement of the expenditures of the town for the same purposes in the preceding year and an estimate of the expenditures for the current year. He shall submit a statement showing all revenues received by the town in the preceding fiscal year, together with an estimate of the receipts of the current year and an estimate of the amount of income from all sources of revenue,

exclusive of taxes upon property in the ensuing year. The town administrator shall report the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the town together with an estimate of the tax rate necessary to raise that amount. For the purposes of enabling the town administrator to project the annual estimates of expenditures, all boards, offices and committees of the town shall, at least 120 days prior to the annual town meeting, furnish all information in their possession and submit to him a detailed, written estimate of the appropriations required for the efficient and proper conduct of their respective departments during the next fiscal year.

**Section 15.**

The board of selectmen shall consider the tentative budget submitted by the town administrator and make such recommendations relative thereto as it deems expedient and proper in the best interests of the town. On or before the seventy-fifth day prior to the annual town meeting, the board of selectmen shall transmit a copy of the budget, together with its recommendations relative thereto, to each member of the advisory board.

**Section 16.**

The town administrator shall be the chief fiscal officer of the town. Warrants for the payment of town funds, prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws, shall be submitted to the town administrator. The approval of any such warrant by the town administrator shall be sufficient authority to authorize payment by the town treasurer, provided, however, that the board of selectmen shall approve all warrants in the event of a vacancy in the office of the town administrator. The town administrator shall present all warrants to the selectmen for review.

**Section 17.**

All laws, town by-laws, votes, rules and regulations, which are in force in the town of Ashburnham on the effective date of this act, or any portion or portions thereof, not inconsistent with this charter, shall continue in full force and effect until otherwise provided by other law, town by-law, vote, rule or regulation, respectively. If any general or special law, town by-law, vote, rule or regulation is inconsistent with this charter, the provisions of this charter shall control.

**Section 18.**

On the effective date of this act, any person holding a town office or employed by the town shall retain such office or employment and continue to perform his duties until another person or agency is selected to perform the duties thereof in accordance with the Ashburnham governmental charter. No person who continues in the permanent full-time service or employment of the town pursuant to this section shall forfeit his pay grade or time in service.

## The Code

## Bylaws

## Administrative Bylaws

# Chapter 1

# GENERAL PROVISIONS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I

# Adoption of Code; General Penalty[2]

**[Adopted as Ch. I of the Bylaws; amended 4-3-1993 ATM by Art. 5; 11-17-2010 ATM by Art. 14]**

## § 1-1. Adoption of bylaws.

The following provisions shall constitute the General Bylaws of the Town of Ashburnham, which shall be in lieu of all bylaws heretofore in force.

## § 1-2. Adoption and amendment of bylaws.

Any or all of these bylaws may be repealed or amended or other bylaws may be adopted at a Town Meeting, an article or articles for that purpose having been inserted in the warrant.

## § 1-3. Prosecution of bylaw violations.

Except when otherwise provided by law, prosecution of any violation of the bylaws of the Town may be made by any law enforcement officer of the Town.

## § 1-4. General penalty for violation of bylaws.

Whoever violates any provisions of these bylaws, whereby any act or thing is enjoined or prohibited, shall, unless other provision is expressly made, forfeit and pay a fine of $100 for each offense.

## § 1-5. Effective date of bylaws.

These bylaws shall go into effect upon their acceptance by the Town Meeting, their approval by the Attorney General, and their publication in the manner required by law.

## § 1-6. Periodic review of bylaws. [Amended 5-4-2021 ATM by Art. 13]

These bylaws shall be reviewed every five years under the direction of the Select Board.

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**2. Editor's Note: The Town voted to renumber and recaption the General Bylaws of the Town 5-3-2022 ATM by Art. 25. This Art. 25: 1) assigned a chapter number to each of the General Bylaws; 2) renumbered each section of each bylaw accordingly; 3) inserted chapter, article and section titles; and 4) updated internal references to reflect the new numbering system.**

ARTICLE II
**Noncriminal Disposition of Violations**
**[Adopted as Ch. XXIV of the Bylaws; amended 4-7-2001 ATM]**

### § 1-7. Procedures authorized; enforcing person.

Any person who violates a provision of any bylaw, rule or regulation of any Town officer, board or department of the Town of Ashburnham, a violation of which is subject to a specific penalty, may be penalized by the method of noncriminal disposition as set forth in MGL c. 40, § 21D. The "enforcing person" as used in this bylaw shall mean any police officer of the Town of Ashburnham and any person who is identified as such in a particular bylaw, rule or regulation relating to violation within such person's respective jurisdiction.

### § 1-8. Authority to seek criminal prosecution.

Nothing herein shall limit or restrict the Town's or any enforcing person's authority to seek criminal prosecution or civil enforcement of any violation of any bylaw, rule or regulation.

# Chapter 5

# ADMINISTRATION OF GOVERNMENT

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. IX of the Bylaws; amended 11-17-2010 ATM by Art. 14; 5-4-2021 ATM by Art. 13. Subsequent amendments noted where applicable.]**

## § 5-1. Administrator authority to prosecute and defend claims and actions.

The Town Administrator shall be agents of the Town and with approval of the Select Board may institute, prosecute and defend any and all claims, actions and proceedings to which the Town is a party, in which the interests of the Town are or may be involved.

## § 5-2. Select Board authority to settle suits.

The Select Board may, at their discretion, compromise or settle any claim or suit to which the Town is a party, which does not require the payment by the Town of an amount in excess of $10,000. No settlement or claim or suit obligating the Town in an amount in excess of $10,000 shall be made, except as authorized by law, without the consent of the Town Meeting.

## § 5-3. Annual report of legal actions.

The Select Board shall state in their annual report what actions have been brought against and on behalf of the Town, what cases have been compromised or settled, and the current standing of all suits at law involving the Town, or any of its interests.

## § 5-4. Appointment of Town Counsel or special counsel.

The Select Board shall appoint a person who is a member of the bar in good standing, to serve as Town Counsel for the term of one year from the first day of April following and until his or her successor is appointed and enters on the performance of his or her duties. They shall likewise fill any vacancy in said office for the unexpired term, and may employ special counsel whenever, in their judgment, necessity therefor arises.

## § 5-5. Town Counsel duties.

It shall be the duty of the Town Counsel to attend each Town Meeting, to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the Town is a party, and the prosecution of actions or proceedings by or on behalf of any Town officer, board or committee as such; to conduct the defense of any action or proceedings brought against any Town officer, board or committee as such, when the Select Board, having determined that any rights or interests of the Town are or may be involved therein, shall so request; to conduct proceedings brought against the Assessors before the Board of Tax Appeals; to assist in the prosecution of complaints for the Board of Tax Appeals; to assist in the prosecution of complaints for violation of any bylaw of the Town when requested so to do by the board or officer enforcing the same; to examine and report upon titles to all land to be acquired by the Town; to prepare or approve contracts, bonds, deeds and other legal instruments in which the Town is a party or in which any right or interest of the Town is involved; to appear at any and all hearings on behalf of the Town whenever his/her services may be required; and generally to advise and act for the Town officers, boards and committees upon and in legal matters touching the duties of their respective offices. No contract, bond, deed or other legal instrument to which the Town is a party or in which any right or interest of the Town is

involved shall be binding upon the Town unless it is approved as to form by the Town Counsel in writing.

# Chapter 12

# BOARDS, COMMITTEES AND COUNCILS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I
**General Provisions**
**[Adopted as Ch. IV of the Bylaws]**

### § 12-1. Qualifications for service on boards and committees.

No person shall be appointed to a committee or board who is not a registered voter of the Town and domiciled in the Town.

### § 12-2. Removal from board or committee upon change in domicile.

Anyone appointed to a committee or board who subsequently removes his domicile from Town shall automatically cease to be a member of said committee or board.

### § 12-3. Removal from board or committee for repeated absences.

When anyone appointed to an appointive committee or board is absent repeatedly from duly called meetings, same shall be reported to the authority making the original appointment, who may declare that a vacancy exists.

### § 12-4. Filling of vacancies.

Vacancies occurring on appointive committees and boards shall be filled by the authority making the original appointment.

### § 12-5. Committee reports; term of committees.

All committees shall report to the Town unless otherwise specified by the Town. If no report is made within a year of its appointment, a committee shall be discharged, unless in the meantime the Town Meeting shall vote otherwise. When an appointed committee reports to the Town Meeting, recommending action upon the matter referred to it, and a vote is taken thereon, such committee shall automatically be discharged, unless otherwise voted by the meeting.

ARTICLE II
**Advisory Committee**
**[Adopted as Ch. VI of the Bylaws; amended 4-25-1977 ATM; 5-14-1987 ATM; 5-1-2004 ATM by Art. 27]**

### § 12-6. Membership; appointment; limitations on service.

The Advisory Committee shall consist of seven members, each a registered voter and domiciled in the Town, who shall be appointed by the Moderator, provided that no person who shall have the care, custody or disposal of Town funds, or the care, custody or disposal of Town property, either as a Town officer or member of any Town committee, or an agent of such officer or Town committee, shall be eligible to serve on said committee.

### § 12-7. Appointment by Moderator; terms; organization.

The Moderator of the Town shall within 30 days after the adjournment of every Annual Town Meeting appoint for a term of three years the number of persons, as may be necessary, to provide a committee of seven members, except that following the final adjournment of the Annual Town Meeting in 2004, the Moderator shall appoint two persons for one-year terms, two persons for two-year terms each and three persons for three-year terms each. The term of office of each member shall commence immediately upon qualification and shall expire upon the final adjournment of the Annual Town Meeting of the last year of such person's term of office. Said Committee shall choose its own officers, shall serve without pay and shall cause to be kept a true record of its proceedings.

### § 12-8. Vacancies.

A vacancy caused by death, resignation or removal of domicile in the membership of the Advisory Committee shall be filled as provided in § 12-4. Frequent nonattendance of any member shall be reported to the Moderator, who may, at his discretion, declare that a vacancy exists. The term of office of any person chosen to fill a vacancy shall be that of the person whom he replaces.

### § 12-9. Review of warrant articles. [Amended 5-4-2021 ATM by Art. 13]

All articles in a warrant for any Town Meeting shall be referred to the Advisory Committee for its consideration. The Select Board, after drawing any such warrant, shall transmit a copy thereof to the said Committee, which shall, after due consideration of the subject matter of all the articles, report thereon in writing to the voters, as prescribed in Chapter 75, § 75-4, of these bylaws.

### § 12-10. Budget duties.

It shall be the duty of the Advisory Committee annually to consider the expenditure in previous years and the estimated requirements for the current fiscal year, which shall be submitted by the several officers, boards and departments of the Town in such form and detail as shall be prescribed by said Committee. Said Committee shall make a report tabulating such expenditures and estimates together with the amounts which, in its opinion, shall be appropriated for the current fiscal year, including such pertinent recommendations as it may deem appropriate, and its consideration of capital budgeting. Said report is to be distributed according to Chapter 75, § 75-4, of these bylaws.

### § 12-11. Authority to investigate departments; subcommittees.

The Advisory Committee shall have authority at any time to investigate the books, accounts and

management of any department of the Town, and to employ such expert and other assistance as it may deem advisable for that purpose; and the books and accounts of all departments and officers of the Town shall be open to the inspection of the Committee and any person employed by it for that purpose. The Committee may summon the attendance of witnesses under MGL c. 233, §§ 8, 10. The Committee may appoint subcommittees of its members and delegate to them such of its powers as it deems expedient.

ARTICLE III
**Council on Aging**
**[Adopted as Ch. XV of the Bylaws; amended 4-9-1994 ATM by Art. 43]**

### § 12-12. Name and address.

A. The name of this organization shall be the "Ashburnham Council on Aging," hereafter referred to as the "Council."

B. The address of the Council shall be P.O. Box 292, Ashburnham, MA 01430. All mail shall be delivered to this address unless another shall be specified by the officers of the Council.

### § 12-13. Purpose.

The purpose of the Council shall be to pursue the following objectives:

A. To identify the total needs of the elderly population of the community;

B. To educate the community and enlist support and participation of all citizens about their needs;

C. To design, advocate and/or implement services to fill these needs;

D. To cooperate with the Massachusetts Executive Office of Elder Affairs and the Central Massachusetts Area Agency on Aging, and to be cognizant of state and federal legislation and programs regarding elders.

### § 12-14. Membership; terms; qualifications.

A. The Council shall consist of a minimum of seven voting members and a maximum of 11. Other interested persons may attend the meetings and express their opinions but shall not have voting privileges.

B. Membership on the Council shall be open to all Ashburnham citizens, provided that at least 51% shall be elders (persons 60 years of age or older).

C. Prospective members shall be nominated by a majority of the existing members of the Council, and no person so nominated is to serve on the Council until appointed by the Town Administrator.

D. Such persons shall be appointed on a rotating basis, so that no less than three members shall be appointed annually, each for a period of three years.

E. All members shall be sworn in by the Town Clerk within seven days of their appointment.

F. After a three-year term, former voting members may be reappointed.

### § 12-15. Meetings.

A. Regular meetings of the Council shall be held once per month. Should a postponement become necessary, due, for example, to inclement weather or a legal holiday, each member shall be notified.

B. Special meetings of the Council may be called by the Chair, or by the request of three members. Due notice must be given to each member at least three days prior to the scheduled special meeting.

C. The annual meeting of the Council shall be held on the second Monday in May. Notice of the annual

meeting and the time and place where it is to be held shall be sent to each member not less than 10 days before the meeting. Notices informing the community of the annual meeting shall also be made.

D. Quorum. At all meetings of the Council, the presence of a simple majority of the total membership shall constitute a quorum. Votes shall be cast only by members in attendance.

E. Conduct of meetings. All meetings shall be conducted in accordance with Robert's Rules of Order and the Open Meeting Law.[3]

F. Resignation. In the event that a member wishes to resign from the Council, he/she shall notify the Council and the Town Administrator in writing.

G. Attendance. Regular attendance is expected of all members. If a member is absent for three consecutive meetings, except for reasons of health or extenuating circumstances duly reported to the Chair in advance of Council meetings, the Council may request the resignation of that member. Six absences during any calendar year constitute an automatic dismissal from the Council.

## § 12-16. Officers.

A. Positions; vacancies.

(1) The officers of the Council shall consist of a Chair, Vice Chair, Secretary and Treasurer.

(2) The officers shall be elected at the annual meeting of the Council, and shall take office upon election.

(3) Vacancies in offices shall be filled by Robert's Rules.

B. Chair. The Chair shall be the chief executive officer of the Council and, subject to the direction of the Council, shall have charge of the business affairs and property of the Council. He/She shall prepare an agenda, preside at all meetings of the members, appoint all committees, be an ex-officio member of all committees.

C. Vice Chair. During the absence or disability of the Chair, the Vice Chair shall exercise all the functions of the Chair, and when so acting, shall have all the powers and be subject to all restrictions of the Chair.

D. Secretary. The Secretary shall:

(1) Record all the proceedings of the meetings of Council.

(2) Cause all notices to be given in accordance with the bylaws and as otherwise may be required.

(3) Perform all duties relevant to the Office of Secretary.

(4) Forward the annual report of the Council to the Town Administrator.

E. Treasurer. The Treasurer shall:

(1) Keep all books of accounts of all the business and financial transactions of the Council and submit vouchers to the Town Accountant for payment of bills.

(2) Render to the Chair and the members a monthly statement of the financial condition of the

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**3. Editor's Note: See MGL c. 30A, §§ 18 through 25.**

Council.

(3) Assist in preparing an annual budget for submission to the Council for approval and to the Town Administrator.

F. Staff.

(1) The Council shall have the power and authority to appoint or employ any clerical or other assistance it may require in the discharge of its duties.

(2) No individual member of the Council shall make requests of the staff or assign duties.

# Chapter 17

# CONTRACTS AND PURCHASING

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. VII, Secs. 1 through 6, of the Bylaws; amended 3-7-1970 ATM; 4-15-1981 ATM; 4-17-1986 ATM; 4-11-1990 ATM by Art. 38; 4-3-1993 ATM by Art. 9; and 4-7-2001 ATM. Subsequent amendments noted where applicable.]**

## § 17-1. Officers prohibited from acting on certain sales, contracts or agreements.

No officer of the Town shall, in his official capacity, make or pass upon, or participate in making or passing upon, any sale, contract or agreement or the terms of amount[4] of any payment in which the Town is interested and in which such officer has any personal financial interest, direct or indirect.

## § 17-2. Compensation or commission beyond official salary prohibited. [Amended 5-4-2021 ATM by Art. 13]

No Town officer and no salaried employee of the Town, or any agent of any such officer or employee, shall receive any compensation or commission for work done by him for the Town, except his official salary and fees allowed by law, without permission of the Select Board expressed in a vote which shall appear on the records, with the reasons therefor.

## § 17-3. Written and signed contracts required.

A. No contract involving an obligation of the Town in excess of $1,000 shall be binding on the Town unless it is in writing and is signed by the Town Accountant, whose signature shall indicate that funds are duly appropriated and available to pay for the contract, and by the Town Administrator.

B. No contract involving an obligation of the Town in excess of $10,000 shall be binding unless it is in writing and signed by the Town Accountant, whose signature shall indicate that funds are duly appropriated and available to pay for the contract, and by the Town Administrator, and by the majority of the Select Board or other board or committee duly authorized to have control over the appropriation. **[Amended 5-4-2021 ATM by Art. 13]**

## § 17-4. Bonds required for certain contracts.

On all contracts with the Town for labor, supplies, materials, machinery or equipment, the estimated cost of which exceeds $25,000, a bond of an approved surety company, or other security, in amount equal to the estimated contract price, conditioned upon full and faithful performance of the contract, shall be posted by the contracting party.

## § 17-5. Contracts exceeding term of one year.

No board, committee or officer shall make any contract on behalf of the Town, the execution of which shall necessarily extend beyond one year from the date thereof, except as otherwise provided by law, unless specific authority to do so has been given by vote of the Town.

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**4. Editor's Note: So in original; should be "terms or amount."**

### § 17-6. Competitive bidding required.

No contract shall be awarded for any work or service to be performed for the Town, other than professional service or service performed by a person regularly employed by the Town as part of the duties of such employment, and no purchase of apparatus, materials, supplies or equipment shall be made, the estimated cost of which in any case is $25,000 or more, unless competitive bids have been obtained therefor. Such bids shall be invited by invitation to prospective vendors, contractors or other qualified persons when considered necessary to insure fair competition, and by public advertisement by at least two insertions in a newspaper of local circulation, on two consecutive weeks, the last publication to be at least one week before the opening of said proposals. Such advertisements shall state the time and place where plans and specifications of proposed work or purchases of apparatus, supplies or materials may be had, and the time and place for opening the proposals in answer to said advertisement, and shall reserve the right of the Town to reject any or all of such proposals, and to accept such proposal as may seem for the best interest of the Town. All bids shall be opened in public. No contract or preliminary plans and specifications therefor shall be split or divided for the purpose of evading the provisions of this section.

# Chapter 28

# FINANCES

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I
**Capital Budgeting**
**[Adopted as Ch. V of the Bylaws; amended 5-3-2008 ATM by Art. 21]**

### § 28-1. Capital Planning Committee. [Amended 5-4-2021 ATM by Art. 13]

The Select Board shall establish and appoint a committee to be known as the "Capital Planning Committee," composed of one member of the Select Board, two members of the Advisory Board, one member of the Planning Board, the Town Treasurer/Collector and two citizens at large. The Town Accountant, Treasurer/Collector and Town Administrator shall be ex-officio, nonvoting members of the Committee. The Committee shall choose its own officers.

### § 28-2. Study of proposed projects. [Amended 5-1-2018 ATM, approved by Attorney General 8-10-2018]

The Committee shall study proposed capital projects and improvements involving major tangible assets and projects which: 1) have a useful life of at least three years; 2) have a dollar value of $15,000 or greater. The following items shall be excluded from the capital plan: 1) police cruiser, and 2) fire turnout gear.

### § 28-3. Policies and procedures.

The Committee shall develop policies and procedures, as necessary, to establish and maintain a capital improvement program.

### § 28-4. Review of anticipated projects and requests; Committee recommendations. [Amended 5-4-2021 ATM by Art. 13]

All officers, boards and committees shall each year, on or before September 30 of each year, give to the Committee, on the forms prepared by it, information concerning all anticipated projects and capital requests requiring Town Meeting action during the ensuing five years. The Committee shall consider the existing and probable future needs of the Town for public improvement and purchases of major equipment, their relationship to the probable future growth of the Town, relative needs, impact, timing and cost of these expenditures and the effect each will have on the financial position of the Town. No appropriation shall be voted for a capital improvement requested by a department, board or commission at an Annual Town Meeting, or at any Special Town Meeting, unless the Committee has first made a recommendation to such Annual Town or Special Town Meeting with respect to such proposed capital improvement unless the proposed capital improvement is considered in the Committee's report, or the Committee shall first have submitted a report to the Select Board explaining the omission.

### § 28-5. Annual report. [Amended 5-4-2021 ATM by Art. 13]

The Committee shall prepare an annual report recommending a Capital Improvement Program for the next fiscal year, and Capital Improvement Program including recommended capital improvements for the following five fiscal years after that. The report shall be submitted to the Select Board for its consideration and approval by December 1 of each year. The Board shall submit its approved capital budget to the Annual Town Meeting for adoption by the Town.

### § 28-6. Authorized capital expenditures.

Such Capital Improvement Program, after its adoption, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, architectural or engineering advice, options or

appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the Town through the appropriation of sums in the current year or in prior years, or preliminary planning for projects to be undertaken more than five years in the future.

### § 28-7. Filing and availability of report. [Amended 5-4-2021 ATM by Art. 13]

The Committee's report and the Select Board's recommended capital budget shall be published and made available in a manner consistent with the distribution of the Advisory Board report. The Committee shall file its original report with the Town Clerk.

ARTICLE II
**Affordable Housing Trust Fund**
**[Adopted 11-13-2008 STM by Art. 13 (Ch. XXIX of the Bylaws)]**

### § 28-8. Name of trust.

The Trust shall be called the "Town of Ashburnham Affordable Housing Trust Fund."

### § 28-9. Purpose.

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Ashburnham for the benefit of low- and moderate-income households. In furtherance of this purpose, the Trustees are hereby authorized, in accordance with the procedures set forth herein, including § 28-12, to acquire by gift, purchase or otherwise real estate and personal property, both tangible and intangible, of every sort and description; to use such property, both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose; provided. however, that all property held by the Trust and the net earnings thereof shall be used exclusively for the preservation and creation in the Town of Ashburnham of affordable housing for the purposes for which this Trust was formed.

### § 28-10. Board of Trustees. [Amended 5-4-2021 ATM by Art. 13]

There shall be a Board of Trustees consisting of not less than five nor more than seven Trustees, who shall be appointed by the Select Board. One of the Trustees shall be the Town Administrator. Only persons who are residents of the Town of Ashburnham shall be eligible to hold the office of Trustee. Trustees shall serve for a term of three years, except that two of the initial Trustee appointments shall be for a term of three years, two for two years, and one for one year, and may be reappointed at the discretion of the Select Board. Any Trustee who ceases to be a resident of the Town of Ashburnham shall cease to be a Trustee hereunder and shall promptly provide a written notification of the change in residence to the Board and to the Town Clerk. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall resign, or for any other reason cease to be a Trustee hereunder before his her term of office expires, a successor shall be appointed by the Select Board to fill such vacancy, provided that in each case the said appointment and acceptance in writing by the Trustee so appointed is filed with the Town Clerk. No such appointment shall be required so long as there are five Trustees in office. Upon the appointment of any succeeding Trustee and the filing of such appointment, the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the "Trustee" shall mean the Trustee or Trustees for the time being hereunder.

### § 28-11. Meetings of Trust.

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, MGL c. 39, §§ 23A, 23B and 23C.[5] A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

### § 28-12. Powers of Trustees. [Amended 5-4-2021 ATM by Art. 13]

The Board of Trustees shall have the following powers, which shall be carried out in accordance with and

5. **Editor's Note: MGL c. 39, §§ 23A, 23B and 23C were repealed in 2009. The Open Meeting Law is now found in MGL c. 30A, §§ 18 through 25.**

in furtherance of the provisions of MGL c. 44, § 55C, as modified under Chapter 109 of the Acts of 2006.

A. With the approval of the Select Board, to accept and receive property, whether real or personal, by gift, grant, devise or transfer from any person, firm, corporation or other public or private entity, including, without limitation, grants of funds or other property tendered to the Trust in connection with provisions of any zoning bylaw or any other bylaw;

B. With the approval of the Select Board and Town Meeting, to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

C. With the approval of the Select Board and Town Meeting, to sell, lease, exchange, transfer or convey any real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to Trust real property as the Trustees deem advisable, notwithstanding the length of any such lease or contract;

D. With the approval of the Select Board, to sell, lease, exchange, transfer or convey any personal property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to Trust personal property, notwithstanding the length of any such lease or contract;

E. With the approval of Town Counsel, to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments, sealed or unsealed, necessary, proper or incident to any transaction in which the Board engages for the accomplishment of the purposes of the Trust;

F. To employ advisors and agents such as accountants, appraisers and lawyers as the Trustees deem necessary;

G. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;

H. With the approval of the Select Board, to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney, with or without power of substitution, to vote any securities or certificates of interest, and to consent to any contract, lease, mortgage, purchase or sale of property by or between any corporation and any other corporation or person;

I. With the approval of the Select Board, to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Board, with the approval of the Select Board, may deem necessary and appropriate;

J. To carry property for accounting purposes other than acquisition date values;

K. With the approval the Select Board and the approval of Town Meeting by a two-thirds majority vote, to incur debt, to borrow money on such terms and conditions and from such sources as the Trustees deem advisable, and to mortgage and pledge Trust assets as collateral;

L. With the approval of the Select Board, to disburse Trust funds for the purpose of making loans or grants in furtherance of the creation or preservation of affordable housing in Ashburnham upon such terms as the Trustees shall deem most appropriate to carry out such purposes;

M. To make distributions or divisions of principal in kind;

N. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property either in total or partial satisfaction of any indebtedness or other obligation and subject to the provisions of MGL c. 44, § 55C, to continue to hold the same for such period of time as the Board may deem appropriate;

O. To manage or improve real property and, with the approval of the Select Board and Town Meeting, to abandon any property which the Trustees determine not to be worth retaining;

P. To hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate; and

Q. To extend the time for payment of any obligation to the Trust.

### § 28-13. Funds paid to Trust.

Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any zoning bylaw, exaction fee or private contribution shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. General revenues appropriated into the Trust become Trust property and these funds need not be further appropriated to be expended. All moneys remaining in the Trust at the end of any fiscal year remain Trust property.

### § 28-14. Acts of Trustees.

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust estate.

### § 28-15. Liability.

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of MGL c. 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of MGL c. 268A.

### § 28-16. Taxes.

The Trust is exempt from MGL Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any subdivision thereto.

### § 28-17. Custodian of funds; annual audit.

The Town Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities.

### § 28-18. Governmental body.

The Trust is a governmental body for purposes of MGL c. 39, §§ 23A, 23B and 23C.[6]

### § 28-19. Board of Town.

The Trust is a board of the Town for purposes of MGL c. 30B and MGL c. 40, § 15A; but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments, and public instrumentalities of the Town shall be exempt from said Chapter 30B.

### § 28-20. Duration of Trust. [Amended 5-4-2021 ATM by Art. 13]

This Trust shall be of indefinite duration until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Select Board for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Select Board, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

### § 28-21. Authority to execute documents. [Amended 5-4-2021 ATM by Art. 13]

The Select Board may authorize the Trustees to execute, deliver, and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

### § 28-22. Section titles.

The titles to the various sections herein are for convenience only and are not to be considered part of said sections nor shall they affect the meaning or the language of any such section.

### § 28-23. Acknowledgement. [Amended 5-4-2021 ATM by Art. 13]

The Select Board, for themselves and their successors, hereby acknowledges and agrees to the terms of this Trust, and the Trustees named hereunder hereby acknowledge and agree for themselves and their successors to hold the Trust property for the purposes hereof in trust for the benefit of all of the inhabitants of the Town of Ashburnham, Massachusetts, in the manner and under the terms and conditions set forth herein.

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**6. Editor's Note: MGL c. 39, §§ 23A, 23B and 23C were repealed in 2009. The Open Meeting Law is now found in MGL c. 30A, §§ 18 through 25.**

ARTICLE III
**Departmental Revolving Funds**
**[Adopted 5-1-2018 ATM by Art. 15 (Ch. XXXI of the Bylaws)]**

### § 28-24. Purpose and authority.

This bylaw establishes and authorizes revolving funds for use by Town departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by MGL c. 44, § 53E 1/2.

### § 28-25. Expenditure limitations.

A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this bylaw without appropriation subject to the following limitations:

A. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.

B. No liability shall be incurred in excess of the available balance of the fund.

C. The total amount spent during a fiscal year shall not exceed the amount authorized by Town Meeting on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the Select Board and Advisory Board. **[Amended 5-4-2021 ATM by Art. 13]**

### § 28-26. Interest.

Interest earned on monies credited to a revolving fund established by this bylaw shall be credited to the general fund.

### § 28-27. Procedures and reports.

Except as provided in MGL c. 44, § 53E 1/2 and this bylaw, the laws, Charter provisions, bylaws, rules, regulations, policies or procedures that govern the receipt and custody of Town monies and the expenditure and payment of Town funds shall apply to the use of a revolving fund established and authorized by this bylaw. The Town Accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the Town Accountant provides the department, board, committee, agency or officer on appropriations made for its use.

### § 28-28. Authorized revolving funds.

A. RAD Program Revolving Fund.

(1) Fund name. There shall be a separate fund called the "RAD Program Revolving Fund" authorized for use by the Police Chief.

(2) Revenues. The Town Accountant shall establish the RAD Program Revolving Fund as a separate account and credit to the fund all of the RAD class registration fees charged and received by the Police Department in connection with Rape Assault Defense Program.

(3) Purposes and expenditures. During each fiscal year, the Police Chief may incur liabilities against and spend monies from the RAD Revolving Fund for administrative costs for supplies and materials, and training costs and traveling expenses for instructors in connection with the RAD Program. Salaries or wages of employees shall be paid from the annual budget appropriation of the Police Department and shall not be paid from the fund.

(4) Fiscal years. The RAD Revolving Fund shall operate for fiscal years that begin on or after July 1, 2018.

B. Fire Alarm & Communication Revolving Fund.

(1) Fund name. There shall be a separate fund called the "Fire Alarm & Communication Revolving Fund" authorized for use by the Fire Chief.

(2) Revenues. The Town Accountant shall establish the Fire Alarm & Communication Revolving Fund as a separate account and credit to the fund all fire alarm fees charged and received by the Fire Department in connection with the fire alarm system that is operated by the Fire Department.

(3) Purposes and expenditures. During each fiscal year, the Fire Chief may incur liabilities against and spend monies from the Fire Alarm & Communication Revolving Fund for equipment costs and upgrades, administrative costs for supplies and materials, radio communication maintenance, and training costs in connection with the fire alarm system. Salaries or wages of employees shall be paid from the annual budget appropriation of the Fire Department and shall not be paid from the fund.

(4) Fiscal years. The Fire Alarm & Communication Revolving Fund shall operate for fiscal years that begin on or after July 1, 2018.

C. Economic Development Banner Program Revolving Fund. **[Amended 5-4-2021 ATM by Art. 13]**

(1) Fund name. There shall be a separate fund called the "Economic Development Banner Program Revolving Fund" authorized for use by the Select Board.

(2) Revenues. The Town Accountant shall establish the Economic Development Banner Program Revolving Fund as a separate account and credit to the fund all banner program fees charged and received by the Select Board in connection with the Banner Program that is administered by the Ashburnham Economic Development Commission.

(3) Purposes and expenditures. During each fiscal year, the Select Board may incur liabilities against and spend monies from the Economic Development Banner Program Revolving Fund for costs of banners, banner brackets, installation costs incurred, administrative costs for supplies and materials, in connection with the Economic Development Banner Program.

(4) Fiscal years. The Economic Development Banner Program Revolving Fund shall operate for fiscal years that begin on or after July 1, 2018.

# Chapter 53

# OFFICERS AND EMPLOYEES

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I
**Leave Policies.**
**[Adopted as Ch. VII, Sec. 7, of the Bylaws]**

## § 53-1. Personal and sick leave; holidays.

A. All regular employees of the Town departments, excluding the School Department, shall be entitled to personal leave not to exceed a maximum of three days per fiscal year and granted at the start of the fiscal year.

B. All regular employees shall be entitled to sick leave not to exceed a maximum of 12 days in a fiscal year and accrued at a rate of one day per month. Sick time shall be cumulative to a total not to exceed 120 days, and upon death or retirement an employee or his legal spouse shall be rebated at 50%.

C. All regular employees are entitled to be paid for all legal holidays, not to exceed 12 days.

ARTICLE II

**Inspector of Gas Piping and Appliances**

**[Adopted as Ch. XII, Sec. 4, of the Bylaws; amended 5-4-2021 ATM by Art. 13]**

## § 53-2. Appointment; term; compensation; qualifications.

The Town Administrator shall annually appoint an Inspector of Gas Piping and Gas Appliances in buildings, who shall hold office for one year or until his successor is appointed, and whose compensation shall be fixed by said Select Board. Said Inspector shall be a licensed gas fitter and shall enforce the rules and regulations adopted by the Board established under Section H. of MGL c. 25.[7]

**7. Editor's Note: This appears to be a reference to MGL c. 25, § 12h, which related to the creation of the gas fitting board and was repealed in 1977.**

(RESERVED)

# Chapter 60

# (RESERVED)

**[Former Chapter 60, Personnel Bylaw, adopted as Ch. XXVII of the Bylaws, was deleted 5-2-2023ATM by Art. 28. Prior histories include: 5-6-2006 ATM by Art. 20; 5-2-2009 ATM by Art. 23; 11-30-2009 STM by Art. 6; 11-17-2010 ATM by Art. 14; 5-4-2021 ATM by Art. 13]**

ASHBURNHAM CODE

# Chapter 66

# RECORDS AND REPORTS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. VIII of the Bylaws; amended 5-3-2008 ATM by Art. 26; 11-17-2010 ATM by Art. 14. Subsequent amendments noted where applicable.]**

## § 66-1. Minutes and accounts of officers, boards and committees.

All officers, boards and committees of the Town shall cause minutes of their doings and of their meetings, and also accounts, to be kept in suitable books. Said books shall regularly be kept in appropriate places, except when in the custody of an authorized official. Such books shall, unless otherwise provided by law be open to public inspection at any reasonable time, but shall remain, during such inspection at any time, under the supervision of the officer, board, or committee having custody thereof. In addition, all such officers, boards and committees shall file with the Town Clerk copies of all meeting minutes within 10 days from approval thereof.

## § 66-2. Annual reports of expenditures. [Amended 5-4-2021 ATM by Art. 13]

All officers, boards, standing committees and special committees of the Town having the expenditure of Town money shall report annually in writing, in such manner as to give the citizens a clear understanding of the objects and methods of such expenditures, referring, however, to the report of the Town Treasurer for statements in detail of receipts and payments. These reports may contain such recommendations as may be deemed proper. Such reports shall be submitted to the Select Board for inclusion in the Annual Town Report on or before the first day of February each year.

## § 66-3. Annual Town Report. [Amended 5-4-2021 ATM by Art. 13]

The Annual Town Report shall contain, in addition to the reports of officers, boards and committees as hereinbefore provided, a detailed report of all moneys received and paid out of the Town treasury in the financial year next preceding, showing separate payments made from the proceeds of loans as capital outlays for permanent improvements; the report of tax receipts, payments and abatements; statement of all funds belonging to the Town or held for the benefit of its inhabitants; a statement of the liabilities of the Town in bonds, notes, certificates of indebtedness, or otherwise, and of indebtedness authorized but not incurred, and the purpose thereof; a statement made to or from any appropriation; a record of the meetings of the Town held since publication of the last annual Town report; and such matters as the said report is required by law to contain, or as may be inserted by the Select Board under the discretion granted them by law.

## § 66-4. Printing of other lists and reports. [Amended 5-4-2021 ATM by Art. 13]

The Select Board or the Town may direct that the Assessors' valuation lists, the bylaws, and standing votes of the Town, and the rules and regulations adopted by any officer, board or committee be printed either separately or as a part of the Annual Town Report.

# Chapter 75

# TOWN MEETINGS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I

# Meeting Dates and Times

**[Adopted as Ch. II of the Bylaws; amended 11-6-1969 STM; 5-10-1976 ATM; 10-1-1991 STM by Art. 10; 6-20-1992 STM by Art. 29; 4-3-1993 ATM by Art. 27; 5-1-2004 ATM by Art. 28; 10-29-2013 STM by Art. 6]**

## § 75-1. Date and time of Town Meetings. [Amended 5-4-2021 ATM by Art. 13]

The Annual Town Meeting shall be held on the first Tuesday in May at 7:00 p.m. in the evening. Notwithstanding the foregoing, however, the Select Board may, in their discretion, vote to designate any other date in April or May for the Annual Town Meeting. All business of the Annual Town Meeting, except the election of Town officials and other matters to be determined by ballot, shall be considered at this time. This meeting may be adjourned to such other times and places as may be determined by the meeting. Special Town Meetings shall be held as provided by law.

## § 75-2. Annual Town election.

On the last Tuesday of April, the election of Town officials and voting on other matters to be determined by ballot shall take place pursuant to a warrant issued according to the General Laws. This day is to provide a uniform election date with Westminster. Special Town Meetings may be held as provided by the General Laws.

## § 75-3. Notice of Town Meetings. [Amended 5-4-2021 ATM by Art. 13]

Notice of every Town Meeting shall be given by posting attested copies of the warrant in at least two places in the Town, which shall include the Town Hall and the Post Office on Central Street in Ashburnham, and in such other places as the Select Board shall determine and occasion require. The posting shall be done at least seven days before the date of the meeting.

## § 75-4. Advisory Committee report.

The Advisory Committee shall report in writing its recommendations at each Annual Town Meeting, which report shall be distributed with the Annual Town Report. In case of Special Town Meetings, the report and recommendations of the Advisory Committee shall be presented orally or in writing at such Special Town Meetings, and whenever practicable shall be released for publication by the news service prior to such Special Town Meetings.

## § 75-5. Adjourned meetings.

As soon as practical after the adjournment of any Town Meeting on a vote to adjourn to another day, the Town Clerk shall cause a notice of the day and hour and place to which this adjournment was voted, together with the business to come before the meeting, to be posted as prescribed in § 75-3 preceding.

ARTICLE II
**Town Meeting Procedures**
**[Adopted as Ch. III of the Bylaws; amended 4-9-1994 ATM by Art. 33; 5-14-1986 ATM; 11-17-2010 STM by Art. 14]**

### § 75-6. Quorum.

There shall be no quorum requirement for Town Meetings.

### § 75-7. Attendance exceeding available space.

In case of an attendance at a Town Meeting which exceeds the capacity of the floor of the auditorium, the Moderator shall appoint tellers who shall permit only registered voters to enter upon the floor of the auditorium. When the attendance at any Town Meeting exceeds the capacity of the floor and balcony of the auditorium, it shall be the duty of the Moderator to make suitable provision so that every registered voter at the Town Hall may hear and participate in the proceedings.

### § 75-8. Order of votes.

Articles in the warrant shall be acted upon in the order in which they appear in the warrant, unless otherwise determined by the vote of the meeting.

### § 75-9. Written motions.

All motions having to do with the expenditure of money shall be presented in writing. Other motions shall be in writing, if so directed by the Moderator.

### § 75-10. Action upon all articles in warrant.

No motion, the effect of which would be to dissolve the meeting shall be in order until every article in the warrant therefor has been duly considered and acted upon, but this shall not preclude the postponement of consideration of any article to an adjournment of the meeting to a stated time and place.

### § 75-11. Order of motions.

When a motion is before the meeting, the following motions, namely: to adjourn; to lay on the table; for the previous question; to postpone to a time certain; to commit; to amend; to postpone indefinitely; to pass over; shall be received, and shall have precedence in the foregoing order; and the first three shall be decided without debate.

### § 75-12. Methods for voting.

When a question is put, the sense of the meeting shall be determined by a "YES" or "NO" ballot, provided a motion to that effect shall have been carried. Otherwise, the sense of the meeting shall be determined by the voices of the voters, and the Moderator shall declare the vote as it seems to him. If the Moderator is unable to decide such vote, or if his decision is immediately questioned by seven or more voters rising in their places for that purpose, he shall determine the vote by a display of hands, or rising vote, and shall appoint tellers to make and return the count.

### § 75-13. Reconsideration of votes.

No final vote which has been announced by the Moderator shall be reconsidered, except upon motion for that purpose within one hour of the time which the vote was taken; provided, however, that any vote taken during the last hour of a meeting which is adjourned to a time certain may be reconsidered upon motion made during the first hour of the adjourned meeting. No question shall be reconsidered except by an order of 2/3 of the voters present and voting.

### § 75-14. Rules for parliamentary procedure.

All questions of parliamentary procedure not covered by these bylaws shall be governed by "Town Meeting Time: A Handbook of Parliamentary Law" by Johnson, Trustman and Wadsworth.

### § 75-15. Supermajority votes required by statute. [Amended 5-3-1997 ATM, approved by Attorney General 7-21-1997]

On matters requiring a two-thirds vote by statute a count need not be taken.

## Regulatory Bylaws

# Chapter 105

# ALCOHOLIC BEVERAGES

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. XI, Sec. 19, of the Bylaws. Amendments noted where applicable.]**

## § 105-1. Public consumption prohibited.

No person shall drink any alcoholic beverages as defined in MGL c. 138, § 1, or have in his possession any open container thereof while in any public park or on any playground or athletic field, to which the public has a right of access or on any public way.

## § 105-2. Enforcement.

All alcoholic beverages used in violation of this bylaw shall be seized and held until final adjudication of the charge against the person summoned before the court, at which time they shall be returned to the person lawfully entitled to their possession.

## § 105-3. Violations and penalties.

Any violation of this bylaw shall be punished by a fine of $50.

# Chapter 111

# BOATS AND BOATING

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. XI, Sec. 18, of the Bylaws; amended 5-14-2021 ATM by Art. 13. Subsequent amendments noted where applicable.]**

## § 111-1. Select Board to make rules and regulations.

The Select Board shall make rules and regulations for the operation of motor boats upon rivers, ponds and lakes of the Town to the end that such motor boats shall not be operated in a manner which endangers the safety of the public, or is detrimental or injurious to the neighborhood, or to the value of property therein; and shall provide penalties for the breaking of such rules and regulations.

ASHBURNHAM CODE

# Chapter 117

# BUILDINGS AND BUILDING CONSTRUCTION

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I

# Notification to Assessor Regarding New Construction

**[Adopted as Ch. XII, Secs. 1 through 3, of the Bylaws; amended 10-29-2013 STM by Art. 7; 11-17-2010 ATM by Art. 14]**

## § 117-1. Notification required.

No person shall commence any new construction whose cost is estimated to exceed $3,500 in value in any calendar year until such proposed construction shall have been reported to the Board of Assessors on such form as they may prescribe.

## § 117-2. Definition.

The term "new construction" shall be held to include any structural alteration or improvement of an existing structure, but shall not include maintenance work, plumbing, electrical or heating changes.

## § 117-3. Violations and penalties.

Whoever violates the provisions of the foregoing section shall be subject to a fine of $250 for each offense.

ARTICLE II
**Stretch Energy Code**
**[Adopted as Ch. XII, Sec. 5, of the Bylaws; amended 10-29-2013 STM by Art. 7; 11-17-2010 ATM by Art. 14]**

### § 117-4. Definitions.

INTERNATIONAL ENERGY CONSERVATION CODE (IECC) — The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

STRETCH ENERGY CODE — Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA of the 8th edition Massachusetts Building Code, the Stretch Energy Code is an appendix to the Massachusetts Building Code, based on further amendments to the International Energy Conservation Code (IECC) to improve the energy efficiency of buildings built to this code.

### § 117-5. Purpose.

The purpose of 780 CMR 115.AA is to provide a more energy-efficient alternative to the Base Energy Code applicable to the relevant sections of the Building Code for both new construction and existing buildings.

### § 117-6. Applicability.

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 13, 34, 51, as applicable.

### § 117-7. Incorporation of Stretch Code; enforcement.

A. The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Town of Ashburnham General Bylaws, Chapter 117.

B. The Stretch Code is enforceable by the Inspector of Buildings or Building Commissioner.

ARTICLE III
**Rapid Entry Systems**
**[Adopted 5-9-2000 ATM (Ch. XXI of the Bylaws)]**

### § 117-8. Secure key box required; contents.

Any building other than a residential building of fewer than six units which has a fire alarm system or other fire protection system shall provide a secure key box installed in a location accessible to the Fire Department in the event of an emergency. This key box shall contain the keys to fire alarm control panels and elevators and any other keys necessary for fire protection.

### § 117-9. Type, location and installation.

The key box shall be a type approved by the Chief of the Ashburnham Fire Department or his designee and shall be located and installed as approved by the Chief or his designee.

### § 117-10. Time frame for compliance.

All existing buildings shall be required to comply within 12 months of the effective date of this bylaw in all commercial buildings not normally occupied 24 hours.

### § 117-11. Applicability.

All newly constructed buildings regardless of use or occupancy, except residential dwellings under six units, shall install a key box system.

ARTICLE IV
**Numbering of Buildings**
**[Adopted 5-7-2005 ATM by Art. 35; amended 11-17-2010 ATM by Art. 14 (Ch. XXV of the Bylaws)]**

### § 117-12. Numbers required.

Every building in the commonwealth, including, but not limited to, dwellings, apartment buildings, condominiums and business establishments, shall have affixed thereto a number representing the address of such building. Said number shall be of a nature and size and shall be situated on the building so that, to the extent practicable, it is visible from the nearest street or road providing vehicular access to such building.

### § 117-13. Entry in state database.

The statewide Emergency Telecommunications Board shall cause such number and the address of such building to be entered into the electronic database for use in enhanced 911 service as defined in MGL c. 6A, § 18A.

### § 117-14. Purpose.

The standards and regulations set forth within the provisions of this bylaw shall have the purpose and effect of promoting the general health, safety, welfare and convenience of the inhabitants of the Town of Ashburnham by reducing the difficulty in quickly responding to individual residences in cases of police, fire, medical or other emergency situations requiring immediate location and response; by facilitating the delivery efforts of the United States Postal Service through the creation of a numbering system for all delivery locations; by decreasing the potential for traffic accidents caused by motorists searching for address locations; by improving local census data gathering capabilities; by improving the accuracy of important legal documents requiring address location information; and by assisting in the planning efforts of a growing community.

### § 117-15. Administration.[8]

This bylaw shall be administered by the Planning Board of the Town of Ashburnham, who shall see that building numbers are assigned to all residential, commercial and industrial structures, and that such numbering is conducted in conformance with the Town of Ashburnham Street Numbering Guidelines to be promulgated under the authority of the Planning Board in order to provide guidance in the development of a consistent numbering system within the Rules and Regulations of the Planning Board using the forty-foot rule.

### § 117-16. Compliance required; location and specifications.

All building owners and/or occupants are required to display assigned numbers in the following manner:

A. Number on the structure or residence. Where the residence or structure is within 50 feet of the edge of a street right-of-way, the assigned number shall be displayed on the front of the residence or structure in the vicinity of the front door or entry.

B. Number at the street line. Where the residence or structure is over 50 feet from the edge of the street

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**8. Editor's Note: See also the Planning Board's numbering regulations in Ch. 436, House Numbering.**

right-of-way, the assigned number shall be displayed on a post, fence, wall or mailbox at the property line in the vicinity of the walk or access drive to the residence or structure.

C. Size and color of number. The numbers shall be three inches high minimum. The color of the number shall be of contrasting color from its background color.

### § 117-17. Existing structures.

Within 60 days of the approval of this bylaw by the Attorney General, the owner of all structures within the Town shall ensure his property meets this bylaw.

### § 117-18. Enforcement; violations and penalties.

Enforcement of this bylaw shall be as follows:

A. The Building Commissioner of the Town of Ashburnham shall be the enforcement agent for the purposes of this bylaw.

B. No inspection shall be performed, or certificate of occupancy or compliance issued, by any Town Inspector for any structure that does not comply with this bylaw.

C. Any property owner found to be in violation of any section of this bylaw shall be notified in writing of the violation by the Building Commissioner. Any person who permits said violation to continue for a period of 60 days subsequent to the receipt of a written notice from the Building Commissioner concerning said violation shall be assessed a penalty by the Select Board of $250 for each violation. For the purposes of this bylaw, each successive day during which any violation is committed or permitted to continue after 60 days of the receipt of a written notice from the Building Commissioner shall constitute a separate violation. **[Amended 5-4-2021 ATM by Art. 13]**

# Chapter 124

# DEMOLITION DELAY

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 4-22-1991 ATM by Art. 44 (Ch. XVIII of the Bylaws). Amendments noted where applicable.]**

## § 124-1. Definitions.

BUILDING — Any structure built for the support, shelter or enclosure of persons, animals, goods or property of any kind.

COMMISSION — Ashburnham Historical Commission.

DEMOLITION — Any act of pulling down, destroying, removing or razing a building or any portion thereof, or commencing the work of total or substantial destruction with the intent of completing the same.

DEMOLITION PERMIT — The permit issued by the Building Inspector as required by the State Building Code for the demolition, partial demolition or removal of a building or structure.

PREFERABLY-PRESERVED — Any historically significant building or structure which, because of the important contribution made by such structure to the Town's historical and/or architectural resources, is in the public's interest to preserve, rehabilitate or restore.

SIGNIFICANT BUILDING — Any building or portion hereof which:

A. In whole or in part was built 50 or more years prior to the date of the application for demolition permit or is of unknown age; or

B. Is listed on, or is within an area listed on, the National Register of Historic Places, or is the subject of a pending application on said National Register; or

C. Is included in the Historical Survey and Inventory prepared for the Town by Commonwealth Collaborative or the Ashburnham Historical Commission, including those buildings listed for which complete surveys may be pending; or

D. Is importantly associated with one or more historic persons or events, or with the broad architectural, political, economic or social history of the Town or the commonwealth; or

E. Is historically or architecturally significant (in terms of period, style, method of building construction or association with a famous architect or builder), either by itself or in the context of a group of buildings.

## § 124-2. Procedure.

A. The Building Inspector shall forward a copy of each demolition permit application for a building or structure to the Ashburnham Historical Commission within seven days of the filing of such application. No demolition permit shall be issued at that time.

B. Within 14 days from its receipt of a demolition permit application the Commission shall determine whether the building is historically significant. If the Commission decides that the building or structure is not historically significant, the Commission shall so notify the Building Inspector in writing and the Building Inspector may issue the permit. If the Commission determines that the building or structure is historically significant, the Commission shall notify the Building Inspector in writing. The demolition plan review must be made prior to the issuance of any demolition permit. If

the Commission fails to notify the Building Inspector of its determination within 14 days of its receipt of the application, then the building or structure shall be deemed not historically significant and the Building Inspector may issue the permit.

C. If the determination is positive and a demolition plan review is deemed necessary, the Commission shall fix a reasonable time for public hearing on the application and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing and also, within seven days of said hearing, mail a copy of said notice to the applicant, to the owners of all property deemed by the Commission to be affected thereby as they appear on the most recent local tax list, and to such other persons as the Commission shall deem entitled to notice. The applicant for the permit shall be entitled to make a presentation to the Commission of said hearing if so desired.

D. If, after such hearing, the Commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall so notify the Building Inspector within 10 days of such determination. Upon receipt of such notification, or after the expiration of 15 days from the date of the closing of hearing without receiving notification from the Commission, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, rules, and regulations, issue the demolition permit.

E. If the Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a preferably-preserved significant building. The Commission shall notify Massachusetts Historical Commission, the Ashburnham Planning Board and other interested parties requesting assistance in preservation funding and adaptive reuses.

F. Upon determination by the Commission that the significant building which is the subject of the application for a demolition permit is a preferably-preserved significant building, the Commission shall so advise the applicant and the Building Inspector and no demolition permit may be issued until at least six months after the date of such determination by the Commission.

G. Notwithstanding the preceding sentence. The Building Inspector may issue a demolition permit for a preferably-preserved significant building at any time after receipt of written advice from the Commission to the effect that either:

(1) The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building; or

(2) The Commission is satisfied that for at least six months the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore subject building, and that such efforts have been unsuccessful.

### § 124-3. Emergency demolition.

Nothing in this ordinance shall restrict the Building Inspector from immediately ordering the demolition of any building in the event of an imminent danger to the safety of the public.

### § 124-4. Enforcement and remedies.

A. The Commission and Building Inspector are both authorized to institute any and all proceedings in law or equity as they deem necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent violation thereof.

B. No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this bylaw for a period of two years after the date of completion of such demolition. As used herein, "premises" refers to the parcel of land upon which the demolished building was located and all adjoining parcels of land under common ownership or control.

### § 124-5. Severability.

If any section, paragraph or part of this bylaw be for any reason declared invalid or unconstitutional by any court, every section, paragraph or part shall continue in full force and effect.

### § 124-6. Review and appeal.

A. Any person aggrieved by a determination of the Commission may, within 20 days after the filing of the notice of such determination with the Town Clerk for a review by the Zoning Board of Appeals.

B. The finding of the Zoning Board of Appeals shall be filed with the Town Clerk within 45 days after the request and shall be binding on the applicant and the Commission.

# Chapter 129

# DOG CONTROL

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 4-15-1981 ATM; amended 2-21-1984 STM; 4-10-1985 ATM; 4-11-1990 ATM by Art. 37; 5-6-1995 ATM; 4-7-2001 ATM; 5-7-2005 ATM by Art. 36; 11-17-2010 ATM by Art. 14; 10-29-2013 STM by Art. 9; 5-4-2021 ATM by Art. 13 (Ch. XVI of the Bylaws). Subsequent amendments noted where applicable.]**

## § 129-1. Licensing of dogs; fees.

A. The owner or keeper of any dog shall license such animals in accordance with the provisions of MGL c. 140, §§ 137-139, inclusive, except that fees for such licenses shall be set by the Select Board.

B. For dog licenses that are not renewed by June 1, the fee schedule shall be set by the Select Board.

## § 129-2. Definitions.

As used in this bylaw, unless the context indicates otherwise:

DANGEROUS DOG — A dog that either:

A. Without justification, attacks a person or domestic animal causing physical injury or death; or

B. Behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

DOGS — All animals of the canine species, both male and female.

KEEPER — Any person, corporation or society, other than the owner, harboring or having in his possession any dog.

NUISANCE DOG — A dog that:

A. By excessive barking or other disturbance is a source of annoyance to a sick person residing in the vicinity; or

B. By excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or

C. Barking, whining or howling in an excessive, continuous or untimely fashion (more than 10 minutes in any hour overnight between the hours of 10:00 p.m. and 7:00 a.m. or for more than 15 minutes in any hour during the day between 7:01 a.m. and 9:59 p.m.); or

D. Has threatened or attacked livestock, a domestic animal or a person, including threatening or attacking passersby or passing vehicles, including bicycles, but such threat or attack was not a grossly disproportionate reaction under all the circumstances;

E. Trespassing on school grounds or other public or private property or damaging public or private property.

OWNER — Any person or persons, firm, association or corporation owning, keeping or harboring a dog as herein defined.

RUN AT LARGE — Free to wander on public or private ways at will, or on the property of another.

### § 129-3. Permitting dog to run at large.

No owner or keeper of a dog shall permit such dog, whether licensed or unlicensed, to run at large within the Town of Ashburnham, except that a dog may, for the purpose of sporting events (such as hunting, field trials or training purposes), or for agricultural assistance, or while working as a canine guard of mercantile, commercial or industrial establishment, be exempt from the restraining order during such period of time as the dog is actually engaged in the event, sport, agricultural function, or guard work.

A. Dogs may be taken from the owner's premises, provided that such dogs are on a leash.

B. Owners are responsible to collect and properly dispose of excrement deposited by their dog on property other than the owner's.

### § 129-4. Impounding.

It shall be the duty of the Dog Officer, duly appointed, to apprehend any dog found unrestrained and running at large, and to impound such dog in a suitable place or to order the owner or keeper thereof to restrain said dog.

### § 129-5. Nuisance or dangerous dogs.

The owner or keeper of a dog shall be prohibited from allowing a dog to be dangerous or a nuisance.

### § 129-6. Notice to owner; release of impounded dog.

If such dog so impounded has upon it the name and owner thereof, or if the name of said owner is otherwise known, then the Dog Officer shall immediately notify the owner; and if the owner is not known, then no notice shall be necessary. The owner of any dog so impounded may reclaim such dog upon payment of the sum of $10 for the first reclaiming, for each 24-hour period or any part thereof, that the dog is held thereafter, the sum of $25 for the second and subsequent reclaimings for each 24 period or any part thereof that the dog is held thereafter, however, if the dog is not licensed that before release to any person, a license as required by the Town of Ashburnham be secured.

### § 129-7. Disposition of funds.

The sums collected pursuant to the provisions of this bylaw shall be accounted for and paid to the Town Treasurer; however, under the provisions of the state law, the Dog Officer shall be entitled to all fees paid to him for the care of impounded dogs by the owners thereof.

### § 129-8. Disposition of unclaimed dogs.

Any dog which has been impounded and has not been redeemed by the owner within 10 days shall be disposed of as provided by MGL c. 140, § 152, and any amendment thereto.

### § 129-9. Violations and penalties.

A. Any owner found in violation of any of the provisions of this bylaw shall be subject to a fine in accordance with the following schedule:

   (1) First offense: $25.

   (2) Second offense in any twelve-month period: $50.

(3) Third offense in any twelve-month period: $75.

B. Further, if the owner or keeper of a dog be a minor, the parent or guardian of such minor shall be held liable for any violation of this bylaw.

### § 129-10. Enforcement.

The Dog Officer or any duly appointed law enforcement officer of the Town shall enforce the provisions of this bylaw relating to dogs, and shall attend to all complaints or other matters pertaining to dogs in the Town of Ashburnham.

### § 129-11. Alternative procedures under MGL c. 140, § 173A.

A. Notwithstanding any provisions of the General Laws to the contrary, any Dog Officer who takes cognizance of a violation of:

(1) This bylaw;

(2) Failure to license dogs pursuant to MGL c. 140, § 137, failure to acquire kennel license pursuant to MGL c. 140, § 137A;

(3) Failure to vaccinate against rabies pursuant to MGL c. 140, § 145B;

May issue or mail a Notice of Complaint of Violation of Municipal Dog Control Law to the owner or keeper of such dog or dogs, and if the owner or keeper of such dog or dogs is a minor, the parent or guardian of such minor shall be liable for any violation of the bylaw.

B. Any owner or keeper found in violation of the above-mentioned procedures shall be subject to a fine of $25. If the owner or keeper of a dog or dogs is a minor, the parent or guardian of such minor shall be held liable for any violation of this bylaw.

C. The procedure set forth above shall also include the provisions of paragraphs 2-4 of MGL c. 140, § 173A, as amended.

### § 129-12. When effective.

This bylaw shall take effect upon its passage by the Town Meeting and approval by the Attorney General's office.

### § 129-13. Recovery of costs and expenses.

Where any owner violates, or continues to violate, any provision of this section, resulting in legal action by the Town, the Town may recover reasonable attorney's fees, court costs, and other expenses associated with such enforcement, including the cost of any actual damages incurred by the Town.

# Chapter 138

# FARMING

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 5-8-2010 ATM by Art. 23 (Ch. XXX of the bylaws). Amendments noted where applicable.]**

## § 138-1. Legislative purpose and intent; applicability.

A. The purpose and intent of this bylaw is to state with emphasis the right to farm accorded to all citizens of the commonwealth under Article 97 of the Constitution, and all state statutes and regulations thereunder, including but not limited to MGL c. 40A, § 3, Paragraph 1; MGL c. 90, § 9, MGL c. 111, § 125A and MGL c. 128, § 1A. We the citizens of Ashburnham restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment").

B. This general bylaw encourages the pursuit of agriculture, promotes agriculturally based economic opportunities, and protects farmlands within the Town of Ashburnham. This bylaw shall apply to all jurisdictional areas within the Town.

## § 138-2. Definitions.

A. The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto. The words "farming" or "agriculture" or their derivatives shall include, but not be limited to, the following:

(1) Farming in all its branches and the cultivation and tillage of the soil;

(2) Dairying;

(3) Production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;

(4) Growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;

(5) The maintenance, collection and processing of maple sugar operations;

(6) Raising of livestock, including horses;

(7) Keeping of horses as a commercial enterprise;

(8) Keeping and raising of poultry, sheep, goats, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

B. "Farming" shall encompass activities including, but not limited to, the following:

(1) Operation and transportation of slow-moving farm equipment over roads within the Town;

(2) Control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plants and animals;

(3) Application of manure, fertilizers and pesticides;

(4) Conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;

(5) Processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand, including signage thereto;

(6) Maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products;

(7) On-farm relocation of earth and the clearing of ground for farming operations;

(8) Operation of log trucks on or off Town roads;

(9) Stacking or storage of processed or unprocessed wood products;

(10) Operation of timber harvest machinery, including chain saw, skidder, forwarder, processor, bulldozer, or other equipment used to fell, process, and transport wood products;

(11) Cultivation, harvest, processing, storage and transportation of non-timber forest products such as mushrooms, medicinal plants, ornamental plants;

(12) Cultivation, harvest, processing, storage and transportation of Christmas trees.

**§ 138-3. Right to farm declaration.**

A. The right to farm is hereby recognized to exist within the Town of Ashburnham. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general.

B. The benefits and protections of this bylaw are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm Bylaw shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

C. The right to manage and harvest forest and farm products is hereby recognized to exist within the Town of Ashburnham. The above-described activities may include the attendant incidental noise, odors, dust, and fumes associated with normally accepted harvesting and management practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture and forestry is more than offset by the benefits of forestry, and farming to the neighborhood, community, and society in general. The benefits and protections of this bylaw are intended to apply exclusively to those reasonable forestry, agricultural, and farming operation and activities conducted in accordance with generally accepted forestry and agricultural practices that are not injurious to environmental quality and public health safety. Moreover, nothing in this Right to Farm Bylaw shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation or local zoning law.

### § 138-4. Conflict with other laws and regulations.

In the event of conflict between this bylaw and all other Town regulations, this bylaw shall take precedence. In the event of conflict between this bylaw and federal or state law, federal or state law shall take precedence, respectfully.

### § 138-5. Resolution of disputes.

A. Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Select Board, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Select Board may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed-upon time frame.

B. The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance and report its recommendations to the Board of Health within an agreed-upon time frame.

### § 138-6. Severability.

If any part of this bylaw is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this bylaw. The Town of Ashburnham hereby declares the provisions of this bylaw to be severable.

ASHBURNHAM CODE

# Chapter 143

# FIREARMS AND WEAPONS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. XI, Sec. 11, of the Bylaws. Amendments noted where applicable.]**

## § 143-1. Discharge restrictions.

No person may fire or discharge any firearm nor shoot a bow and arrow nor use a slingshot within 200 feet of a paved highway or public property, nor on any private property, except with the consent of the owner thereof, except that a shotgun may be discharged while hunting, if otherwise lawful, without the landowner's permission; provided, however, that this bylaw shall not apply to the use of any weapons at any military exercise, or in the lawful defense of the person, family or property of any citizen, nor in any act of duty required or justified by law.

# Chapter 155

# JUNK AND SECONDHAND DEALERS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. X of the Bylaws; amended 3-11-1967 ATM; 3-7-1970 ATM; 6-18-1973 STM; 11-17-2010 ATM by Art. 14; 5-14-2021 ATM by Art. 13. Subsequent amendments noted where applicable.]**

## § 155-1. Authority to license.

The Select Board may license suitable persons to be collectors of or dealers in junk and keepers of shops for the purchase, sale or barter of junk, old metal, used cars, and other secondhand articles, and may make such additional rules, regulations and restrictions as they may deem necessary, not inconsistent with the law or of these bylaws.

## § 155-2. Required signage.

Every keeper of such a shop shall put up and maintain in a suitable and conspicuous place in his shop, a sign having his name and occupation legibly inscribed thereon in large letters.

## § 155-3. Hours of operation.

Every shop for the sale, purchase or barter of junk, old metals, used cars or other secondhand articles shall be closed between the hours of 8:00 p.m. and 7:00 a.m., and no keeper thereof and no junk collector shall purchase any of such articles between said hours.

## § 155-4. Authority to inspect articles or premises.

Such shops, and any place, vehicle or receptacle used for collecting and keeping of such articles and all articles of merchandise therein, may be examined at all times by the Select Board or by any police officer of the Town, or by any other person authorized by the Select Board.

## § 155-5. Recordkeeping requirements.

Every keeper of a shop for the sale, purchase or barter of junk, old metals, used cars or other secondhand articles shall keep a book in which shall be written at the time of each purchase, a description thereof, the name, age and residence of the person from whom, and the day and hour when purchase was made; and such book shall at all times be open to inspection of the Select Board, or of any person by them or by law authorized to make such an inspection.

## § 155-6. Minors.

No keeper of such a shop and no collector of junk shall directly or indirectly purchase or receive by way of barter or exchange from a minor any of the articles mentioned in § 155-1 of this chapter.

## § 155-7. Open storage of junk vehicles.

No person or entity, corporate or otherwise, as owner or as one in control of premises, shall keep in the open any junk motor vehicle as defined in the following section, without being licensed to do so under this bylaw.

A. For the purpose of this bylaw, a junk motor vehicle shall be one which is worn out, cast off, or

discarded and which is ready for dismantling or destruction, or which has been collected or stored for salvage, or for stripping in order to make use of parts thereof. Any parts from such a vehicle shall be considered junk motor vehicle under this bylaw.

B. A license to keep no more than two junk motor vehicles shall be requested from the Chief of Police, who may issue said license under the terms and standards set forth in Subsection D of this bylaw. The refusal to grant such license may be appealed to the Select Board within 10 days of such refusal.

C. The Select Board shall hold a public hearing upon such appeal, notice of which shall be given by publishing in a newspaper having general circulation in the Town, five days at least before the date of the hearing. The cost of publishing shall be paid by the applicant.

D. The Select Board may grant a license for not more than one year to keep such junk motor vehicles in the open after a public hearing has been held and said Board determines that the keeping of the same will not depreciate property values in the area, will not create a hazard to the public safety or will not become a public nuisance. Renewals of said licenses shall be granted only after the procedure set forth above is followed.

E. No provisions contained herein shall apply to premises for which a Class III license has been granted under MGL c. 140, § 58.

F. Any person or entity who violates this bylaw shall be liable to a fine of $50 for each day said violation continues.

# Chapter 162

# LICENSING

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I
**Denial, Suspension or Revocation for Delinquent Taxpayers**
**[Adopted 12-9-1987 STM (Ch. XVII of the Bylaws)]**

## § 162-1. List of delinquent taxpayers.

The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the "Tax Collector," shall annually furnish to each department, board, commission, or division, hereinafter referred to as the "licensing authority," that issues licenses or permits, including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the "party," that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges for not less than a twelve-month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.

## § 162-2. Authority to deny, revoke or suspend licenses or permits; procedure.

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the Tax Collector; provided, however, that written notice is given to the party and the Tax Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than 14 days after said notice. Said list shall be prima facie evidence for denial, revocation, or suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation, or suspension. Any findings made by the licensing authority with respect to such license denial, revocation, or suspension shall be made only for the purpose of such proceeding and shall be made only for the purpose of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation, or suspension. Any license or permit denied, suspended, or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments, or other municipal charges payable to the municipality as of the date of issuance of said certificate.

## § 162-3. Payment agreements.

Any party shall be given an opportunity to enter into payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

## § 162-4. Waivers. [Amended 5-4-2021 ATM by Art. 13]

The Select Board may waive such denial, suspension, or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in MGL c. 268, § 1,[9] in the business or activity conducted in or on said property.

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**9. Editor's Note: So in original; should reference MGL c. 268A, § 1.**

## § 162-5. Exceptions.

This section shall not apply to the following licenses and permits granted under the General Laws of the Commonwealth of Massachusetts: open burning, MGL c. 48, § 13; bicycle permits, MGL c. 85, § 11A;[10] sales of articles for charitable purposes, MGL c. 101, § 33; children work permits, MGL c. 149, § 69; clubs, associations dispensing food or beverage license, MGL c. 140, § 21E; dog licenses, MGL c. 140, § 137; fishing, hunting, trapping license, MGL c. 131, § 12; marriage licenses, MGL c. 207, § 28; and theatrical events, public exhibition permits, MGL c. 140, § 181.

**10. Editor's Note: MGL c. 85, § 11A was repealed by St. 2008, c. 525, § 2.**

# Chapter 167

# LOW-IMPACT DEVELOPMENT

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 11-15-2007 STM by Art. 3 (Ch. XXVIII of the bylaws). Amendments noted where applicable.]**

ARTICLE I
**Regulations**

## § 167-1. Introduction.

Land uses in Town affect our streams, lakes and water supplies. Careful planning of new development and redevelopment will protect the quality and health of these important water resources. Therefore, the Town of Ashburnham enacts this Low Impact Development bylaw to provide guidance that will prevent harmful impacts from land development activities.

## § 167-2. Purposes; applicability of other bylaws.

A. The purpose of this bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to manage stormwater runoff, promote groundwater recharge and to prevent water pollution from new development and redevelopment. This bylaw seeks to meet that purpose through the following objectives:

   (1) Establish regulations for land development activities that preserve the health of water resources;

   (2) Require that the amount and quality of stormwater runoff from new development is equal to or better than pre-development conditions in order to reduce flooding, stream erosion, pollution, property damage and harm to aquatic life;

   (3) Establish LID management standards and design criteria to control the quantity and quality of stormwater runoff;

   (4) Encourage the use of "low-impact development practices," such as reducing impervious cover and preserving greenspace and other natural areas;

   (5) Establish maintenance provisions to ensure that stormwater treatment practices will continue to function as designed and pose no threat to public safety;

   (6) Establish procedures for the Town's review of low-impact development plans and for the Town's inspection of approved stormwater treatment practices.

B. Nothing in this bylaw is intended to replace the requirements of either, the Town of Ashburnham Wetlands Protection Bylaw, Open Space Residential Development Bylaw, or any other bylaw that may be adopted by the Town of Ashburnham. Any activity subject to the provisions of the above-cited bylaws must comply with the specifications of each.

## § 167-3. Authority.

This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, and pursuant to the regulations of the federal Clean Water Act, and as authorized by the residents of the Town of Ashburnham at Town Meeting, dated November 15, 2007.

## § 167-4. Scope and applicability.

A. Applicability.

   (1) This bylaw shall be applicable to all new development and redevelopment, including, site plan review applications, subdivision applications and subdivision applications where approval is not required under the Subdivision Control Law. The bylaw shall apply to any activities that will

result in an increased amount of stormwater runoff or pollutants from a parcel of land, or that will alter the drainage characteristics of a parcel of land, unless exempt under Subsection B of this section. All new development and redevelopment, under the jurisdiction of this bylaw, shall be required to obtain a LID permit. The LID permit process shall be coordinated with existing permitting, where applicable.

(2) An alteration, redevelopment, or conversion of land use or activities to those with higher potential pollutant loadings such as: auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas, shall require a LID permit.

B. Exemptions. No person shall alter land within the Town of Ashburnham without having obtained a LID permit for the property with the following exceptions:

(1) Any activity that will disturb an area less than 7,500 square feet;

(2) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act, 310 CMR 10.04 and MGL c. 40A, § 3.

(3) Timber harvesting conducted under the terms of an approved Forest Cutting Plan as defined by the Forest Cutting Practices Act regulation 304 CMR 11.00 and MGL c. 132, §§ 40 through 46.

(4) Maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling;

(5) Repair or replacement of an existing septic system;

(6) Repair or replacement of an existing roof of a single-family dwelling;

(7) The construction of any fence that will not alter existing terrain or drainage patterns;

(8) Construction of a deck, patio, addition, garage, retaining wall, driveway expansion, accessory building, shed, swimming pool, tennis or basketball court associated with an existing single-family dwelling, provided that the resulting runoff does not discharge untreated into a resource area;

(9) Construction of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not alter terrain, ground cover, or drainage patterns;

(10) Emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, or as deemed necessary by the Planning Board;

(11) Any work or projects for which all necessary approvals and permits have been issued before the effective date of this bylaw.

## § 167-5. Definitions.

The definitions are in Article II of this bylaw and shall apply in the interpretation and implementation of the bylaw. Terms not defined in Article II shall be understood according to their customary and usual meaning. Additional definitions may be adopted by separate regulation.

## § 167-6. Administration.

A. The Planning Board is hereby designated as the LID Authority. The Planning Board shall administer, implement and enforce this bylaw. Any powers granted or duties imposed upon the Planning Board may be delegated in writing by the Planning Board to its employees or agents.

B. LID regulations. The Planning Board shall adopt, and may periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this LID Bylaw by majority vote of the Planning Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least 14 days prior to the hearing date. After public notice, public hearing and review by a registered professional engineer, the Planning Board may issue rules and regulations to fulfill the purposes of this bylaw. Failure by the Planning Board to issue such rules and regulations or a legal declaration of their invalidity by a court shall not suspend or invalidate the effect of this bylaw.

C. Simplified LID regulations. The Planning Board shall adopt and implement a simplified LID permit program for specific types of projects associated with a single-family residence. The purpose of the simplified LID permit is to streamline the permitting process under this bylaw by eliminating many of the standard requirements for minor residential projects. The simplified LID permit application form and simplified LID permit requirements shall be defined and included in the LID regulations.

D. The Planning Board shall, with the concurrence of the applicant, designate another Town board, including the Conservation Commission, Zoning Board of Appeals, Department of Public Works, and Board of Health, as its authorized agent for the purposes of reviewing all LID submittals and approving LID permits for any project within that particular board's jurisdiction.

E. Stormwater management handbooks. The Planning Board will use the policy, criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater Management Policy to execute the provisions of this bylaw. This Policy includes a list of acceptable stormwater treatment practices, including specific design criteria for each. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the LID regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

F. Actions by the Planning Board. The Planning Board may take any of the following actions as a result of an application for a LID permit: approval, approval with conditions, disapproval, or disapproval without prejudice.

G. Appeals of action by the Planning Board. A decision of the Planning Board shall be final. Further relief of a decision by the Planning Board made under this bylaw shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with MGL c. 249, § 4.

H. LID credit system. The Planning Board may adopt a LID credit system through the regulations authorized by this LID Bylaw. This credit system will allow applicants the option, if approved by the Planning Board, to take credit for the use of stormwater better site design practices to reduce some of the requirements specified in the criteria section of the regulations. Failure by the Planning Board to issue such a credit system through its regulations or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this bylaw.

## § 167-7. Procedures.

Permit procedures and requirements shall be defined and included as part of any rules and regulations

issued as permitted under § 167-6 of this bylaw.

### § 167-8. Enforcement.

The Planning Board or an authorized agent of the Planning Board shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Enforcement shall be further defined and included as part of any LID Regulations issued as permitted under § 167-6 of this bylaw.

### § 167-9. Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of this bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

ARTICLE II
**Definitions**

**§ 167-10. Terms defined.**

APPLICANT — A property owner or agent of a property owner who has filed an application for a LID permit.

BEST MANAGEMENT PRACTICE (BMP) — Structural, nonstructural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

BETTER SITE DESIGN — Site design approaches and techniques that can reduce a site's impact on the watershed through the use of nonstructural LID management practices. Better site design includes conserving and protecting natural areas and greenspace, reducing impervious cover, and using natural features for LID management.

FOREST CUTTING PLAN — A plan for the cutting of trees on forest land, which is prepared and submitted in accordance with MGL c. 132, §§ 40-46A. The forest cutting plan requires approval by a Service Forester of the Massachusetts Department of Conservation and Recreation, as provided under 304 CMR 11.04.

IMPERVIOUS SURFACE — Any material or structure on or above the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved parking lots, sidewalks, rooftops, driveways, patios, and paved, gravel and compacted dirt surfaced roads.

LID AUTHORITY — Town of Ashburnham Planning Board that has the authority to administer, implement, and enforce these LID bylaws. The Planning Board is responsible for coordinating the review, approval and permit process as defined in this bylaw. Other boards and/or departments participate in the review process as defined in § 167-6 of these LID bylaws.

LID CREDIT SYSTEM — A form of incentive for developers to promote conservation of natural and open space areas. Projects that comply with prescribed requirements are allowed reductions in stormwater management requirements when they use techniques to reduce stormwater runoff at the site.

LOW-IMPACT DEVELOPMENT PERMIT (LIDP) — A permit issued by the Planning Board, for projects in the categories and meeting the standards defined in this bylaw, after review of an application, plans, calculations, and other supporting documents. Projects in these categories that meet these generic standards and are properly implemented are assumed to meet the requirements and intent of this bylaw which is designed to protect the environment of the Town of Ashburnham from the deleterious effects of uncontrolled and untreated stormwater runoff.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY — The policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state bylaws promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131, § 40 and Massachusetts Clean Waters Act MGL c. 21, §§ 23-56. The policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

NONPOINT SOURCE POLLUTION — Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

PERSON — Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Ashburnham, and any other legal entity, its legal representatives, agents, or assigns.

POST-DEVELOPMENT — The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

PRE-DEVELOPMENT — The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Planning Board. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

RECHARGE — The replenishment of underground water reserves.

REDEVELOPMENT — Any construction, alteration, transportation, improvement exceeding land disturbance of 7,500 square feet, where the existing land use is commercial, industrial, institutional, or multifamily residential.

RESOURCE AREA — Any area protected under including without limitation: the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Town of Ashburnham Wetlands Protection Bylaw. For the purposes of this bylaw a resource area includes all land lying within 100 feet of a wetland and 200 feet of a perennial stream.

# Chapter 185

# RECYCLING

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 4-3-1993 ATM by Art. 38 (Ch. XIX of the Bylaws). Amendments noted where applicable.]**

## § 185-1. Purpose.

It is the purpose and intent of this bylaw to require that recycling in the Town of Ashburnham be conducted in the same manner and include the materials and method of disposition as set forth by the commonwealth in its regulations promulgated by the Department of Environmental Protection (DEP) in order to insure orderly and organized recycling in the Town in accordance with state law.

## § 185-2. Recycling by residents required.

All residents of the Town shall recycle materials as determined by DEP and set forth in 310 CMR 19.17, as amended from time to time.

## § 185-3. Recycling by commercial haulers required. [Amended 5-4-2021 ATM by Art. 13]

All commercial haulers providing residential collection of solid waste within the Town of Ashburnham shall recycle materials as determined by DEP and set forth in 310 CMR 19.17, as amended from time to time. Said commercial haulers shall be subject to all inspections by appropriate Town officials as may from time to time be ordered, in writing, by the Select Board.

ASHBURNHAM CODE

# Chapter 191

# SCENIC ROADS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. XI, Sec. 20, of the Bylaws. Amendments noted where applicable.]**

## § 191-1. Violations and penalties.

Anyone who violates the provisions of MGL c. 40, § 15C concerning the designation and improvement of scenic roads shall be punished by a fine of $300. Each day of violation shall constitute a separate offense.

# Chapter 196

# STREETS, SIDEWALKS AND PUBLIC PLACES

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I

# Openings and Excavations; Moving Buildings

**[Adopted as Ch. XI, Secs. 1, 2 and 3, of the Bylaws; amended 5-4-2021 ATM by Art. 13]**

## § 196-1. Permits required.

A. Road or sidewalk opening permits.

(1) No person or other entity shall dig up, alter or obstruct any portion of any Town road, or way or any way that the Town is responsible for maintenance, without first obtaining a road and/or sidewalk opening permit.

(2) Road and/or sidewalk opening permits shall be issued by the Superintendent of Highway/Parks, and Grounds or his designee and shall be obtained before any obstructing, cutting, digging up, or altering in any Town road or way, or sidewalk and right-of-way or any way the Town maintains. The Superintendent of Highway/Parks, and Grounds or his/her designee, shall adopt, and may, from time to time, amend reasonable design standards and forms for road and/or sidewalk openings to include fees and surety requirements with the approval of the Select Board.

B. Driveway permits.

(1) No person or other entity shall construct a driveway or curb cut exiting onto a Town road or way or other way that the Town is responsible for maintenance, without first obtaining a driveway permit.

(2) Driveway permits shall be issued by the Superintendent of Highway/Parks, and Grounds or his/her designee, and shall be obtained prior to construction of any and every new driveway, curb cut or alteration of any existing driveway at its intersection with the boundary line of any public street or way or any way the Town maintains, including sidewalks and any rights-of-way. The Superintendent of Highway/Parks, and Grounds or his/her designee, with assistance from the Planning Board, shall adopt, and may from time to time amend, reasonable design standards and forms for driveways to include fees and surety requirements, with the approval of the Select Board.

C. Anyone who violates the provision of this section of the Town of Ashburnham's General Bylaw shall be punished by a fine of $300. Each day of violation shall constitute a separate offense.

## § 196-2. Moving buildings or structures.

Any person moving a building, structure or material or anything liable to obstruct passage along the highway, must apply for a permit to the Select Board, in the same manner as provided in § 196-1, and no permit shall be granted by the Select Board if said moving will cause destruction or serious injury to any tree or shrub standing on the highway, or owned by an abutter without written consent of that abutter.

## § 196-3. Indemnification of Town; safety requirements.

Any person who secures a permit under regulations in §§ 196-1 and 196-2 herein shall execute a written agreement to save harmless the Town against all damage, costs, or claims or by reason of any process, civil or criminal, on account of such excavation or obstruction and shall obey all requirements or limitations imposed by the Select Board, in respect to barriers and maintenance of lights, and the taking of other precautions for the safety of travelers on the highway.

ARTICLE II
**Obstructions**
**[Adopted as Ch. XI, Secs. 4 and 5, of the Bylaws]**

### § 196-4. Removal of safety barriers prohibited.

No person shall remove a barrier or light placed on any public way for the safety of travelers.

### § 196-5. Placement of waste or dangerous materials on public ways prohibited.

No person shall place rubbish, garbage, bottles, cans, nails or any substance dangerous to persons or vehicles on any public way.

ARTICLE III
**Snow and Ice Removal**
**[Adopted as Ch. XI, Secs. 6 and 7, of the Bylaws]**

### § 196-6. Prevention of snow or ice falling from roof.

Any person owning a building so situated and constructed that snow or ice on the roof or other portion thereof would fall or slide to, on or in any sidewalk, street, road, way or other public place shall cause suitable snow guards or barriers to be attached or erected on such roof or other portion of such building or take other suitable measures to prevent the fall or sliding of snow or ice therefrom.

### § 196-7. Placement of ice or diversion of water onto public ways prohibited.

No person shall shovel or throw snow or ice into that portion of any public way which is open to travel. No person shall pump or direct water so that it runs in or on to any public way.

ARTICLE IV
**Drainage Control; Deposits**
**[Adopted as Ch. XI, Secs. 8, 14 and 15, of the Bylaws]**

### § 196-8. Sewage drainage. [Amended 5-4-2021 ATM by Art. 13]

Any person who owns a building, the sewage from which flows in any amount off his property and onto, across or underneath any sidewalk, public place or waterway, shall be required to take such action as is necessary to confine the sewage from his own building to his own property, unless he can secure a written agreement from the Select Board, the Highway Department, or from an adjacent landowner, to allow such sewage to enter such adjacent property.

### § 196-9. Pollution of water sources prohibited.

No person shall place, deposit or cause to flow in any well, stream, pond, lake or any other body of water in the Town any glass, metal or any article, material or substance, or liquid, liable to cause injury or pollute the same in any manner.

### § 196-10. Distribution of printed materials.

No person shall deposit papers, circulars, or advertising matter of any kind in the public ways of the Town, nor distribute the same through the Town in such manner as to create a disturbance or litter.

ARTICLE V
**Use Restrictions**
**[Adopted as Ch. XI, Sec. 9, of the Bylaws]**

### § 196-11. Grazing or at-large animals prohibited.

No person who owns or has the care of domestic animals of the grazing type shall permit such animals to graze on any highway common or other public place, or to go at large, without proper restraint.

ARTICLE VI
**Interference with Trees, Walls and Scenic Roads**
**[Adopted as Ch. XI, Sec. 12, of the Bylaws]**

### § 196-12. Interference prohibited without permit. [Amended 5-4-2021 ATM by Art. 13]

No person, unless lawfully authorized, shall set up, take down, cut or destroy any tree, post, fence, edgestone, stonewall or any part thereof in or on any street, highway, square or other public place in Town, or on any property owned or controlled by the Town, without a permit from the Select Board.

### § 196-13. Scenic roads.

In the case of scenic roads, anyone wishing to change the scenery on such a road must also obtain written permission from the Planning Board in accordance with MGL c. 40, § 15C.

### § 196-14. Violations and penalties.

Any person or entity that violates this article shall be liable for a fine of $300. Each day of violation shall constitute a separate offense.

ARTICLE VII
**Graffiti and Advertisements**
**[Adopted as Ch. XI, Sec. 13, of the Bylaws; amended 5-4-2021 ATM by Art. 13]**

## § 196-15. Posting restricted.

No person, unless required or permitted to do so, shall make any marks, letters or figures of any kind, or affix in any manner any sign, advertisement or placard, bill, picture or notice, or anything of like nature upon or against any wall, fence post, ledge, store, building or other structure, without permission of the owner, thereof, nor upon any sidewalk, bridge, guide post, electric light or telephone pole or fence adjoining any public way, or upon any property belonging to the Town, without permission of the Select Board.

ARTICLE VIII
**Loitering**
**[Adopted as Ch. XI, Sec. 16, of the Bylaws]**

### § 196-16. Loitering prohibited; violations and penalties.

No person or group of persons shall obstruct or impede the movement of traffic on any sidewalk, street or road, or prevent access to any public or private building adjacent to said sidewalk, street or road. Any person doing so and who refuses to move on the direction of a police officer shall be subject to a fine of $100.

# Chapter 202

# TAXATION

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as indicated in article histories. Amendments noted where applicable.]**

ARTICLE I

# Payment Agreements for Overdue Taxes

**[Adopted 10-25-2016 STM by Art. 3, AG approval 8-1-2018 (Ch. XXXII of the Bylaws)]**

## § 202-1. Authority to enter into agreements.

Pursuant to MGL c. 60, § 62A, the Treasurer is hereby authorized to enter into a written payment agreement ("agreement") with those person(s) entitled to redeem ownership of parcels of real estate ("redeemer") which have been taken by the Town as a result of nonpayment of real estate taxes.

## § 202-2. Applicability.

Such agreements may be authorized for all categories of real property subject to all other terms and conditions in this bylaw.

## § 202-3. Conditions.

The Treasurer may enter into an agreement only upon the existence of the following conditions:

A. The Town has not filed an action in Land Court to foreclose the rights of redemption;

B. All real estate taxes due for the current fiscal year assessed against the parcel, as well as any other fees and charges owed to the Town, are paid to date; and

C. The redeemer, at the time of execution of said agreement, pays to the Town a minimum of 25% of the total amount required to redeem the parcel, including all principal, interest, fees, costs, and other charges, in the form of certified funds or cash.

## § 202-4. Term of agreement; payment schedule.

The term of the payment agreement shall be 60 months. At the request of the redeemer, the Treasurer is authorized to agree to a shorter term. All payments shall be made quarterly based on the Town's fiscal year and in the amounts and at the time provided in a payment schedule prepared by the Treasurer that is and shall be a part of said payment agreement.

## § 202-5. Breach of agreement.

The redeemer shall be in breach of the payment agreement by failing to make any payment(s) under the agreement as provided in the schedule or if a check for any payment is returned, or by failing to stay current on taxes and/or other charges that are a lien on the same parcel(s). In the event of such breach, the full amount of the overdue tax, including all interest, charges and fees, will immediately become due and the Treasurer may bring an action to foreclose the tax title on such parcel(s). The Treasurer is under no obligation to accept late payments. In the event that the redeemer breaches a payment agreement and the Treasurer has not foreclosed on the tax title, a subsequent payment agreement shall not be made available for the same parcel(s). During the term of the agreement, the Treasurer may not bring an action to foreclose on the tax title of the redeemer unless there is a breach of the agreement.

## § 202-6. Credit.

The redeemer shall be entitled to a credit equal to 50% of the accrued interest on the balance owed on the tax title account after the 25% payment required to redeem the parcel as provided for in this bylaw. Interest

shall continue to accrue, pursuant to the rate established by state law for tax title accounts, during the term of the payment agreement but shall be subject to the 50% credit provided for herein. The Treasurer shall calculate the credit at the time of the execution of the agreement and the credit shall be reflected in the payment schedule so as to be deducted from the last payment(s).

### § 202-7. Agreement not assignable; sale or transfer of property subject to agreement.

The agreement shall not be assignable by the redeemer. The agreement does not change or alter in any way the priority of the Town's lien on the parcel(s). In the event of any sale or other transfer of any kind of the parcel(s) subject to an agreement or any interest therein, in whole or part, all amounts owed to the Town, including the full amount of interest, fees and costs, shall become immediately due and payable before any such transaction may take place.

### § 202-8. Terms and conditions for payment.

The Treasurer and the redeemer shall execute an agreement that sets forth terms and conditions for payment that are consistent with this bylaw. No extensions or amendments to the agreement or to the terms and conditions as set forth in this bylaw shall be allowed, except that the Treasurer is authorized to agree to accept accelerated payments. In the event of any discrepancy between the agreement and the bylaw the bylaw shall control.

# Chapter 210

# VEHICLES AND TRAFFIC

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. XI, Sec. 17, of the Bylaws; amended 5-4-2021 ATM by Art. 13. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**

**Traffic Regulations — See Ch. 550.**

## § 210-1. Select Board to adopt regulations.

The Select Board shall from time to time, as they may deem necessary, make such regulations and rules for parking vehicles and for traffic, as is essential for the public safety and convenience.

ASHBURNHAM CODE

# Chapter 214

# VEHICLES, REGULATIONS FOR THE STORAGE OF

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 5-3-2003 ATM by Art. 23; amended 11-17-2010 STM by Art. 14 (Ch. XXIII of the Bylaws). Subsequent amendments noted where applicable.]**

## § 214-1. Open storage of unregistered vehicles restricted.

No more than two unregistered motor vehicles or trailers or any parts thereof may be stored on any property in Town, except if such vehicles or parts thereof are stored inside a garage or other enclosed structure, or such vehicles are used for agricultural purposes, or such vehicles are on premises duly licensed under the provisions of Chapter 140 of the General Laws.

## § 214-2. Violations and penalties.

Anyone who fails to remove or register such vehicles or parts thereof within 10 days of receipt of written notice by the Police Department shall be subject to a fine of $100. Each day or part thereof on which such vehicle or part thereof remains and continues to exist on the property shall constitute a separate offense.

# Chapter 220

# WATER USE

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 5-9-2000 ATM; amended 11-17-2010 ATM by Art. 14 (Ch. XXII of the Bylaws). Subsequent amendments noted where applicable.]**

## § 220-1. Authority.

This bylaw is adopted by the Town of Ashburnham under its police powers to protect public health and welfare and its powers under MGL c. 40, § 21 et seq. and implements the Town's authority to regulate water use pursuant to MGL c. 41, § 69B. This bylaw also implements the Town's authority under MGL c. 40, § 41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection (DEP).

## § 220-2. Purpose.

The purpose of this bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the DEP.

## § 220-3. Definitions.

PERSON — Any individual, corporation, trust, partnership or association, or other entity.

STATE OF WATER SUPPLY CONSERVATION — A State of Water Supply Conservation declared by the Town pursuant to § 220-4 of this bylaw.

STATE OF WATER SUPPLY EMERGENCY — A State of Water Supply Emergency declared by the DEP under MGL c. 21G, §§ 15-17.

WATER USERS or WATER CUSTOMERS — All public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

## § 220-4. Declaration of State of Water Supply Conservation.

The Town, through its Water and Sewer Commission, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Commission that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water customers. Public notice of a State of Water Supply Conservation shall be given under § 220-6 of this bylaw before it may be enforced.

## § 220-5. Restricted water uses.

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under § 220-6.

A. Odd/even day outdoor watering. Outdoor watering by water users with odd-numbered addresses is restricted to odd-numbered days. Outdoor watering by water users with even-numbered addresses is

restricted to even-numbered days.

B. Outdoor watering ban. Outdoor watering is prohibited.

C. Outdoor watering hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.

D. Filling swimming pools. Filling of swimming pools is prohibited.

E. Automatic sprinkler use. The use of automatic sprinkler systems is prohibited.

### § 220-6. Public notification of State of Water Supply Conservation; notification of DEP.

Notification of any provision, restriction, requirement or condition imposed by the Town as a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under § 220-5 shall not be effective until such notification is provided. Notification of the State of Water Supply shall also be simultaneously provided to the DEP.

### § 220-7. Termination of State of Water Supply Conservation; notice.

A State of Water Supply Conservation may be terminated by a majority vote of the Water and Sewer Commission, upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by § 220-6.

### § 220-8. State of Water Supply Emergency; compliance with DEP orders.

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the DEP, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the DEP intended to bring about an end to the state of emergency.

### § 220-9. Violations and penalties.

Any person violating this bylaw shall be liable to the Town in the amount of $50 for the first violation and $100 for each subsequent violation, which shall inure to the Town for such uses as the Water and Sewer Commission may direct. Fines shall be recovered by indictment, or a complaint before the District Court, or by noncriminal disposition in accordance with MGL c. 40, § 21D. Each day of violation shall constitute a separate offense.

### § 220-10. Severability.

The invalidity of any portion or provision of this bylaw shall not invalidate any other portion or provision thereof.

# Chapter 225

# WELLS

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as Ch. XIII of the Bylaws. Amendments noted where applicable.]**

## § 225-1. Covering or filling of wells.

Any owner of land on which is located, to his knowledge, an abandoned well or well in use, shall either provide a covering for such well capable of sustaining a weight of 300 pounds or fill the same to the level of the ground.

## § 225-2. Violations and penalties.

The penalty for violation of the foregoing bylaw shall be a fine of not less than $100 nor more than $500.

# Chapter 230

# WETLANDS PROTECTION

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham 5-6-2006 ATM by Art. 12 (Ch. XXVI of the bylaws). Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Wetlands Regulations — See Ch. 400.**

## § 230-1. Purpose; administration.

A. The purpose of this bylaw is to protect resource areas in the Town of Ashburnham by overseeing all activities deemed by the Conservation Commission (hereinafter "Commission") likely to have a significant or cumulative effect upon the following resource area interests: protection of public and private water supplies, protection of groundwater supply, flood control, storm damage prevention, prevention of pollution, protection fisheries, and protection of wildlife habitat, as identified in the Wetlands Protection Act MGL c. 131, § 40.

B. It shall be the responsibility of the Conservation Commission to administer the protection of all wetlands within the geographical boundaries of the Town of Ashburnham, as defined in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and enforce all provisions of this bylaw as described below and adopt regulations for administrating this bylaw.

## § 230-2. Jurisdiction.

A. Except as permitted by the Commission or as provided by this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 200 feet of a perennial river or stream (hereinafter "resource areas").

B. Consistent with MGL c. 131, § 40, 310 CMR 10.02, any activity other than minor activities identified in 310 CMR 10.02(2)(b)1 proposed or undertaken within 100 feet of a resource area (hereinafter called the "buffer zone") which, in the judgment of the Commission, will alter a resource area is subject to regulation under this bylaw, and requires the filing of an application with the Commission.

## § 230-3. Waivers.

Strict compliance with this bylaw may be waived when, in the judgment of the Conservation Commission, such action is in the public interest and is consistent with the intent and purpose of the bylaw. Any request for a waiver must be submitted to the Commission in writing. The waiver shall be presented at the time of filing along with a written justification stating why a waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the bylaw.

## § 230-4. Exceptions.

A. Preexisting activities or structures not meeting the requirements set forth in this bylaw need not be discontinued or removed but shall be deemed to be nonconforming. No new activity shall be commenced and no new structure shall be located closer to the edge of wetlands than existing nonconforming like activities or structures, but the Commission may permit new activity or structures as close to the edge of a resource area if it finds that such activity or structure will not affect the interests protected by the bylaw no more adversely than the existing activity or structure.

B. The permit and application required by this bylaw shall not be required for work on any preexisting lot when the alteration is required to protect public health and safety, provided that the applicant receives a Determination of Negligible Impact from the Commission as described in § 230-5.

C. The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public. An "emergency project" shall mean any project certified to be any emergency by the Ashburnham Conservation Commission or its agents within 24 hours of notice. Work necessary to abate the emergency shall proceed, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work, provided that the Commission certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of commencement of said emergency project a permit application shall be filed with the Commission for review as provided in the bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

**§ 230-5. Applications; consultants.**

A. Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The application, formally known as the Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation, shall include such information and plans as are deemed necessary by the Commission to describe all resource areas and/or proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit, formally known as an Order of Conditions or Conditions imposed on a Negative Determination of Applicability, issued pursuant to this bylaw.

B. Any person may request, in writing, that the Commission review a minor activity, as defined in the regulations of the Commission, for a Determination of Negligible Impact. The Commission shall review the request at a public hearing within 21 days from receipt of the request. In order to approve the request, the Commission must find that the proposed activity will have negligible or no impact on a resource area. A Request for Determination of Negligible Impact is decided upon at the sole discretion of the Commission, can be denied for good cause, including failure to submit information requested by the Commission, and can only be approved by a super majority vote of the Commission members present. A letter shall be sent informing the applicant of the Commission's decision within 21 days of the decision.

C. The Commission may accept as the permit application submittal under this bylaw, the permit applications filed under the Wetlands Protection Act, MGL c. 131, § 40 and in accordance with regulations set forth in 310 CMR 10.00.

D. At the time of a permit application submittal the applicant shall pay a filing fee specified in the

regulations of the Commission. These fees shall be made available to and used by the Commission only for the administration and enforcement of the Town of Ashburnham Wetlands Protection bylaw.

E. Pursuant to MGL c. 44, § 53G and regulations promulgated by the Commission. The Commission is authorized to require the applicant to pay all reasonable costs and expenses for expert consultation deemed necessary by the Commission to review applications for compliance with this bylaw and its regulations. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; soils analysis; and researching environmental or land use law. The Commission shall make proper provision to continue the hearing until all information is received, but in no case shall this procedure be used so as to cause unreasonable delay.

F. The applicant may seek an administrative appeal from the selection of the outside consultant to the Ashburnham Select Board. The grounds for such an appeal shall be limited to claims that the consultant chosen by the Conservation Commission has a conflict of interest or does not possess the minimum required qualifications. The minimum qualification shall consist either of an M.S. degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by the Conservation Commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Select Board within one month following the filing of the appeal, the selection of the Conservation Commission shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in these rules. **[Amended 5-4-2021 ATM by Art. 13]**

G. Failure of the applicant to pay such costs within 21 days after the close of the hearing shall be cause for the Commission to deny the issuance of a Determination or Order of Conditions.

H. The Commission may waive a filing fee, consultant fee, and/or costs and expenses for a permit application or Request for Determination filed by a Town officer or agency.

### § 230-6. Public notice and hearing.

A. In all respects, public notice and hearings shall be as provided in MGL c. 131, § 40, and regulations hereunder.

B. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40 and regulations, 310 CMR 10.00.

### § 230-7. Permits and conditions.

A. In all respects, procedures shall be as provided in MGL c. 131, § 40, and regulations hereunder.

B. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land or water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

C. The Commission is empowered to deny a permit for the applicant's failure to meet the requirements of this bylaw; to submit necessary information and plans requested by the Commission; to meet the design specifications, performance standards, and other requirements in regulations of the Commission; to avoid or prevent unacceptable significant or cumulative effects upon the wetland resource areas or interests protected by this bylaw; or where it finds that no conditions are adequate to protect such values and interests.

D. The Commission may require in its regulations that the applicant maintain a strip of continuous, undisturbed vegetative cover and a strip of continuous area where no permanent structures or impervious surfaces exist within these areas, unless the applicant presents credible evidence which in the judgment of the Commission the area or part of it may be disturbed without harm to the values protected by this bylaw.

E. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be extended, provided that a request for an extension is received in writing by the Commission 30 days prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land, their successors or assigns.

F. The Commission, in an appropriate case, may combine the decision issued under this bylaw with the decision issued under MGL c. 131, § 40, and regulations hereunder.

## § 230-8. Definitions.

The following definitions shall apply in the interpretation and implementation of this bylaw. Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).

BUFFER ZONE — Non-wetland areas, immediately adjacent to, and extending in a horizontal direction from any resource area, the activities on which are having or may have a significant or cumulative effect upon wetland values due to factors, such as, but not limited to, soil type, ground cover, slope and project proposed.

RESOURCE AREA — Wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; respected buffer zones associated with the aforesaid resource areas; and, lands within 200 feet of a perennial river or stream.

VERNAL POOL — A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, for site certified by the Massachusetts Division of Fisheries and Wildlife or where credible scientific evidence is presented demonstrate the area meets the Certification Criteria of The Massachusetts Natural Heritage and Endangered Species Program Vernal Pool Certification Program.

## § 230-9. Enforcement; violations and penalties.

A. In accordance with applicable law, including but not limited to the provisions of MGL c. 40, §§ 21D and 31, the Commission and/or Town may enforce the provisions of this bylaw and the Massachusetts

Wetlands Protection Act, restrain violations thereof and seek injunctions and judgments to secure compliance with its Orders of Conditions.

B. The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the commonwealth.

C. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, noncriminal citations under MGL c. 40, § 21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

D. Upon written request of the Commission, the Select Board and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in the enforcement of this bylaw. **[Amended 5-4-2021 ATM by Art. 13]**

E. Any person who violates any provision of this bylaw or regulations, any Order of Conditions, or any permit, or enforcement order issued thereunder, with or without conditions issued pursuant to it, may be punished by a fine in the amount of $100 per violation, per day. Each day or portion thereof during which a violation continues shall constitute a separate offense; if there is more than one, each condition violated shall constitute a separate offense. The Commission, its agents, officers, employees or any police officer shall be empowered to enforce this bylaw.

### § 230-10. Burden of proof.

The applicant for a permit shall have the sole burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. Failure to provide such adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### § 230-11. Appeals.

At the applicant's request, a decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4., each party independently responsible for its own legal expenses.

### § 230-12. Relation to Wetlands Protection Act.

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00) thereunder.

### § 230-13. Regulations.[11]

A. After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw which shall be effective upon its filing with the Town Clerk.

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**11. Editor's Note: See Ch. 400, Wetlands Regulations.**

Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

B. At a minimum these regulations shall define key terms in this bylaw not inconsistent with the bylaw and procedures governing the amount and filing of fees. Said regulations shall be reviewed by a state-certified wetland scientist of the Commission's choosing prior to adoption.

### § 230-14. Severability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously had been issued.

### § 230-15. Security.

In addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed as part of any permit issued hereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

A. By a corporate bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient, in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit. Such deposit shall be held by the Town Treasurer.

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality, whereby the permit conditions shall be performed and observed before any lot may be conveyed, other than by mortgage deed.

## Zoning Bylaws

# Chapter 250

# ZONING

**[HISTORY: Adopted by the Town Meeting of the Town of Ashburnham as amended through 5-6-2014. Subsequent amendments noted where applicable.[12]]**

**12. Editor's Note: The Town voted 5-3-2022 ATM by Art. 26 to renumber and recaption this Zoning Bylaw. This Art. 26: 1) designated the Zoning Bylaw as Chapter 250 of the new Town Code; 2) renumbered sections of the Zoning Bylaw, as necessary; 3) inserted section titles, where necessary; 4) updated internal references to reflect any revised numbering.**

# Part 1
# General Provisions

## SECTION 1.1
## Purpose; Basic Requirements

### 1.1.1. Purpose.

The purpose of this bylaw is to promote the health, safety and general welfare of the inhabitants of the Town of Ashburnham, to lessen the danger of fire and congestion and to protect and preserve the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality and quantity of its water resources, and further to conserve the natural resources of Ashburnham, to prevent temporary and permanent contamination of the environment and to improve the Town under the provisions of Chapter 40A, General Laws.

### 1.1.2. Basic requirements.

A. All buildings or structures herein erected, reconstructed, altered, enlarged, or moved and used of premises in the Town of Ashburnham shall be in conformity with the provisions of this bylaw. Any building, structure or land shall not be used for any purpose or in any manner other than is permitted within the district in which such building, structure or land is located. Any use not specifically enumerated in a district herein shall be deemed prohibited. In accordance with Chapter 40A, General Laws, and notwithstanding any provisions to contrary, this bylaw shall not prohibit or limit the use of land for any church or other religious purpose or for any educational purpose which is religious, sectarian, denominational, or public, or for any municipal purpose. This bylaw shall not repeal, annul or in any way impair or remove the necessity of compliance with any rule, regulation, bylaw, permit or provision of law. Where this bylaw imposes a greater restriction upon the use of land, buildings or structures, the provisions of this bylaw shall control.

B. No building shall be erected except on a lot fronting on a street, way or road (as defined by this bylaw), and there shall be not more than one principal building on any lot, except as allowed in this bylaw.

SECTION 1.2
**Nonconformities**

### 1.2.1. Nonconforming uses.

A. Continuation. The lawful use of any land existing at the time of the enactment or subsequent amendment of this bylaw may be continued although such use did not conform with the provisions of the bylaw as adopted or amended.

B. Extension. Except for agricultural, horticultural or floricultural uses, the extent of nonconforming use of land not covered by a building or structure may not be increased by more than 25% of the land area in nonconforming use at the time the bylaw is adopted or amended except by special permit from the Board of Appeals after a finding that such extension will not be detrimental or injurious to the neighborhood.

C. Abandonment. All nonconforming uses which have been abandoned or discontinued for more than two years shall not be reestablished except by special permit from the Board of Appeals after a public hearing and a finding that such reestablishment will not be detrimental or injurious to the neighborhood.

D. Changes. Once changed to a conforming use, no land shall be permitted to revert to a nonconforming use.

### 1.2.2. Nonconforming buildings and structures.

A. Continuation. The lawful use of any building or structure existing at the time of the enactment or subsequent amendment of this bylaw may be continued although such building or structure did not conform with the provisions of the bylaw as adopted or amended.

B. Alteration and enlargement. A nonconforming building may be altered or enlarged, provided that such alteration or enlargement conforms to applicable yard, building height and lot coverage requirements, but a nonconforming extension or alteration of a nonconforming structure may be permitted by special permit and only if there is a finding by the Zoning Board of Appeals that such extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. In no case may the height of a permitted nonconforming alteration or extension of a nonconforming structure exceed that of the applicable schedule of dimensional regulations except by a variance.

C. Restoration. A nonconforming building or structure which has been damaged or destroyed may be repaired or rebuilt, subject to the provisions of § 1.2.1B and C and Subsection B of this section.

SECTION 1.3
**Definitions**

### 1.3.1. Terms defined.

In this bylaw, the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed.

ACCESSORY BUILDING — A building devoted exclusively to a use subordinate to and customarily incidental to the principal use.

ACCESSORY DWELLING UNIT — An accessory dwelling unit is a self-contained housing unit that is clearly a subordinate part of the single-family dwelling and complies with Section 5.12 of this Bylaw.

ACCESSORY USE — A use subordinate to and customarily incidental to the principal use.

ASSISTED ELDERLY HOUSING — Private or private nonprofit elderly housing comprised of individual studio, one-bedroom, and two-bedroom dwelling units for residents over the age of 65. On-site services and facilities such as meals, cleaning, laundry, recreation, fitness, transportation, and social activities are an integral part of the development. Medical services may be offered but no long-term hospital or nursing home care is provided within the assisted elderly housing development. Town water and sewer must serve assisted elderly housing unit(s).

BED-AND-BREAKFAST — Private, owner-occupied building with no more than five guest rooms which includes a breakfast in the room rate and which serves meals to overnight guests only.

BUILDING — Any structure built for the support, shelter or enclosure of person, animals, goods or property of any kind.

CONFORMING USE — Use of buildings, structures or land which complies with all the use and dimensional requirements of the zoning district in which the use is located.

CUSTOMARY HOME OCCUPATION — An occupation engaged in by a resident of the premises, including but not limited to carpentry, cooking, dressmaking, electrical work, handicrafts, interior decorating, masonry work, painting, plumbing, repairs of appliances or other small items and routine office work, but not including the display or warehousing of goods not produced on the premises.**[Amended 5-2-2023ATM by Art. 27]**

DWELLING — Any fixed structure, not a mobile home, containing one or more dwelling units.

DWELLING UNIT — A room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating.

FAMILY — One or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

FAMILY-TYPE CAMPGROUNDS — An area used for a range of overnight accommodations, from tenting to serviced trailer sites, including accessory facilities which support the use, such as administration offices, laundry facilities, washrooms, support recreational facilities, but not including the use of mobile homes, trailers or other forms of moveable shelter on a permanent year-round basis.

FRONTAGE — The boundary of a lot coinciding with the street line being an unbroken distance along a way currently maintained by the town, county, or state; along ways shown on a duly approved and recorded subdivision plan; or lies on private way in existence on February 18, 1954. A way may provide frontage only upon determination by the Planning Board that it provides sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land and for the installation of municipal services to service such land and proposed buildings.

Frontage shall be able to provide direct access to the lot. Lot frontage shall be measured continuously along street lines between side lot lines. Lots with interrupted or discontinuous frontage must demonstrate that the required length along the street may be obtained from one continuous frontage section along a single way, without any totaling of discontinuous frontage sections. Also see Zoning §§ 4.1.2 Schedule of Dimensional Regulations, 4.2.2 Frontage, and 4.2.3 Corner lots as well as Planning Board Subdivision Rules and Regulations.**[Added 5-2-2023ATM by Art. 27]**

GROSS FLOOR AREA — The sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the interior faces of the exterior walls.

GROUNDWATER — All water found beneath the surface of the ground.

HALF (1/2) STORY — As used in Part 4, Dimensional Requirements, § 4.1.2, Table I, a 1/2 story is habitable space where floor area does not exceed 75% of the floor area of the story below and where the minimum ceiling height in accordance with the Massachusetts State Building Code does not exceed 50% of the floor area of the story below.**[Added 5-7-2019 ATM by Art. 19]**

HAZARDOUS MATERIALS — Material including, but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or the environment, when improperly stored, treated, transported, disposed of, or otherwise managed. The term shall not include oil.

HAZARDOUS WASTE — Those wastes and materials designated as hazardous in the regulations of the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws, Chapter 21C (310 CMR 30.00).

HEIGHT OF BUILDING — The vertical distance of the highest point of the roof above the mean grade of the ground adjoining the building.

IMPERVIOUS SURFACES — Materials or structures on or above the ground that do not allow precipitation or surface water to penetrate directly into the soil.

LIVING SPACE — The floor area used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathroom, toilet, laundry and storage spaces, communicating corridors, stairways, spaces with less than four feet clear headroom, garages, breezeways and carports.

LOT — A single area of land in one ownership with definite boundaries as described on a recorded deed or recorded plan.

LOT LINE — A property boundary separating a lot from a street or adjoining lots; for example, street, side and rear lot lines.

MOBILE HOMES — A structure designed as a dwelling unit for living purposes, capable of being moved on its own wheels by a motor vehicle whether retained on wheels or fixed to a permanent foundation.

NONCONFORMING USE — Use of buildings, structures or land which does not comply with all the use and dimensional requirements of the zoning district in which the use is located, but which was in existence at the time the use regulation became effective and was lawful at the time it was established.

OVERNIGHT CABIN — A building containing only one or two habitable rooms, which is adapted and used to provide transient sleeping accommodations for hire to not exceed four persons but not adapted or used for cooking or preparing meals or for residence by the same person for more than 90 days.

PREMISES — One or more lots in the same ownership, contiguous or separated only by a road, including all buildings, structures and improvements thereon.

PRIMARY RESIDENCE — A building in which is conducted the principal use of the lot on which it is located. For residentially zoned lots, such a building would be a dwelling.

PRINCIPAL BUILDING — A building in which is conducted the principal use of the lot on which it is located.

PRINCIPAL USE — The main or primary purpose for which a structure or lot is designed, arranged or intended, or for which it may be used, occupied or maintained under this bylaw.

PUSHCART — Any wagon, cart, trailer or similar wheeled container, not a self-propelled "motor vehicle" as defined in MGL c. 90, § 1, from which food or beverage is offered for sale to the public.

RECREATIONAL VEHICLE — A vehicle or vehicular attachment with or without motive power designed for temporary sleeping or living quarters for one or more persons, which is not a dwelling and which may include a pick-up camper, travel trailer, tent trailer, beach buggy and motor home.

SEASONAL FARM STAND, NONEXEMPT — Facility for the sale of produce, wine and dairy products on property nonexempted by MGL c. 40A, § 3, operated on a non-year-round basis.

STORY — The space in a building between two adjacent floor levels or between a floor and the roof. Also see definition of "half story."**[Added 5-2-2023ATM by Art. 27]**

STREET, WAY OR ROAD — An accepted Town way, or a way established by or maintained under county, state or federal authority, or a way established by a subdivision control law, or a way determined by the Planning Board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

SUPPORTIVE HOUSING — Facilities comprising personal and other supportive services with a nonmedical focus, limited to persons 55 years and older, including, but not limited to, assisted living, congregate care and independent living and should specifically exclude skilled nursing facilities, intermediate-care facilities, nursing facilities, custodial-care facilities and continuing-care retirement communities, or such facilities which provide multiple levels of care within a single facility. Town water and sewer must serve supportive housing facility(ies).

SURFACE WATER — Any lake, stream, spring, impoundment, or pond as determined by the Massachusetts geographic information service based upon the United States Geological Survey one to 25,000 scale quadrangle maps. Surface water shall include the land located thereunder and the banks thereto. Surface water shall exclude all reservoirs, aquifers, groundwaters and man-made farm ponds used for irrigation, as well as all so-called "great ponds" of the commonwealth which do not drain into any lake, stream, spring or pond as described above.

TRAILER — A vehicle without motive power, designed to be towed by a passenger automobile but not designed for human occupancy and which may include a utility trailer, boat trailer and horse trailer.

WATERSHED — Lands lying adjacent to watercourses and surface water bodies which create the catchment or drainage areas of such watercourses and bodies.

# Part 2
# Use Districts

## 2.1. Types of districts. [Amended 5-3-2022 ATM by Art. 24]

A. For the purpose of this bylaw the Town of Ashburnham is hereby divided into the following districts:

| | |
|---|---|
| R-A | Residential |
| R-B | Residential |
| B | Business |
| VC-C | Village Center Commercial |
| VC-R | Village Center Residential |
| I | Industrial |
| WSP | Water Supply Protection (Overlay) District |
| F | Floodplain District |
| LI-A | Light Industrial |
| LI-B | Light Industrial |
| G-B | Green Business |

B. The Village Center Commercial (VC-C) and Village Center Residential (VC-R) Districts are intended to foster appropriate reuse of existing structures and new construction within the downtown area in harmony with the historic character and dense development pattern of the downtown.

C. The Water Supply Protection District is an overlay district encompassing all lands within the Town of Ashburnham, lying within the watershed of the Upper Naukeag Lake Reservoir, which now serves as a public water supply. This overlay district is superimposed on the zoning districts and shall apply to all new construction, reconstruction, or expansion of existing buildings and/or expanded uses. Applicable activities or uses within the Water Supply Protection District must comply with the requirements of this district as well as with the underlying zoning. All regulations of the Town of Ashburnham zoning bylaws shall remain in effect.

D. The LI-A and LI-B Light Industrial Districts shall include light manufacturing, retail, business, and office as allowed in the Schedule of Use Regulations. The purpose of this district is to provide areas for industrial and commercial uses in an open setting that will not have objectionable influences on adjacent residential and commercial districts and are not dangerous by reason of fire or explosion, nor injurious or detrimental to the neighborhood by reason of dust, odor, fumes, wastes, smoke, glare, noise, vibration or other noxious or objectionable feature as measured at the nearest property line.

E. The Green Business is intended to foster businesses that will support tourism and passive and outdoor recreation while preserving the natural beauty and ecological significance of the area.

## 2.2. Location of districts. [Amended 5-3-2022 ATM by Art. 24]

A. Districts R-A, R-B, B, VC-C, VC-R, I, G-B, LI-A, LI-B, and WSP are located and bounded as shown on a map entitled "Zoning Map of Ashburnham, Massachusetts", dated MONTH/YEAR, and on file as subsequently amended in the offices of the Town Clerk and the Zoning Enforcement Officer.

(1) G-B: Route 119 from the Ashby Town line to the New Hampshire state line 2,000 feet on either side of the road, excluding the existing business district already designated at Route 119 and Route 101, as depicted on the map referenced above.

(2) LI-A: Light industrial use from South Pleasant Street to the Gardner line on the south side of Route 101 and southwest of the railroad bed on the north side of Route 101 overlaying the already established industrial zone, but excluding any residentially zoned parcels in this area, as depicted on the Zoning Map.

(3) LI-B: Light industrial use along Route 12, starting 1,000 feet beyond Hunter Avenue on the north side of Route 12 and continuing along Route 12 to the Winchendon Town line and on the south side of Route 12 as depicted on the map referenced above.

B. The Water Supply Protection (WSP) Overlay District includes all lands within the Town of Ashburnham lying within the watershed of the Upper Naukeag Lake reservoir, a public water supply. The WSP Overlay District is located and bounded as shown on maps on file with the Zoning Enforcement Officer, entitled "Zoning Map of Ashburnham, Massachusetts" dated MONTH/YEAR, and the "Water Supply Protection Overlay District Map" dated 3 May 2022, which is based on the 2018 U.S. Geological Survey (USGS) U.S. Top 7.5-Minute Series Topographic Map for Ashburnham Quadrangle.

C. The Floodplain District is hereby established as an overlay district. The underlying permitted uses are allowed, provided that they meet the Floodplain District additional requirements as well as those contained in the Massachusetts State Building Code dealing with construction in floodplains. The Floodplain District includes all special flood hazard areas designated as Zone A, A1-19 on the Ashburnham Flood Insurance Rate Maps (FIRM) and the Flood Boundary and Floodway Maps dated June 15, 1984 on file with the Town Clerk, Planning Board and Zoning Enforcement Officer. Where the above maps are inadequate for the detail required, detailed floodplain plans shall be prepared by a registered professional engineer with costs to be borne by the applicant. These maps, as well as the accompanying Flood Insurance Study of Ashburnham, are incorporated herein by reference.

D. The Zoning Map, Water Supply Protection Overlay District Map, Flood Insurance Rate Maps, and Flood Boundary and Floodway Maps, with all explanatory matter thereon, are hereby made part of this bylaw.

E. Boundary identification.

(1) Where a boundary is shown as following a street, railroad, or utility, the boundary shall be the center line thereof, unless otherwise indicated.

(2) Where a boundary is shown outside of a street, railroad, or utility and approximately parallel thereto, the boundary shall be deemed parallel to the nearest line thereof, and the figure placed on the Zoning Map between the boundary and such line shall be the distance in feet between them, as measured at a right angle from such line unless otherwise indicated.

(3) Where a boundary is shown as following a watercourse, the boundary shall coincide with the center line thereof as said line existed at the date of the Zoning Map.

(4) Where the location of a boundary is otherwise uncertain, the Zoning Enforcement Officer shall determine its position in accordance with the distance in feet from other lines or bounds as given on the Town of Ashburnham Zoning Map and good engineering practice. Where the bounds of the Water Supply Protection District, as referenced in Subsection B, are in doubt or dispute, the

burden of proof shall be upon the owner(s) of the land in question, who may engage a registered professional engineer/professional registered land surveyor to determine more accurately the location and extent of watershed lands. The final determination of a boundary, however, shall be made by the Zoning Enforcement Officer. Any and all fees shall be at the owner's expense.

(5) Where a district boundary divides a lot, a use permitted as a matter of right or by exception in the less restricted district may be extended not more than 50 feet into the more restricted portion of the lot.

# Part 3
# Use Regulations

## SECTION 3.1
## General Requirements

### 3.1.1. Basic requirements. [Amended 5-5-2012 ATM, AG approved 8-30-2012]

A. No building, structure, or land shall be used for any purpose or in any manner other than as permitted and set forth in § 3.1.2, Schedule of Use Regulations, of this bylaw and in accordance with the following notation:

| | | |
|---|---|---|
| Y | (Yes) | Use permitted as a matter of right. |
| Sp | (Special Permit) | Use allowed as an exception under special permit by the Board of Appeals or Planning Board as provided hereafter. |
| N | (No) | Use prohibited. |

B. Uses permitted as a matter of right and uses allowed by the Board of Appeals shall be in conformity with all dimensional requirements, off-street parking requirements, and any other pertinent requirements of this bylaw.

C. The Planning Board is designated as the special permit granting authority (SPGA) for all special permits requiring site plan review under Section 5.7 of this bylaw and any special permits being granted in conjunction with a planned unit development (PUD) Special Permit under Section 5.15 of this bylaw.

D. The Zoning Board of Appeals is designated as the special permit granting authority (SPGA) for all special permits that also require a variance from the Zoning Board of Appeals.

### 3.1.2. Schedule of Use Regulations.

The Schedule of Use Regulations is included as Attachment 1 to this chapter.

SECTION 3.2
**Special Conditions**

### 3.2.1. Prohibited uses in Water Supply Protection District. [Amended 5-3-2022 ATM by Art. 24[13]]

A. The following land uses are hereby prohibited in the Water Supply Protection District on: (i) the land area between the surface water source and the upper boundary of the bank; (ii) the land area within a 400-foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), Class A; and (iii) the land area within a 200-foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body, as defined as "Zone A" in 310 CMR 22.02 and in accordance with 310 CMR 22.20B(2) and 310 CMR 22.20C of the Massachusetts Drinking Water Regulations, as amended from time to time:

(1) All underground storage tanks;

(2) Above-ground storage of liquid hazardous material as defined in MGL c. 21E, or liquid propane or liquid petroleum products, except as follows:

(a) The storage is incidental to:

[1] Normal household use, outdoor maintenance, or the heating of a structure;

[2] Use of emergency generators;

[3] A response action conducted or performed in accordance with MGL c. 21E and 310 CMR 40.000, Massachusetts Contingency Plan, and which is exempt from a groundwater discharge permit pursuant to 314 CMR 5.05(14); and

(b) The storage is either in container(s) or above-ground tank(s) within a building, or outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline, provided the replacement is performed in accordance with applicable state and local requirements;

(3) Treatment or disposal works subject to 314 CMR 3.00, Surface Water Discharge Permit Program, or 5.00, Ground Water Discharge Permit Program, except the following:

(a) The replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;

(b) Treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in noncompliance with 310 CMR 15.000, The State Environmental Code, Title 5, Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, provided the facility owner demonstrates to the Department's satisfaction that there are no feasible siting locations outside of the Zone A. Any such

**13. Editor's Note: This enactment also repealed original Sections 3.31, Prohibited uses in Wetlands and Watershed Protection District and Water Supply Protection District, 3.32, Prohibited uses in Wetlands and Watershed Protection District, and 3.31, Special conditions in Wetlands and Watershed Protection District and Water Supply Protection District.**

facility shall be permitted in accordance with 314 CMR 5.00, Ground Water Discharge Permit Program, and shall be required to disinfect the effluent. The Department may also require the facility to provide a higher level of treatment prior to discharge;

(c) Treatment works approved by the Department designed for the treatment of contaminated ground- or surface waters and operated in compliance with 314 CMR 5.05(3) or (13);

(d) Discharge by public water system of water incidental to water treatment processes.

(4) Facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste that are subject to MGL c. 21C and 310 CMR 30.000, Hazardous Waste, except for the following:

(a) Very small quantity generators, as defined by 310 CMR 30.000, Hazardous Waste;

(b) Treatment works approved by the Department designed in accordance with 314 CMR 5.00, Ground Water Discharge Permit Program, for the treatment of contaminated ground- or surface waters;

(5) Sand and gravel excavation operations;

(6) Uncovered or uncontained storage of fertilizers;

(7) Uncovered or uncontained storage of road or parking lot deicing and sanding materials;

(8) Storage or disposal of snow or ice, removed from highways and streets outside the Zone A, that contains deicing chemicals;

(9) Uncovered or uncontained storage of manure;

(10) Junk and salvage operations;

(11) Motor vehicle repair operations;

(12) Cemeteries (human and animal) and mausoleums;

(13) Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00, Site Assignment Regulations for Solid Waste Facilities; and

(14) Commercial outdoor washing of vehicles; commercial car washes.

B. Land uses that result in the rendering impervious of more than 15%, or more than 20% with artificial recharge, or 2,500 square feet of any lot, whichever is greater.

C. Definitions. The following definitions shall be applicable to the WSP (Overlay) District:

BANK — The portion of the land surface which normally abuts and confines a water body; it lies between a water body and a bordering vegetated wetland and adjacent floodplain, or in the absence of these, it lies between a water body and an upload; the upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is lower; the lower boundary of a bank is the mean annual low flow level.

CLASS A WATER SOURCE — Those inland waters so designated pursuant to 314 CMR 4.06; including, without limitation, 314 CMR 4.06(1)(d)1. and (4) as public water supplies and their tributaries; certain wetlands designated in 314 CMR 4.06(2); certain reservoirs designated in 314 CMR 4.06(3); and certain surface waters designated in 314 CMR 4.06(6)(b).

SURFACE WATER — All water that is open to the atmosphere and subject to surface runoff.

SURFACE WATER SOURCE — Any lake, pond, reservoir, river, stream or impoundment designated as a public water supply in 314 CMR 4.00, Massachusetts Surface Water Quality Standards.

TRIBUTARY — Any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A surface water source, as defined in 314 CMR 4.05(3)(a), Class A.

ZONE A —

(1) The land area between the surface water source and the upper boundary of the bank;

(2) The land area within a 400-foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), Class A; and

(3) The land area within a 200-foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

**3.2.2. (Reserved)**

**3.2.3. (Reserved)**

**3.2.4. Floodplain District requirements.**

A. In the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:

(1) All encroachments, within the floodway, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that an equal amount of compensatory flood storage area, having an unrestricted hydraulic connection to the same waterway or water body, is provided within the same property bounds. "Compensatory storage" shall mean a volume not previously used for flood storage on the same property and shall be incrementally equal to the theoretical volume of floodwater at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project.

(2) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.

(a) Except for structures designed for flood control or water storage purposes, allowed or permitted uses shall not substantially reduce natural water storage capacities nor substantially affect natural stream flow.

(b) Septic tanks, cesspools and leaching fields shall not be permitted.

(c) Driveways and roads are permitted where alternative means of access are impractical.

B. Subdivision standards for the Floodplain District. All subdivision proposals and other proposed new development shall be reviewed by the Planning Board's engineer at the applicant's expense to determine whether such proposals will be reasonably safe from flooding. If any part of a subdivision proposal or other new development is located within the Floodplain District established under the

Zoning Bylaw it shall be reviewed to assure that:

(1) The proposal is designed consistent with the need to minimize flood damage; and

(2) All public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage systems shall be provided to reduce exposure to flood hazards; and

(4) Base flood elevation (the level of the 100-year flood) data shall be provided for proposals greater than 50 lots or five acres, whichever is the lesser, for that portion within the Floodplain District.

C. Health regulation pertaining to the Floodplain District. The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Floodplain District established under the Zoning Bylaws, shall require that:

(1) New and replacement water supply systems shall be designed to prevent infiltration of floodwaters in the system; and

(2) New and replacement sanitary sewage systems be designed to prevent infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

D. Floodplain District regulations for mobile homes.

(1) Within Zone A1-19, all mobile homes shall provide that:

(a) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level; and

(b) Adequate surface drainage and access for a hauler are provided; and

(c) In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart, and reinforcement is provided for piers more than six feet above ground level.

(2) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, are prohibited in the floodway (or coastal high hazard area or V-zone.

### 3.2.5. Village Center.

A. Retail operations with more than 10,000 square feet of gross floor area on any individual floor shall be prohibited in the Village Center-Commercial and Village Center-Residential Zoning Districts.

B. More than one principal building shall be allowed on any lot located in the Village Center-Commercial and Village Center-Residential Zoning Districts, subject to issuance of a special permit by the Planning Board that such buildings would be in keeping with the purpose of the Village Center Zoning District(s), per § 2.1 of the Zoning Bylaw, and the following findings:

(1) No principal building shall be located in relation to another principal building on the same lot, or on adjacent lot, so as to cause danger from fire;

(2) All principal buildings on the lot shall be served by accessways suitable for fire, police, and emergency vehicles;

(3) All of the multiple principal buildings on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.[14]

**14. Editor's Note: Original Sec. 3.36, Open Space Residential Development, which immediately followed this subsection, was repealed 5-5-2012 ATM, AG approved 8-30-2012.**

# Part 4
# Dimensional Requirements

## SECTION 4.1
## General Requirements

### 4.1.1. Basic requirements.

No building, structure or use in any district shall be built, located, enlarged or permitted which does not conform to the applicable dimensional regulations as set forth in § 4.1.2 and § 4.2 and the special regulations as set forth in Part 5, Sections 5.1, 5.2, 5.3 and 5.4, of this bylaw.

### 4.1.2. Schedule of Dimensional Regulations. [Amended 5-3-2022 ATM by Art. 24]

| Minimum Lot Dimension | | | Minimum Yard Dimensions (1) (feet) | | | Maximum Building Height | | Maximum Lot Coverage (2) |
|---|---|---|---|---|---|---|---|---|
| District | Area (square feet) | Frontage (feet) | Front | Side | Rear | (stories) | (feet) | (%) |
| *R-A | *45,000 | *150 | 20 | 10 | 10 | 2 1/2 | 35 | 25 |
| **R-B | **60,000 | *200 | 40 | 25 | 25 | 2 1/2 | 35 | 20 |
| G-B | 60,000 | 200 | 40 | 25 | 25 | 2 1/2 | 40 | 20 |
| LI-A | 60,000 | 150 | 40 | 25 | 25 | 3 | 40 | 40 |
| LI-B | 60,000 | 150 | 40 | 25 | 25 | 3 | 40 | 40 |
| *B | *25,000 | *125 | 20 | 10 | 10 | 3 | 40 | 40 |
| VC-C | 0 | 20 | 0 (3) | 0 | 0 | 3 | 40 | 50 |
| VC-R | 10,000 | 75 | 20 | 10 | 10 | 2 1/2 | 35 | 50 |
| I | 60,000 | 150 | 40 | 25 | 25 | 3 | 40 | 30 |
| **WSP | **90,000 | | | | | | | |

(1) The yards defined herein shall, except for customary walks and driveways, be kept open and/or landscaped and shall not be used for the parking or storage of automobiles, trucks, recreational vehicles, trailers and boats.

(2) Includes accessory buildings.

(3) In the Village Center Commercial District (VC-C), the following additional front yard provisions shall apply:

(a) The maximum front yard setback permitted shall be 20 feet.

(b) The Planning Board may, by special permit, increase the required size of a front yard setback in the Village Center Commercial (VC-C) and Village Center Residential (VC-R) Districts.

* EFFECTIVE DATE Minimum Lot Dimensions July 19, 1973
Boston, Massachusetts

The foregoing amendment to Zoning Bylaws adopted under Article 10 is hereby approved. Robert H. Quinn, Attorney General

** Minimum Lot Dimensions Amended - July 1, 1986, - Francis X. Bellotti, Attorney General

SECTION 4.2
**Special Conditions**

### 4.2.1. Recorded lots.

A lot or parcel of land in a Residential District having an area or width less than that required by this Part 4 may be developed for a single residential use, provided that such lot or parcel complies with the specific exemptions of Chapter 40A, General Laws.

### 4.2.2. Frontage. [Amended 5-2-2023ATM by Art. 27]

The frontage of a lot shall be measured as the straight-line distance between the points of intersection of the side lot lines and the street line. Corner lots shall meet the frontage requirement on at least one street. In all residential districts, with the exception of open space residential developments, 75% of the required frontage shall be maintained for a minimum depth of 50 feet measured at a 90° angle from the front lot line towards the back lot line. Also see definition of "frontage."

### 4.2.3. Corner lots.

A corner lot shall maintain front yard requirements for each street frontage; at least one of the remaining yards shall be a rear yard.

### 4.2.4. Visual corner clearance.

In any district, no structure, fence, planting, or off-street parking (except a transparent fence in which the solid area is not more than 5% of the total area) shall be maintained between horizontal parallel planes 2 1/2 feet and seven feet above street level, within the triangular area prescribed by the two street lines and a straight line connecting points on such lines 25 distant from the point of intersection.

### 4.2.5. Projections.

Nothing herein shall prevent the projection of steps, stoops (not exceeding 30 square feet in area), eaves, cornices, window sills or belt courses into any required yard.

### 4.2.6. Height limitation.

The limitation on height of buildings and structures in the schedule shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of buildings, which features are in no way used for living purposes.

### 4.2.7. Fences and walls.

A fence or wall of not more than four feet in height is permitted along any lot line (except on corner lots as modified above) and six feet in height along any rear yard line. Fences or walls of greater height are permitted if they are set back a distance equal to 2/3 their height.

### 4.2.8. (Reserved)[15]

**15. Editor's Note: Former § 4.2.8, Swimming pool fences, was repealed 5-2-2023ATM by Art. 27.**

# Part 5
# Special Requirements

## SECTION 5.1
## Special Use and Dimensional Requirements

### 5.1.1. Accessory buildings. [Amended 5-2-2023ATM by Art. 27]

A detached accessory building with a footprint up to 1,200 square feet in area, including air-supported, air-inflated, membrane-covered cable and membrane-covered frame structures, may only be erected in the side or rear yard of a lot which already contains a principal building, not on an empty lot. It shall be erected not less than 10 feet from any side lot line, five feet from any rear lot line, six feet from the principal building, and shall not be located within the required front setback of the zoning district in which it is located. The only exemptions to the front setback requirement are for signs erected in conformance with Section 5.2 Signs and temporary farm stands in conformance with § 3.1.2 Schedule of Use Regulations. In no case shall accessory buildings cover more than 30% of the total required rear yard area. Accessory buildings larger than 1,200 square feet shall follow the dimensional regulations for principal buildings for the zoning district in which it is located. Also see Zoning § 4.1.2 Schedule of Dimensional Regulations.

### 5.1.2. Minimum residential floor area.

No multifamily dwelling shall be erected, reconstructed, remodeled or altered so that the floor area of living space shall be less than 450 square feet per apartment of one bedroom or less and 600 square feet per apartment of two bedrooms or more.

### 5.1.3. Use of transportable structures for habitation. [Added 5-2-2023ATM by Art. 27]

No person shall occupy any recreational vehicle, camper, motor home, or other structure which is designed to be transportable, for the purpose of living, sleeping, cooking or eating therein, unless it is either located within a permitted and inspected campground or it has been issued a temporary permit from the Board of Health in accordance with Ashburnham Board of Health Regulations and State Sanitary Code 105 CMR 410. Also see Zoning § 1.3.1 Definition of Recreational Vehicle, and Section 5.6 Mobile Homes and Mobile Home Parks.

SECTION 5.2
**Signs**
**[Amended 5-7-2019 ATM by Art. 21]**

### 5.2.1. Purpose.

Under authority of the General Laws, the Town of Ashburnham adopts this chapter for the regulation and restriction of signs and other outdoor, visual advertising devices on public ways, on private property within public view, in public parks, and in playgrounds. The purpose of these sign regulations are to encourage the effective use of signs as a means of communication in the Town; to maintain and enhance the aesthetic environment of the Town; to encourage the Town's ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; and to minimize the possible adverse effect of signs on nearby public and private property.

### 5.2.2. Definitions.

ACCESSORY SIGN — A sign relating in its subject matter to the premises upon which it is located or to the primary products, accommodations, services, or activities upon the premises.

ANIMATED SIGNS — A sign that uses movement, moving images or changes of lighting to depict action or create a special effect or scene.

AREA OF SIGN — The area of a sign shall be determined by measuring the area within the perimeter which forms the outside shape of display elements from the top of the highest display elements to the bottom of the lowest display elements and from exterior side to exterior side of display elements, including in such measurement any blank or open area between display elements. Display elements include any letters, words, trademarks, logos, and symbols. Any frame around the sign shall be included in the measurement, but the measurement shall not include any supporting structure or bracing. Any such measurement shall be taken on only one face of the sign, although informational or advertising matter may be displayed on both sides of any permitted sign.

BILLBOARD — A sign in excess of 200 square feet in area and located on a lot, building or roof but unrelated to a business or profession conducted, to a service offered or to a commodity sold upon the premises where such sign is located.

BUSINESS — A single store, office, research facility, manufacturing facility, or noncommercial establishment, or similar location for a single activity.

BUSINESS CENTER — A group of five or more businesses which collectively have a name different from the name of any of the individual businesses and which have common private parking and entrance facilities.

DIRECTORY SIGN — A sign which lists the tenants or occupants of a premises and may indicate respective professions.

FREESTANDING SIGN — A sign supported by uprights, braces, structures or supports that are placed on or anchored in the ground and that are independent from any building or other structure, including pole signs, ground signs and sandwich signs.

GROUND SIGN — A freestanding sign in contact with, or within six inches of, the ground surface.

HISTORIC SIGN — An accessory sign 50 or more years old that is structurally safe, or any other sign designated by an accredited historic association or governmental agency to have historical significance.

ILLUMINATED SIGN — A sign that has characters, letters, figures, designs, or outlines illuminated by

electric lights or luminous tubes.

INCIDENTAL SIGN — An informational sign, no larger than two square feet, which has a purpose secondary to the use of the premises on which it is located, such as "loading only," "no parking," "entrance," "telephone," "credit cards accepted," "open," "closed," "back in one hour" and other similar directives.

INSPECTOR OF BUILDINGS — The duly appointed Inspector of Buildings for the Town of Ashburnham, local inspector, or any alternate inspector who meets the qualifications set forth in 780 CMR 107.3.

LOT — A single area of land in one ownership with definite boundaries as described on a recorded deed or recorded plan.

MARQUEE SIGN — A projecting sign attached to or hung from a marquee, canopy or other covered structure, projecting from and supported by the building and extending beyond the building wall, building line or street line.

POLE SIGN — A freestanding sign elevated more than six inches above the ground surface by a supporting structure.

PORTABLE SIGN — A sign not securely anchored to the ground or to a building or structure and which obtains some or all of its structural stability with respect to wind or other normally applied force by means of its geometry or character, or a sign designed to be transported, including, but not limited to, posters, sandwich signs, temporary signs, balloons, flags used as signs, banners, streamers, pennants, umbrellas used for advertising, wheeled signs, signs on portable letter boards, and signs mounted on, attached to or painted on vehicles parked and visible from a public right-of-way.

POSTER — A sign no more than eight square feet in area printed on cardboard, paper or other similar nondurable material and not permanently attached to the ground, a building or other permanent structure. Said sign shall include, but not be limited to, the advertising of goods and services that are weekly or monthly specials, or other types of temporary specials. Said signs shall comply with the setback provisions of § 5.2.3I herein.

PREMISES — A single residence, building or place of business.

PROJECTING SIGN — A sign attached directly to a building wall, and which extends more than 15 inches from the face of the wall, including, without limitation, so-called shingle signs, marquee signs and signs on canopies and awnings.

SANDWICH SIGNS — An A-frame, T-frame or menu sign.

SIGN — Any fabricated sign or outdoor display structure, including its structure, consisting of any letter, figure, character, mark, point, plane, marquee sign, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter or illuminating device, constructed, attached, erected, fastened or manufactured in any manner whatsoever so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever, and displayed in any manner to advertise, identify, or communicate information of any kind to the public. All such devices, fixtures, placards and structures visible from a public right-of-way, whether on the exterior or interior of a building, shall be considered signs.

STREET LINE — The boundary of the public right-of-way and private property, although the way may not have been constructed to its full width or although less than its full width is open or devoted to public travel.

TEMPORARY SIGN — A sign constructed of cloth, fabric, vinyl, paper, plywood, or other light

temporary material not well suited to provide a durable substrate, with or without a structural frame, intended for a limited period of display and not permanently mounted, including a decoration display for holidays or public demonstrations, poster, other paper or cardboard sign, flag, banner, streamer, pennant, string of lights, or string of pennants.

WINDOW SIGN — A sign on exterior windowpanes of glass or placed inside an exterior window or mounted inside the window and intended to be visible from the exterior of the window.

### 5.2.3. General requirements and prohibitions.

A. Abandoned signs. Any sign which has been abandoned or which advertises a business no longer conducted at the premises shall be removed within 30 days of abandonment or cessation of such business.

B. Accessory signs. Signs solely advertising brand names or products sold at the premises shall not be considered accessory signs, unless such brand name products constitute the majority of products sold at the premises.

C. Freestanding signs. The top of a freestanding sign shall not exceed in height the lesser of (a) 25 feet above grade or (b) five feet higher above grade than the distance from the base of the pole to the street line. A freestanding sign shall not be placed within five feet of the street line or lot line of the premises (or, if the distance between a building on the premises and the lot line or street line shall be less than 10 feet, 1/2 of such distance), nor within the setback required by the Zoning Bylaw, if any. If a pole sign shall be within 10 feet of a street line, it shall have a minimum clearance of 10 feet between grade and the bottom of the sign.

D. Illuminated signs. No sign shall be internally illuminated except "Open" signs displayed in the Business and Commercial Districts during the hours such business or entity located on the premises is open. Such signs shall not exceed three square feet and may only employ lights emitting a constant intensity. No sign shall be illuminated by a flashing, intermittent, rotating, or moving light or lights.

E. Marquees. The changeable copy of marquee signs shall contain only advertising or information for current or upcoming events. Each marquee shall be constructed to meet the following requirements:

(1) It shall be equipped with gutters and conductors for the purpose of draining water toward the building to which it is attached, and shall not discharge ice, water or snow onto the street or the walk;

(2) If such marquee shall be glazed, it shall be glazed with wire glass not less than 1/4 of an inch in thickness and be safely supported; and

(3) It shall safely support its own weight plus a superimposed load of 30 pounds per square foot, equally distributed, in addition to any concentrated load to which it may be subjected.

F. Moving signs. Rotating signs, animated signs, rotating beacons, and otherwise moving signs shall be prohibited.

G. Number of signs. The total number of signs shall not exceed five per premises.

H. Pole signs. When calculating square feet of signs for purposes of maximum square footage allowed by this chapter, the actual square footage of pole signs shall be multiplied by 125%. Pole signs shall be limited to one per lot, regardless of the number of tenants. No pole sign shall be constructed within 50 feet of another pole sign.

I. Portable signs. Portable signs shall be prohibited, except (a) those painted or affixed to a duly registered motor vehicle, provided that such vehicle is not continuously parked in one location for a period in excess of two weeks and is used in the day-to-day operation of the business conducted at the premises at which such vehicle is parked, (b) temporary signs otherwise in compliance with this chapter, and (c) sandwich signs otherwise in compliance with this chapter and all regulations of the Department of Public Services.

J. Posters. Posters shall not be placed closer than five feet from the lot lines or street line (or, if the distance between a building on the premises and the lot line or street line shall be less than 10 feet, 1/2 of such distance) and are otherwise subject to the same restrictions as other temporary signs.

K. Projecting signs. Projecting signs (except those on marquees, canopies and awnings) shall not extend more than five feet over the public right-of-way. Marquee signs and projecting signs on canopies and awnings shall not extend more than eight feet over the public right-of-way. Projecting signs shall not be closer than three feet to the curbline. No portion of any projecting sign (or such marquee, canopy or awning on which it is located) shall be lower than 10 feet above grade. All canopies and awnings shall comply with other applicable bylaws and regulations.

L. Roof signs. No sign shall be placed on a building above the eave line or gable, hip, or gambrel; above the parapet or eave on a flat or deck roof; on any part of or above the mansard portion of a mansard or French-style roof; or on any part of or above the roof portion of an A-frame structure.

M. Sign posts. Sign posts and supports shall not contain lettering.

N. Signs for multiple businesses. Freestanding signs containing signs for more than one business in a commercial zone shall not exceed 80 square feet in the aggregate and shall only contain signs of consistent and uniform coloring, lighting, lettering and other characteristics.

O. Structural condition. All signs shall be maintained in a good repair, in good structural condition and in compliance with all building and electrical codes. No sign shall be erected so as to obstruct any door, window or fire escape.

P. Temporary signs. Temporary signs (other than posters) shall not be displayed for more than 60 continuous days. Posters shall not be displayed for more than 90 continuous days. If any premises shall have any temporary signs displayed for more than 90 days in any calendar year, all such signs at such premises shall not be considered temporary signs for the purposes of this chapter. Temporary signs, including posters, must be removed promptly when the event advertised is concluded.

Q. Traffic sight lines. No sign shall be erected so as to constrict traffic sight lines for drivers or pedestrians. A freestanding sign shall not be placed within the triangle formed by connecting the point at the intersection of any street lines with the points on each street line 20 feet from such intersection.

R. Traffic signs. No sign, except as otherwise provided in this chapter, shall use the words "stop," "danger," or any other word, phrase, symbol, or character that might be misconstrued as a public safety warning or traffic sign.

S. Trees, etc. No sign shall be permitted on trees, light poles, telephone poles, or street identification signs.

T. Window signs. Window signs shall not exceed in aggregate square feet 60% of the total square footage of the window or glass door on which they are located.

### 5.2.4. Exemptions.

A. Flags. Governmental flags and governmental insignia, any other flag not in excess of 15 square feet.

B. For sale signs. "For Sale" or "For Rent" signs, not exceeding (a) eight square feet in aggregate area per premises in a nonresidential district or (b) six square feet in aggregate area per premises in a residential district and which advertise for sale or for rent only the premises upon which the sign is located. Such signs shall be removed promptly when the advertised sale or rental is concluded.

C. Historic signs.

D. Historical markers. Historical markers erected or placed by an accredited historical association or governmental agency.

E. Identifying signs. Signs which bear only house numbers, post box numbers, names of residents, or identification of premises and not exceeding two square feet in area per premises.

F. Incidental signs.

G. Information and directional signs. Informational, directional, traffic or warning signs erected or required by governmental agencies or bodies, including signs directing traffic to hospitals, parking areas, highways, cultural institutions and commercial areas.

H. Legal notices. Legal notices and identifications not exceeding two square feet in area, including "No Trespassing" and "No Hunting" signs.

I. Memorial signs. Memorial signs, plaques, or tablets.

J. Signs exempted by law, with the exception of billboards. Signs described in MGL c. 93, § 32.

K. Vending machine signs. Permanent signs on vending machines, gas pumps, ice containers or similar devices indicating only the contents of such devices.

### 5.2.5. Requirements applicable to specific districts. [Amended 12-5-2023STM by Art. 10]

A. Districts. For the purpose of this chapter, the districts as established on the Town of Ashburnham Zoning Map, as amended from time to time, are hereby adopted by reference.

B. Signs permitted in residential districts with permits from the Inspector of Buildings and payment of a fee.

(1) Subdivision signs. One sign advertising any real estate development or subdivision.

(2) Nonresidential use in residential district. One unlighted accessory sign per premises advertising a permitted nonresidential use in a residential district (other than permitted home occupations), not to exceed 12 square feet in area.

(3) Up to two nonflashing signs, not to exceed six square feet in area per sign, pertaining to a permitted accessory use on the premises.

C. Signs permitted in business, industrial and commercial districts with permits from the Inspector of Buildings and payment of a fee.

(1) Sign limits. Each entity in a business or industrial district shall be allowed one or more accessory signs which shall not exceed 80 square feet in the aggregate, provided that a business with frontage on two or more streets shall be allowed an additional accessory sign or signs directed toward such additional street or streets which shall not exceed 50 additional square feet

in the aggregate. Each entity in the Village Center Commercial District shall be allowed one or more accessory signs which shall not exceed 64 square feet in the aggregate, provided that a business with frontage on two or more streets shall be allowed an additional accessory sign or signs directed toward such additional street or streets which shall not exceed 32 additional square feet in the aggregate.

(2) Frontage limits. The combined surface area of all signs on any premises in a Business, Industrial or Commercial District shall not exceed four square feet in the aggregate per linear foot of frontage of the face of the building or of the lot on which such signs are located, whichever is greater.

(3) Business center signs. In addition to other signs allowed to individual businesses, a business center shall be allowed one common accessory sign for each approved curb cut or driveway. Signs for any individual business on such common business center sign shall be consistent with the business center sign with uniform colorings, lighting, lettering and other characteristics.

(4) Sandwich signs. Sandwich signs shall be allowed in Business, Industrial and Commercial Districts. Sandwich signs shall not exceed 12 square feet in area per sign and shall not exceed one square foot in the aggregate per lineal foot of frontage of the face of the building or of the lot on which such signs are located, whichever is greater. Sandwich signs must be within 15 feet of the advertised premises and must relate in subject matter to accommodations, services or activities upon the advertised premises.

(5) Projecting signs. Projecting signs shall be allowed in Business, Industrial, and Village Center Commercial Districts only. Only one projecting sign shall be allowed per premises, and shall be allowed only instead of, not in addition to, any permitted freestanding signs. Projecting signs shall not exceed 15 square feet in area and shall not exceed one square foot of sign area per lineal foot of frontage of the face of the building or of the lot on which such sign is located, whichever is greater, except that marquee signs shall not exceed 50 square feet on each surface. No projecting signs shall obstruct the visibility of an adjacent sign. Projecting signs shall require the posting of a bond as set forth in § 5.2.6C.

(6) "Open" flags. "Open" flags shall be allowed in Business, Industrial and Commercial Districts. One flag shall be allowed per premises, in good repair, no larger than six square feet in area, displayed only while the business conducted at the premises is open.

D. Signs permitted without a permit from the Inspector of Buildings. The following signs are allowed as provided below without a permit from the Inspector of Buildings, payment of a fee or posting of a bond.

(1) Home occupations. Home occupations located in a residential district, one accessory sign per premises not to exceed two square feet advertising a permitted home occupation.

(2) Directory signs.

(3) Entryway signs. Signs on an entryway to the Town, not to exceed either (a) one sign per entryway per organization/individual not to exceed two square feet in area each or (b) one sign per entryway for all organizations/individuals not to exceed 12 square feet in area; all such signs subject to applicable regulations of the Department of Public Works.

(4) Directional signs. Directional signs for the purpose of giving directions to a particular destination, not to exceed two square feet in area, and subject to applicable regulations of the

Department of Public Works.

(5) Temporary signs. Temporary signs not to exceed 12 square feet in aggregate area per premises in a residential district and not to exceed 50 square feet in aggregate area per premises in a nonresidential district.

**5.2.6. Permit process.**

A. Appeals. Any person aggrieved by reason of his inability to obtain a permit from the Inspector of Buildings, and any person aggrieved by any order or decision of the Inspector of Buildings in violation of any provision of this bylaw or Chapter 40A of the General Laws, may appeal such decision to the Zoning Board of Appeals (ZBA) in accordance with the provisions for appeals set forth in § 6.4 of these Zoning Bylaws, and Chapter 40A of the General Laws.

B. Applications. For all signs requiring a permit, the owner of the premises (or owner's authorized agent) shall apply to the Inspector of Buildings for the issuance of a sign permit on such application form as shall be acceptable to the Inspector of Buildings. All applications shall indicate the size, location, lighting, building materials and specifications for each proposed sign. The Inspector of Buildings shall be responsible for the review of the application, issuance of the sign permit, and enforcement of the provisions of this chapter. The Inspector of Buildings shall act upon a completed sign application within 45 days of its receipt. Each permit issued under the provisions of this chapter shall continue in effect until the sign is removed or the sign permit is revoked, canceled or otherwise terminated. The granting of a sign permit shall not relieve the owner or operator from procuring any permit or license required by any other provision of law, including but not limited to applicable provisions of the Town's bylaws.

C. Bonds. Projecting signs require the posting of a bond with the Inspector of Buildings, satisfactory to the Town Counsel as to form, and in the penal sum hereinafter set forth, duly executed by the applicant and a surety company qualified to do business in the commonwealth, conditioned to indemnify the Town against any and all claims (including the cost of a trial) for personal injuries, consequential damages, and death, or damage to property resulting from the placing, construction, or maintenance or removal of such sign, and further conditioned to pay all judgments obtained against the owner or operator of the premises upon or to which the sign is to be placed, or against any person subsequently becoming the owner or operator of such premises, or the owner of such sign, or liable for its proper maintenance, by reason of personal injuries or damage to property resulting from the placing, construction or maintenance or removal of such sign.

(1) Amount.

(a) The penal sum of such bonds shall be as follows:

[1] For damage to property $100,000; and

[2] For personal injuries, including consequential damages and death $1,000,000.

(b) Such bond or one similar in effect and amount shall be maintained in force for each such sign as long as it is maintained or until permission is given by the Inspector of Buildings to release or discharge the same. The failure to maintain such bond in force shall automatically terminate the sign permit under which such sign was erected and maintained.

(2) A liability insurance policy may be provided in place of such a bond, subject to the following

requirements:

(a) Such a liability policy shall be issued by an insurer authorized to do business in the commonwealth and evidenced by an insurance certificate which shall require that the certificate holders be notified in writing at least 30 days in advance of any cancellation or nonrenewal of the policy;

(b) The applicant shall annually furnish to the Town certificate(s) of insurance showing coverage as set forth above;

(c) The Town of Ashburnham shall be named as an additional insured on the liability insurance policies and so identified on the insurance certificate(s); and

(d) The certificate holders shall be the Town Administrator and the Town Treasurer, 32 Main Street, Ashburnham, Massachusetts 01430.

D. Enforcement. The Inspector of Buildings is authorized to enforce the provisions of this bylaw and order the repair or removal of any sign and its supporting structure which, in the Inspector's judgment, is dangerous, in disrepair or which is maintained contrary to this chapter. The owner of the premises shall be responsible for reimbursing the Town for all expenses of removing and disposing of any abandoned or dangerous sign or sign in disrepair or maintained contrary to this chapter.

E. Exceptions. Any person seeking a sign not in conformity with this chapter may request a special permit for an exception to this bylaw from the ZBA. The ZBA shall establish applications and written procedures as it deems necessary pursuant to § 6.4 of these Zoning Bylaws.

F. Fees. Sign permit applications may be subject to a reasonable fee which shall be established by the Inspector of Buildings.

G. Special permits.

(1) The ZBA may grant a special permit for an exception to this bylaw where compliance with the provisions contained herein pose practical difficulties or unnecessary hardships to the applicant:

(a) Where the Board finds that compliance is impractical or poses a hardship, including an economic hardship or a design issue due to difficulties that are peculiar to the premises, the land or the building(s), the business or the person requesting the special permit, resulting from conditions which do not exist generally throughout the zoning district; and

(b) Upon due consideration of any competing interests, the public benefits intended to be secured by this bylaw, the individual hardships that will be suffered by the failure of the ZBA to grant the special permit, and the compatibility of the proposed sign with its surroundings, including but not limited to abutting properties.

[1] No demonstration of a hardship shall be required for a special permit for temporary signs in connection with conventions, celebrations, parades or other special events.

(2) Provided that no special permit shall be granted that results in aggregate signage on one lot being 50% or more than any applicable aggregate limitation set forth elsewhere in this Sign Bylaw.

H. Transfer of ownership. Upon the sale or transfer of ownership of any sign, or business or premises to which a sign relates, the new owner shall file with the Inspector of Buildings a written application for the transfer of the sign permit for such sign. Such application shall be accompanied by a certification

that such sign complies with the provisions of this chapter. Such sign permit shall be transferred by the Inspector of Buildings, subject to the filing of any necessary bond by the applicant.

### 5.2.7. Nonconforming signs.

A sign lawfully erected and in compliance prior to the effective date of this section, and which fails to conform to the provisions of this Sign Bylaw, may continue unless the use of such sign is abandoned or discontinued for one year or more, subject to the following:

A. A nonconforming sign shall not be changed to another sign not in conformity with this chapter.

B. A face replacement that involves any alteration to the face itself constitutes a change.

C. A preexisting nonconforming sign shall lose its nonconforming status if the owner of such premises changes the use of the land or any buildings thereon, changes the location of the sign, expands or extends any building(s) thereon, or changes the property line(s).

D. A nonconforming sign shall not be maintained or reestablished after the activity, business, or usage to which it relates has been discontinued for 30 days.

### 5.2.8. Enforcement; violations and penalties.

A. Violations of this bylaw shall be enforced by the Inspector of Buildings.

(1) Noncriminal disposition. In addition to enforcement procedures authorized elsewhere in this Zoning Bylaw or the General Laws, the provisions of this bylaw may be enforced by noncriminal complaint pursuant to the provisions of MGL c. 40, § 21D.

(2) Penalties. Each day on which a violation exists shall be deemed a separate offense. The penalty for violation of any of the provisions of this Sign Bylaw shall be $50 for the first offense; $75 for the second offense; and $100 for the third and each subsequent offense.

B. Nothing contained herein shall be deemed to require the use of noncriminal disposition, and at the option of the Inspector of Buildings, criminal and/or civil proceedings may also be utilized.

### 5.2.9. State Building Code.

To the extent that any conflict exists between the provisions of this bylaw and the applicable provision of the State Building Code, as it may be amended from time to time, the provisions of the State Building Code shall govern.

SECTION 5.3
**Off-Street Parking and Loading Requirements**

### 5.3.1. Basic requirement.

In any district where permitted, no use of premises shall be authorized or extended, and no building or structure shall be erected or enlarged unless there is provided for such extension, erection, or enlargement, off-street automobile parking space within 300 feet of the principal building, structure, or use of the premises, in accordance with the following minimum specifications. An area of 200 square feet of appropriate dimensions for the parking of an automobile, exclusive of drives or aisles, shall be considered as one off-street parking space.

### 5.3.2. Schedule of Minimum Off-Street Parking Requirements.

A. Two spaces per dwelling unit in all housing except that constructed for elderly persons of low income, which shall have 1.25 spaces per dwelling unit.

B. One space for each sleeping room in a tourist home, boarding or lodging house, motel or hotel, plus required spaces for facilities used for eating, drinking, and assembly, as outlined in Subsection H below.

C. One space for each campsite in family-type campgrounds.

D. One space for each two beds in a hospital or sanitarium.

E. One space for each four beds for other institutions devoted to the board, care or treatment of humans.

F. One space for each 200 square feet or fraction thereof, of floor area of any retail, retail/wholesale, wholesale, or service establishment.

G. One space for each 800 square feet, or fraction thereof, of floor area of any wholesale establishment, but not less than five spaces per enterprise.

H. One space for each two employees and one space for three seats, permanent or otherwise, for patron use for restaurants, and other places servicing food or beverages.

I. One space for each two persons employed or anticipated to be employed on the largest shift for all types of business, industrial, professional or other permitted uses.

J. One space for each 250 square feet, or fraction thereof, of floor area of any office or professional building; except that one space per 150 square feet shall be provided for medical offices.

K. One space for each 150 square feet, or fraction thereof, of floor area of any bank, plus one space for each 250 square feet of area not devoted to customer service.

L. One space for each 800 square feet of floor area, or one space per employee, whichever is greater, for any industrial use.

M. One space for each four persons capacity for any theater, auditorium or other place of amusement or assembly.

N. Adequate spaces to accommodate customers, patrons and employees of other business and professional uses not specified, but not less than one space per 200 square feet of area devoted to customer service.

O. Adequate spaces to accommodate customers, patrons, and employees at automobile service stations, drive-in establishments, open air retail business and amusements and other permitted uses not specifically enumerated herein shall be provided.

### 5.3.3. Off-street loading.

In any district where permitted or allowed, business, wholesale or industry uses as listed in § 3.1.2, Schedule of Use Regulations,[16] shall be provided as necessary with adequate off-street loading facilities located entirely on the same lot as the building or use to be served so that trucks, trailers and containers shall not be located for loading, unloading or storage upon any public way.

### 5.3.4. Parking in Village Center Zoning District and in planned unit developments (PUD). [Amended 5-5-2012 ATM, AG approved 8-30-2012]

The standards of § 5.3.2 must be met for the additional parking demand created by new buildings, additions or changes of use unless, in performing a site plan review and approval under Section 5.7 or issuing a special permit under the provisions of Section 5.15, Planned Unit Development (PUD), the Planning Board determines that special circumstances dictate a different provision in order to meet all parking needs. In performing a site plan review and issuing a PUD special permit, the Planning Board may authorize a smaller number of parking spaces because of staggered hours of use or other circumstances. The Planning Board shall determine all parking space calculations based on information in the most recent edition of the Parking Generation Manual by the Institute of Transportation Engineers (ITE), on studies and surveys done by qualified persons regarding parking, on parking requirements and use for similar facilities in the Montachusett region and/or other appropriate information.

**16. Editor's Note: See the Schedule of Use Regulations included in Attachment 1 to this chapter.**

SECTION 5.4
**Wireless Communications Facilities and Towers**

### 5.4.1. General purpose.

The purpose of this section shall be to regulate the placement, design, construction, removal, and modifications of wireless communication facilities and towers so as to promote the economic viability of Ashburnham and to protect its historic, cultural, natural, and aesthetic resources. To accomplish the purpose of this bylaw, no permit for the installation of a wireless communications facility or wireless communications tower shall be granted by the Town of Ashburnham Building Inspector until a special permit has been issued by the Town of Ashburnham Zoning Board of Appeals (ZBA).

### 5.4.2. Special permit review criteria.

A. No wireless communications facility shall be erected, constructed, or installed without first obtaining a special permit from the Town of Ashburnham Zoning Board of Appeals. A special permit is required for new tower construction (or major modification of a preexisting tower) and for new wireless communications facilities (or major modification of a preexisting facilities) to be mounted on a tower or structure.

B. Exemptions. The following types of wireless communications facilities and towers are exempt:

(1) Amateur radio tower - construction or use of an antenna structure by a federally licensed amateur radio operator as exempted by MGL c. 40A, § 3.

(2) A tower or antenna erected by the Town exclusively for municipal public safety communications purposes.

### 5.4.3. Consistency with federal law.

These regulations are intended to be consistent with Section 704 of the 1996 Telecommunications Act. Accordingly, they shall not prohibit or have the effect of prohibiting the provision of wireless communication services; shall not unreasonably discriminate among providers of functionally equivalent services; shall not regulate wireless services based on the environmental effects of radiofrequency emissions to the extent that these facilities comply with the Federal Communications Commission regulations concerning such emissions.

### 5.4.4. Definitions.

ABANDONED TOWER — A tower not being used for the purpose it was permitted for a period of 12 months.

ADEQUATE COVERAGE — Coverage is adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be signal strength of at least 90 dBm. It is acceptable for there to be minor temporary loss of signal within the area of adequate coverage. The outer boundary of the area of adequate coverage is that location past which the signal does not regain uniformly.

ANTENNA — A device used to transit and/or receive electromagnetic waves, which is attached to a tower or other structure.

ANTENNA SUPPORT STRUCTURE — Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

AVAILABLE SPACE — The space on a tower or structure to which antennas of a telecommunications provider is both structurally able and electromagnetically able to be attached.

BASE STATION — The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider may be located on a single tower or structure.

BUILDING FOR EQUIPMENT SHELTER — An enclosed structure used to contain batteries, electrical equipment, telephone lines, transmitters, etc. used by the carriers on the towers.

BUILDING-MOUNTED ANTENNA SUPPORT STRUCTURE — Any antenna support structure mounted on, erected on, or supported in whole or part by a building or structure occupied and/or used for purposes other than wireless telecommunications.

CARRIER — A company that provides wireless service as defined by Section 704 of the 1996 Telecommunications Act.

CHANNEL — The segment of the radiation spectrum to or from an antenna, which carries one signal. An antenna may radiate on many channels simultaneously.

COLOCATION — Locating the wireless communications equipment of more than one provider on a single tower.

COMMUNICATION TOWER — A monopole or self-supporting tower, constructed as a freestanding structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving wireless communications.

CONSULTANT — Certified expert engineer licensed by the Commonwealth of Massachusetts, hired at the expense of the applicant to review the application and verify that the new tower is necessary at the proposed site, or any other review required under this bylaw.

dBm — Unit of measure of the power level of a signal expressed in decibels above one milliwatt.

dBu — Unit of measure of the electric field strength of a signal, expressed in an absolute measure for describing service areas and comparing different transmitting facilities independent of the many variables (see dBm above) introduced by different receiver configurations.

EA — See "environmental assessment."

EMERGENCY POWER — Electrical generators usually powered by propane gas or diesel fuel so as to provide uninterrupted service in the case of electrical utility failure, provided that any generators used may not emit more than 50 decibels over the ambient noise level at the property line.

ENVIRONMENTAL ASSESSMENT — An EA is the document required by the FCC and NEPA when a personal wireless facility is placed in certain designated areas.

FAA — Federal Aviation Administration.

FACILITY SITE — A property, or any part thereof, which is owned or leased by one or more wireless communications facility(s) and where required landscaping is located.

FALL ZONE — The area on the ground within a prescribed radius from the base of a tower, typically the area within which there is a potential hazard from falling debris, or collapsing material.

FCC — Federal Communications Commission.

FREQUENCY — The number of cycles completed each second by an electromagnetic wave, measured in

hertz (Hz), megahertz (MHz, or one million hertz), or gigahertz (GHz, one billion hertz).

HERTZ — One hertz (Hz) is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

LATTICE TOWERS — A type of mount that is self-supporting with multiple legs and crossbracing of structural steel.

MAJOR MODIFICATIONS — The changing or alteration of any portion of a tower from its description in a previously approved permit, including any addition that increases the height of the tower size of the building for equipment shelter.

MONITORING — The measurement, by the use of instruments in the field, of nonionizing radiation exposure from wireless communications facilities, towers, antennas, or repeaters.

MONOPOLE — A type of tower that is self-supporting with a single shaft of wood, steel, or concrete.

NEPA — National Environmental Policy Act.

PREEXISTING TOWERS AND ANTENNAS — Any tower or antenna which was lawfully erected before the effective date of these regulations.

REPEATER — A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

RFI — Radiofrequency interference.

RFR — Radiofrequency radiation.

SCENIC VIEW — A scenic view is a wide angle or panoramic field of sight and may include natural and/or man-made structures and activities which may be seen from a stationary viewpoint or as one travels along a roadway, waterway, or path, and may be to an object in the distance such as a mountain, or an object nearby such as an historic building or a pond.

SELF-SUPPORTING TOWER — A communications tower that is constructed without guy wires.

SPECIAL PERMIT — As defined by § 6.4B of the Town of Ashburnham Zoning Bylaws.

SPECTRUM — Relating to any transmissions or reception of electromagnetic waves.

STEALTH TOWER — A structure designed to blend with or be hidden by surrounding terrain, architectural design, or buildings.

STRUCTURALLY ABLE — The determination that a tower or structure is capable of carrying the load imposed by the proposed new antenna(s) under all reasonable predictable conditions as determined by professional structural engineering analysis.

TOWER — A vertical structure for antenna(s) that provides wireless communications services.

TOWER HEIGHT — The vertical distance measured from the base of the tower support structure to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the tower height.

TOWN — Ashburnham, Massachusetts and/or its elected or appointed officials.

WIRELESS COMMUNICATIONS FACILITY — All equipment, buildings and locations of equipment (real estate) with which a wireless communications provider transmits and receives the waves which carry their services. This facility may be owned and permitted by the provider or another owner or entity.

WIRELESS COMMUNICATIONS PROVIDER — An entity licensed by the FCC to provide

telecommunications services to individuals or institutions.

WIRELESS SERVICES — Commercial mobile services, unlicensed wireless exchange access services, including cellular services, personal communications services, specialized mobile radio services, and paging services.

### 5.4.5. Permit application requirements.

A. An applicant for a wireless communications tower or facility permit must be a wireless communications provider or must provide a copy of its executed contract to provide land or facilities to an existing wireless communications provider at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.

B. Applicants for wireless communications towers or facilities shall include the following supplemental information in their filings for special permit approval:

(1) Location map. The location of the proposed structure on the most recent United States Geological Survey Quadrangle map, showing the area within at least a three-mile radius of the proposed tower site.

(2) A map or sketch of the property proposed to be developed, professionally drawn to scale and with the area to be developed clearly indicated.

(3) A report from qualified and licensed professional engineers (consultants) that:

(a) Describes the facility height, design, and elevation.

(b) Documents the height above grade for all proposed mounting positions for antennas to be colocated on a wireless communications tower or facility and the minimum separation distances between antennas.

(c) Describes the tower's proposed capacity, including the number, height, and type(s) of antennas that the applicant expects the tower to accommodate.

(d) Documents steps the applicant will take to avoid interference with any established public safety wireless communications, and includes both an intermodulation study that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies. Towers utilized by Ashburnham Public Safety channels will not locate conflicting frequencies on same tower.

(e) Describes existing and proposed coverage. In the case of new tower proposals, the applicant shall demonstrate that existing wireless communications facility sites and other existing structures within Ashburnham, in abutting towns, and within a ten-mile radius of the proposed site cannot reasonably be modified to provide adequate coverage and/or adequate capacity to the Town of Ashburnham.

(f) Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage, and provides a detailed computer-generated actual received level propagation model that describes coverage of the existing and proposed facilities.

(g) Describes the output frequency, number of channels and power output per channel for each proposed antenna.

(h) Includes a written five-year plan for use of the proposed wireless communications facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town of Ashburnham.

(i) Demonstrates the tower's compliance with the municipality's setbacks for towers and support structures.

(j) Provides proof that at the proposed site the applicants will be in compliance with all FCC regulations, standards, and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards, and requirements regarding both radiofrequency interference (RFI) and radiofrequency radiation (RFR). The Town of Ashburnham may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards, and requirements on an annual basis at unannounced times. The Town may allocate to the applicant any reasonable expenses incurred or authorized by it in retaining independent engineers to perform these evaluations.

(4) Commitment to share space. A letter of intent committing the tower owner and his or her successors to permit shared use of the tower if the additional user agrees to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provision of this bylaw.

(5) Existing structures. For wireless services to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure must be submitted.

(6) Environmental assessment. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete environmental assessment (EA) draft of final report describing the probable impacts of the proposed facility shall be submitted to the Building Inspector prior to the issuance of a building permit.

(7) Vicinity map. A topography priority resource map showing the entire vicinity within a 1,000-foot radius of the tower site, including the wireless communications facility or tower, public and private roads and buildings and structures, water bodies, wetlands, landscape features and historic sites. The map shall show the property lines of the proposed tower site parcel and all easements or rights-of-way needed for access from a public way to the tower.

(8) Proposed site plans of the entire wireless communications facility, professionally drawn to scale, showing all improvements, including landscaping, utility lines, screening and roads.

(9) Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.

(10) Where the proposed site is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.

(11) Construction sequence and estimated time schedule for completion of each phase of the entire project.

(12) Any additional information requested by the Ashburnham ZBA.

C. Plans shall be drawn at a minimum at the scale of one inch equals 50 feet. The permit application shall be signed under the penalties of perjury.

**5.4.6. Tower and antenna design requirements.**

A. Protection of scenic character.

(1) Proposed facilities shall not unreasonably interfere with any scenic views, paying particular attention to such views from the downtown business area, public parks, natural scenic vistas or historic buildings or districts. Towers shall, when possible, be sited off ridge lines and where their visual impact is least detrimental to scenic views and areas. Height and mass of facilities shall not exceed that which is essential to their intended use. In determining whether the proposed tower will have an undue adverse impact on the scenic beauty of a ridge or hillside, the Town shall consider, among other things, the following:

(a) The period of time during which the proposed tower will be viewed by the traveling public on a public highway, public trail, or public body of water;

(b) The frequency of the view of the proposed tower by the traveling public;

(c) The degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;

(d) Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;

(e) The distance of the tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;

(f) The number of travelers or vehicles traveling on a public highway, public trail, or public body of water at or near the critical vantage point; and

(g) The sensitivity or unique value of the particular view affected by the proposed tower.

(2) To assist the Town in its review, it may require the applicant to fly or raise a three-foot-diameter balloon at the maximum height of the proposed facility at a location within 50 horizontal feet of the center of the proposed facility.

(3) The applicant shall provide photographs of the balloon test taken from at least four vantage points previously designated by the ZBA.

(4) Only self-supporting monopoles and stealth towers are acceptable. The ZBA may, at its sole discretion, waive any of the requirements of § 5.4.6 for the purpose of approving the development of a wireless communications facility utilizing innovative siting techniques that camouflage or conceal the presence of antennas or towers.

B. Lighting, bulk, height, glare. All wireless communications facilities, including towers and antennas, shall be designed and constructed so as to minimize the visual impact of height and mass of said tower. Materials utilized for the exterior of any structure shall be of a type, color, and style so as to minimize glare and blend into the environment. Towers shall not be artificially illuminated. Tower sites will not be allowed if the FAA or other federal or state authority requires lighting at proposed site unless required in the future by the FAA.

C. Transmitter building. Facilities buildings shall be built to accommodate all anticipated tenants on a tower, one building per site. Buildings seen from the road must be consistent with the historic colonial character of the Town.

D. Landscaping and screening. Base of tower as well as the building accessory to the tower shall be screened from view by a suitable vegetation screen that is consistent with existing vegetation. A planted or existing vegetative screen shall be maintained. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

E. Height limitations. In order to protect public safety and to preserve the scenic, rural character and appearance of Ashburnham, antennas and all related facilities shall not exceed the lesser of 90 feet above the average height of the tree line within 200 feet of the base of the tower, or 170 feet total tower height. However, additional height may be approved upon finding by the ZBA that the additional height is required in order to provide adequate coverage up to and including 190 or to eliminate the need for other towers in the Town. Additional height must not have an undue visual impact on the scenic character or appearance of the area.

F. Fencing and signage. The area around the tower shall be completely fenced for security to a height of eight feet and gated. Use of multiple strands of barbed wire is required. A painted sign no greater than two square feet stating the name of the facility's owner and a 24-hour emergency number shall be posted on the entry gate. In addition, "No Trespassing" and any other mandated warning signs shall be posted and maintained at the site. No commercial signs or lettering shall be placed on a tower. If possible, the tower will be equipped with an anti-climbing device. The wireless communications facility owner shall maintain adequate insurance on all wireless communications facilities.

G. Utilities. All utilities must be routed underground via conduit from public road to site where feasible.

H. Access road. Vehicle access to site shall be required and shall conform to all Conservation Commission guidelines and be at least 18 feet wide. A sturdy, posted, swinging, lockable gate must be installed which is more than 15 feet and less than 30 feet off the public road upon which said access is situated, a KNOX box or keys shall be provided to a designated Town official for municipal access.

I. Removal of abandoned antennas and towers.

(1) The owner of a facility/tower shall annually, by January 15, file a declaration with the Town of Ashburnham Land Use Clerk certifying the continuing safe operation of said facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and shall be considered abandoned.

(2) A facility/tower shall also be considered abandoned when it has not been used for the purpose for which it was permitted, for a period of 12 months.

(3) The applicant or subsequent owners shall provide and maintain a financial surety bond in the amount of $25,000 payable to the Town of Ashburnham to cover the costs of removal of each wireless communications facility applied for and the remediation of the landscape, should the facility be deemed abandoned. The bond shall not limit the applicant's financial liability to the Town for said facility/tower removal.

(a) The owner of a facility/tower shall have 90 days to remove said tower from the date it is deemed abandoned as stated above.

(b) The Town may exercise its option to remove said facility/tower at its own discretion upon notification of owner, anytime after the ninety-day waiting period.

J. Emergency power. Emergency power shall emit no more than 50 decibels over ambient noise level at all property lines.

K. Noise. Noise at the site perimeter from the operation of any machinery or equipment shall be minimized.

L. Property consideration. An applicant shall demonstrate that all municipally-owned property in the geographic area was considered.

M. Electric power. Power to the site shall be provided by Ashburnham Municipal Light Plant.

N. Distance of tower or repeaters.

(1) No repeater shall be located closer than 50 feet to an existing residential dwelling unit. No repeater shall be located less than 25 feet, nor more than 70 feet above ground.

(2) No tower or personal wireless service facility, with the exception of repeaters, shall be located:

(a) Within any of the following prohibited areas:

[1] Massachusetts or federally regulated wetlands.

[2] A Massachusetts certified vernal pool.

(b) Within 100 feet horizontally of any Massachusetts regulated wetland.

(c) Within 200 feet horizontally of the outer riparian zone measured horizontally from any river or perennial stream.

(d) Within 300 feet of any existing permanently occupied residential dwelling for monopoles.

(e) Within the overall height of the stealth or camouflaged facilities to the property line unless incorporated within an existing building, tower or steeple.

O. Documentation. Engineering and environmental assessment impact as well as FAA notice of determination of no hazard of flight zone shall be submitted with any application.

P. Colocation requirements. An application for a new (non-colocated) wireless communications tower shall not be approved unless the Zoning Board of Appeals finds that the wireless communications facility planned for the proposed tower cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

(1) The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.

(2) The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts and such interference cannot be prevented at a reasonable cost.

(3) The proposed antennas and equipment, along or together with existing facilities, equipment or

antennas, would create RFI in violation of federal standards or requirements.

(4) The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create RFR in violation of federal standards or requirements.

(5) Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function, or are too far from the area of needed coverage to function reasonably, as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts.

(6) Aesthetic considerations make it unreasonable to locate the planned wireless communications equipment upon an existing or approved tower or building.

(7) There is no existing or approved tower in the area in which coverage is sought.

(8) Other unforeseen specific reasons make it unreasonable to locate the planned wireless communications equipment upon existing or approved tower or building.

Q. Towers shall be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's and additional antennas when overall permitted height allows.

R. Wireless communication towers shall be a minimum distance of 2.5 miles from each other unless it is determined by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts that a closer proximity is needed for "adequate coverage" as defined in § 5.4.4. Under no circumstances shall any wireless communications towers be within a distance of one mile to each other unless such tower is a stealth tower and the applicant's technology cannot be used on an existing tower as determined by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts.

### 5.4.7. Modifications to existing wireless communications facilities special permit.

An alteration or addition to a previously approved wireless communications facility shall require an additional special permit when any of the following are proposed:

A. A change in the number of buildings or facilities permitted on the site;

B. Changes in technology used by the wireless communications facility;

C. An addition or change of any external equipment or an increase in the height of the tower, including profile of additional antennas, not specified in the original application; or

D. Change in ownership.

### 5.4.8. Continuing obligations.

Upon receiving a permit, the permittee shall annually, by January 15, document that the facility is in compliance with all FCC standards and at the same time the permittee shall provide a list of the most recent RFR readings at the site, their distances from the tower/transmitter, dates of the readings and the name of the person or company who took readings.

### 5.4.9. Fees.

The Town shall establish a schedule of fees to cover permitting and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

### 5.4.10. Severability.

If a court of competent jurisdiction holds any portion of this bylaw unconstitutional or invalid, the remainder of this bylaw shall not be affected.

### 5.4.11. Conflicts.

If any definition or term as used in this bylaw is inconsistent with or would result in a conflict with an applicant's compliance with any FCC regulation or licensing requirement, the FCC regulation or licensing requirement shall control.

SECTION 5.5
**Soil, Vegetation, Rock and Gravel Removal**

### 5.5.1. Purpose.

The purpose of this Section 5.5 is to prevent the degradation of the Town's natural resources, including its soil, surface and groundwater and naturally occurring vegetation, due to the improper or uncontrolled removal or redisposition of soils, vegetation and earth materials. Unless otherwise provided for in this bylaw, this Section 5.5 shall not apply to the removal of less than 19 cubic yards of material from a lot for noncommercial purposes for maintenance or improvement of the lot or the removal or alteration of existing vegetation upon a lot for noncommercial purposes related to the routine maintenance or improvement of the lot.

### 5.5.2. General provisions.

A. Excavation, removal, stripping, or mining of any earth material, soil and vegetation, except as hereinafter permitted on any parcel of land, public or private, in Ashburnham is prohibited.

B. Exclusion jurisdiction to issue earth removal permits shall be with the Board of Appeals.

C. The Building Inspector shall have the authority to enforce all conditions of any permit issued under this Section 5.5 of the Zoning Bylaw.

D. All earth removal operations in existence in Ashburnham on the effective date of this Section 5.5 shall be subject to the requirements stated herein. However, all earth removal permits issued prior to the effective date of this Section 5.5 shall remain in effect until their expiration date. At such time, said operation shall be subject to the provisions of this Section 5.5, unless otherwise allowed by the Board of Appeals for a period not to exceed six months.

E. An annual fee shall be required for an earth removal permit as established by the Board of Appeals.

### 5.5.3. Application for soil, vegetation, rock and gravel removal; materials for submission.

All applicants for a soil, vegetation, rock and gravel removal permit must, at a minimum, submit the following materials to the Board of Appeals.

A. A plan or plans to scale (one inch equals four feet), prepared and stamped by a registered engineer and a registered land surveyor, and subdivided into five-acre lots showing the property lines of the parcel of land under consideration along with all abutters to the property, existing and final contours in two-foot elevation increments, existing and proposed final drainage of the site, including all culverts, streams, ponds, swamps, and siltation basins, and all wetlands pursuant of MGL c. 131, § 40, means of entrance and egress from the property, locus map, and any other pertinent data deemed necessary by the Board of Appeals.

B. A plan, study, or report showing the proposed ultimate use of the land conforming with the existing Zoning Bylaw. Proper planning for future land use shall be a primate consideration affecting the issuance of soil, vegetation, rock and gravel removal permit.

C. A complete list of the names and addresses of the current abutters of the property where such removal is proposed.

D. An operation schedule showing the active area (not to exceed five acres) where the removal will begin and also how the total parcel will be developed in progressive five-acre increments.

E. A log of soil borings taken to the depth of the proposed excavation with a minimum of five borings per five-acre section. Additional borings may be requested by the Board of Appeals if necessary.

F. A plan showing all refuse and debris burial sites on or off the property. (May be shown on plan as required in Subsection A above.)

G. The full legal name and address of the owner of record, the operator of the removal operation and of the applicant.

### 5.5.4. Planning Board review of application.

Within 10 days of receipt of application and plan, the Board of Appeals shall furnish the Planning Board with a copy of said plan. The Planning Board may investigate the case and make a written report of its recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from the Planning Board or until 30 days have elapsed since the Planning Board's receipt of such plan without submission of a report.

### 5.5.5. Permit for soil, vegetation, rock and gravel removal.

A. General.

(1) The Board of Appeals may issue soil, vegetation, rock and gravel removal permits for R-B, I, W Districts, complete with conditions imposed, for areas not to exceed 20 acres. All permits shall conform to the minimum restoration and operating standards contained herein and such other conditions as the Board of Appeals may deem necessary. Said permit shall allow the working of only five acres at any one time. Upon completion of the earth removal operation on a five-acre parcel, or a part thereof, and substantial restoration of said parcel as determined by the Board of Appeals, according to the restoration standards and the permit conditions, application may then be made to the Board of Appeals for a permit renewal. Such permit renewal shall allow the removal of earth on another five-acre section, as shown by the operating schedule submitted with the permit application. This procedure shall be followed until the operation is completed. No soil being removed under special permit may take place within 300 feet of a street or way, nor within 100 feet of the high water mark of any natural watercourse, nor within 100 feet of a lot line. Soil may be disturbed within these established boundaries if it is considered part of the site restoration work and has received prior approval by the Board of Appeals.

(2) Removal of soils shall not take place below a level that would be considered an undesirable grade for the future development of the area, or to an elevation within six feet of the springtime high water table unless such elevation has been approved by the Board of Appeals as a desirable improvement that will enhance the future development of the area. A monitoring well shall be installed by the property owner to verify groundwater elevations.

(3) The Board of Appeals may specify engineering review of the application and plan. The registered professional engineer shall be specified by the Board of Appeals and fees to be borne by the applicant.

B. Accuracy of information. The permit shall be considered a nontransferable, revocable permit to remove earth materials. If it is found that incorrect information was submitted in the application, or that conditions of the permit are being violated, or that the governing regulations are not being followed, the permit shall be suspended until all provisions have been met and promises made to conform. Failure of the permit holder to comply within the time specified by the Board of Appeals

for correction of violations shall cause the permit to be revoked, forfeiture of the security of the Town, and the imposition of all fines.

C. Compliance review. The Board of Appeals shall discuss and review the permit periodically, and, at a minimum, annually. Written progress reports showing conformance with regulations and permit conditions shall be submitted to the Board of Appeals by the Building Inspector or his designated agent every three months at a minimum, or when otherwise deemed appropriate by the Board of Appeals. The Building Inspector may employ a registered professional engineer to act as his agent in the inspection of the work to insure compliance with this section of the Zoning Bylaw and to report to the Building Inspector his recommendations as to the approval or disapproval of the work. In the event that the Board of Appeals employs an engineer under Subsection A of this bylaw for plan review, then the Building Inspector will, if possible, employ the same engineer for site inspection. Inspection fees to be at the permittee's expense.

D. Effective date. A soil, vegetative, rock and gravel removal permit shall not be in effect until the applicant has filed the proper security as required in § 5.5.9, paid the required fees as required by § 5.5.2E, recorded the special permit at the Registry of Deeds, and paid for an engineering review under Subsection A.

### 5.5.6. Removal incidental to development, construction or improvement.

A. This bylaw shall not be deemed to prohibit the removal of sod, loam, soil, clay, sand, gravel or stone as may be required to be excavated for the purpose of constructing ways and services in accordance with a plan approved or endorsed by the Planning Board in accordance with the Subdivision Control Law and the Subdivision Regulations and Procedural Rules of the Planning Board.[17]

B. Where soil is to be removed in connection with the preparation of a specific site for building, removal may take place only after the issuance of a building permit by the Building Inspector. Removal will be allowed only from the area for the building, driveways, parking areas, and from areas where removal is specifically required by the Board of Health in connection with disposal systems.

### 5.5.7. Operation standards for removal and restoration.

All soil, vegetation, rock and gravel removal activities controlled by this Section 5.5 shall be subject to the following standards:

A. Time of operation.

(1) Excavation and site maintenance may be carried on from 8:00 a.m. until 4:30 p.m., Monday through Saturday.

(2) Trucking from the site may be carried on from 7:30 a.m. through 6:00 p.m., Monday through Saturday.

B. Site preparation.

(1) Only the active area described in the permit application may be made ready for earth removal.

(2) No standing trees are to be bulldozed over, or slashed and bulldozed into piles. All trees must be cut down. All wood and brush must be piled for removal or chipping. Wood chips may remain on the site. No trees are to be buried on the site.

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**17. Editor's Note: See Ch. 475, Subdivision of Land.**

(3) Stumps shall be buried in predesignated areas as shown on application plans.

(4) Any change in stump burial must be submitted to the Board of Appeals for approval.

(5) All topsoil removed from the active removal area shall be piled and adequately protected from erosion for future site restoration.

(6) No topsoil shall be removed from the site until all areas have been restored and permission has been granted by the Board of Appeals and as detailed in the Town bylaws.

(7) Prior to any excavation of earth removal, adequate siltation basins shall be constructed to prevent the run-off of silted water from the site.

(8) All excavation shall be done so as to create contours to channel run-off waters into the siltation basins.

(9) No siltation basin shall exceed seven feet in depth.

(10) Siltation basins must be cleaned when sediment deposits are within 18 inches of the outfall invert.

C. Site maintenance.

(1) No open face excavation shall exceed 25 feet in height.

(2) No excavation shall be closer than 100 feet to a property line unless approved by the Board of Appeals.

(3) No slope shall exceed a two-foot horizontal to a one-foot vertical (2:1) grade.

(4) No earth removal operation shall create excessive amounts of dust or allow roads leading into or from a site to become excessively dust producing.

(5) Proper dust control methods shall be employed and approved by the Board of Appeals.

D. Screening and access.

(1) An immediate program of site screening shall start when site preparation begins.

(2) All entrances shall be screened with existing vegetation, evergreens, or other suitable natural methods, so as to prevent a direct view into the earth removal area.

(3) All areas within 50 feet of a traveled way or abutting property lines shall be reforested immediately upon completion of the earth removal operation of that area. Said reforestation shall be done in accordance with the standard as stated in § 5.5.8, Subsections B through G, inclusive.

(4) A minimum of 150 trees per acre shall be used for this reforestation.

(5) All access roads shall be level with intersecting streets for a distance of 60 feet.

(6) A STOP sign shall be installed so as to warn any vehicle entering onto a Town street.

(7) All access roads shall be equipped with a suitable locking gate to prevent unauthorized entry.

(8) The Board of Appeals may prescribe routes for transporting materials in and out of the site

within the Town boundaries.

(9) The permittees shall be responsible for the cleaning, repair and/or resurfacing of streets used in removal activity which have been adversely affected by such activities.

E. Temporary buildings.

(1) All temporary structures shall be specified in the special permit application and shown on the plan.

(2) Any structure erected on the premises for use by personnel or storage of equipment shall be located at least 40 feet from any existing roadway and at least 30 feet from any lot line.

(3) Any temporary structure will be removed no later than 90 days after the expiration date of the permit.

F. Mechanical crushing and screening.

(1) All crushing and screening permits shall be granted for a period not to exceed six months.

(2) Said permits shall be granted as a cleanup procedure only.

(3) Washing of processed materials will not be allowed.

(4) Operation of crushing or screening equipment shall be from 7:30 a.m. until 5:00 p.m., Monday through Friday.

(5) All crushing and screening equipment shall be equipped with suitable dust- and noise-control devices.

(6) Under no conditions shall the crushing and screening cause a nuisance beyond the property line.

**5.5.8. Restoration standards.**

A. All restoration must be completed with 60 days after the termination of a soil, vegetation, rock and gravel removal permit or by the first of June if the permit terminates between December 1 through March 31.

B. No slope shall be left with a grade steeper than a two-foot horizontal to a one-foot vertical.

C. All siltation basins shall be filled with earth, and a natural drainage pattern must be reestablished. No area upon the site which will collect water shall remain unless approval is granted by the Board of Appeals or unless the area was shown on the original application plans.

D. All topsoil which was on the site prior to earth removal operations shall be replaced to a minimum depth of six inches on all disturbed areas. Sites that had less than six inches of topsoil shall be restored with a minimum of four inches over the entire area.

E. Seeding. The entire area shall be seeded with grass or legume which contains at least 60% perennials. The planted area shall be protected from erosion during the establishment period using good conservation practices. Areas which wash out shall be repaired immediately.

F. Reforestation. All areas which are disturbed in the earth removal operation shall be reforested with 50% coniferous and 50% deciduous trees planted at the rate of 150 trees per acre. All trees used are to be a minimum of two-year transplants. Areas which are to be used for agricultural purposes after

earth removal operations are completed may be reforested in the following manner:

(1) Trees shall be planted 25 feet deep from a public road or property line.

(2) The remaining area shall immediately be planted with grass or other suitable agricultural planting material.

G. Within 90 days of completion of operations, all equipment, accessory buildings, structures, and unsightly evidence of operation shall be removed from the premises.

**5.5.9. Security requirements.**

There shall be filed with the Town Treasurer, a continuous bond or deposit of money in a form approved by the Board of Appeals and Town Counsel in the minimum amount of $1,000 per acre to be excavated, or other amount as deemed appropriate by the Board of Appeals and shall be of a sufficient amount to cover 10 acres, or the total parcel, whichever is smaller, as determined by and satisfactory to the Board of Appeals. After completion of the total project, and at the applicant's written request, the Board of Appeals may grant a partial release of any security posted by the applicant. One year after such a partial release is granted and if in the opinion of the Board of Appeals no damage or deterioration to the finished project has developed, the Board of Appeals will issue a final release of the security. If, during the year following the date of a partial release, slumping, gullying, erosion or any other unsatisfactory condition appears, the applicant shall be responsible for, and shall make any necessary repairs, before final release of security is granted. The bonding agent shall be required to give the Board of Appeals, by registered or certified mail, a sixty-day notice prior to any termination or cancellation of the bond.

SECTION 5.6
**Mobile Homes and Mobile Home Parks**

**5.6.1. Mobile home parks.**

A. Mobile home parks, application for permit. Application for a permit from the Board of Appeals for a mobile home park shall be accompanied by a plan, in duplicate, prepared by a registered professional engineer, registered architect or registered land surveyor, which shall show:

(1) The boundaries of the lot or lots for which the permit is requested;

(2) The existing and proposed contour of the land at intervals not to exceed 10 feet referred to mean sea level;

(3) The location of all proposed driveways, parking areas and mobile home sites;

(4) The location and size of all proposed public facilities;

(5) The proposed provisions for drainage, including drainage calculations;

(6) The proposed sanitary sewer system;

(7) The proposed landscaping plan; and

(8) Other information necessary to indicate the physical characteristics of the proposed mobile home park.

B. Reference to Planning Board. Within 10 days of receipt of the application and plan, the Board of Appeals shall transmit to the Planning Board a copy of said plan. The Planning Board may investigate the proposed plan and make a written report of its recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from the Planning Board or until 30 days have elapsed since the Planning Board's receipt of such plan without submission of a report.

C. Conditions of permit. The Board of Appeals may issue a permit for a mobile home park, providing the following conditions shall be met:

(1) The owner or operator of the mobile home park shall have a valid license to operate said park issued by the Board of Health under the authority of MGL c. 140, § 32B.

(2) The total area of land included within the park shall be six acres or more;

(3) There shall be a minimum of 6,000 square feet of lot area, of appropriate dimensions, for each mobile home, of which 1,000 square feet per mobile home shall be provided for common open space and active recreation, exclusive of paved areas;

(4) No mobile home shall be placed within 30 feet of any other mobile home;

(5) There shall be a maximum of 50 mobile homes in a single park;

(6) No mobile home lots shall have frontage on any existing public road;

(7) No mobile home shall be placed closer than 50 feet to any exterior lot line;

(8) The mobile home park shall be connected to the public water system at no expense to the Town;

and

(9) A continuous landscaped area not less than eight feet in width containing evergreen shrubs, trees, fences, walls or any combination thereof forming an effective visual barrier of not less than six feet in height shall be located on all exterior lot lines of the park, except that driveways shall be kept open to provide visibility for vehicles entering and leaving the park.

### 5.6.2. Temporary mobile home location. [Amended 5-2-2023ATM by Art. 27]

A. The provisions of §§ 1.1.2 and 3.1.2 notwithstanding, a mobile home may be located and occupied for a period not to exceed 12 months by the owner of a lot for the purpose of rebuilding an existing residence which has been damaged or destroyed by a disaster and made uninhabitable.

B. The provisions of §§ 1.1.2 and 3.1.2 notwithstanding, a mobile home may be located and occupied for a period not to exceed 12 months by the owner of a lot for the purpose of constructing a new residence.

C. No mobile home shall be located or occupied for the above purposes until the owner of the lot has obtained a building permit for the proposed construction, a building permit for the temporary mobile home, and has installed a septic system and a water supply. The permitted period of occupancy shall begin upon compliance with the provisions of this subsection.

D. An extension of the permitted period of occupancy may be granted by the Board of Appeals after an application and public hearing. Such extension shall be for not more than 12 months, and no more than one such extension may be granted.

E. The rights of location and occupancy of a mobile home granted under this section shall cease upon the expiration of the permitted period of location and occupancy or upon the issuance of a certificate of occupancy according to the provisions of Section 6.3, whichever occurs first, and the provisions of § 1.1.2 and the Schedule of Use Regulations, Subsection 3.2.2,[18] with respect to mobile homes shall than apply forthwith.

**18. Editor's Note: The Schedule of Use Regulations is included as Attachment 1 to this chapter.**

SECTION 5.7
**Site Plan Review and Approval**

### 5.7.1. Introduction.

A. General purpose. To accomplish the purposes set forth in Section 1.1 of this (Zoning) Bylaw, including but not limited to facilitating traffic flow and control, assuring adequate drainage of surface water and protecting the environment, property values, abutting properties and visual amenities. To facilitate the administration of this Section 5.7, no permit for any of the activities and uses under Subsection B shall be granted until the provisions of this bylaw have been met.

B. Applicability. The following types of activities and uses require site plan review:

(1) Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, recreational, commercial, or industrial structure and/or use.

(2) Construction or expansion of a parking lot for a municipal, institutional, recreational, commercial, industrial, or multifamily structure or purpose.

(3) Under § 5.7.6, Waiver of technical compliance and site plan review level, the Planning Board may waive the applicability of site plan review under these provisions if the Board makes a written determination that the proposed changes to the site are minimal and do not require site plan review.

(4) There shall be three levels of site plan review under this bylaw based on the extent of the proposed use. New construction greater than 500 square feet but not greater than 2,000 square feet shall be reviewed as a "Minor Site Plan" and any new construction greater than 2,000 square feet shall be reviewed as a "Major Site Plan," as set forth in § 5.7.6A. A change of use or new construction of up to 500 square feet shall be reviewed by the Building Inspector under an "Abbreviated Plan Review" procedure as set forth in § 5.7.6C.

### 5.7.2. Procedures.

The applicant for site plan review approval shall submit 18 copies of the application and plans to the Planning Board for review. The Planning Board, following the procedures in § 5.7.3, shall solicit input and comments from other Town departments, board and committees. The Planning Board shall review and render its decision, upon the site plan, within 60 days of its receipt The Planning Board shall take the following action upon each application: approve, approve with conditions or disapprove. Any site plan approval issued by the Planning Board, with or without conditions, shall require a concurring vote of a majority of the Board and shall be in writing. No building permit or certificate of occupancy shall be issued by the Building Inspector until the written approval of the site plan has been issued by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board.

A. Application for building permit. An application for a building permit to perform work as set forth in § 5.7.1B (Applicability) available as a matter of right in the Ashburnham Zoning Bylaw, as denoted in § 3.1.2, Schedule of Use Regulations, by the letter "Y",[19] shall be accompanied by an approved site plan.

B. Application for special permit or variance. An application for a special permit, as denoted in § 3.1.2, Schedule of Use Regulations, by the letters "SP" or a variance, approved subject to § 6.4C of the

**19. Editor's Note: See the Schedule of Use Regulations included as Attachment 1 to this chapter.**

Ashburnham Zoning Bylaw, to perform work as set forth in § 5.7.1B shall be accompanied by an approved site plan; in the alternative, any special permit or variance granted for work set forth in § 5.7.1B shall contain the following condition: The work described herein requires the approval of a site plan by the Planning Board pursuant to Section 5.7 of the Ashburnham Zoning Bylaw. Any conditions imposed in such site plan approval shall also be conditions of this special permit/variance.

C. Where the Planning Board approves a site plan "with conditions," and said approved site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall also be incorporated into any special permit or variance granted by the Board of Appeals.

D. Where the Planning Board serves as the special permit granting authority for proposed work, it shall consolidate its site plan review and special permit procedures.

E. The applicant may request, and the Planning Board may grant, an extension of the time limits set forth therein.

F. No deviation from an approved site plan shall be permitted without modification thereof. Modifications may be requested and shall be processed in the same manner as an original application for site plan review in accordance with this bylaw.

### 5.7.3. Coordination with other boards.

Upon receipt of the site plan review application, the Planning Board shall transmit a copy of the application and plan to the Selectmen, Fire Department, Water and Sewer Commission, Board of Health, DPW Director, Conservation Commission, Building Inspector, Historical Commission, Police Department, Light Department and the Planning Board's consulting engineer for their written recommendation. Failure to respond to the Planning Board within 14 days shall indicate approval by said agencies. The Planning Board decision shall address any departure from the recommendations of the other Town agencies.

### 5.7.4. Presubmission review.

Prior to investing in extensive professional design efforts for site plans, it will often prove useful to review the proposed development/use of land with the Planning Board, in order that general approaches and potential problems can be freely explored. The Planning Board encourages applicants to meet with the Town Planner to review their development proposals and/or applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board at the public comment period at a regular meeting of the Planning Board. Sketches, which need not be professionally prepared, will assist the discussion and might show some but not all of the information required to be shown on a site plan. At this review, the Board may vote to waive the applicant's need to submit an application for site plan review under this provision (Section 5.7) or may waive certain submission requirements, as provided for under § 5.7.6.

### 5.7.5. Contents of site plan.

A. Five separate plans prepared at a scale of one inch equals 40 feet or such other scale as may be approved by the Planning Board. Of the 18 required plan copies, four of the following site plans shall be submitted on 24-inch by 36-inch sheets and 14 shall be submitted on 11-inch by 17-inch sheets. Site plans shall be prepared by a registered professional engineer, registered land surveyor, architect, or landscape architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposals. The plans are

as follows:

(1) Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one inch equals 100 feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries or such other distance as may be approved or required by the Planning Board.

(2) Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.

(3) Utility and public safety plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and fire-fighting facilities on and adjacent to the site.

(4) Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.

(5) Landscape plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements, including screening, planting areas with size and stock of each shrub or tree, proposed erosion control measures, all proposed recreation facilities and open space areas, and all wetlands, as defined under the Wetlands Protection Act, MGL c. 131, § 40, within 100 feet of any proposed construction, including floodplain areas. The site plan shall be designed to meet the additional landscaping requirements, as outlined in § 5.7.7C.

B. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

C. A written summary of the contemplated projects shall be submitted with the site plan indicating evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this bylaw.

D. A table with the following information:

(1) Area of lot.

(2) Area and size of building.

(3) Maximum area of building to be used for selling offices, business, industrial or other uses if applicable.

(4) Maximum number of employees where applicable.

(5) Maximum seating capacity where applicable.

(6) Maximum sleeping capacity where applicable.

(7) Number of parking spaces required for the intended use, based on Section 5.3.

(8) Number of parking spaces existing at the site (including street parking adjacent to site).

E. A site plan review application complete with name of owner and/or applicant. Where any site plan review is submitted by an individual or agency other than the owner of the affected land, the applicant must provide an original letter from the owner authorizing the applicant to submit the site plan review with an original notarized signature. A copy of any purchase and sales agreement, along with evidence of the owner's rightful ownership of the land, such as a deed, must be submitted with all applications. Where the owner is a corporation, corporate documents must be submitted indicating who has signed authority to enter into agreements on behalf of the corporation. Applications shall include a municipal lien certificate, or similar document, indicating no outstanding taxes or assessments are due on the property.

F. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to the Town of Ashburnham Planning Board Subdivision Rules and Regulations,[20] the Massachusetts Stormwater Policy as well as any other stormwater design requirements of the Town of Ashburnham.

G. The Planning Board may require a narrative statement detailing the impact of the proposed use on municipal services and the environment. Such statement shall conform to § 475-3.15, Development impact statements, of the Town of Ashburnham Planning Board Subdivision Rules and Regulations.

H. Certification that the proposal is in compliance with the provisions, if applicable, of the American with Disabilities Act (ADA) and the Massachusetts Architectural Access Board. Applicants shall show compliance with 521 CMR 21.00 and 22.00.

I. All site plan review applications shall include all administrative fees, as required under the Planning Board's Regulations Governing Fees and Fee Schedule.[21] No site plan review application shall be considered complete until and unless all such fees are paid.

### 5.7.6. Waiver of technical compliance and site plan review level.

A. The Planning Board may, upon written request of the applicant, waive any of the requirements of Section 5.7, where the project involves relatively simple development plans or constitutes a minor site plan. An application for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor areas of 500 square feet but not exceed a total gross floor area of 2,000 square feet, or an application which will not generate the need for more than five parking spaces shall be deemed as a "minor site plan." Any application for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed 2,000 square feet, or generates the need for more than five parking spaces shall be deemed a "major site plan." For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five previous calendar years.

B. Minor site plans shall set forth all of the information required by § 5.7.5; provided, however, that the scale of the site plan may be one inch equals 80 feet, and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey, unless the Planning Board waives any other of the requirements, as authorized by this section.

C. In addition, for site plan review applications that involve a change of use or for new construction that is less than or equal to 500 square feet, the applicant shall submit a request for a plan review to the

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**20. Editor's Note: See Ch. 475, Subdivision of Land.**

**21. Editor's Note: See Ch. 427, Fees.**

Building Inspector on an application form determined by the Building Inspector, along with sufficient plans and documentation to fully describe the proposed use and/or structure and its site. Upon submission of an application the Building Inspector deems complete, the Building Inspector shall transmit copies of such application, plans and documentation to those Town officials as specified in § 5.7.3 as well as the Planning Board. The Building Inspector shall have 30 days from time of completed application to review and make determination on such plan review applications.

### 5.7.7. Approval and review objectives.

Site plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. Site plan review applications located in the Ashburnham Village Center Zoning District shall also meet the Center Village District Site Plan Review Principles in Chapter 475, Part 6, of the Planning Board's Subdivision Rules and Regulations and those in Subsection B. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations.[22] New building construction or other site alteration shall be designed in the site plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development so as to the objectives in Subsection A below.

A. General review objectives.

(1) Minimize the volume of cut and fill, the number of removed trees 10 inches caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and the threat of air and water pollution.

(2) Maximize pedestrian and vehicular safety both on the site and exiting from it.

(3) Minimize obstruction of scenic views from publicly accessible locations.

(4) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned.

(5) Minimize glare from headlights and lighting intrusion.

(6) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.

(7) Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.

(8) Ensure compliance with the provisions of this Zoning Bylaw, including parking and landscaping.

B. Village Center review objectives.

(1) In addition, the following review objectives shall be applicable for any site plan review applications located within the Ashburnham Village Center Zoning District.

(a) No off-street parking area, except for one required driveway, shall be located between the

**22. Editor's Note: See Ch. 475, Subdivision of Land.**

street line and the front line of the building.

(b) All off-street parking areas shall be screened from adjacent properties by provision within the required side and/or rear yard with:

[1] Dense plantings with a minimum height of four feet; or

[2] Appropriate low fencing as permitted by § 4.2.7 of this bylaw.

(2) The Planning Board may establish and adopt design review principles and standards, beyond those outlined for the Village Center, intended to guide the applicant in the development of site and building design and consider these principles and standards in its review of proposed actions. These principles and standards shall not be regarded as inflexible requirements and they are not intended to discourage creativity, invention or innovation. The Planning Board is specifically precluded from mandating any official aesthetic style for Ashburnham or for imposing the style of any particular historical period.

C. Landscaping requirements.

(1) Required landscaping shall be provided as set forth in Table A.

(2) Buffers along street lines and other landscaped areas required by Table A (other than buffers protecting residential uses and/or districts) shall be reserved exclusively for plantings, pedestrian facilities such as benches and walkways, required fences, necessary traffic control signs and those freestanding signs which conform to the requirements of Section 5.2 of this bylaw. Required buffers protecting residential uses and/or districts shall be reserved exclusively for plantings and fences. The site plan review application shall include a chart showing the following information:

(a) Number of trees and/or shrubs required.

(b) Number of trees and/or shrubs shown on plan.

Table A
Required Landscaping

| Requirement by Lot Area | Percent of Total Automobile Parking and Circulation Area To Be Landscaped | Depth of Buffer Along Street Lines (feet) | Width of Buffer for Abutting Residential Uses and/or Districts (feet) |
|---|---|---|---|
| Up to and including 15,000 square feet | No requirements | 5 | 5 |
| 15,001 to 30,000 square feet | 4% | 5 | 5 |
| 30,001 to 43,560 SQUARE Feet | 5% | 10 front yard street line<br>5 all other street lines | 10 |
| 43,561 to 100,000 square feet | 6% | 10 front yard street line<br>5 all other street lines | 10 |
| 100,001 square feet up to but not including 217,800 square feet (5 acres) | 7% | 15 front yard street line<br>17 all other street lines | 15 |

Table A
Required Landscaping

| Requirement by Lot Area | Percent of Total Automobile Parking and Circulation Area To Be Landscaped | Depth of Buffer Along Street Lines (feet) | Width of Buffer for Abutting Residential Uses and/or Districts (feet) |
|---|---|---|---|
| 5 acres or more | 8% | 25 front yard street line<br>20 all other street lines | 20 |

### 5.7.8. Lapse.

Site plan approval shall lapse after two year(s) from the grant thereof if a substantial use has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

### 5.7.9. Regulations.

The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these site plan requirements.

SECTION 5.8
**Developmental Rate Limitation**

### 5.8.1. Intent.

To avoid large year-to-year variations in development rates in Ashburnham while allowing development consistent with history average rates.

### 5.8.2. Single-family and two-family conversion limitation.

A. The Building Inspector shall issue no more than 36 building permits for the construction of new residential dwelling units per calendar year. All completed applications will be signed and dated upon receipt. For the purpose of this section, an application shall be accepted for review only if it conforms to all applicable building and zoning requirements and has received all necessary approvals from pertinent Town boards, including the Board of Health, Planning Board, Zoning Board of Appeals, and Conservation Commission. After 36 permits have been issued for that year, applications will no longer be accepted until the start of the following calendar year. No permits shall be carried over from one calendar year to the next. Building permits for no more than six dwelling units shall be issued to any one applicant within a calendar year, unless the development schedule in Subsection B allows a greater number.

B. Development schedule:

(1) Building permits for new dwelling units in a development shall be authorized in accordance with the following schedule, only if the Town-wide limit referred to in Subsection A has not been reached. Dwelling units shall be considered as part of a single parcel or contiguous parcels of land which have been in the same ownership at any time subsequent to the date of adoption of this section.

| Number of New Units in Development | Dwelling Units Allowed Per Year |
|---|---|
| 1 - 4 | 100% |
| 5 - 12 | 40% |
| 13 - 20 | 33% |
| 21+ | 20% |

(2) In computing the number of dwelling units authorized under a schedule, the figure shall be rounded to the nearest whole number. This yearly schedule shall commence on the date of the issuance of the first building permit in a development.

C. Special development. A special permit may be granted by the Zoning Board of Appeals authorizing more rapid development than allowed under Subsection B for housing development determined by that Board to have unusually low impact on public services because of its location, occupancy, or design, and to serve an important unmet housing need of Ashburnham residents without overburdening Town services.

### 5.8.3. Zoning change protection.

The protection against subsequent zoning changes granted by MGL c. 40A, § 6 to land in subdivision shall, in case of a development whose completion has been constrained by § 5.8.2, be extended to the minimum

time for completion allowed under Section 5.8.

### 5.8.4. Review.

This Section 5.8 shall be reviewed by the Planning Board five years after its approval and may be amended or deleted in accordance with MGL c. 40A, § 5.

### 5.8.5. Validity.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

SECTION 5.9
**Adult Entertainment Establishments**

### 5.9.1. Purpose.

It is the intent and purpose of this Section 5.9 to regulate adult entertainment establishments to promote the health, safety and general welfare of the citizens of Ashburnham and to guard against adverse secondary effects on the youth of the Town. Furthermore, it is the intent and purpose to establish reasonable and uniform regulations to prevent any deleterious location and concentration of adult entertainment establishments within the Town, thereby reducing the adverse secondary effects from such adult entertainment establishments. The provisions of this Section 5.9 have neither the purpose nor effect of imposing limitations or restrictions on the content of any communicative materials. Similarly, it is not the intent nor effect of this Section 5.9 to condone or legitimize the distribution of obscene material.

### 5.9.2. Definitions.

ADULT ENTERTAINMENT USES — Shall include the following uses:

A. Adult bookstores, as defined by MGL c. 40A, § 9A;

B. Adult motion-picture theaters, as defined by MGL c. 40A, § 9A;

C. Adult paraphernalia store, as defined by MGL c. 40A, § 9A;

D. Adult video store, as defined by MGL c. 40A, § 9A;

E. Establishment which displays live nudity for its patrons, as defined by MGL c. 40A, § 9A.

### 5.9.3. Adult Entertainment Overlay District.

The Adult Entertainment Overlay District is established over all the zoning districts of the Town of Ashburnham, except for the Village Center-Commercial and Village Center-Residential Zoning Districts. The Adult Entertainment Overlay District use regulations shall be as herein described in the Adult Entertainment District.

### 5.9.4. Spacing requirements.

A. Special permits shall not be granted for an adult entertainment establishment if it is to be located less than 1,000 feet from the following uses. Measurement of distances shall be from the lot line of any of the uses described herein.

   (1) Another adult entertainment establishment.

   (2) Residential users.

   (3) Public or private nursery schools.

   (4) Public or private day-care centers.

   (5) Public or private kindergartens.

   (6) Public or private elementary schools.

   (7) Public or private secondary schools.

(8) Playgrounds, parks, or athletic fields.

(9) Religious institutions.

(10) Governmental buildings.

B. Reduction of spacing requirement. The Board of Appeals may waive the 1,000-foot restriction contained in Subsection A by special permit; provided, however, that the Board of Appeals shall not, under any circumstances, grant a special permit for an adult entertainment establishment which shall be closer than 750 feet to any of the uses listed in Subsection A. To grant a special permit reducing the spacing requirement, the Board shall find that:

(1) The proposed use will not be contrary to the public intent or injurious to nearby properties and that the spirit of this chapter will be observed;

(2) The proposed use will not enlarge or encourage the development of a "skid row" area;

(3) The establishment of an additional regulated use in that area will not be contrary to any program of neighborhood conservation nor will it interfere with any program or urban renewal;

(4) All applicable regulations of this chapter will be observed; and

(5) No portion of the establishment shall be located on the ground level of any building.

**5.9.5. Special permit required; conditions.**

A. Special permit. No adult entertainment establishment shall commence operations without first applying for and receiving a special permit from the Board of Appeals.

B. Conditions. The following conditions shall be attached to any special permit for adult entertainment establishments:

(1) Adult entertainment establishments shall not be allowed within a building containing other retail, consumer or residential users.

(2) No adult entertainment establishment shall be located within 60 feet of a public or private way.

(3) Any adult entertainment establishment shall cease its operations between the hours of 11:00 p.m. and 11:00 a.m. each day.

(4) No adult entertainment establishments may have visible from the exterior of the premises any flashing lights.

(5) At all times when an adult entertainment establishment is open for business, the entire area of the premises must be continually illuminated to the degree of not less than one footcandle (measured 30 inches from the floor), except those portions of the room covered by furniture.

C. Statutory prohibition. No special permit for an adult use shall be issued to any person convicted of violating MGL c. 119, § 63 or MGL c. 272, § 28.

SECTION 5.10

# Open Space Residential Development[23]

**[Amended 5-5-2012 ATM, AG approved 8-30-2012]**

## 5.10.1. Where permitted; types of structures permitted.

Open space residential development (OSRD) in accordance with this bylaw shall be allowed by right as a type of subdivision in the R-A, R-B and G-B Zones, on one or more parcels of land in common ownership, except for parcels located in the Floodplain District. OSRD may consist of any combination of single-family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this bylaw. Multifamily structures of not more than four units may also be permitted by the Planning Board if they serve the purpose of the OSRD Bylaw, as stated in § 5.10.2. The land not included in the building lots shall be preserved as open space.

## 5.10.2. Purpose.

The purpose of an OSRD is to encourage the preservation of open land by providing an alternative pattern of development through which the following objectives are likely to be met:

A. Greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is no greater than that which is normally allowed in the district;

B. The permanent preservation of open space, agricultural lands, forest lands, and other natural resources and to encourage a less sprawling form of development that consumes less open land;

C. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farm land;

D. The construction of street(s), utilities and public services in a more economical and efficient manner;

E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;

F. Promote alternatives to strip residential development lining the roadsides in the Town to preserve the unobstructed natural views from roadways;

G. Promote the development of housing affordable to low- and moderate-income families;

H. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;

I. To protect and enhance the value of real property;

J. To provide for a diversified housing stock.

## 5.10.3. Definitions.

AFFORDABLE UNITS — Any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as an income-eligible household. The affordable restriction shall be approved as to form by the Town Counsel, and a right of first refusal upon transfer of such restricted units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.

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**23. Editor's Note: See also the Planning Board's rules and regulations regarding open space residential development in Ch. 468, Open Space Residential Development.**

BASIC MAXIMUM NUMBER — The number of dwelling units that would be allowed under the Ashburnham Zoning Bylaw.

COMMON OPEN SPACE — Any open space set aside, dedicated, designated or reserved for use as passive, recreation, conservation, agriculture, forestry, natural buffers, and active recreation as permitted by this bylaw. Common open space shall be contiguous open space wherever possible and shall not include roadways, parking areas or private yards.

INCOME-ELIGIBLE HOUSEHOLD — A household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the Massachusetts Department of Housing and Community Development in guidelines.

OPEN SPACE — Any parcel or area of land or water essentially unimproved or set aside, dedicated, designated or reserved for public or private use and enjoyment of the owners and occupants of an OSRD as permitted by this bylaw.

### 5.10.4. Authority.

The Planning Board shall act as the approving authority for OSRD applications. The Planning Board may adopt, and from time to time amend, rules and regulations consistent with the provisions of this bylaw and MGL c. 40A and other provisions of the General Laws, including Rules and Regulations Governing the Subdivision of Land,[24] and shall file a copy of said rules and regulations with the Town Clerk.[25]

### 5.10.5. Applicability.

A. An open space residential development (OSRD) may be proposed in accordance with this bylaw within the R-A, R-B, and G-B Zoning Districts.

B. Subsection A above applies only to subdivisions of land as defined in MGL c. 41, § 81L, and not to construction of homes or businesses on individual lots that existed prior to (Town Meeting Date) or to lots created through the "Approval Not Required" process with frontage on public ways existing as of May 5, 2012 described in the Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land.[26] However, if a subdivision approval is not required because a new roadway is not proposed; an applicant may nevertheless apply for an open space residential development under this Section 5.10. In such a case, the application shall be subject to site plan review as described in Section 5.7.

### 5.10.6. Design process.

At the time of the application for an OSRD, applicants are required to demonstrate to the Planning Board that the following design process was performed by a multidisciplinary team of which one member must be a certified landscape architect and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

A. Identifying conservation areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as

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**24. Editor's Note: See Ch. 475, Subdivision of Land.**

**25. Editor's Note: See Ch. 458, Open Space Residential Development.**

**26. Editor's Note: See Ch. 475, Subdivision of Land.**

historic and archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

B. Locating house sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community.

C. Aligning the streets and trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

D. Lot lines. Draw in the lot lines using assumed lot lines if the ownership is in condominium, cooperative or other similar form of common ownership.

### 5.10.7. Design standards.

The following generic and site-specific design standards shall apply to all OSRD plans and shall govern the development and design process:

A. Generic design standards.

(1) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, surface water buffers, and natural drainageways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

(2) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.

(3) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(4) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

B. Site-specific design standards.

(1) Parking. Each dwelling unit shall be served by two off-street parking spaces. Parking spaces in front of garages may count in this computation. Calculations for parking spaces in these developments shall be rounded up to the nearest integer where necessary. The Planning Board may choose to modify these requirements during the review process in response to conditions specific to an individual proposal.

(2) Drainage. The Planning Board shall encourage the use of low-impact development techniques that reduce impervious surface and enable infiltration where appropriate.

(3) Screening and landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.

(4) On-site pedestrian and bicycle circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

(5) Additional criteria for multifamily development.

(a) The design and location of the structure(s) on the site shall be consistent with the visual scale and character of single-family development.

(b) No more than three bedrooms shall be permitted per multifamily dwelling unit.

**5.10.8. Design criteria.**

A. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the common open space.

B. Residences shall be grouped so that the greatest number of units can be designed to take advantage of solar heating opportunities; so that scenic views and long views remain unobstructed, particularly those seen from roads; so that habitat areas and species listed as endangered, threatened, or of special concern by the Massachusetts Natural Heritage Program shall be protected; and so that historic and prehistoric sites and their environs shall be protected.

C. In areas greater than 20% slope or upon hilltops and ridgelines, lots shall be laid out, to the greatest extent possible, to achieve the following objectives:

(1) Building sites shall be located so that the silhouettes of structures will be below the ridgeline or hilltop or, if the site is heavily wooded, the building silhouettes shall be at least 10 feet lower than the average canopy height of the trees on the ridge or hilltop.

(2) Where public views will be unavoidably affected by the proposed use, architectural and landscaping measures shall be employed so as to minimize significant degradation of the scenic or aesthetic qualities of the site.

(3) The removal of native vegetation shall be minimized.

(4) Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site.

(5) Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding.

**5.10.9. Roads.**

The principal roadway(s) serving the site shall be designed to conform to the standards of the Rules and Regulations of the Planning Board. OSRDs shall have access on a public way, a way approved by the Planning Board or a way approved under the Subdivision Control Law.

**5.10.10. Open space requirements.**

A. A minimum of 50% of the site shall be open space. The percentage of this open space that can be wetland shall not exceed the percentage of wetland for the entire site under existing conditions as shown on the OSRD plan. Percentage is calculated by dividing the total wetland acres by the total site acres. A sample calculation is provided below:

**Sample Calculation**

Existing Conditions:

12-acre site with 3 acres of wetland

3 ÷ 12 = 25% wetland coverage

Open Space Requirements:

50% Open Space = 6 acres

Wetland Allowance:

6 acres * 25% wetland coverage = 1.5 acres

Open space can be 4.5 acres of upland and 1.5 acres of wetland

B. Description of restriction on open space. Further subdivision of open space, or its use for other than conservation, agriculture, forestry, or noncommercial recreation, shall be prohibited, and the approved plan shall be so endorsed in writing. These restrictions shall be granted in a conservation restriction in accordance with MGL c. 184, §§ 31 and 32 in perpetuity, to a grantee approved by the Planning Board, a copy of which is filed with the Massachusetts Executive Office of Environmental Affairs recorded in the Northern District Worcester County Registry of Deeds, shall be enforceable by the Town of Ashburnham, and shall provide that such land shall be kept in an open or natural state and not built upon for residential use or developed for accessory uses, including parking or roadways.

(1) At least 70% of the common open space shall be contiguous open space, unless otherwise approved by the Planning Board.

(2) The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, aquifer protection, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD and is consistent with state and local level environmental protections.

(3) Limited access to common open space may be allowed in the form of a walking or hiking/biking path, the total area of which must be no more than 2% of the total common open space area.

(4) If the OSRD is located in an area currently in agricultural use or containing agricultural soils as determined by the U.S. Soil Conservation Service, the landowner is not required to sell that part of the property which is to become permanent agricultural open space. Said owner shall, however, convey the development rights of that open space in a conservation restriction pursuant to MGL c. 184, §§ 31 and 32 et seq. filed with the Massachusetts Executive Office of Environmental Affairs and enforceable by the Town of Ashburnham, prohibiting future development of the property.

(5) Any wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify

towards the minimum open space required unless approved by the Planning Board. Open space serving such systems is required to be under the control/ownership of either the developer or homeowners' association to allow for maintenance.

### 5.10.11. Ownership of open space.

The open space shall be conveyed to:

A. The Town of Ashburnham, for a park or open space use if accepted by the Town; or

B. A nonprofit organization, the principal purpose of which is the conservation of open space; or

C. A corporation, trust, or association owned by the owners of the lots or residential units within the development; or

D. Remain under ownership of the original property owner, who has conveyed the development rights to this part of the parcel to the developer who in turn has conveyed an undivided equal interest in these rights to each new homeowner in the development; or

E. A new owner, subject to the conditions in Subsection D, above; or any combination of the above, subject to approval of the Planning Board.

F. Where applicable, a nonprofit incorporated homeowners' association shall be established requiring membership of each lot owner in the OSRD. The homeowners' association shall be responsible for the permanent maintenance of all commonly owned water and septic systems, open space, recreational and thoroughfare facilities, including but not limited to private ways and common driveways. A homeowners' association agreement or covenant shall be submitted with the OSRD application guaranteeing continuing maintenance of such common land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of the Town Counsel and the Planning Board.

G. In any case when the common open space is not to be conveyed to the Town, the application for an OSRD shall include a description of how and when the common open space shall be preserved in perpetuity. The applicant shall also provide as part of this description, a proposal agreement authorizing and empowering the Town to perform any and all maintenance of the common open space, and any other facilities in common ownership in the event of a failure to comply with common open space preservation plan or agreement and/or any other agreement, whether a homeowners' agreement or otherwise, to maintain the common open space and/or any facilities in common ownership, and providing that, if the Town is required to perform any maintenance work, the owners of the lots within the OSRD shall pay the costs thereof and that these costs shall constitute a lien upon those lots until such costs have been paid in full.

### 5.10.12. Common driveways.

A. Common driveways serving no more than five residential units may be allowed in the OSRD, provided that they meet one of the following:

(1) The provision of individual driveways to the lots to be served by the proposed common driveway would require curb cuts which are separated by less than 60 feet along the exterior street line;

(2) The provision of individual driveways to the lots to be served by the proposed common driveway would allow no alternative but to cross a "wetland resource area", as defined by MGL

c. 131, § 40, and/or the Town of Ashburnham Wetlands Protection Bylaw,[27] or to cross any land in the Floodplain District as described in Part 2 of the Town's Zoning Bylaws;

(3) One or more alternate individual driveways which would be necessary in the absence of the proposed common driveway would intersect the roadway at a point of insufficient traffic sight distance, as determined by the Planning Board;

(4) The provision of individual driveways to the lots to be served by the proposed common driveway would adversely affect a significant natural feature or vista.

B. The common driveway shall access the property over the frontage of at least one of the lots being served by the driveway.

C. The common driveway shall not be in excess of 500 feet in length.

D. The owners of the properties to be served by the common driveway shall provide evidence to the Planning Board that they have a deeded right to the common driveway.

E. The common driveway shall provide adequate access and turnaround for vehicles, including moving vans, snowplows, ambulances, fire, and police vehicles. To provide such adequate access, the common driveway shall be built to meet standards as outlined in the Town of Ashburnham Planning Board Rules and Regulations, as amended.[28]

F. All installation of utilities shall meet the requirements as outlined in the Town of Ashburnham Planning Board Rules and Regulations, as amended.

G. Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within 10 feet of the intersection of the common driveway with the street, as well as within 10 feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner that will not cause them to be blocked during heavy snow pack and/or snow removal.

H. Approval of a common driveway(s) in an OSRD shall be subject to a covenant by and between the developer and the Planning Board recorded in the chain of title and running with the land, on a form approved by the Planning Board, acknowledging that the common driveway approval was granted in consideration of the conditions contained within the decision of an OSRD and the grant of covenant, and that the owner, his heirs, executors, successors and assigns, agree that the common driveway shall never be submitted to Town Meeting for a vote to have it become an accepted street. This paragraph authorizes the Planning Board to accept the covenant on behalf of the Town.

I. A lot in an OSRD may be served by a common driveway only if it meets the requirements of § 5.10.13 of this bylaw, and the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long-term maintenance, including, but not limited to, removal of ice and snow from the common drive. The plan required under § 5.10.15 shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these bylaws. It shall incorporate by reference the document(s), satisfactory to the Town Counsel and the Planning Board, creating the mandatory owners' association

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**27. Editor's Note: See Ch. 230, Wetlands Protection; and the regulations in Ch. 400, Wetlands Regulations.**

**28. Editor's Note: See Ch. 418, Common Driveways.**

and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) must include, at a minimum, the following:

(1) Specific standards for the maintenance of all structures designed to be requirements of a common driveway, including, but not limited to, the travel way, drainage system, and signage;

(2) Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;

(3) Text of proposed easement, including the metes and bounds description;

(4) A procedure for the resolution of disagreements.

**5.10.13. Reduction of dimensional requirements.**

Applicant may propose to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

A. Frontage. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw. The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.

B. Setbacks. Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In no event shall structures be closer than 20 feet to each other. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be zero feet; however, the distance between structures shall be a minimum of 20 feet.

**5.10.14. Increases in permissible density.**

The Planning Board may award a density bonus to increase the number of dwelling units beyond the basic maximum number for an OSRD plan. The density bonus for the OSRD shall not, in the aggregate, exceed 30% of the basic maximum number. Computations shall be rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

A. For each additional 10% of the site (over and above the required 50%) set aside as open space, a bonus of one additional dwelling unit beyond the basic maximum number may be awarded.

B. For every two dwelling units restricted in perpetuity to occupancy by persons or families that qualify as income-eligible households, one dwelling unit may be added as a density bonus beyond the basic maximum number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board. Additional lots allowed under Subsection B will become buildable as additional dwelling unit(s) upon completion and sale of said deed-restricted home, or upon donation of, and recording of a deed to, the lot set aside for such deed-restricted home to the Town or to a public or nonprofit housing agency or trust. The permanently deed-restricted affordable home or lot shall not be subject to the growth management provisions of Section 5.8.

C. For every historic structure preserved and subject to a historic preservation restriction, one dwelling

unit may be added to the basic maximum number.

### 5.10.15. Administration.

A. Relation to Subdivision Control Law. To facilitate timely processing, promote better communication and avoid misunderstanding, applicants are encouraged to submit a preliminary subdivision plan. This plan should include alternative OSRD designs and must include how a non-OSRD, or conventional, subdivision design would appear. Such plan shall show the basic maximum number of dwelling units that would be allowed under Ashburnham Zoning Bylaw via conventional residential subdivision.

B. Submission requirements.

(1) Each OSRD application and plan shall be prepared in accordance with the requirements of the Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land as adopted from time to time by the Planning Board.[29]

(2) Each OSRD application and plan shall provide the following additional information:

(a) The location and acreage of areas to be devoted to specific uses.

(b) The proposed location of parks, open spaces, and other public and community uses.

(c) Developments on municipal sewer systems: written approval certifying tie-in to municipal sewage from the Ashburnham Water and Sewer Commission.

(d) On-site septic development: a sanitary survey sewage feasibility report by a registered professional civil engineer licensed in Massachusetts. The purpose of the report is to evaluate the feasibility of the ground for subsurface disposal of septic tank effluents, based on soil characteristics and test borings, water table, natural drainage patterns and other observation by the engineer.

[1] The report shall take into consideration the following factors: location of deep holes, to be shown on the appropriate map; topographic and ground level conditions; natural drainage patterns; flood heights of nearby waterways; underlying soil characteristics, absorption qualities, maximum groundwater elevations and distances to bedrock; and location and dimensions of abutting off-site sewage disposal systems if within 100 feet of property lines to be shown on an appropriate map.

[2] The report shall contain a statement by the civil engineer of why the septic system design and location is the most suitable of considered alternatives for on-site sanitary sewage disposal systems as indicated in Title V, the State Environmental Code. The Ashburnham Board of Health has final jurisdiction over all on-site septic systems.

(e) The organization the applicant proposes to own and maintain the open space land, in accordance with § 5.10.11.

(f) Draft copies of all proposed covenants, agreements, and other restrictions the applicant proposes and is required to provide in accordance with this bylaw.

(g) Proposed gross density of entire development tract, amount of open space required in

29. **Editor's Note: See Ch. 475, Subdivision of Land.**

accordance with § 5.10.10, and amount of open space retained.

(h) A yield plan shall also be provided showing the basic maximum number of dwelling units that could be created for residential purposes via a conventional residential subdivision.

(i) Any and all other information from the definitive subdivision regulations of the Town of Ashburnham that the Planning Board may require to assist in determining whether the proposed OSRD meets the objectives and standards as set forth in this bylaw.

C. Review and approval process. Applications under this bylaw shall be processed and reviewed in accordance with the Subdivision Control Law, including but not limited to Planning Board review of the reports and recommendations of the Conservation Commission, Board of Health and Town Engineer.

D. Fees. See Planning Board Rules Governing Fees and Fee Schedule.[30]

### 5.10.16. Conservation Commission review.

No endorsement of a plan will be made until the Conservation Commission has completed an order of conditions and has been registered with the Northern Worcester County Registry of Deeds and made part of the plans. Any further changes required by the Conservation Commission shall meet the approval of the Planning Board's consulting engineer prior to endorsement.

### 5.10.17. Review for compliance.

The OSRD Plan shall show compliance with the requirements of this bylaw and shall show any other particular features of the OSRD as requested by the Planning Board or required by the applicable rules and regulations to enable the Planning Board to determine compliance with this bylaw.

### 5.10.18. Waiver of compliance.

The Planning Board may waive strict compliance with such requirements of this Section 5.10, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this Section 5.10.

### 5.10.19. Validity.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

**30. Editor's Note: See Ch. 427, Fees.**

SECTION 5.11
**Common Driveways**[31]

### 5.11.1. Allowed by special permit.

Common driveways may be allowed by special permit in accordance with the provisions of this Section 5.11.

### 5.11.2. Purpose.

The purpose of allowing access to no more than three lots in any zoning districts, except in an open space residential development, over a common driveway is:

A. To enhance public safety by reducing the number and frequency of points at which vehicles may enter upon the ways used by the public, particularly arterial streets as defined in the Rules and Regulations Governing the Subdivision of Land in Ashburnham, Massachusetts;[32]

B. To preserve, protect, and enhance environmentally sensitive land, such as well discharge areas, wetlands and floodplains, by reducing the area of land that is cleared, excavated, filled and/or covered with impervious material;

C. To encourage the protection and preservation of significant features and vistas.

### 5.11.3. Applicability and requirements.

The Planning Board may grant a special permit for common driveways serving no more than three lots, except as specified in § 5.10.12 for open space residential developments, each with approved frontage on a public way or a way approved by the Planning Board, upon receipt of an application and a site plan prepared by a registered engineer and showing that such common driveway meets the following requirements:

A. The common driveway shall not be in excess of 500 feet in length;

B. The common driveway shall not enter any roadway at a point separated by less than 100 feet from an intersection. On a state-numbered highway, the common driveway shall not enter the roadway at a point separated by less than 100 feet from any other driveway, curb cut, or intersection;

C. The common driveway shall not be allowed if it would serve as the primary means of access to property which is publicly controlled or which serves a public purpose;

D. Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within 10 feet of the intersection of the common driveway with the street, as well as within 10 feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner so that they will not be blocked during heavy snow pack and/or the driveway;

E. The common driveway shall access the property over the frontage of either or both of the lots served by the driveway;

F. The applicant shall provide evidence to the Planning Board that the owners of the properties to be

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**31. Editor's Note: See also the Planning Board's rules and regulations regarding common driveways in Ch. 418, Common Driveways.**

**32. Editor's Note: See Ch. 475, Subdivision of Land.**

served by the common driveway have a deeded right to the common driveway;

G. The common driveway shall have an easement width of not less than 24 feet and the travel portion shall be no less than 14 feet in width and shall be treated with an all-weather surface. The width requirement shall apply only to that portion of a driveway which is used in common by more than one lot. The maximum grade shall be 10%. The minimum grade shall be 1%, with a 3% maximum grade within 50 feet of its intersection with a street right-of-way.

H. No common driveway shall be accepted as a public road nor shall the Town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any common driveway.

I. A lot may be served by a common driveway only if the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long-term maintenance, including, but not limited to, removal of ice and snow from the common drive. The site plan shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board and the Town Counsel, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these bylaws. It shall incorporate by reference the document(s), satisfactory to the Planning Board and the Town Counsel, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) shall include, at a minimum, the following:

(1) Specific standards for the maintenance of all structures designed to be requirements of a common driveway special permit, including, but not limited to, the travel way, drainage system, and signage;

(2) Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;

(3) Text of proposed easement, including the metes and bounds description;

(4) A procedure for the resolution of disagreements. Said document(s) shall be recorded along with the site plan and public utility and drainage easements in the Northern Worcester County Registry of Deeds and shall also be recited in and attached to every deed to every lot served by the common driveway.

### 5.11.4. Adoption of rules and regulations.

The Planning shall adopt an application form and rules and regulations in accordance with the provisions of this bylaw. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this bylaw.[33]

### 5.11.5. Waiver of compliance.

The Planning Board, acting as the special permit granting authority under this Section 5.11, may waive strict compliance with any requirements of this Section 5.11, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this Section 5.11.

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**33. Editor's Note: See Ch. 418, Common Driveways.**

### 5.11.6. Validity.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.[34]

34. **Editor's Note: Original Sec. 5.15, Major Residential Development (MRD), which immediately followed this section, was repealed 5-5-2012 ATM, AG approved 8-30-2012.**

SECTION 5.12
**Accessory Dwelling Units**[35]

### 5.12.1. Purpose and intent.

The intent of permitting accessory dwelling units (ADU) is to:

A. Provide older homeowners with a means of obtaining rental income, companionship, security, and services, thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;

B. Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate-income households who might otherwise have difficulty finding housing;

C. Develop housing units in single-family neighborhoods that are appropriate for households at a variety of stages in their life cycle;

D. Provide housing units for persons with disabilities;

E. Protect stability, property values, and the residential character of a neighborhood.

### 5.12.2. Procedural requirements.

A. Review procedure.

(1) The Planning Board, acting as the special permit granting authority (SPGA), shall grant a special permit for an accessory dwelling unit as provided for in this bylaw.

(2) The Planning Board shall adopt an application form and rules and regulations in accordance with the special permit provisions of this section of the bylaw. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the applicant in complying with the intent of this bylaw.[36]

### 5.12.3. Use and dimensional regulations. [Amended 5-2-2023ATM by Art. 27]

A. The Planning Board shall issue a special permit authorizing the installation and use of an accessory dwelling unit within an existing or new owner-occupied, single-family dwelling when the conditions outlined in Subsection A(1) through (9) have been met, or the Planning Board may issue a special permit authorizing the installation and use of an accessory dwelling unit in a detached structure on a single-family home lot only when the conditions outlined in Subsection A(1) through (9) have been met:

(1) The unit shall be a complete, separate housekeeping unit containing both kitchen, sleeping quarters, and bath.

(2) Only one accessory dwelling unit may be created within a single-family house or lot.

(3) The owner(s) of the residence in which the accessory dwelling unit is created must continue to occupy at least one of the dwelling units as their primary residence, except for bona fide

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35. **Editor's Note: See also the Planning Board's rules and regulations regarding accessory dwelling units in Ch. 410, Accessory Dwelling Units.**

36. **Editor's Note: See Ch. 410, Accessory Dwelling Units.**

temporary absences.

(4) Any new, separate, outside entrance serving an accessory dwelling unit shall be located on the side or in the rear of the building and shall not be visible from the way providing primary access to the lot.

(5) The gross floor area of an accessory dwelling unit (including any additions) shall not be less than 300 square feet or more than 900 square feet of living space. If the accessory dwelling unit is a subdivision of the main house, the main unit cannot be made smaller than the accessory unit.

(6) Once an accessory dwelling unit has been added to a single-family structure or lot, the accessory dwelling unit shall never be enlarged beyond the area allowed in Subsection A(5) without approval of the Planning Board.

(7) An accessory dwelling unit shall not be occupied by more than four people nor have more than two bedrooms.

(8) The construction of any accessory dwelling unit shall be in conformity with the State Building Code, Title V of the State Sanitary Code and other local bylaws and regulations.

(9) At least one off-street parking space shall be provided for the accessory dwelling unit in addition to any other off-street parking requirements in § 5.3.2 of the Zoning Bylaw.

B. In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited mobility, the SPGA may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

C. Approval for an ADU requires that the owner shall occupy one of the dwelling units. The approval and the notarized letters required in Subsections D and E below must be recorded in the Worcester Northern Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Building Commissioner, prior to the occupancy of the accessory dwelling unit.

D. When a structure which has received a special permit for an accessory dwelling unit is sold, the new owner(s), if they wish to continue to exercise the permit, must, within 30 days of the sale, submit a notarized letter to the Building Commissioner stating that the owner(s) will occupy one of the dwelling units on the premises as the owner(s) primary residence, except for bona fide temporary absences.

E. Prior to issuance of a special permit, the owner(s) must send a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's primary residence, except for bona fide temporary absences.

F. Prior to issuance of a special permit, a floor plan must be submitted showing the proposed interior and exterior changes to the building.

### 5.12.4. Administration and enforcement.

A. It shall be the duty of the Building Commissioner to administer and enforce the provisions of this bylaw.

B. No building shall be constructed or changed in use or configuration until the Planning Board has

issued a special permit and the Building Commissioner has issued a building permit. No special permit shall be issued until a sewage disposal works permit, when applicable, has first been obtained from the Board of Health and the proposed building and location thereof conform with the Town's laws and bylaws. Any new building or structure shall conform to all state and Town laws, bylaws, codes and regulations. No ADU permitted under this bylaw shall be occupied until a certificate of occupancy has been issued by the Building Commissioner.

C. The Building Commissioner shall refuse to issue any permit which would result in a violation of any provision of this Section 5.12 or in a violation of the conditions or terms of any special permit granted by the SPGA.

D. The Building Commissioner shall issue a cease and desist order on any work in progress or on the use of any premises, either of which are in violation of the provisions of Section 5.12.

E. Construction or use according to a special permit shall conform to any subsequent amendment of this chapter unless the construction or use is begun within a period of not more than six months after the issuance of a special permit granted under this bylaw before the effective date of the amendment.

F. The SPGA specified in this section may, upon making findings of fact supporting said waiver or modification, approve a waiver or modification to the dimensional standards of this bylaw, provided that such waiver or modification is not greater than 10% of the dimensional standards.

### 5.12.5. Waiver of compliance.

The Planning Board, acting as the SPGA under this bylaw, may waive strict compliance with any requirements of this bylaw, where the SPGA makes a finding such waiver is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this Section 5.12.

### 5.12.6. Validity.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

SECTION 5.13
**Large Wind Energy Facilities**
**[AG approved 3-11-2009]**

### 5.13.1. Purpose.

The purpose of this bylaw is to provide by special permit for the construction and operation of wind facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources of the Town of Ashburnham and provide adequate financial assurance for decommissioning.

### 5.13.2. Applicability.

A. This Section 5.13 applies to all utility-scale and on-site wind facilities with capacity greater than 60 Kw proposed to be constructed after the effective date of this Section 5.13. It does not apply to single stand-alone turbines under 60 kilowatts of rated nameplate(s) capacity.

B. Any physical modifications to existing wind facilities that materially alter the type or increase the size of such facilities or other equipment shall require a special permit.

### 5.13.3. Definitions.

HEIGHT — The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

LARGE WIND ENERGY FACILITIES — Any utility-scale wind facility or on-site wind facility that generates 60 kilowatts of rated nameplate(s) capacity or greater on a lot.

ON-SITE WIND FACILITY — A wind project which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated by the project on-site.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

SPECIAL PERMIT GRANTING AUTHORITY — The Planning Board, acting as the special permit granting authority (SPGA), shall grant a special permit for large wind energy facilities as provided for in this bylaw.

SUBSTANTIAL EVIDENCE — Such evidence as a reasonable mind might accept as adequate to support a conclusion.

UTILITY-SCALE WIND FACILITY — A commercial wind facility where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

WIND FACILITY — All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

WIND MONITORING OR METEOROLOGICAL TOWER — A temporary tower equipped with devices to measure wind speeds and direction, used to determine how much wind power a site can be expected to generate.

WIND TURBINE — A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or

more blades.

### 5.13.4. General requirements.

A. Special permit granting authority.

(1) No wind facility over 60 kilowatts of rated nameplate(s) capacity shall be erected, constructed, installed or modified as provided in this Section 5.13 without first obtaining a permit from the special permit granting authority. The construction of a wind facility over 60 kilowatts of rated nameplate(s) capacity shall be permitted within the Large Wind Energy Facility Zoning Overlay District subject to the issuance of a special permit and provided that the use complies with all requirements set forth in §§ 5.13.4, 5.13.5, 5.13.6 and 5.13.7. All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No special permit shall be granted unless the special permit granting authority finds in writing that:

(a) The specific site is an appropriate location for such use;

(b) The use is not expected to adversely affect the neighborhood;

(c) There is not expected to be any serious hazard to pedestrians or vehicles from the use;

(d) No nuisance is expected to be created by the use; and

(e) Adequate and appropriate facilities will be provided for the proper operation of the use.

(2) Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

(3) Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

B. Large Wind Energy Facility Overlay District. The Large Wind Energy Facility Overlay District is established over all the zoning districts of the Town of Ashburnham, except the following parcels: Map 28, Parcels 1 and 2 and Map 29, Parcels 8-13. The Large Wind Energy Facility Overlay District is located and bounded as shown on a map entitled "Large Wind Energy Facility Zoning Overlay District", Ashburnham, MA prepared by the Town Planner, dated November 13, 2008, and on file with the offices of the Town Clerk, Zoning Enforcement Officer and Town Planner.[37]

C. Compliance with laws, bylaws and regulations. The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

D. Proof of liability insurance. The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

E. Site control. At the time of its application for a special permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation

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**37. Editor's Note: A copy of the Large Wind Energy Facility Zoning Overlay District is included in Attachment 4 to this chapter.**

and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. "Control" shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

### 5.13.5. General siting standards.

A. Freestanding large wind energy facility height. Wind facilities shall be no higher than 400 feet above the current grade of the land, provided that wind facilities may exceed 400 feet if:

(1) The applicant demonstrates by substantial evidence that such height reflects industry standards for a similarly sited wind facility;

(2) Such excess height is necessary to prevent financial hardship to the applicant; and

(3) The facility satisfies all other criteria for the granting of a special permit under the provisions of this Section 5.13.

B. Rooftop large wind energy facility height. Rooftop large wind energy facilities shall not extend more than 10 feet above the ridgeline of the structure to which they are attached.

C. Setbacks.

(1) Wind turbines shall be set back a distance equal to one times the overall blade tip height of the wind turbine from the nearest existing abutting residential or commercial structure and 100 feet from the nearest property line and private or public way.

(2) Setback waiver. The special permit granting authority may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a special permit under the provisions of this Section 5.13.

### 5.13.6. Design standards.

A. Color and finish. The special permit granting authority shall have discretion over the turbine color, although a neutral, nonreflective exterior color designed to blend with the surrounding environment is encouraged.

B. Lighting and signage.

(1) Lighting. Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

(2) Signage. Signs on the wind facility shall comply with the requirements of the Town's sign regulations, and shall be limited to:

(a) Those necessary to identify the owner, provide a twenty-four-hour emergency contact phone number, and warn of any danger.

(b) Educational signs providing information about the facility and the benefits of renewable energy.

(3) Advertising. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

(4) Utility connections. Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

C. Appurtenant structures. All appurtenant structures to such wind facilities shall be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

D. Support towers. Monopole towers are the only type of support for the wind facilities that shall be approved.

**5.13.7. Safety, aesthetic and environmental standards.**

A. Emergency services.

(1) The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the special permit granting authority. Upon request, the applicant shall cooperate with local emergency services in developing an emergency response plan.

(2) Unauthorized access. Wind turbines or other structures part of a wind facility shall be designed to prevent unauthorized access.

B. Shadow/Flicker. Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses through either siting or mitigation.

C. Noise.

(1) The wind facility and associated equipment shall conform with the provisions of the Department of Environmental Protection's (DEP) Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the special permit granting authority agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source:

(a) Increases the broadband sound level by more than 10 dB(A) above ambient; or

(b) Produces a "pure tone" condition - when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by three decibels or more.

(2) These criteria are measured both at the property line and at the nearest inhabited residence. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards.

(3) The special permit granting authority, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

D. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and bylaws.

E. Rooftop wind energy facilities installation. Wind facilities sited on top of, attached to and extending above the ridgeline of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code. Certification by an engineer licensed by the State of Massachusetts shall be required.

### 5.13.8. Monitoring and maintenance.

A. Facility conditions. The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.

B. Modifications. All material modifications to a wind facility made after issuance of the special permit shall require approval by the special permit granting authority as provided in this Section 5.13.

### 5.13.9. Abandonment or decommissioning.

A. Removal requirements. Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the Town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:

(1) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.

(2) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.

(3) Stabilization or revegetation of the site as necessary to minimize erosion. The special permit granting authority may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

B. Abandonment. Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the special permit granting authority. The special permit granting authority shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town shall have the authority to enter the property and physically remove the facility.

C. Financial surety. The special permit granting authority may require the applicant for utility-scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the facility, of an amount and form determined to be reasonable by the special permit granting authority, but in no event to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for cost-of-living adjustment. The Planning Board may require an annual report on the working and operating condition of the wind energy facility(ies).

### 5.13.10. Term of special permit; public contact number.

A. A special permit issued for a wind facility shall be valid for 25 years, unless extended or renewed. The time period may be extended or the permit renewed by the special permit granting authority upon satisfactory operation of the facility. Request for renewal must be submitted at least 180 days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the special permit granting authority acts. At the end of that period (including extensions and renewals), the wind facility shall be removed as required by this Section 5.13.

B. The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

### 5.13.11. Application process and requirements.

A. Application procedures.

(1) General. The Planning Board shall adopt an application form, fee schedule and rules and regulations in accordance with the provisions of this bylaw. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this bylaw.

(2) Application. Each application for a special permit shall be filed by the applicant with the Town Clerk pursuant to MGL c. 40A, § 9.

B. Required documents.

(1) General. The applicant shall provide the special permit granting authority with 17 copies of the application, plans and documents. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:

(a) Name, address, phone number and signature of the applicant, as well as all co-applicants or property owners, if any.

(b) The name, contact information and signature of any agents representing the applicant.

(c) Documentation of the legal right to use the wind facility site, including the requirements set forth in Subsection C(2) of this section.

C. Siting and design. The applicant shall provide the special permit granting authority with a description of the property, which shall include:

(1) Location map. Copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed facility site, including turbine sites, and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however, a copy of a Zoning Map with the parcel identified is suitable.

(2) Site plan. A one inch equals 200 feet plan of the proposed wind facility site, with contour intervals of no more than 10 feet, showing the following:

(a) Property lines for the site parcel and adjacent parcels within 300 feet.

(b) Outline of all existing buildings, including purpose (e.g., residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the wind facility to each building shown.

(c) Location of all roads, public and private, on the site parcel and adjacent parcels within 300 feet, and proposed roads or driveways, either temporary or permanent.

(d) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.

(e) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.

(f) Location of viewpoints referenced below in Subsection C(3) of this section.

(3) Visualizations. The special permit granting authority shall select between three and six sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a two-mile radius of the wind facility. View representations shall have the following characteristics:

(a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g., superimpositions of the wind facility onto photographs of existing views).

(b) All view representations will include existing, or proposed, buildings or tree coverage.

(c) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc.).

D. Landscape plan. A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.

E. Operation and maintenance plan. The applicant shall submit a plan for maintenance of access roads and stormwater controls, as well as general procedures for operational maintenance of the wind facility. The applicant shall attempt to implement low-impact development techniques to manage stormwater, in accordance with the Low Impact Development General Bylaw.[38]

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**38. Editor's Note: See Ch. 167, Low-Impact Development, and the Planning Board regulations in Ch. 449.**

F. Compliance documents. If required under previous sections of this bylaw, the applicant will provide with the application:

(1) A description of financial surety that satisfies § 5.13.9C of this section;

(2) Proof of liability insurance that satisfies § 5.13.4D of this section;

(3) Certification of height approval from the FAA;

(4) A statement that satisfies § 5.13.7C, listing existing and maximum projected noise levels from the wind facility.

G. Independent consultants. Upon submission of an application for a special permit, the special permit granting authority will be authorized to hire outside consultants, pursuant to MGL c. 44, § 53G.

**5.13.12. Waiver of compliance.**

The Planning Board, acting as the special permit granting authority under this Section 5.13, may waive strict compliance with such requirements of this Section 5.13, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this Section 5.13.

**5.13.13. Validity.**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

SECTION 5.14
**Small Wind Energy Systems**
**[AG approved 3-11-2009]**

### 5.14.1. Purpose.

A. The purpose of this bylaw is to provide criteria which will help the Town of Ashburnham evaluate a small wind project. The criteria will be utilized by Building Inspectors charged with issuing building permits for small wind energy systems. Any proposed nonconforming small wind energy systems will be addressed through a special permit process under the review of the special permit granting authority.

B. The small wind energy systems bylaw should provide cities and towns with a streamlined and efficient administrative permitting process to allow for responsibly sited small wind systems.

### 5.14.2. Applicability.

This Section 5.14 applies to small wind systems no greater than 60 kilowatts in total to the lot of rated nameplate(s) capacity proposed to be constructed after the effective date of this Section 5.14.

### 5.14.3. Definitions.

BUILDING INSPECTOR — The Inspector of Buildings, Building Commissioner or local inspector, or, if there are none in a town, the Board of Selectmen, or person or board designated by local ordinance or bylaw charged with the enforcement of the Zoning Bylaw.

BUILDING PERMIT — A building permit is a required approval of a project by the Building Inspector which is consistent with the local, state and federal building codes. In addition, the permit must meet the criteria set forth under the local zoning bylaws regarding small wind energy systems.

HEIGHT — The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

SMALL WIND ENERGY SYSTEM — All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity of 60 kW or less.

SPECIAL PERMIT — A permit provided by the special permitting authority for nonconforming small wind systems (e.g., a small wind system that does not meet the criteria for small wind systems set forth by the Building Inspector).

SPECIAL PERMIT GRANTING AUTHORITY — The special permit granting authority shall be the Planning Board, by this Section 5.14, for the issuance of special permits to construct and operate small wind energy systems.

WIND TURBINE — A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

### 5.14.4. General requirements.

A. Building Inspector issued permit.

(1) No small wind energy system shall be erected, constructed, installed or modified as provided in this Section 5.14 without first obtaining a building permit from a licensed Building Inspector from the Town of Ashburnham. All such wind energy systems shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts.

(2) Such permits may also impose safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the small wind energy system, should they occur.

B. Special permit granting authority. If the proposed small wind energy system does not satisfy the criteria of the building permit set forth under the adopted bylaws, then the applicant must seek review and petition the special permit granting authority for a special permit. The special permit will provide for a variance from the prescribed bylaw requirements. This variance from the building permit criteria will only be applicable to that specific nonconforming project.

C. Compliance with laws, bylaws and regulations. The construction and operation of all such proposed small wind energy systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications, and FAA aviation requirements.

D. Utility notification. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

E. Temporary meteorological towers (met towers).

(1) Met towers shall be permitted under the same standards as a small wind system, except that the requirements apply to a temporary structure. A permit for a temporary met tower shall be valid for a maximum of three years, after which an extension may be granted.

(2) Wind monitoring shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure.

**5.14.5. General siting standards.**

A. Freestanding small wind energy system height. Small wind energy facilities shall be no higher than 160 feet, provided that such wind energy facilities may exceed 160 feet if granted a special permit from the Planning Board based on:

(1) The applicant demonstrating by substantial evidence that such height reflects industry standards for a similar sited wind facility;

(2) Demonstration that such excess height is necessary to prevent financial hardship to the applicant; and

(3) The facility satisfies all other criteria for the granting of a building permit, or for a special permit, if required.

B. Rooftop small wind energy system height. Rooftop small wind energy facilities shall not extend more than 10 feet above the ridgeline of the structure to which they are attached.

C. Setbacks.

(1) Wind turbines shall be set back a distance equal to the total height of the wind turbine from all abutting inhabited structures, overhead utility lines, public road or right-of-way and at least five feet from property boundaries.

(2) Setback waiver. The Building Inspector may reduce the minimum setback distance if written permission is granted by the entity with care and control over the affected asset.

**5.14.6. Design standards.**

A. Appearance, color and finish. The wind generator and tower shall remain painted or finished the nonreflective color or finish that was originally applied by the manufacturer, unless approved in the building permit.

B. Lighting and signage.

(1) Lighting.

(a) Wind turbines shall be lighted only if required by the Federal Aviation Administration.

(b) Lighting of other parts of the small wind energy system, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

(2) Signage and advertising. Signs and advertising shall be restricted to reasonable identification of the manufacturer or operator of the small wind energy facility and shall defer to the requirements of the Town of Ashburnham sign regulations.

**5.14.7. Safety, aesthetic and environmental standards.**

A. Unauthorized access. Wind turbines or other structures part of a small wind energy system shall be designed to prevent unauthorized access.

B. Noise. The small wind energy system and associated equipment shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the permit granting authority agree that those provisions shall not be applicable.

C. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and is otherwise prescribed by applicable laws, regulations, and bylaws.

D. Rooftop wind energy facilities installation. Wind facilities sited on top of, attached to and extending above the ridgeline of an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code. Certification by an engineer licensed by the State of Massachusetts shall be required.

**5.14.8. Monitoring and maintenance.**

A. System conditions. The applicant shall maintain the small wind energy system in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

**5.14.9. Abandonment or decommissioning.**

A. Removal requirements.

(1) Any small wind energy system which has reached the end of its useful life or has been abandoned shall be removed.

(2) A small wind energy system shall be considered abandoned when it fails to operate for one year. Upon a notice of abandonment issued by the Building Inspector, the small wind energy system owner will have 30 days to provide sufficient evidence that the system has not been abandoned or the Town of Ashburnham shall have the authority to enter the owner's property and remove the system at the owner's expense.

**5.14.10. Permit process, requirements and enforcement.**

A. Permit requirements.

(1) Documents. The building permit application shall be accompanied by deliverables including the following:

(a) A plot plan showing:

[1] Property lines and physical dimensions of the subject property within two times the total height from the tower location.

[2] Location, dimensions, and types of existing major structures on the property.

[3] Location of the proposed wind system tower, foundations, guy anchors and associated equipment.

[4] The right-of-way of any public road that is contiguous with the property.

[5] Any overhead utility lines.

(b) Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).

(c) Tower foundation blueprints or drawings signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts.

(d) Tower blueprint or drawing signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts.

(2) Fees. The application for a building permit for a small wind energy system must be accompanied by the fee required by the Building Commissioner.

(3) Expiration. A permit issued pursuant to this bylaw shall expire if:

(a) The small wind energy system is not installed and functioning within 24 months from the date the permit is issued; or

(b) The small wind energy system is abandoned.

B. Violations. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this bylaw or with any condition contained in a building permit issued pursuant to this bylaw. Small wind energy systems installed prior to the adoption of this bylaw are exempt.

C. Administration and enforcement.

(1) This bylaw shall be administered and enforced by the Building Commissioner, or his/her designee.

(2) The Building Commissioner may enter any property for which a building permit has been issued under this bylaw to conduct an inspection to determine whether the conditions stated in the permit have been met.

D. Penalties. Any person who fails to comply with any provision of this bylaw or a building permit issued pursuant to this bylaw shall be subject to enforcement and penalties as allowed by applicable law.

### 5.14.11. Waiver of compliance.

The Planning Board, when acting as the special permit granting authority under this Section 5.14, may waive strict compliance with such requirements of this Section 5.14, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this Section 5.14.

### 5.14.12. Severability.

The provisions of this bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.

SECTION 5.15
**Planned Unit Development**
**[Added 5-5-2012 ATM]**

### 5.15.1. Purpose and intent.

The purpose and intent of the planned unit development (PUD) provision is to allow via special permit an alternative use and pattern of land development for large tracts and for redevelopment of smaller parcels in built-up areas by allowing single-family and multifamily clustered residential development along with a mix of nonresidential uses as permitted in this Section 5.15, while encouraging the conservation of open space within the PUD. The PUD is a flexible zoning tool designed to meet the following objectives:

A. Encourage innovation in commercial and residential development so that the growing demand for more and varied housing may be met by a greater variety in type and design of living units;

B. Encourage a less sprawling form of community development which makes more efficient use of land, requires shorter networks of streets and utilities and which fosters more economical development and less consumption of developable land;

C. The permanent preservation of open space, agricultural lands, forest lands, and other natural resources;

D. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farm land;

E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;

F. Encourage historic preservation, infill development and adaptive reuse of historic structures in applicable zoning districts;

G. Provide opportunities to allow greater density and intensity of residential development than would normally be allowed, provided that the land usage can be shown to be in the public good;

H. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;

I. To protect and enhance the value of real property.

### 5.15.2. Definitions.

DEVELOPABLE LAND — All land located within the PUD exclusive of wetlands as said terms are defined in the Wetlands Protection Act (MGL c. 131, § 40).

FLOOR AREA RATIO — As used in this Section 5.15, the floor area ratio is the ratio of the gross floor area of all buildings within a PUD to the area of developable land within the PUD; provided, however, that the gross floor area of garages and attics, which are not designed to be used or occupied as living areas, shall be excluded.

### 5.15.3. Applicability.

A. Any development under the PUD provisions of this Section 5.15 of the Ashburnham Zoning Bylaw requires a special permit approval from the Ashburnham Planning Board.

B. Planned unit developments (PUDs) shall be allowed within parcels included in the Planned Unit

Development (PUD) Overlay District subject to the issuance of a special permit and provided that the use complies with all requirements set forth in this Section 5.15. The minimum size of any PUD shall be a parcel or contiguous parcels of land having an area of at least four acres within the PUD Overlay District. The Planning Board may allow a PUD on a parcel or contiguous parcels of land smaller than four acres upon a finding that the proposed development is consistent with the objectives of this Section 5.15 and § 1.1.1 of the Zoning Bylaw.

C. The PUD Overlay District is established over all the zoning districts of the Town of Ashburnham, except the following parcels: Map 28, Parcels 1 and 2 and Map 29, Parcels 8-13. The PUD Zoning Overlay District is located and bounded as shown on a map entitled "Planned Unit Development Zoning Overlay District", Ashburnham, MA prepared by the Montachusett Regional Planning Commission, dated May 5, 2012, and on file with the offices of the Town Clerk, Zoning Enforcement Officer and Planning Board.

**5.15.4. Permitted uses.**

A. Any use allowed by-right (Y) or by special permit (SP) in at least one of the underlying zoning districts within which the PUD is located shall also be allowed by-right or allowable by special permit, as the case may be, in any location within that PUD, including within underlying districts where such use is not otherwise allowed, with the following exceptions:

(1) Dwelling units are allowed by right within all PUDs without limitation on form of tenure or structure type, including single-family, two-family, multifamily, assisted elderly, or supportive housing. A maximum of 20 dwelling units shall be allowed in any one building.

(2) Retail operations with more than 10,000 square feet of gross floor area on any individual floor shall be prohibited within any PUD.

(3) Hotel, motel or inn, and commercial indoor amusement or recreational place or place of assembly are allowed uses within all PUDs.

B. Residential uses shall comprise not less than 25% and not more than 75% of the gross floor area planned within any PUD.

**5.15.5. Dimensional and area regulations.**

A. Applicability. The dimensional and area regulations set forth in this section shall apply to the total area of developable land within the PUD and shall not regulate individual lots therein.

B. Maximum allowable density.

(1) The Planning Board shall have the discretion to reduce or suspend the minimum requirements otherwise applicable under Part 4 (Dimensional Requirements) of the Zoning Bylaw for a planned unit development, provided that the Planning Board finds that the conditions present on the site are adequate to support the proposed development, protect the surrounding neighborhood, and meet the purposes and objectives of this Section 5.15, and further provided to meet the following requirements:

(a) There shall be at least 10,000 square feet of developable land for each bedroom created in a PUD.

(b) Meet the floor area ratio, ground coverage and setback requirements as specified within this section.

(c) Residential uses are limited to the overall gross floor area limitations specified in § 5.15.4B of this bylaw.

(2) Increases in permissible density.

(a) The Planning Board may award a density bonus to increase the number of dwelling units beyond the base density of dwelling units based on Subsection B(1) above. The density bonus for the PUD shall not, in the aggregate, exceed 30% of the basic maximum number. Computations shall be rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

[1] For each additional 5% of the site (over and above the required 25%) set aside as common open space, a bonus of one additional dwelling unit beyond the base density may be awarded.

[2] For every two dwelling units restricted in perpetuity to occupancy by persons or families that qualify as income-eligible households, one dwelling unit may be added as a density bonus beyond the base number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.

(b) Additional housing units allowed under this subsection will become buildable as additional dwelling unit(s) upon completion and sale of said deed-restricted home, or rental of such affordable housing unit, or upon donation of, and recording of a deed to, the lot set aside for such deed-restricted home to the Town or to a public or nonprofit housing agency or trust.

(3) Developments on municipal sewer systems: written approval certifying tie-in to municipal sewage from the Ashburnham Water and Sewer Commission indicating that the proposed density is feasible.

(4) On-site septic development: a sanitary survey sewage feasibility report by a registered professional civil engineer licensed in Massachusetts, indicating that the proposed density is feasible. The purpose of the report is to evaluate the feasibility of the ground for subsurface disposal of septic tank effluents, based on soil characteristics and test borings, water table, natural drainage patterns and other observation by the engineer.

(a) The report shall take into consideration the following factors: location of deep holes, to be shown on the appropriate map; topographic and ground level conditions; natural drainage patterns; flood heights of nearby waterways; underlying soil characteristics, absorption qualities, maximum groundwater elevations and distances to bedrock; and location and dimensions of abutting off-site sewage disposal systems if within 100 feet of property lines to be shown on an appropriate map.

(b) The report shall contain a statement by the civil engineer of why the septic system design and location is the most suitable of considered alternatives for on-site sanitary sewage disposal systems as indicated in Title V, the State Environmental Code. The Ashburnham Board of Health has final jurisdiction over all on-site septic systems.

C. Floor area ratio requirement. The ratio of the gross floor area of all buildings, residential and commercial, within the PUD, to the total area of developable land within the PUD shall not exceed 32% (0.32).

D. Ground coverage requirement. The ground coverage of all residential and commercial buildings, and parking lots and impervious landscaping within the PUD shall not exceed 40% of the total area of developable land within the PUD. The ground coverage of all roadway areas and associated sidewalks shall be excluded from this requirement.

E. Setback requirements. Setbacks within a PUD shall conform to the following requirements; provided, however, that the Planning Board may reduce the setback requirements or may require greater setbacks to provide additional buffers to residences abutting the PUD or to enhance the aesthetic appearance or planning objectives of this bylaw.

(1) Perimeter setbacks. All structures within a PUD shall have a minimum setback requirement of 50 feet from the PUD boundary line.

(2) Front setback requirements. All structures within a PUD shall have a minimum setback from any lot line or any street line of 20 feet.

(3) Separation of buildings. All buildings within the PUD shall have a setback of at least 20 feet from any other building therein.

F. Maximum height requirement. No buildings in the PUD shall exceed the height allowed by the underlying zoning district.

G. Solar orientation of buildings. Spacing of buildings and landscaping, wherever possible and practical, shall be oriented to optimize solar exposure for buildings located within the PUD.

H. Flexible design and orientation of buildings. More than one principal building shall be allowed on any lot located in the planned unit development, subject to issuance of the PUD special permit by the Planning Board, along with a finding that such buildings would be in keeping with the purpose of the Village Center Zoning District(s), per § 2.1 of the Zoning Bylaw, and the additional findings:

(1) No principal building shall be located in relation to another principal building on the same lot, or on adjacent lot, so as to cause danger from fire;

(2) All principal buildings on the lot shall be served by accessways suitable for fire, police, and emergency vehicles;

(3) All of the multiple principal buildings on the same lot shall be accessible via pedestrian walkways connected to the required parking for the premises, and to each principal building.

**5.15.6. Open land and open space.**

A. Basic requirement. Open space shall be provided within a PUD in accordance with the requirements of this section.

B. Public open space. Significant areas of land within the PUD which are not developable and are classified as wetlands in accordance with the Mass. Wetlands Protection Act (MGL c. 131, § 40) and the DEP regulations promulgated thereunder, including the wildlife protection regulations, shall be designated as "public open space." Said areas shall be preserved as open space in perpetuity and either conveyed to the Town of Ashburnham Conservation Commission, or to a nonprofit organization, the

principal purpose of which is the conservation of open space, or shall be protected as a means of a conservation restriction imposed on the land pursuant to MGL c. 184, § 31.

C. Common open space.

(1) A minimum of 25% of the total developable land within the PUD, exclusive of the land set aside for streets, shall be designated "common open space." Common open space shall include all developable land not dedicated to roads, parking areas, buildings and structures. At least 50% of the required common open space maybe used for recreational facilities; and for passive open space and buffer areas. Common open space shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by residents of the PUD; and, where possible, be located such that significant areas of continuous open space are distributed throughout the PUD. There shall also be significant areas of common open space near areas containing high concentrations of housing units.

(2) The approximate location of major areas of public open space and common open space shall be identified as part of the preliminary development plan. The granting of a special permit shall include as a condition that the large areas of open space identified on the preliminary development plan be preserved approximately as shown, with the understanding that the precise definition of such open space might be altered with the submittal and approval of definitive development plans.

D. Ownership of common open space, restrictions thereon.

(1) The required open land shall be conveyed to a nonprofit corporation or trust comprising a condominium or homeowners' association. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Northern Worcester District Registry of Deeds a declaration of covenants and restrictions which shall, at a minimum, provide for the following:

(a) Mandatory membership in an established association, as a requirement of ownership of any condominium unit, rental unit, building or lot in the tract.

(b) Provisions for maintenance, assessments of the owners of all condominium units, rental units, buildings or lots in order to ensure that the open land is maintained in a condition suitable for the users approved by the homeowners' association. Failure to pay assessment shall create a lien on the property assessed, enforceable by the association.

(c) Provisions which, so far as possible under the existing law, will ensure that the restrictions place on the use of the open land will not terminate by operations of law.

(d) Provisions for limited easements to significant areas of open space and natural resources for recreational use by residents of the Town, and to provide linkages to open space of abutting properties.

(2) The developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the association is capable of assuming such responsibility.

**5.15.7. Design standards; off-street parking and loading requirements.**

A. Basic requirements. The PUD shall be designed and constructed in accordance with the design standards and specifications set forth in Part 4 of the Town of Ashburnham Planning Board Rules and

Regulations Governing the Subdivision of Land.[39]

B. Off-street parking.

(1) Off-street parking facilities for structures and uses within a PUD shall conform to all regulations and design standards as set forth in Section 5.3 of the Zoning Bylaw. However, the Planning Board is given flexibility for provision of off-street parking facilities as provided for under § 5.3.4 of the Ashburnham Zoning Bylaw.

(2) Off-street parking areas within any PUD shall meet the screening standards as specified within § 5.7.7B of the Zoning Bylaw.

C. Off-street loading. Off-street loading facilities for structures and uses within a PUD shall conform to all regulations and design standards as set forth in § 5.3.3 of the Zoning Bylaw.

D. Garages. The construction of individual garages attached to or within housing units is encouraged, where feasible, taking into consideration the topography, layout, type, architectural design and price of the unit. The location of such garages is encouraged, where feasible, to be located to the rear of townhome and/or apartment units.

### 5.15.8. Contents and scope of application and review procedure.

A. Pre-application conference. Prior to investing in extensive professional design efforts for a planned unit development, it will often prove useful to review the proposed development/use of land with the Planning Board, in order that general approaches and potential problems can be freely explored. The Planning Board encourages applicants to meet with the Planning Board Chairman to review their development proposals and/or applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board at the public comment period at a regular meeting of the Planning Board. Sketches, which need not be professionally prepared, will assist the discussion and might show some but not all of the information required to be shown on a site plan.

B. Preliminary plan.

(1) The applicant may file a preliminary plan accompanied by the form "Form B Preliminary Subdivision Application" and the "Form B Preliminary Subdivision Application Check List" to the Planning Board. The applicant shall include any required filing fee as established in the Planning Board Rules Governing Fees and Fee Schedule.[40] The Planning Board shall, upon receipt of the complete preliminary plan application and supporting documents, follow the requirements of Article IV of the Planning Board Rules and Regulations Governing the Subdivision of Land related to the review and decision of such preliminary plan.[41]

(2) The Planning Board may suggest modifications and changes to the preliminary plan in anticipation of filing of the final plan. If the Planning Board fails to act within 45 days of receipt of a complete preliminary plan and application, the applicant may proceed to file a final plan.

C. Final plan application:

(1) The application for planned unit development (PUD) special permit shall be made in accordance with § 5.7.5 of the Ashburnham Zoning Bylaw.

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**39. Editor's Note: See Ch. 475, Subdivision of Land.**

**40. Editor's Note: See Ch. 427, Fees.**

**41. Editor's Note: See Ch. 475, Subdivision of Land.**

(2) Coordination with other boards. Upon receipt of the PUD final plan application, the Planning Board shall transmit a copy of the application and plan to the Selectmen, Fire Department, Water and Sewer Commission, Board of Health, Highway Department, Conservation Commission, Building Inspector, Historical Commission, Police Department, Light Department and the Planning Board's consulting engineer for their written recommendation. Failure to respond to the Planning Board within 30 days shall indicate approval by said agencies. The Planning Board decision shall address any departure from the recommendations of the other Town agencies.

(3) The applicant shall provide a narrative development impact statement detailing the impact of the proposed use on municipal services and the environment. Such statement shall conform to § 475-3.15, Development impact statements, of the Town of Ashburnham Planning Board Subdivision Rules and Regulations.[42]

(4) Public hearing. The Planning Board shall hold a public hearing on any properly completed application within 65 days after filing of a complete application, shall properly serve notice of such hearing, and shall render its decision within 90 days of the close of said hearing. The hearing and notice requirements set forth herein shall comply with the requirements of MGL c. 40A, §§ 9 and 11.

(5) Review of applications for any use-related special permits may be consolidated into the planned unit development special permit process, while being voted on separately.

D. The Planning Board shall grant the special permit only if it finds the application satisfies the objectives of a PUD as defined in § 5.15.1.

E. A PUD special permit granted pursuant to this Section 5.15 shall establish and regulate the following as conditions of approval:

(1) Location of all primary streets and ways within the development, including access to existing public ways, with the layout, design, construction and other relevant standards for such streets and ways to conform to the Town of Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land.[43]

(2) Locations of significant areas of public open space and common open space.

(3) Boundaries of lots to be created within the development, if any.

(4) Overall project density, including the distribution of housing units to avoid undue concentration of development, as well as maximum number of housing units that may be built within the development, including maximum number of building permits that may be issued within any twelve-month period.

(5) Location and boundaries of each development phase.

(6) Location of nonresidential establishments.

(7) Development timetable.

(8) Off-site traffic improvements and environmental mitigation measures, if any, to be performed

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**42. Editor's Note: See Ch. 475, Subdivision of Land.**

**43. Editor's Note: See Ch. 475, Subdivision of Land.**

by the applicant, including timetables and procedures for implementation of the same.

(9) Requirements for instruments to be executed by the owners of the land and recorded with the Registry of Deeds waiving all rights to previously issued permits and approvals for residential or nonresidential buildings and uses for the land, if any, and to future uses of the land which would otherwise be otherwise permitted by the zoning district in which it is located, except as specifically allowed under this PUD special permit.

(10) Such other terms, conditions or restrictions as the Planning Board may deem appropriate.

### 5.15.9. Relation to Subdivision Control Law.

In the event the applicant seeks subdivision approval for streets and lots within the PUD pursuant to the Subdivision Control Law, MGL c. 41, § 8I, the applicant shall file an "Application for a Definitive Plan" pursuant to Part 3, Article V, of the Town of Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land.[44] In order to facilitate the processing the Planning Board shall consider said application simultaneously with the application for a PUD special permit, and may adopt regulations establishing procedures for the simultaneous submission and consideration of the applications; provided, however, that nothing contained herein shall be deemed to require approval of streets and ways within a PUD under the Subdivision Control Law. Any subdivision of land within the PUD shall in no way diminish the effect of any conditions, agreements or covenants imposed or made as part of the grant of the PUD special permit.

### 5.15.10. Administration.

A. The Planning Board may adopt, and from time to time amend, rules and regulations relating to the administration of this planned unit development zoning provision consistent with the provisions of this bylaw and MGL c. 40A and other provisions of the General Laws, including Rules and Regulations Governing the Subdivision of Land, and shall file a copy of said rules and regulations with the Town Clerk.

B. Fees. See Town of Ashburnham Planning Board Rules Governing Fees and Fee Schedule.[45]

C. Waiver of compliance. The Planning Board may waive strict compliance with such requirements of this Section 5.15, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this Section 5.15.

D. Separability. The invalidity of one or more provisions or clauses of this Section 5.15 shall not invalidate or impair the article as a whole or any other part hereof.

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**44. Editor's Note: See Ch. 475, Subdivision of Land.**

**45. Editor's Note: See Ch. 427, Fees.**

SECTION 5.16
**Registered Marijuana Dispensaries**
**[Added 5-6-2014 ATM]**

### 5.16.1. Purposes.

A. To provide for the limited establishment of registered marijuana dispensaries (RMD) in appropriate places and under strict conditions in accordance with applicable laws.

B. To minimize the adverse impacts of RMDs on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said RMDs.

C. To regulate the siting, design, placement, safety, monitoring, modification, and removal of RMDs.

D. To limit the overall number of RMDs in Ashburnham to what is essential to serve the public convenience and necessity.

### 5.16.2. Applicability.

A. The cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of marijuana for medical use is prohibited unless permitted as an RMD under this Section 5.16.

B. If any provision of this Section 5.16 or the application of any provision of this article to any person or circumstance shall be held invalid, the remainder of this Section 5.16, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and shall remain in effect.

### 5.16.3. Definitions.

MARIJUANA — Shall be defined as "marijuana" under Chapter 94C of the Massachusetts General Laws and 105 CMR 725.004.[46]

MARIJUANA FOR MEDICAL USE — Marijuana that is designated and restricted for use by, and for the benefit of qualifying patients in the treatment of debilitating medical conditions.

REGISTERED MARIJUANA DISPENSARY — A not-for-profit entity registered under 105 CMR 725.100,[47] that acquires, cultivates, possesses, processes (including development of related projects such as edible marijuana-infused products (MIP), tinctures, aerosols oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

### 5.16.4. Eligible locations for registered marijuana dispensaries.

An RMD shall be permitted only in the RMD Use Overlay District by special permit by the special permit granting authority (SPGA) in accordance with the provisions of MGL c. 40A. § 9, this Section 5.16, Section 5.7 (Site Plan Review) and the general special permit provisions of § 6.4B of these bylaws.

### 5.16.5. General requirements and conditions for all registered marijuana dispensaries.

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**46. Editor's Note: See now 935 CMR 501.002, Medical Use of Marijuana: Definitions.**

**47. Editor's Note: See now 935 CMR 501.000.**

A. No RMD shall have a gross floor area in excess of 2,500 square feet. An RMD may be located in buildings that exceed 2,500 square feet of floor area, provided that the gross floor area of the RMD shall not exceed 2,500 square feet.

B. All RMD shall be contained within a building or structure, except as otherwise permitted by the Department of Public Health Regulations at 105 CMR 725.000 et seq.[48]

C. The hours of operation of a RMD shall be set by the SPGA, but in no event shall RMDs be open and/or operating between the hours of 9:00 p.m. and 8:00 a.m.

D. No special permit for an RMD shall be issued to a person who has been convicted of a felony or a violation of a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs. Further, no special permit for an RMD shall be issued to a business or nonprofit corporation in which an owner, shareholder, member, officer, manager, or employee has been convicted of a violation of a felony or a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs.

E. No special permit for an RMD shall be issued to a person who has been convicted of a violation of MGL c. 119, § 63 or MGL c. 272, § 28. Further, no special permit for an RMD shall be issued to a business or nonprofit corporation in which an owner, shareholder, member, officer, manager, or employee has been convicted of a violation of MGL Chapter 119, Section 63 or Massachusetts General Law Chapter 272, Section 28.

F. No RMD shall be located within 100 feet of a residential zoning district.

G. No RMD shall be located within 500 feet of any of the following:

(1) Any school attended by children under the age of 18, any day-care center, or any other facility where children commonly congregate, such as, but not limited to, playgrounds, athletic fields, or other similar facilities;

(2) Any drug or alcohol rehabilitation facility;

(3) Any correctional facility, half-way house; or similar facility; or

(4) Any other RMD.

H. No smoking or burning of marijuana or marijuana-related products shall be permitted on the premises of an RMD.

I. No RMD shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.

J. Signage for an RMD shall be limited to one exterior sign which shall not be directly illuminated and shall otherwise comply with the dimensional requirements of the underlying zoning district, and the applicable regulations promulgated by the DPH in 105 CMR 725.105.L.[49]

K. All RMDs shall provide the SPGA with the name, phone number and email address of an on-site community relations staff person designated by the RMD to be contacted by Town officials in the event of any operating problems associated with the RMD.

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**48. Editor's Note: See now 935 CMR 501.000 et seq.**

**49. Editor's Note: See now 935 CMR 501.105.**

L. All employees of an RMD shall be at least 18 years of age.

M. No one under the age of 18 years old shall be permitted on the premises of an RMD during hours of operation unless that person is a qualified patient or caregiver with a valid registration card as set forth in DPH regulations, 105 CMR 725.000 et seq.[50]

**5.16.6. RMD special permit requirements.**

A. Special permits granted under this Section 5.16 shall be limited to the applicant for the duration of the applicant's ownership and/or use of the premises as an RMD. A special permit may be transferred only upon approval of the SPGA in the form of an amendment to the special permit pursuant to all applicable provisions of MGL c. 40A and the Town's zoning bylaws.

B. A special permit for an RMD may be limited to one or more of the following uses that shall be prescribed by the special permit granting authority:

(1) Cultivation of marijuana for medical use (horticulture);

(2) Processing and packaging of marijuana for medical use, including marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;

(3) Retail sale or distribution of marijuana for medical use to qualifying patients;

(4) Wholesale sale of marijuana for medical use to other RMDs as permitted by the DPH regulations found in 105 CMR 725.000.[51]

C. In addition to the application requirements set forth in this section and § 6.4B of the zoning bylaws, a special permit application for an RMD shall include the following:

(1) A statement from the applicant under oath, setting forth the following information:

(a) The name and address of each owner, manager, member, partner and employee of the RMD, and a certification that the application conforms is to § 5.16.5 above;

(b) The source of all marijuana that will be sold or distributed at the RMD;

(c) The source of all marijuana that will be cultivated, processed, and/or packaged at the RMD;

(d) The quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the RMD; and

(e) If marijuana is to be cultivated, processed, and/or packaged at the RMD, the name and address of each purchaser of said marijuana.

(2) A copy of the applicant's current Articles of Organization or Articles of Incorporation, a current Certificate of Legal Existence, from the Secretary of the commonwealth, and the most recent annual report; if the applicant is a public agency, evidence of the agency's authority to engage in the development and operation of the RMD as proposed in the application;

(3) Copies of all licenses and permits issued by the Commonwealth of Massachusetts and any of its

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**50. Editor's Note: See now 935 CMR 501.000 et seq.**

**51. Editor's Note: See now 935 CMR 501.000.**

agencies for the RMD;

(4) Evidence of the applicant's right to use the site of the RMD as an RMD, such as a deed, lease, or purchase and sale agreement;

(5) If the applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities. If any of the above are entities rather than persons, the applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;

(6) A market study demonstrating sufficient demand for the marijuana for medical use proposed to be sold or distributed by the RMD;

(7) Proposed security measures for the RMD, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft in accordance with 105 CMR 725.110.[52]

(8) Resume(s) of the applicant and all members of the RMD's management, including company history, references, and relevant experience.

### 5.16.7. Required findings.

The SPGA may issue a special permit for an RMD upon finding that:

A. The RMD is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in MGL c. 40A, § 11;

B. The project is compatible with the immediately surrounding uses. In determining same, the special permit granting authority shall consider how the proposed use fits in with the surrounding uses, and shall consider traffic impacts, pedestrian safety impacts, odor(s), and noise impact(s).

C. The RMD is fully permitted by all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations;

D. In the case of retail sale or distribution, the RMD is serving a measurable demand for marijuana for medical use that is currently unmet within the municipality;

E. The applicant has not provided materially false documents or testimony; and

F. The applicant has satisfied all of the conditions and requirements of this bylaw.

### 5.16.8. Annual reporting.

Every RMD permitted under this bylaw shall, as a condition of its special permit, file an annual report to the special permit granting authority and the Town Clerk no later than January 31, providing a copy of all current applicable state licenses for the RMD and/or its owners, and certifying that answers to each of the questions set forth under § 5.16.6C of this bylaw for the preceding calendar year, as well as the RMD's good faith estimate of the same information for the ensuing calendar year.

### 5.16.9. Waivers.

A waiver of strict compliance from these rules and regulations may be granted if the SPGA determines

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**52. Editor's Note: See now 935 CMR 501.110.**

that such a waiver is in the public interest and not inconsistent with the Zoning Bylaw. All requests shall identify the provision or provisions of the regulations from which relief is sought. The request shall also include a statement explaining why the applicant thinks that granting a waiver would be in the public interest and not inconsistent with the purpose and intent of these rules and regulations and Zoning Bylaw.

### 5.16.10. Violations.

Any violation of this Section 5.16, the special permit issued hereunder, or any suspension or revocation of any license or permit issued by the Commonwealth of Massachusetts for the RMD shall be grounds for revocation or suspension of the special permit issued under this Section 5.16 in accordance with MGL c. 40A as may be applicable.

SECTION 5.17
**Large-Scale Ground-Mounted Photovoltaic Installations**
**[Added 5-6-2014 ATM]**

### 5.17.1. Purpose.

The purpose of this Section 5.17 of the Zoning Bylaw is to establish appropriate criteria and standards for the placement, design, construction, operation, monitoring, modification and removal of new large-scale ground-mounted solar photovoltaic installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

### 5.17.2. Applicability.

A. The provisions set forth in this Section 5.17 shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

B. This Section 5.17 applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this Section 5.17. This Section 5.17 also pertains to physical modifications that materially alter the type, configuration, or size of existing installations or related equipment.

### 5.17.3. Definitions.

LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION — A solar photovoltaic system that is structurally mounted on the ground and including related buildings and structures and equipment not roof-mounted, and has a minimum nameplate capacity of 250 kWDC.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the photovoltaic system in direct current (DC).

### 5.17.4. Location.

A Large-Scale Ground-Mounted Photovoltaic Installation Overlay District is hereby established over all zoning districts in the Town of Ashburnham. Large-scale ground mounted photovoltaic installations shall be allowed as of right with site plan review in accordance with this Section 5.17 and Section 5.7 of this bylaw in the Large-Scale Ground-Mounted Photovoltaic Installation Overlay District on all parcels of land under single ownership or control.

### 5.17.5. General requirements for all large-scale ground-mounted photovoltaic installations.

The following requirements are common to all large-scale ground-mounted solar photovoltaic installations.

A. Compliance with laws, bylaws and regulations. The construction and operation of all large-scale solar photovoltaic installations shall meet all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code, and further comply with all other provisions of the Ashburnham Zoning Bylaws.

B. Utility notification. No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that Ashburnham Municipal Light

Plant (AMLP) has been informed of the solar photovoltaic installation owner's or operator's intent to install an interconnected customer-owned generator. All proponents should inform themselves of AMLP's Distributed Generation Interconnection Study to the extent applicable.

C. Building permit and building inspection. No large-scale solar photovoltaic installation shall be constructed, installed or modified as provided in this Section 5.17 without first obtaining a building permit.

D. Fees.

(1) An application fee for site plan review is required. (See the Planning Board Fee Schedule for the amount required.[53])

(2) In addition, a review fee may be required by the Planning Board, which sum shall be based upon an estimate provided by the peer review engineer appointed by the Planning Board to review the project. The review fee shall be paid to the Town and deposited into a 53G Account prior to commencement of the hearing. Sufficient funds to compensate the Town's engineer shall remain in the account until final payment is made at the end of the process.

### 5.17.6. Site plan review.

The proponent is required to provide the Planning Board with the following application requirements and must obtain site plan approval from the Planning Board prior to construction, installation or modification as provided in this Section 5.17. No large-scale solar photovoltaic installation shall be added to, modified or changed without site plan approval from the Planning Board, and without first obtaining a building permit as may be required for such addition, modification or change.

A. Application requirements. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts except to the extent that the applicant is exempt pursuant to MGL c. 112, § 81R, and/or a registered land surveyor, as the case may be.

(1) A site plan showing:

(a) Existing conditions on the site, including property lines and physical features, including existing grades, vegetation, roads, buildings, and other significant features.

(b) Proposed changes to the site, including landscape, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures; a landscape plan (in plan view) identifying plant material to be used to screen all appurtenant structures and identifying plant material or fencing to be used to satisfy the requirement for a buffer between installation and property edge as per § 5.17.8C, and structures.

(c) Schematic or blueprints of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts, except to the extent that the applicant is exempt pursuant to MGL c. 112, § 81R, showing the proposed layout of the structures and any potential shading from nearby structures.

(d) Schematic or outline electrical diagram showing proposed solar panels and associated components, and electrical interconnection methods, with all Massachusetts Electrical Code compliant disconnects and overcurrent devices.

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**53. Editor's Note: See Ch. 427, Fees.**

(e) Documentation of the major system components to be used, including the photovoltaic panels, mounting system, and inverter.

(f) Name, address, and contact information for proposed system installer.

(g) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any.

(h) Name, contact information and signature of any agents representing the project proponent, if any.

(2) Documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

(3) An operation and maintenance plan, which shall include measures for maintaining safe access to the installation, stormwater controls, and general procedures for operational maintenance of the installation.

(4) Proof of liability insurance in an amount sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility.

(5) Payment of financial surety that satisfies § 5.17.11C.

(6) Other reasonable documentation requested by the Planning Board.

### 5.17.7. Design standards.

A. Dimensional and density requirements setbacks. For large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks and lot coverage shall be as follows:

(1) Front yard. The front yard depth shall be at least 40 feet; provided, however, that where the lot abuts the front yard shall not be less than 50 feet.

(2) Side yard. Each side yard shall have a depth at least 25 feet; provided, however, that where the lot abuts the side yard shall not be less than 50 feet.

(3) Rear yard. The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a the rear yard shall not be less than 50 feet.

(4) Lot coverage. For purposes of determining compliance with lot coverage standards of the underlying zone (See Schedule of Dimensional Regulations[54]), the total surface area of all ground-mounted and freestanding solar collectors, including solar photovoltaic cells, panels, and arrays, shall be considered impervious and as structures. The horizontal area projected on the ground surface of a ground mounted system, regardless of the mounted angle, the areas of buildings and accessory structures, and other impervious surfaces shall be calculated as part of the overall lot coverage.

(5) When a proposed large-scale ground-mounted solar photovoltaic installation does not abut a residential zoning district or use, the Planning Board may waive the above dimensional requirements for front, side and rear yard setbacks as provided in § 5.17.10, Waivers. In no case, however, shall the front, side or rear yard setback be less than 10 feet.

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**54. Editor's Note: The Schedule of Dimensional Regulations is included in § 4.1.2.**

B. Lighting. Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar photovoltaic installation shall be directed downward and inward and shall incorporate full cut off fixtures to reduce light pollution.

C. Signage. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer. Signage identifying the owner and/or operator of the solar installation and a twenty-four-hour emergency contact telephone number shall be provided at all points of access. In all other respects, any signs shall comply with the applicable requirements of the underlying zoning district.

D. Utility connections. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

E. Appurtenant structures. All appurtenant structures to large-scale ground-mounted solar photovoltaic arrays shall conform to the setback requirements of the zoning district in which the installation is located. All such appurtenant structures, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

**5.17.8. Safety and environmental standards.**

A. Emergency services. The large-scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief and AMLP. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall provide the name, phone number, and email of the person responsible for public inquiries throughout the life of the installation.

B. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

C. Landscaped buffer strip. A landscaped buffer strip is intended to provide in a reasonable time a visual barrier between the large-scale ground-mounted solar photovoltaic installation and adjacent parcels. Except for vehicular and pedestrian passways, the areas shall be used only for an interplanting of deciduous and evergreen trees and shrubs, with lawn or other suitable and appropriate ground cover. The buffer must provide coverage of three feet in height from the proposed grade to the top of the majority of the planting material at time of installation. Reasonable leeway may be provided by the Planning Board to allow for expected growth of the buffer strip over time. The buffer strip shall occupy at least 20% of the depth between the property line and the mandated setback of the zoning district where the installation is located. Where considered appropriate in the judgment of the Planning Board, walls and fences may be used in addition to in lieu of plantings. A planting plan showing the types, sizes and locations of material to be used shall be subject to the approval of the Planning Board. The Planning Board may waive the requirements of the visual barrier where it deems it advisable.

### 5.17.9. Monitoring and maintenance.

A. Installation conditions. The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief, AMLP and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

B. Modification conditions/change in ownership or operator.

(1) Any material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board, and AMLP as the case may be.

(2) If the owner and/or operator of a large-scale ground-mounted solar photovoltaic installation changes, written notice shall be given to the Planning Board and AMLP within 30 days of such change, and such notice shall include the contact information for the new owner/operator and the effective date of the change.

### 5.17.10. Waivers.

A. The Planning Board may waive strict compliance with any requirement of the design standards, safety and environmental standards section of this bylaw, or any rules and regulations promulgated hereunder, where:

(1) Such action is allowed by federal, state and local statutes and/or regulations;

(2) It is in the public interest;

(3) It is not inconsistent with the purpose and intent of this bylaw.

B. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaws does not further the purposes or objectives of this bylaw.

C. All waiver requests shall be discussed and voted on by the Planning Board.

D. If the Planning Board deems additional time or information is required in the review of a waiver request, the Planning Board may continue the request for a waiver until such time as the Planning Board deems it is ready to vote on said request.

### 5.17.11. Abandonment or decommissioning.

A. Removal requirements. Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

(1) Physical removal of all large-scale ground solar photovoltaic installations, arrays, structures, equipment, security barriers and above-ground transmission lines from the site, if any.

(2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste

disposal regulations.

(3) Stabilization or revegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

B. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. The AMLP shall have the right of first refusal as to whether it will choose to assume responsibly for the abandoned solar operation. If the AMLP chooses to forgo such responsibility and assume the operation, and the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.

C. Financial surety. The Planning Board shall require the applicant for a large-scale ground-mounted solar photovoltaic installation to provide a form of surety, either through the Planning Board or AMLP before construction to cover the estimated cost of removal as set forth herein. If setting up a surety with the Planning Board, the form of surety must be either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation or otherwise due to a cost of living adjustment.

SECTION 5.18
**Adult Use Marijuana Facilities**
**[Added 10-30-2018 STM by Art. 9]**

### 5.18.1. Purposes.

A. To provide for the limited establishment of adult use marijuana facilities (collectively, known hereafter as "marijuana facilities") in appropriate places for such use and under conditions in accordance with Chapter 334 of the Acts of 2016, entitled, "Regulation and Taxation of Marijuana Act," as amended by Chapter 55 of the Acts of 2017, "An Act to Ensure Safe Access to Marijuana," and all regulations which have or may be issued by the Department of Public Health ("DPH") and the Cannabis Control Commission ("CCC"), including, but not limited to, 935 CMR 500.00 et seq.

B. To minimize the adverse impacts of marijuana facilities on adjacent properties, residential neighborhoods, schools, and other land uses potentially incompatible with marijuana facilities.

C. To regulate the siting, design, placement, safety, monitoring, modification, and removal of marijuana facilities.

### 5.18.2. Applicability.

A. The commercial cultivation, production, processing, assembly, packaging, retail sale or wholesale, trade, distribution or dispensing of marijuana for adult use is prohibited unless licensed by all applicable Massachusetts licensing authorities and permitted as a marijuana facility under this Bylaw.

B. No marijuana facility shall be established except in compliance with the provisions set forth herein.

C. If any provision of this Section 5.18 or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Section 5.18 and to this end the provisions of this Section 5.18 are severable.

### 5.18.3. Administration.

A. The Board of Selectman shall be the special permit granting authority (SPGA) for an applicant for a marijuana facility.

B. A special permit is required for marijuana facilities where indicated on § 3.1.2, Schedule of Use Regulations, under the Ashburnham Zoning Bylaws.[55]

### 5.18.4. Definitions.

Any term not specifically defined herein shall have the meaning as defined in 105 CMR 725.00 and 935 CMR 500.00 as such regulations may from time to time be amended.

DESIGNATED CONTACT PERSONS — Any and all persons whose names appear on the special permit and formal site plan approval applications as the applicant's designee.

INDEPENDENT TESTING LABORATORY — An entity licensed by the Commonwealth of Massachusetts to test marijuana and marijuana products.

LOCKED AREA — An area equipped with locks or other security devices, which is accessible only

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**55. Editor's Note: The Schedule of Use Regulations is included as an attachment to this chapter.**

to consumers 21 years of age or older, employees or owners of a marijuana facility or agents thereof, registered qualifying patients that are 18 years or older, or caregivers.

MARIJUANA — The same substance defined as "marihuana" or "marijuana" under MGL c. 94C and MGL c. 94G.

MARIJUANA CULTIVATOR — An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other marijuana facilities, but not to consumers.

MARIJUANA FACILITY — A commercial marijuana cultivator, independent testing laboratory, product manufacturer, research facility, transporter, retailer, or any other type of licensed marijuana-related business, excluding a marijuana treatment center.

MARIJUANA FOR ADULT USE — Marijuana that is regulated by 925 CMR 500.00 and cultivated, processed, manufactured, transported or sold for recreational purposes for individuals 21 years of age or older.

MARIJUANA PRODUCT MANUFACTURER — An entity licensed to obtain, manufacture, process and package marijuana and marijuana products and to transfer these products to other marijuana facilities, but not to consumers.

MARIJUANA PRODUCTS — Products that have been manufactured and contain marijuana or an extract from marijuana, including, but not limited to, concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

MARIJUANA RETAILER — An entity licensed to purchase and transport marijuana and marijuana products from marijuana facilities and to sell or otherwise transfer marijuana and marijuana products to marijuana facilities and to consumers.

NONMEDICAL MARIJUANA — Any marijuana that is not regulated by 105 CMR 725.00 and designated and restricted for use by, and for the benefit of, qualifying patients in the treatment of debilitating medical conditions.

**5.18.5. Application requirements for all marijuana facilities.**

A. All marijuana facilities shall be subject to the application requirements set forth in the Town of Ashburnham's Zoning Bylaw, Section 5.7, Site Plan Review and Approval.

B. In addition to the application requirements for site plan review and approval, a special permit for a marijuana facility shall be required, and the application for such special permit shall include the following additional information:

(1) A statement from the applicant, setting forth the following:

(a) The name and address of each owner of the facility;

(b) The source of all marijuana that will be sold or distributed at the marijuana facility, if applicable;

(c) The source of all marijuana that will be cultivated, processed, and/or packaged at the marijuana facility, if applicable;

(d) The quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the marijuana facility;

(e) Plans must be approved by the Ashburnham Chief of Police and must show all proposed security measures for the marijuana facility, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft;

(f) Evidence that the applicant has site control and the right to use the site for a facility, which evidence may take the form of a deed or valid purchase and sale agreement; or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;

(g) A management plan that includes a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to and from the marijuana business;

(2) Additional documentation depending upon the type of organization:

(a) For a nonprofit organization, a copy of its Articles of Organization, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report;

(b) For a for-profit corporate entity, a copy of its Articles of Incorporation or equivalent documents, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report.

(3) Copies of all licenses issued by the CCC or DPH, and any materials submitted to these entities by the applicant for purposes of seeking licensing;

(4) A detailed floor plan of the premises of the proposed marijuana facility that identifies the square footage available and describes the functional areas of the facility; and

(5) The resume(s) of the applicant's principal(s), a company history, references, and relevant experience, where applicable.

### 5.18.6. Use requirements.

A. No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises of any marijuana facility.

B. Marijuana facilities shall provide the SPGA and all abutters located within 500 feet of the marijuana facility with the name, phone number and email address of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment.

C. The hours of operation of retail marijuana facilities shall be set by the SPGA.

### 5.18.7. Location and physical requirements.

A. Eligible locations for marijuana facilities.[56]

(1) Retail marijuana facilities be permitted in certain zoning districts as set forth in the Zoning Bylaw § 3.1.2, Schedule of Use Regulations.

(2) Non-retail marijuana facilities may be permitted in certain zoning districts as set forth in the

56. **Editor's Note: See the Schedule of Use Regulations included in an attachment to this chapter.**

Zoning Bylaw § 3.1.2, Schedule of Use Regulations.

B. All aspects of a marijuana facility relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.

C. No outside storage of marijuana, related supplies, or educational materials is permitted.

D. No retail marijuana facility shall have a gross floor area accessible to patients or customers which is in excess of 2,500 square feet. Space which is dedicated to administration or operations and is accessible only to employees of the retail marijuana facility shall not be included in this limitation.

E. In the R-A and R-B Districts, all marijuana facilities shall be subject to siting on a parcel no less than five acres. In addition, all marijuana facilities in the R-A and R-B Districts shall be subject to a 100-foot setback from the street lines and property lines on the front, side and rear.

F. All marijuana facilities shall provide adequate ventilation such that the application of pesticides shall be performed in compliance with MGL c. 132B et seq. and the regulations promulgated at 333 CMR 2.00 through 333 CMR 14.00.

G. No use shall be allowed at a marijuana facility which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including, but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive sound or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

H. No marijuana facility shall be located within 500 feet of a preexisting public or private school providing education in kindergarten or any of the grades one through 12, nor shall any such facility be located within 300 feet from a public park or playground. The distance shall be measured as set forth under 935 CMR 500.110(3), in a straight line from the nearest point of the property line in question to the nearest point of the property line where the marijuana facility is or may be located.

I. Natural or man-made features which in the opinion of the SPGA and the Planning Board provide equivalent separation may be substituted for the 500-foot buffer.

J. No marijuana facility shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.

K. Signage for marijuana facilities shall be subject to the Town of Ashburnham Zoning Bylaw Section 5.2 and the provisions for marketing set forth in 935 CMR 500.105(4).

**5.18.8. Reporting requirements.**

A. All permit holders for uses under this Section 5.18 shall provide the Police Department, Fire Department, Building Commissioner, Board of Health, Planning Board, and special permit granting authority with the names, phone numbers, mailing and email addresses of all management staff and key-holders, including a minimum of two operators or managers of the facilities identified as designated contact persons to whom notice should be made if there are operating problems associated with any use under this Section 5.18. All such contact information shall be updated as needed to keep it current and accurate.

B. The designated contact persons shall notify the Police Department, Fire Department, Building Commissioner, Board of Health, Planning Board, and special permit granting authority in writing a minimum of 30 days prior to any change in ownership or management of a facility regulated under this Section 5.18.

C. All marijuana facilities shall file an annual report with the permit granting authority and owner or operations manager for the marijuana facility shall appear before said authority to present the report no later than January 31 of each year, providing a copy of all current applicable state licenses to demonstrate continued compliance with the conditions of the permit.

D. Within 24 hours of contact by a municipal official concerning the operation of a marijuana facility, the designated contact persons shall be required to respond by phone or email to any such inquiry.

**5.18.9. Transfer or discontinuance of use.**

A. A permit granted under this Section 5.18 is nontransferable and shall have a term limited to the duration of the applicant's ownership or leasing of the premises as a marijuana facility.

B. Any marijuana facility permitted under this Section 5.18 shall be required to remove all material, plants, equipment and other paraphernalia upon registration or licensure revocation, expiration, termination, relocation to a new site or any other cessation of operation as regulated by the CCC or DHP in compliance with applicable state regulations.

**5.18.10. Outside consultants and review fees.**

Applicants may be required to pay reasonable fees for the employment of outside consultants, which may include legal counsel. Said fees shall be deposited into a special account and shall be maintained and expended in accordance with the rules promulgated by the respective permit granting authority and the applicable law, MGL c. 44, § 53G.

**5.18.11. Findings.**

The SPGA shall not issue a permit for a marijuana facility unless it finds that:

A. The facility is designed to minimize any adverse visual impacts on abutters and other parties in interest, as defined in MGL c. 40A, § 11;

B. The facility has received a provisional certificate of registration or provisional license from the appropriate licensing authority and is in compliance with all applicable state laws and regulations;

C. The applicant has provided a copy of a signed host agreement with the Town of Ashburnham, in accordance with MGL c. 94G, § 3(d);

D. The applicant has provided adequate security measures to protect the health and safety of the public, and that the storage and/or location of cultivation of marijuana is adequately secured in an enclosed, locked area;

E. The applicant has adequately addressed issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility; and

F. A special permit (when required) had been granted.

### 5.18.12. Violations.

Any violation of this Section 5.18 shall be determined by the Board of Selectmen and may include but not be limited to revocation of a permit issued under this Section 5.18.

# Part 6
# Administration

## 6.1. Enforcement.

This bylaw shall be enforced by the Board of Selectmen or by a Building Inspector appointed by them.

## 6.2. Building or use permit.

No building permit for any lot shall be issued except to the owner of record thereof, or an authorized agent, until the construction or alteration of a building or structure, as proposed, shall comply in all respects with the provisions of this bylaw or with a decision rendered by the Board of Appeals. Any application for such a permit shall be accompanied by a plan, accurately drawn, showing the actual shape and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed, together with the lines within which all buildings or structures are to be erected, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this bylaw. Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record by the Board of Selectmen or a Building Inspector appointed by them.

## 6.3. Certificates of occupancy.

A. No land shall be occupied or used, and no building or structure hereinafter erected or structurally altered shall be occupied or used unless a certificate of occupancy has been issued by the Building Inspector or Board of Selectmen. Such certificate shall state that the structure and the use of the structure and land comply in every respect with the provisions of this bylaw in effect at the time of issuance or with a decision of the Board of Appeals.

B. A certificate of occupancy shall be conditional on the maintenance of full compliance with the provisions of this bylaw in effect at the time of issuance or with restrictions imposed in a decision of the Board of Appeals, and shall lapse if such compliance fails. A copy of each certificate of occupancy shall be maintained as a permanent record by the Board of Selectmen or a Building Inspector appointed by them.

## 6.4. Board of Appeals.

There is hereby established a Board of Appeals which shall be the special permit granting authority under this bylaw, and which shall consist of five members and two associate members to be appointed by the Board of Selectmen as provided in Chapter 40A, General Laws. The Board shall annually elect a Chairman and a Clerk from its own membership. A member can only be removed for cause by the appointing authority and only after written charges have been filed and a public hearing has been held. Vacancies shall be filled in the same manner as appointments. The Board of Appeals shall establish written procedures consistent with the provisions of this bylaw and with the provisions of Chapter 40A or other applicable provisions of the General Laws, and shall file a copy thereof with the Town Clerk. The issuance of special permits and the granting of variances shall require a public hearing with due notice given in accordance with the General Laws. The Board of Appeals shall have the following powers and duties.

A. Appeals. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit from the Building Inspector or Board of Selectmen under the provisions of Chapter 40A, General Laws, or by any officer or board of the Town of Ashburnham or by any person aggrieved by any order or decision of the Building Inspector or Board of Selectmen in violation of

any provision of Chapter 40A, General Laws, or of this bylaw.

B. Special permits. To hear and decide applications for special permits for exceptions as provided in this bylaw, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board.

(1) A special permit shall be issued only after a public hearing, which must be held within 65 days after the effective date of filing of a special permit application. The effective date of filing is the date the application is filed with the Town Clerk. Upon receipt of such application, the Town Clerk shall forthwith transmit the same to the Board of Appeals.

(2) A special permit shall lapse at the end of two years from the date of issue, unless substantial use thereof has been commenced, except for good cause, or if the permit is for construction, if construction has not begun by such date, except for good cause.

(3) Construction or operations under a building or special permit shall conform to any subsequent amendment to these bylaws unless the use or construction is commenced within a period of one year after the issuance of the permit, and in cases involving construction, unless such construction is carried through to completion as continuously and expeditiously as possible.

C. Variances. To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this bylaw where, owing to conditions especially affecting such parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw, but not otherwise.

(1) The Board of Appeals is authorized to grant a variance for use not otherwise permitted in the district in which the land or structure is located.

(2) If the rights authorized by a variance are not exercised within one year from the date of grant of such variance, they shall lapse and may be re-established only after notice and a new hearing.

### 6.5. Repetitive petitions.

No proposed changes in this bylaw which has been unfavorably acted upon by the Town Meeting shall be considered on its merits by the Town Meeting within two years after the date of such unfavorable action unless adoption of the proposed change is recommended in the final report of the Planning Board. No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless the Board of Appeals finds, by a vote of not less than four members, specific and material changes in the conditions upon which the previous unfavorable action was based, and described such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to the parties in interest of the time and place of the proceedings when the question of such consent will be considered.

### 6.6. Amendments.

A. This bylaw may be amended from time to time in accordance with the provision of MGL c. 40A, § 5. A proposal to amend this bylaw may be made by the Board of Selectmen or by one of the following

by submitting the proposed amendment to the Board of Selectmen.

(1) The Planning Board.

(2) The Zoning Board of Appeals.

(3) An individual owning land to be affected by the amendment.

(4) The registered voters of the Town pursuant to the provisions of MGL c. 39, § 10.

B. The Board of Selectmen shall submit a proposed amendment within 14 days of its receipt to the Planning Board for review, public hearing, and report with recommendations to the Town Meeting.

### 6.7. Penalty.

Any person, firm or corporation violating any section or provisions of this bylaw shall be fined not more than $50 for each offense. Each day that willful violation continues shall constitute a separate offense.

### 6.8. Validity.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

### 6.9. Planning Board associate member.

The Planning Board and the Board of Selectmen jointly may appoint an associate member as provided for under MGL c. 40A, § 9. The Planning Board Chairperson may designate an associate member to sit on the Board for the purposes of acting on special permit applications in the case of absence on the part of any Planning Board member, or in the event of vacancy on the Board. The term of an associate member shall be three years. Associate members may be removed for cause by the Planning Board upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments.

### 6.10. Effective date.

The effective date of these bylaws and amendments thereto shall be the date of their adoption or amendment by a Town Meeting, subject to the requirement of publication set forth in MGL c. 40, § 32.

Chapter 808 Zoning Amendments added in August 1, 1979

# Regulations

# Board of Health Regulations

# Chapter 345

# SEWAGE DISPOSAL REGULATIONS

**[HISTORY: Adopted by the Board of Health of the Town of Ashburnham 5-1-1995. Amendments noted where applicable.]**

## § 345-1. Deep observation holes.

Deep observation holes for the determination of groundwater elevations may be performed during the months of March and April, and other months during which the Board of Health allows based on climatic conditions. Additionally, if soil evaluation can, in the opinion of both the permit applicants' engineer and Board's Agent, determine groundwater out of season on a specific site, this testing may be acceptable in lieu of actual observation of high groundwater.

A. If actual groundwater observation holes are dug (in-season), the effect of groundwater used for design shall be five feet.

B. If soil evaluation is used to determine groundwater, the offset used shall be that allowed in Title 5 (310 CMR 15.000).

## § 345-2. Refilling of observation holes.

Deep observation holes must be completely refilled within 12 hours of being witnessed by the Board of Health or its agent.

## § 345-3. Inspection of lot by Board required.

A lot must be inspected by the Board or its agent when it is clear of snow before a sewage disposal works construction permit may be issued.

## § 345-4. Seasonal-occupancy dwellings.

Any dwelling used for summer occupancy only may not be occupied year-round until a sewage disposal system, meeting the requirements of Title 5, and Ashburnham regulations, serves the dwelling.

## § 345-5. Location of leaching facilities.

Leaching facilities (including proposed expansion areas) must be located at least 100 feet from the nearest wetland, watercourse or wetland vegetation.

## § 345-6. Scale of plans submitted to Board.

All plans submitted to the Board of Health must be drawn to a scale of one inch to 20 feet.

## § 345-7. Length of pipe between septic tank and distribution box.

The length of the pipe between the septic tank and the distribution box shall not exceed 100 feet.

## § 345-8. Minimum distances.

The distances required by Title 5 and the Ashburnham Board of Health are minimum distances and may be increased if, in the opinion of the Board or its agent, such an increase is required to protect the environment

or the public health.

### § 345-9. Permissible location for reserve area.

The area between trenches shall not be used for the reserve area of a system.

### § 345-10. Trenches in fill.

The trenches installed in fill are prohibited unless proper engineering documentation of the construction methods to be used are noted on the design plan. The engineer's certification will certify to the placement of the fill required.

### § 345-11. Distance between primary and expansion leaching facilities.

A minimum of four feet must be available between the primary and expansion leaching facilities.

### § 345-12. Location of sewage disposal system.

The sewage disposal system must be located on the same lot as the facility it is intended to serve; for the purpose of this regulation, a lot shall not be interconnected by an easement or right-of-way.

### § 345-13. Privies, humus or self-contained toilets.

No privy, humus or self-contained toilet may be used without the written permission of the Board of Health. Such permission shall indicate the period of time for which such a facility may be used and in no case shall exceed one year. Permanently installed privies, humus or self-contained toilets must receive written permission annually.

### § 345-14. Variances. [Added 10-2-1989]

Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons therefor. No variance shall be granted for a new sewage disposal system, repair, nor for an enlargement to an existing system which increases capacity to accommodate additional flows, except after the applicant has notified all abutters by certified mail at his own expense at least 10 days before the Board of Health meeting at which the variance request will be on the agenda. The notification shall state the specific variance sought and the reason therefor.

### § 345-15. Areas unsuitable for sewage disposal.

A. The area of land defined by a circle with a 25-foot radius around a failing percolation test shall be deemed unsuitable for sewage disposal.

B. The area of land defined by a circle with a 25-foot radius around a deep observation hole with less than the prescribed amount of pervious, naturally occurring soil, as described in Title 5 (310 CMR 15.000), shall be deemed unsuitable for sewage disposal.

### § 345-16. Mounding analysis.

When an individual proposes a sewage disposal system in excess of 2,000 gallons per day, groundwater-mounding analysis will be required as part of the design information submitted to obtain a sewage works construction permit.

### § 345-17. Innovative systems.

When an individual proposes to use one of the Department of Environmental Protection's approved innovative systems for the design of a sewage disposal system, they must also receive approval from the Board of Health.

### § 345-18. Applicable regulations.

If an applicant for a sewage disposal work permit construction claims the right to use the 1978 Code (Title 5, 310 CMR 15.00), the Ashburnham Board of Health regulations in effect on March 1, 1995 and before shall govern the design of the system.

### § 345-19. Uses prohibited in Watershed Protect District.

The following uses are prohibited in the Watershed Protection District as defined by Ashburnham Zoning Bylaws of the Town of Ashburnham.[57] Where the location of a boundary is uncertain the burden of proof shall be upon the owner(s) of the land in question and subject to Town Zoning Bylaws, Chapter 250, Section 2.2E(7).

A. The replacement or repair of an existing subsurface sewage disposal system which results in an increase in design capacity greater than the design capacity of the existing system(s).

B. Individual sewage disposal systems that are designed to receive more than 110 gallons of sewage per quarter per day or 440 gallons of sewage per acre per day, whichever is greater, provided that the replacement or repair of the existing system, which will not result in design capacity above the original design, shall be exempted.

### § 345-20. Floodways.

In the floodway, designated on the Flood Boundary and Floodway Map, with any boundary disputes being determined according to the Towns Zoning Bylaws, Chapter 250, Section 2.2E(1) through (7), the following provision shall apply:

A. New construction requiring the installation of a subsurface sewage disposal system is prohibited.

**57. Editor's Note: See Ch. 250, Zoning.**

# Chapter 350

# SOLID WASTE

**[HISTORY: Adopted by the Board of Health of the Town of Ashburnham as amended 1-4-2010. Subsequent amendments noted where applicable.]**

## § 350-1. Authority and purpose.

The Board of Health of the Town of Ashburnham, Massachusetts, acting under the authority of MGL c. 111, §§ 31, 31A, 31B and the provisions of the Sanitary Code, Article 1, and in accordance therewith, and in the interest of and for the preservation of public health, hereby adopts the following amended regulations.

## § 350-2. Definitions.

COMMERCIAL SOLID WASTE — All types of solid waste generated by stores, offices, institutions, restaurants, warehouses, and other nonmanufacturing activities or similar types of solid waste generated from manufacturing firms. Commercial solid waste does not include solid waste generated in a residence or in a manufacturing or industrial process.

CONSTRUCTION AND DEMOLITION WASTE — Waste building materials and rubble resulting from the construction, remodeling, repair or demolition of buildings, pavement, roads or other structures. Construction and demolition waste includes but is not limited to concrete, bricks, lumber, masonry, road paving materials, rebar and plaster.

PERSONS — Every individual, partnership, corporation, firm, association, company, department, agency or group, any other entity, including a city, town, county or other governmental unit, owning property or carrying on an activity or operation regulated by these regulations.

RECYCLABLE MATERIAL — A material that has the potential to be recycled and that is not commingled with solid waste or contaminated by significant amounts of toxic substances, including, but not limited to, glass and metal containers, HDPE and PETE plastic containers and newspaper.

RESIDENTIAL SOLID WASTE — Waste or recyclables produced by any household or person who is not operating a commercial enterprise or involved in a project requiring a building permit.

SOLID WASTE — Useless, unwanted, or discarded solid, liquid, or contained gaseous material resulting from industrial, commercial, mining, agricultural, municipal, or household activities that is abandoned by being disposed or incinerated or is stored, treated, or transferred pending such disposal, incineration, or other treatment, but does not include materials excluded in 310 CMR 19.006, "Solid Waste or Waste," Subsections (a) - (i), generally, hazardous waste, sludge, septage, or sewage, wastewater treatment facility residuals or sludge ash, coal ash, materials and by-products generated from and reused with an original manufacturing process and compostables or recyclables.

## § 350-3. Regulations for transportation of solid waste.

A. Vehicles.

(1) All vehicles used for the transporting of solid waste or recyclables shall have all local, state and federal registrations, permits and licenses. These permit registrations and licenses shall be valid.

(2) All vehicles used for the transportation of solid waste or recyclables shall be in good condition to prevent spills and leaks, to prevent materials from blowing or falling out, and the vehicles

shall be deodorized and sanitized to prevent the vehicle from creating an odor nuisance. Any materials falling from vehicles shall be retrieved. All trucks shall have enclosed disposal compartments.

(3) The vehicle used for transporting solid waste or recyclables shall carry the owner's and/or company's name and telephone number on the sides of the vehicles in lettering large enough to be seen from a distance of 100 feet.

(4) Vehicles used for transporting solid waste or recyclables shall not use residential driveways for any purpose, including changing directions.

(5) All vehicles may be inspected by the Board of Health or its Agent at the Board's request.

B. Permit.

(1) No person shall remove or transport solid waste other than that generated by one's own household through the Town of Ashburnham without a permit from the Board of Health.

(2) Permits shall allow the removal or transportation of residential solid waste and commercial solid waste through the streets of the Town of Ashburnham. No permit is necessary for the removal or transportation of construction and demolition waste.

(3) The Ashburnham Board of Health shall determine the fee to be charged for such permit which is attached as Schedule A, and which may be amended by the Board of Health from time to time.[58]

(4) An application must be completed and fee paid prior to any permits being issued.

(5) Person(s) applying for a permit must provide proof that their disposal sites are approved as required by law.

(6) Permits shall expire on June 30 of the year after the permit was issued and must be renewed annually.

(7) Permits are nontransferable except with the approval of the Board of Health.

(8) Permits shall be issued at the discretion of the Board of Health. Among its considerations, the Board of Health may inquire into the petitioner's insurance, past experiences, reliability, vehicle inspection results, and such other matters as the Board determines affect the public health, safety and welfare of the residents of the Town of Ashburnham.

C. Residential collection.

(1) Any person permitted for the removal or transportation of residential solid waste shall provide curbside collection of the recyclables listed in these regulations to their customers. Any and all monies made from the sale of recyclables shall be retained by the permit holder. Once collected, the recyclables are the property and responsibility of the permit holder.

(2) No collection of refuse shall commence prior to 6:00 a.m. on weekdays and 8:00 a.m. on weekend days (Saturday and Sunday).

(3) Each permit holder shall provide their prospective customers an agreement that outlines the

**58. Editor's Note: Schedule A is on file in the Town offices.**

customer's and company's responsibilities, including the fee for the service. An updated list of the names and addresses of the customers being served by the permit holder must be on file at the Town Hall, so that the Board of Health may appropriately determine responsibility for any complaints received from residents concerning curbside collections. This list must be submitted to the Board of Health at the time of application and an updated copy must be submitted by January 30 of the permitting year.

(4) Dumpsters used for the collection of residential solid waste must be emptied at least once every two weeks. Dumpsters left at a site for the purpose of collecting refuse from construction, demolition or remodeling projects must be removed in a timely manner once the project is complete.

(5) All residential collection of solid waste, except as noted in Subsection C(4), shall occur no less frequently than once every two weeks. Solid waste shall be placed for collection no sooner than the night prior to collection. The Board reserves the right to require more frequent collection if, in its opinion, the property warrants more frequent collections and/or these regulations are not being followed.

## § 350-4. Enforcement.

The Ashburnham Board of Health, or its designated agent, shall enforce these regulations. All rules and regulations or portions thereof contained in the Massachusetts General Laws, the Massachusetts Sanitary Code, or other applicable regulations, ordinances and statutes which are not stated or referred to in the foregoing rules and regulations shall apply. If any section, subsection, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of these regulations shall not be affected thereby.

## § 350-5. Variances.

The Board of Health may vary the application of any provision of these regulations with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of these regulations or the minimum standards required by the laws of the Commonwealth of Massachusetts. Any variance granted by the Board of Health shall be in writing. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the Board of Health, Ashburnham.

## § 350-6. Expiration, modification or suspension of variance.

Any variance or other modification authorized to be made by these regulations may be subject to such qualification, revocation, suspension, or expiration as the Board of Health expresses in its grant. A variance or other modification authorized to be made by these regulations may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard.

## § 350-7. Violations and penalties.

Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates these regulations shall be punished by a fine of not more than $500 for each and every offense and/or loss of license.

# Chapter 355

# STABLE REGULATIONS

**[HISTORY: Adopted by the Board of Health of the Town of Ashburnham. Amendments noted where applicable.]**

## § 355-1. Authority.

In accordance with the authority granted by the MGL c. 111, §§ 155 through 157 and § 31, the Board of Health of the Town of Ashburnham hereby establishes the following regulations for stables.

## § 355-2. Purpose.

The purpose of these regulations is to preserve the public health by requiring proper drainage, ventilation, size and character of stalls, bedding, number of animals, and the storage and handling of manure in any stable.

## § 355-3. Definitions.

For the purpose of these regulations, the following words shall have the following meanings:

AGENT — The Board's appointed representative. Agents shall include, but are not limited to, Nashoba Associated Boards of Health, the Animal Inspector or others appointed by the Board.

FARMER — Any person who is principally and substantially engaged in the occupation of farming or the raising of horses, livestock, or poultry, excluding domestic pets, on land owned or controlled by him/her for an ultimate commercial purpose.

FARMING AND AGRICULTURE — Includes farming in all its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising and keeping of livestock, including horses, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals and any practices including any forestry or lumbering operation, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

LOT — A parcel of land owned by a person that is deeded and recorded to show ownership, dimension, lot lines and may include existing buildings.

PRIVATE STABLE — Includes any stable where horses are kept for hire to the general public and shall include, but not be limited to, guided and unguided riding or carriage driving.

PUBLIC STABLE — Includes any stable where horses are kept for hire to the general public and shall include, but not be limited to, guided and unguided riding or carriage driving.

STABLE — A structure used to provide shelter for a horse.

TURNOUT — A fenced-in area in which a horse is let free for the purpose of self-exercise.

VECTOR CONTROL — The effective control of insects and rodents so that they do not cause a public health nuisance.

### § 355-4. Existing stables.

All existing horse owners must apply for a Town of Ashburnham stable permit. The owners of horses must apply for the permit within 90 days from the date these regulations are published. The only sections of these regulations to apply to existing stables are § 355-7, Sanitary controls, and § 355-10, Locations (except Subsection D). Those owners of existing stables, who cannot meet these specific sections, may apply for the needed variances.

### § 355-5. Applicability of permit; term.

A. Owners of land who qualify as "agriculture or farming" under MGL c. 128, § 1A and whose owner/operator is a farmer are exempt from these regulations.

B. All other landowners and owner/operators must apply for a public or private stable permit as applicable by definition and meet the stable regulations in order to be issued a Town of Ashburnham stable permit.

C. Once issued, the stable license will remain in effect until the property owner sells the property for which the license has been issued. Licenses are not transferable without the prior approval of the Board of Health.

### § 355-6. Application for private or public stable permit.

Applicants for a stable permit shall do the following:

A. Read the Ashburnham Stable Regulations;

B. Submit the completed applications and fee to the Board of Health, or its Agent (fee to be set in the spring of 1998 by a Town Meeting vote);

C. Comply with the regulations as written.

### § 355-7. Sanitary controls.

In general, the following minimum sanitary requirements are to be met.

A. All horses are to be maintained in a clean and healthy manner.

B. Insects (flies) shall be controlled through the use of fly tapes, sprays, fogs and/or other means demonstrated effective in the stable(s) and around the manure storage area.

C. Vermin (mice, rats and other rodents) shall be controlled through the use of bait boxes, traps and/or other means demonstrated effective.

D. The sanitary maintenance of the stable and manure storage area and property storage of feed shall reduce the incidences of vectors.

E. Grain must be kept in a rodent-proof container.

F. Manure.

(1) Stalls must be cleaned daily.

(2) Manure will not be allowed to drain or run-off into any wetlands or water resource area.

(3) Manure shall be stored to prevent vector problems.

(4) No more than one cord (128 cu. ft.) of manure and bedding shall be allowed to accumulate on the property, nor shall the storage thereof cause nuisance to abutters or the public. Exceptions to this may be granted by the Board if the applicant demonstrates that the manure can be stored without causing a nuisance.

### § 355-8. Housing.

All horses must have access to shelter. The minimum requirements for the provided shelters are found in the guidelines by the Massachusetts Department of Agriculture, Division of Animal Health.

### § 355-9. Lot requirements.

A. All persons requesting a private stable permit shall have enough land to maintain their animals in a sanitary manner and one which does not create a nuisance to their abutters.

B. All persons requesting a public stable permit shall have at least five acres of land.

C. All fencing shall be a minimum of four feet in height and may consist of wood, woven wire, electric-charged fencing with signs every 50 feet, stone walls or other materials that will effectively contain but not be harmful to the animals. Barbed-wire fencing WILL NOT be permitted.

### § 355-10. Locations.

A. All turnout areas and stables must be 50 feet from vegetated wetlands and 100 feet from the actual water's edge.

B. All manure must be stored at least 100 feet from all wetlands.

C. All turnout areas, manure storage and stables must be 100 feet from private wells.

D. All turnout areas, manure storage and stables shall be at least 100 feet from the abutter's residences. The Board may increase this distance to protect the public health. Upon submission of an application for a stable permit, the Board, or its Agent, reserves the right to inspect the location of the proposed stable to determine compliance with this section is met.

### § 355-11. Dead animals.

Dead animals shall be buried, incinerated, or disposed of promptly in such a way as to prevent the attraction of files and the generation of odors. If an animal must be destroyed, it shall be done in a humane matter. If buried, the animal shall be put in a hole, the bottom of which shall be a minimum of four feet above high groundwater and covered with at least six feet of compacted dirt. The burial site shall be at least 15 feet from property lines and 100 feet from any well or wetlands. The Board of Health, or its Agent, must be notified of the proposed burial site in advance. If unable to contact the Board of Health in a timely manner on weekends or holidays, then the animal may be buried in accordance with the restrictions outlined above and the Board of Health notified on the first working day following the burial.

### § 355-12. Variances.

A. Variances may be granted by the Ashburnham Board of Health with respect to any particular case when, in its opinion, the applicant has provided that the same degree of compliance can be achieved

without strict application of the particular provision.

B. The process for obtaining a variance is listed below.

(1) Submit a written request, which shall include the following information: specific section(s) of the regulations which relief is sought, the reasons for the request and may include any sketches or additional information that would be useful to the Board in making its decision. The Board will schedule the requested hearing within 60 days of the request.

(2) All abutters shall be notified of the variance hearing at least 10 days prior to the hearing by certified mail. The return receipts shall be presented to the Board of Health at the hearing.

(3) At the hearing the applicant may present their request(s) and any related materials. If the Board feels that a site visit is warranted, it will continue the hearing until the visit can be arranged.

(4) Once the hearing is closed, the Board will vote on the requested variance(s).

## § 355-13. Enforcement.

These regulations can be enforced by the Board of Health, the Animal Inspector, the Nashoba Associated Board of Health, or by any other appointed Agent of the Board.

## § 355-14. Severability.

If any section, paragraph, sentence, clause or phrase of these rules and regulations is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate and distinct provision and such decision shall not affect the validity of the remaining portion of the regulations, which shall remain in full force and effect, and to this end, the provisions of the rules and regulations are hereby declared severable.

## § 355-15. Violations and penalties.

Following notice of violation of any section of the preceding regulations, and a reasonable time for the correction, the owner or agent responsible for such violation may be subject to a fine of $5 per day that said violations exist and to the revocation of his/her permit (MGL c. 111, § 157).

# Chapter 365

# TOBACCO REGULATIONS

**[HISTORY: Adopted by the Board of Health of the Town of Ashburnham 11-5-2018, effective 12-30-2018. Amendments noted where applicable.]**

## § 365-1. Statement of purpose.

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat[59];

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin[60] and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,[61] and that it is addiction to nicotine that keeps youth smoking past adolescence;[62]

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers "spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive" and that these companies were likely to continue targeting underage smokers;[63]

Whereas more than 80% of all adult smokers begin smoking before the age of 18, more than 90% do so before leaving their teens, and more than 3.5 million middle and high school students smoke;[64]

Whereas 18.1% of current smokers aged <18 years reported that they usually directly purchased their cigarettes from stores (i.e., convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30%;[65]

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 — 17, which would improve health across the lifespan and save lives;[66]

Whereas cigars and cigarillos, can be sold in a single "dose"; enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth;[67]

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59. Center for Disease Control and Prevention, (CDC) (2012), Health Effects of Cigarette Smoking Fact Sheet. Retrieved from: http://www.cdc.gov/tobacco/data _statistice/fact_ sheets/health_ effects/effects_ cig_smoking/index.htm.
60. CDC (2010), How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/
61. U.S. Department of Health and Human Services. 2014. The Health Consequences of Smoking — 50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf.
62. Id. at Executive Summary p. 13. Retrieved from: http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf
63. United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al., 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.
64. SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U.S. Department of Health and Human services (HHA).
65. CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.
66. IOM (Institute of Medicine) 2015. Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products. Washington DC: The National Academies Press, 2015.
67. CDC (2009), Youth Risk Behavior, Surveillance Summaries (MMWR 2010: 59, 12, note 5). Retrieved from: http:www.cdc.gov/ mmwr/pdf/ss/ss5905.pdf.

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%;[68]

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1% of 12 — 17 year olds who smoked cigars reported smoking cigar brands that were flavored;[69]

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;[70]

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,[71] largely because these flavored products were marketed to youth and young adults,[72] and younger smokers were more likely to have tried these products than older smokers,[73] neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products that help establish smoking habits that can lead to long-term addiction;[74]

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale;[75]

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014;[76]

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**68. Ringel, J., Wasserman, J., and Andreyeva, T. (2005) Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.nebi.nim.gov/pubmed/21809109.**

**69. Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., Tob Control, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.**

**70. U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.**

**71. 21 U.S.C. § 387g.**

**72. Carpenter CM, Wayne GF, Pauly JL, et al. 2005. "New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies." Health Affairs. 24(6): 1601 — 1610; Lewis M and Wackowski O. 2006. "Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands." American Journal of Public Health. 96(2): 244-251; Connolly GN. 2004. "Sweet and Spicy Flavours: New Brands for Minorities and Youth." Tobacco Control. 13(3): 211-212; U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-reports.pdf.**

**73. U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.**

**74. Food and Drug Administration. 2011. Fact Sheet: Flavored Tobacco Products, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.**

**75. See fn. 3 at p. 85.**

**76. Centers for Disease Control and Prevention. 2015. "Tobacco Use Among Middle and High School Students — United States, 2011 — 2014," Morbidity and Mortality Weekly Report (MMWR) 64(14): 381-385;**

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them;[77]

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste";[78]

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing "no nicotine" actually had low levels of nicotine present in all cartridges tested, except for one;[79]

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days was 10.8% in 2013;[80]

Whereas data from the National Youth Tobacco Survey indicate that more than 2/5 of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;[81]

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms; and

Whereas the Massachusetts Supreme Judicial Court has held that" . . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means".[82]

Now, therefore, it is the intention of the Ashburnham Board of Health to regulate the sale of tobacco products.

## § 365-2. Authority.

This regulation is promulgated pursuant to the authority granted to the Ashburnham Board of Health by MGL c. 111, § 31, which states "Boards of health may make reasonable health regulations."

## § 365-3. Definitions.

For the purpose of this regulation, the following words shall have the following meanings:

ADULT-ONLY RETAIL TOBACCO STORE — An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Ashburnham Board of Health.

BLUNT WRAP — Any tobacco product manufactured or packaged as a wrap or as a hollow tube made

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77. **Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)**

78. **310 CMR 30.136**

79. **Food and Drug Administration, Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA, available at: http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm.**

80. **See fn. 7.**

81. **King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." Journal of Adolescent Health. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.**

82. **Druzik et al. v. Board of Health of Haverhill, 324 Mass. 129 (1949).**

wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers, regardless of any content.

BUSINESS AGENT — An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

CHARACTERIZING FLAVOR — A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

CIGAR — Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, not otherwise defined as a cigarette under MGL c. 64C, § 1, Paragraph 1.

COMPONENT PART — Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

CONSTITUENT — Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

COUPON — Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

DISTINGUISHABLE — Perceivable by either the sense of smell or taste.

EDUCATIONAL INSTITUTION — Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

EMPLOYEE — Any individual who performs services for an employer.

EMPLOYER — Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one or more employees.

FLAVORED TOBACCO PRODUCT — Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

HEALTH-CARE INSTITUTION — An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under MGL c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health-care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drugstores, doctor offices, optician/optometrist offices and dentist offices.

LIQUID NICOTINE CONTAINER — A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed

by the manufacturer and not intended to be opened by the consumer or retailer.

LISTED OR NONDISCOUNTED PRICE — The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

MINIMUM LEGAL SALES AGE (MLSA) — The age an individual must be before that individual can be sold a tobacco product in the municipality.

NONRESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINE — A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not nonresidential RYO machines.

PERMIT HOLDER — Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a tobacco product sales permit pursuant to these regulations, or his or her business agent.

PERSON — Any individual, firm, partnership, association, corporation, company or organization of any kind, including, but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

SCHOOLS — Public or private elementary or secondary schools.

SELF-SERVICE DISPLAY — Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

SMOKE CONSTITUENT — Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

SMOKING BAR — An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by MGL c. 270, § 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars."

TOBACCO PRODUCT — Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

VENDING MACHINE — Any automated or mechanical self-service device which, upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

### § 365-4. Tobacco sales to persons under minimum legal sales age prohibited.

A. No person shall sell or provide a tobacco product, as defined herein, to a person under the minimum

legal sales age. The minimum legal sales age in Ashburnham is 21.

B. Required signage.

(1) In conformance with and in addition to MGL c. 270, § 7, a copy of MGL c. 270, § 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Ashburnham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand-rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.05(2)(e).

(2) The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Ashburnham Board of Health that discloses current referral information about smoking cessation.

(3) The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as "tobacco products," at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

C. Identification. Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

D. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

**§ 365-5. Tobacco product sales permit.**

A. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Ashburnham without first obtaining a tobacco product sales permit issued annually by the Ashburnham Board of Health. Only owners of establishments with a permanent, nonmobile location in Ashburnham are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Ashburnham.

B. As part of the tobacco product sales permit application process, the applicant will be provided with the Ashburnham regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws about the

sale of tobacco and this regulation.

C. Each applicant who sells tobacco products is required to provide proof of a current tobacco retailer license issued by the Massachusetts Department of Revenue, when required by state law, before a tobacco product sales permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.

D. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee shall be determined by the Ashburnham Board of Health annually.

E. A tobacco product sales permit is nontransferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

F. Issuance of a tobacco product sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

G. A tobacco product sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

H. A tobacco product sales permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (see the definition in § 365-3) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with § 365-17D of the "Violations" section.

I. Maximum number of tobacco product sales permits.

(1) At any given time, there shall be no more than six tobacco product sales permits issued in Ashburnham. No permit renewal will be denied based on the requirements of this subsection, except any permit holder who has failed to renew his or her permit within 30 days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.

(2) A tobacco product sales permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.

(3) A tobacco product sales permit shall not be issued to any new applicant for a retail location within 500 feet of a retailer with a valid tobacco product sales permit as measured by a straight line from the nearest point of the property line of the retailer with a valid tobacco product sales permit to the nearest point of the property line of the site of the applicant's business premises.

(4) Applicants who purchase or acquire an existing business that holds a valid tobacco product sales permit at the time of the sale or acquisition of said business must apply within 60 days of such sale or acquisition for the permit held by the current permit holder if the applicant intends to sell tobacco products, as defined herein.

### § 365-6. Cigar sales regulated.

A. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at $2.50 or more.

B. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at $5 or more.

C. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Ashburnham.

D. The Ashburnham Board of Health may adjust from time to time the amounts specified in this section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

### § 365-7. Sale of flavored tobacco products prohibited.

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

### § 365-8. Sale of blunt wraps prohibited.

No person or entity shall sell or distribute blunt wraps in Ashburnham.

### § 365-9. Free distribution and coupon redemption.

No person shall:

A. Distribute, or cause to be distributed, any free samples of tobacco products, as defined herein;

B. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or nondiscounted price; or

C. Sell a tobacco product, as defined herein, to consumers through any multipack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or nondiscounted price in exchange for the purchase of any other tobacco product.

### § 365-10. Out-of-package sales.

A. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than 20 cigarettes, including single cigarettes.

B. Permit holders who sell liquid nicotine containers must comply with the provisions of 310 CMR 30.000, and must provide the Ashburnham Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.

C. All permit holders must comply with 940 CMR 21.05, which reads: "It shall be an unfair or deceptive

act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016, unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§ 1471 through 1476 and 16 CFR § 1700 et seq."

D. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

### § 365-11. Self-service displays.

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors, including, but not limited to, walk-in humidors, must be locked. The only self-service displays that are permissible pursuant to U.S. FDA and Massachusetts Attorney General regulations are displays that are located in retail tobacco stores that ensure that no person younger than the MLSA is present, or permitted to enter, at any time.

### § 365-12. Vending machines.

All vending machines containing tobacco products, as defined herein, are prohibited.

### § 365-13. Nonresidential roll-your-own machines.

All nonresidential roll-your-own machines are prohibited.

### § 365-14. Sale of tobacco products by health-care institutions prohibited.

No health-care institution located in Ashburnham shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health-care institution within it, such as a pharmacy, optician/optometrist or drugstore, shall sell or cause to be sold tobacco products, as defined herein.

### § 365-15. Sale of tobacco products by educational institutions prohibited.

No educational institution located in Ashburnham shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

### § 365-16. Incorporation of state laws and state regulations.

A. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at MGL c. 270, §§ 6, 6A, 7 and MGL c. 112, § 61A.

B. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sales and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts") and 940 CMR 22.00 ("Sales and Distribution of Cigars in Massachusetts").

### § 365-17. Violations and penalties.

A. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

(1) In the case of a first violation, a fine of $100.

(2) In the case of a second violation within 36 months of the date of the current violation, a fine of $200 and the tobacco product sales permit shall be suspended for three consecutive business days.

(3) In the case of three or more violations within a 36-month period, a fine of $300 and the tobacco product sales permit shall be suspended for 14 consecutive business days.

(4) In the case of four violations or repeated, egregious violations of this regulation, as determined by the Board of Health, within a 36-month period, the Board of Health shall hold a hearing in accordance with Subsection D of this section and may permanently revoke a tobacco product sales permit.

B. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco product sales permit for 30 consecutive business days.

C. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for 30 consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.

D. The Ashburnham Board of Health shall provide notice of the intent to suspend or revoke a tobacco product sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Ashburnham Board of Health shall suspend or revoke the tobacco product sales permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the tobacco product sales permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

### § 365-18. Noncriminal disposition.

Whoever violates any provision of this regulation may be penalized by the noncriminal method of disposition as provided in MGL c. 40, § 21D.

### § 365-19. Separate violations.

Each day any violation exists shall be deemed to be a separate offense.

### § 365-20. Enforcement.

Enforcement of this regulation shall be by the Ashburnham Board of Health or its designated agent(s). Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Ashburnham Board of Health or its designated agent(s) and the Board shall investigate.

### § 365-21. Severability.

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

### § 365-22. Effective date.

This regulation was passed on November 5, 2018 and shall take effect on December 30, 2018.

# Chapter 375

# WELL REGULATIONS

**[HISTORY: Adopted by the Board of Health of the Town of Ashburnham 4-3-1989. Amendments noted where applicable.]**

## § 375-1. Authority.

The Ashburnham Board of Health, under the provisions of MGL c. 111, § 31, hereby adopts the following regulations: pursuant to 105 CMR 410.000, Chapter II of the State Sanitary Code, "Minimum Standards of Fitness for Human Habitation."

## § 375-2. Purpose and authority.

These regulations are intended to promote the public health and general welfare by ensuring that private wells are constructed in a manner which will protect the quality of the groundwater derived from private wells. These regulations are adopted by the authority of MGL c. 111, § 31.

## § 375-3. Definitions.

As used in these regulations, the following terms shall be defined and interpreted as follows:

ABANDONED WATER WELL — A private well that has not been used for a water supply for a period of one year or more and which the owner does not intend to use again.

AGENT — The Nashoba Associated Boards of Health (hereinafter referred to as "Nashoba") serving as the agent for the Board of Health, as provided by MGL c. 111, § 27A.

AQUIFER — A water-bearing geologic formation that contains water in sufficient quantities to potentially supply a well for drinking water or other purposes.

PERSON — An individual, corporation, company, association, trust or partnership.

POTABLE WATER — Water that is satisfactory for drinking and for culinary and domestic purposes.

PRIVATE WELL — A water supply well which will not serve either a number of service connections or a number of individuals sufficient to qualify as a public water system as defined in 310 CMR 22.02.

PUMPS AND PUMPING EQUIPMENT — Any equipment or materials used or intended for use in withdrawing or obtaining groundwater, including, without limitation, seals and tanks, together with fittings and controls.

REGULATING AGENCY — The Town Board of Health through its agent, the Nashoba Associated Boards of Health.

WELL — An excavation or opening into the ground made by digging, boring, drilling, driving and other methods, for the purpose of providing a potable drinking water supply.

WELL DRILLER AND/OR DIGGER — Any person who is licensed by the Water Resources Commission (as defined by Chapter 620 of the Acts of 1956, as amended) to construct wells.

WELL SEAL — An approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.

## § 375-4. Requirements for private wells; violations and penalties.

A. No private well shall be deemed a source of potable water unless it is constructed in accordance with these regulations. No well shall be destroyed except in accordance with these regulations.

B. For each private well constructed after the effective dates of these regulations, there shall be:

(1) A well construction permit application;

(2) A well construction permit;

(3) A water quality analysis;

(4) A certificate of compliance with the terms of the permit;

(5) A well driller's or digger's report.

C. For each private well destroyed after the effective date of these regulations, there shall be:

(1) A well destruction permit application;

(2) A statement of well abandonment from the owner;

(3) A well destruction permit;

(4) A well driller's or digger's, or contractor's report of destruction.

D. The Board of Health or its agent shall investigate violations of these regulations or of any permit issued and may take such actions as it may deem necessary for the protection of the public health and to restrain violations of these regulations.

E. Whosoever violates these regulations shall be punished by a fine of not more than $500 to, and for the use of, the Town in which the well is located.

## § 375-5. Well construction or destruction permits.

A. No person shall engage in the business of constructing or destroying private wells within the Town under these regulations unless registered as a well driller/digger with the Water Resources Commission, pursuant to 313 CMR 3.00.[83]

B. An application for a well construction or destruction permit shall be submitted by the property owner, the well driller/digger or his agent to Nashoba on a form furnished by Nashoba.

C. A well construction or destruction permit shall be obtained from Nashoba prior to the construction or destruction of any private well. Nashoba shall charge a fee for each well construction or destruction permit and said fee shall be paid to the Nashoba Associated Boards of Health prior to the permit's issue.

## § 375-6. Well construction permit requirements.

A. Application requirements.

(1) The following information shall be submitted by the property owner or the well driller/digger or their agent with the well construction application, prior to the issuance of a permit:

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**83. Editor's Note: 313 CMR 3.00 no longer exists. See now 310 CMR 46.00, Certification of Well Drillers and Filing of Well Completion Reports.**

(a) General location of the proposed well, to include the location of at least one road intersection for reference;

(b) A sketch of the expected construction of the well, to include an approximation of the expected well depth;

(c) A description of any possible source(s) of contamination within 400 feet of the proposed well location [see Subsection B(1)];

(d) The well driller's/digger's name and certification number as it appears on the Water Resources Commission certificate.

(e) Description of the prior/current land use in the vicinity of the proposed well location (i.e., agricultural, industrial, etc.).

(2) For emergency repair, alteration, or replacement of an existing well the Board of Health or Nashoba may waive the requirements of these regulations for dwellings which were in existence prior to the effective date of this regulation.

B. Well location requirements.

(1) In establishing the location of a well, the well owner and/or the driller/digger shall identify any and all sources of potential contamination (agricultural fields, animal feed lots, beauty salon, dry cleaner, funeral home, furniture stripper/refinisher, gasoline/service stations, fuel depot, automotive junkyard, railroad line or yard, etc.) which exist within 1,000 feet of the proposed well site. The following minimum lateral distances from contamination shall apply with the granting of a variance under special conditions:

| Source of Contamination | Minimum Distance (feet) |
|---|---|
| Leaching facility (310 CMR 15.00) | 100 |
| Cesspool | 100 |
| Septic tank | 50 |
| Sewer line | 50 |
| Property line | 25 |
| Public or private way, common drive, easement | 25 |
| Active or closed landfill | 1,000 |
| Hazardous waste spill site | 1,000 |
| Watercourses as defined by Title 5 | 25 |

(2) Where, in the opinion of the Town Board of Health or Nashoba, adverse conditions exist, the above minimum distances may be increased or special means of protection may be required. These special requirements shall be added to the well construction permit by Nashoba.

(3) The well shall be upgradient of sources of contamination whenever possible. The top of the well shall be higher than any surface of contamination and above any conditions of flooding by

drainage or runoff from the surrounding land, unless otherwise adequately protected.

C. Well construction standards.

(1) Wells shall be constructed in compliance with the recommendations of the latest edition of the Manual of Individual Water Supply, U.S. Environmental Protection Agency (U.S. EPA), Water Supply Division (Exception: Springs shall not be used for the purpose of a potable water supply.).

(2) The annular space between the protective well casing and the wall of the drilled hole or the surface casing shall be effectively sealed. The seal is to protect against contamination by surface and/or shallow, subsurface waters.

(3) The well casing shall be capped or covered with a sanitary well seal. Casings shall extend a minimum of 24 inches above the highest known flood levels or 18 inches above the ground surface in areas which are not subject to flooding. In addition all nonvent opening shall be sealed to exclude the intrusion of contaminants. Vent openings shall be of an approved type, complete with screening.

(4) Any well that is furnished in bedrock or penetrates any confining layers (impervious formations) and therefore a potentially different aquifer(s) shall require the sealing off of each aquifer from the other(s). A minimum of 10 feet of an appropriate sealing material shall be used to seal one aquifer or formation from another.

(5) When well screens are used, the screen length and opening size should be selected to ensure that the water supply will be free from silts and sands and other suspended solids.

(6) Well pumps and water storage equipment shall be selected to ensure that the water supply is to be adequate (a minimum of five gallons per minute (GPM) is recommended) over a sustained period of pumping. NOTE: The proper selection of the pump is important to protect against unnecessary wear on the equipment and to maintain a safe and adequate supply of water.

(7) Pump suction lines (if used) shall not be closer than 100 feet from underground sewage leaching facilities or 50 feet from a septic system (310 CMR 15.03).

(8) Well pits to house the pumping equipment or to permit accessibility to the top of a well shall not be permitted.

D. Disinfection and other sanitary requirements. All private wells shall be disinfected following construction, rehabilitation, and well or pump repair, before the well is placed into service. The well shall be pumped to waste (not to the septic system) until the water is as clear as possible. Thereafter, the well and the pumping equipment (and plumbing, if installed) shall be disinfected with a solution containing at least 50 parts per million (ppm) of chlorine. The well shall remain in contact with the chlorine solution for a minimum of 24 hours before the well is pumped to waste (not the septic system) and the water found to be free of chlorine. (Information and instructions for the disinfection procedure are available from Nashoba.)

E. Water sampling procedure.

(1) Water sample(s) shall be collected by Nashoba. All water sample(s) shall be collected in an appropriate manner so as to maintain the integrity of the sample collected. Collection of the sample(s) shall occur following the well development and the disinfection process for that well (see Subsection D). The water sample may be taken to a laboratory of Nashoba's choice unless

the owner selects a specific laboratory, at which time the sample container may be sealed with a custody tag and be delivered to the owner-selected testing laboratory by him/herself. The laboratory shall be required to notify Nashoba should the sample be received with a broken custody seal.

(2) A representative water sample for laboratory analysis shall be collected at the pump discharge or from a tap in the pump discharge line. A representative sample shall constitute a sample collected after the removal of at least three standing volumes of water from the well or a minimum of 10-15 minutes of pumping from the well.

(3) The sample(s) shall be analyzed for the following parameters at a minimum: coliform bacteria, arsenic, lead, sodium, iron, manganese, copper, magnesium, color, sulfate, turbidity, alkalinity, chlorine, chloride, hardness, ammonia, nitrate, pH, conductivity, odor and potassium. All analyses shall be performed in accordance with U.S. EPA methods or other approved methods for drinking water analysis.

(4) Analytical tests such as volatile organics (VOCs), pesticides, PCBs and inorganics (metals), other than those specified in Subsection E(3), can be added or deleted, as public knowledge increases or at the request of the Town Board of Health or Nashoba, when conditions may indicate the need (i.e., prior land use) for such test. Samples which are to be analyzed for volatile organic compounds shall not contain air bubbles of any size.

F. Water quality.

(1) All analytical results shall be reviewed by Nashoba and an assessment of the suitability of that well for drinking water will be made. Nashoba will adhere to the current and applicable drinking water standards as detailed by the U.S. EPA and the State of Massachusetts Department of Environmental Protection (DEP). Approval of the results, by Nashoba, must be obtained in writing before the well shall be placed into service as a drinking water supply.

(2) The water sample(s) shall be analyzed by a laboratory certified to perform drinking water analysis by the DEQE for each parameter analyzed. A copy of the results shall be sent to both the Town Board of Health and Nashoba. All fees for the water testing are the responsibility of the applicant and all fees shall be paid in full prior to the approval of the well permit.

(3) As stated in Subsection E, Nashoba or the Town Board of Health may require that additional chemical analysis be performed on the well water. Any such additional requirement shall specify which chemical constituents or chemical fractions (pesticide/PCB, extractables, etc.) shall be tested for.

(4) No result shall exceed the current and applicable drinking water standards for public water supply, as detailed by the U.S. EPA and/or DEP (410 CMR 141 and 310 CMR 22). Coliform results shall be zero colonies per 100 ml of sample. Nashoba may also use professional judgement when assessing the results of the water well prior to approval of that well. When the results indicate a potential health hazard (i.e., possible gasoline contamination), Nashoba may at its discretion disapprove the well for use as a water supply.

G. Well completion requirements.

(1) Within 30 days after the completion of the construction of any well, the well driller/digger shall submit to Nashoba a report containing the following information:

(a) The name of the owner of the well;

(b) The address of the property served and/or the lot number as assigned by the Assessor's office;

(c) The depth, size and method of construction of the well;

(d) The location of the well, which shall show the distance from the permanent landmarks;

(e) The static water level;

(f) The yield of the well after eight hours of pumping;

(g) The recovery after drawdown and yield tests (for at least 24-hour period);

(h) The well driller's/digger's log information.

(2) The well driller's/digger's report shall be signed by an authorized representative and shall constitute a statement of compliance with all requirements of these regulations. This will satisfy the requirement of the certificate of compliance.

**§ 375-7. Well destruction.**

A. A well that is abandoned shall be destroyed to protect the groundwater supply and to eliminate potential physical hazards. Wells shall be sealed with nonhazardous, impervious materials, which shall be permanently in place. All exposed casing materials, pumping equipment, and distribution lines shall be removed. The excavation shall be returned to the existing grade of the surrounding land. A record of abandonment shall be kept in accordance with § 375-4C(4).

B. Well destruction requirements.

(1) The following information shall be submitted with each well destruction application, prior to the issuance of a permit:

(a) The specific location of the well to be destroyed;

(b) The design and construction of the well to be destroyed;

(c) A written statement from the owner that the well is abandoned;

(2) Within 30 days after the destruction of any well, the well driller/digger, or contractor shall submit to Nashoba a report containing the following:

(a) The name of the owner of the well;

(b) The address of the property served;

(c) Method of sealing, including materials used;

(d) Person or persons sealing the well and date of the sealing of the well.

(3) The well driller's/digger's report shall be signed by an authorized representative and shall constitute a statement of compliance with all requirements of these regulations. This will satisfy the requirement of the certificate of compliance.

**§ 375-8. Variances.**

A. Variances may be granted only as follows: The Town Board of Health may vary application of these regulations with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and the applicant has proven that the same degree of public health and environmental protection required under these regulations can be achieved without strict application of a particular provision(s).

B. Variance requests shall be in writing to the Town Board of Health and include all the information/ reasons and proposed measures necessary to assure the protection of the public health and environment. The Town Board of Health shall grant, modify, or deny a variance in writing, and state the reasons for any denial.

## Conservations Commission Regulations

# Chapter 400

# WETLANDS REGULATIONS

**[HISTORY: Adopted by the Conservation Commission of the Town of Ashburnham 2-12-2007; amended 3-25-2019. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**

**Wetlands Bylaw — See Ch. 230.**

ARTICLE I
**General Provisions**

## § 400-1.1. Authority and intent.

These rules and regulations (hereinafter referred to as the "Regulations") are promulgated by the Ashburnham Conservation Commission (hereinafter referred to as the "Commission") pursuant to the authority granted to it under § 230-12A of the Ashburnham Wetlands Protection Bylaw (hereinafter referred to as the "Bylaw"). These regulations shall complement the bylaw. They shall be used to enforce and implement the bylaw and shall have the same force of law upon their effective date.

## § 400-1.2. Purpose.

A. The Bylaw sets forth a public review and decision-making process by which activities likely to have an impact or cumulative effect upon resource areas under the Bylaw are to be regulated in order to ensure the protection of wetlands, including: protection of public and private water supplies, protection of groundwater supply, flood control, storm damage prevention, prevention of pollution, protection of fisheries, and protection of wildlife habitat, as identified in the MA Wetlands Protection Act (MGL c. 131, § 40).

B. The purpose of these Regulations is to create a uniformity of process and to clarify and define the provisions of the Bylaw by which the Commission shall carry out its responsibilities. Both the Bylaw and these Regulations may be amended when necessary.

C. In instances where these Regulations are more stringent than the state wetland regulations at 310 CMR 10.00, these local Regulations shall prevail [see 310 CMR 10.01(2)].

## § 400-1.3. Jurisdiction.

A. Except as permitted by the Commission or as provided by this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any waters or wetlands, whether or not geographically isolated; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 200 feet of a perennial river or stream (hereinafter "resource areas").

B. Consistent with MGL c. 131, § 40 and 310 CMR 10.02 of the state wetland regulations, any activity other than minor activities identified in 310 CMR 10.02(2)(b)1 and 2, proposed or undertaken within 100 feet of a resource area (hereinafter called the "Buffer Zone") shall require the filing of an application with the Commission.

## § 400-1.4. Definitions.

Except as otherwise provided below or in the Bylaw, the definitions of terms in these Regulations shall be as set forth in the MA Wetlands Protection Act (MGL c. 131, § 40) and associated Regulations (310 CMR 10.00).

ABUTTER — The owner of land in accordance with the most recent records of the Ashburnham Tax Assessor's office. The abutters' properties are within 100 feet in any horizontal direction of any boundary of the site listed in the permit, or as set forth in the most recent edition of the state wetland regulations.

ACTIVITY — Any form of removing, filling, grading, dredging, building upon, expansion, reconstruction,

altering, changing, enlarging, draining, withdrawing, damming, discharging, excavation, driving of pilings, construction, improvement, intercepting and/or diverging of water, installations of pipes or drainage systems, discharging of pollutants, destruction or cutting of plant life (including, but not limited to, trees), and any change to the physical characteristics of land or the physical or chemical characteristics of water.

ALTERATION — Without limitation, the following actions when undertaken in areas subject to this Bylaw:

A. Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;

B. Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention characteristics;

C. Drainage or other disturbance of water level or water table;

D. Dumping, discharging or filling with any material which may degrade water quality;

E. Driving of piles, erection of buildings or structures of any kind;

F. Placing of obstructions, whether or not they interfere with the flow of water;

G. Destruction of plant life, including cutting or removal of trees proximate to resource areas;

H. Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water;

I. Any activities, changes or work which may cause or tend to contribute to pollution of any resource area or groundwater;

J. Incremental activities which have, or may have a cumulative adverse impact on the resource areas protected by this Bylaw.

BYLAW — The Town of Ashburnham Wetlands Protection Bylaw.[84]

COMMISSION — The Conservation Commission of the Town of Ashburnham.

ISOLATED WATERS/WETLANDS — Any surface water or wetland that is geographically surrounded by uplands with no apparent surface water connections to other waters/wetlands that are not surrounded by uplands, e.g., areas of hydrophytic vegetation surrounded by terrestrial vegetation.

REPLICATION — Creation/Restoration of a freshwater wetland with the use of soil material(s) conducive for creation/restoration purposes and plants species indigenous to the project area and/or environs, ideally derived from plant stock with local and New England regional origins.

RESOURCE AREAS — Any waters or wetlands, whether or not geographically isolated; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 200 feet of a perennial river or stream (hereinafter "resource areas").

VERNAL POOL HABITAT — A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or the summer, and is free of adult fish populations. Vernal pool habitat also includes the area within 100 feet of the mean annual boundary of such depression, which is certified or certifiable by the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program vernal pool certification program.

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**84. Editor's Note: See Ch. 230, Wetlands Protection.**

### § 400-1.5. Performance standards.

A. In performance of its duties under the Bylaw and these Regulations, the Commission shall apply the following performance standards, without limitation. Standards not listed herein shall be those set forth in the Wetlands Protection Act Regulations (310 CMR 10.00). Specifically, the standards as set forth in 310 CMR 10.53 through 10.60 are herein incorporated by reference.

B. The Commission or its agent shall not delineate/flag wetland resources. The Commission shall only approve or disapprove wetland resource delineations. It is the responsibility of the applicant to hire a qualified wetland consultant/scientist to flag or otherwise denote in the field the boundaries of wetland resources.

C. Bordering any wetland resource area, the Commission may require a zone of natural vegetation of sufficient width to assure that silt, soil, fertilizer in solutions, organic chemicals, herbicides, organic manure, oils or petroleum products which may be carried by surface runoff shall not reach that wetland, but instead shall be trapped by the natural mulch, soil and roots. This requirement would depend on slope, soil type, ground cover and the project proposed. The Commission shall encourage stabilization of up-gradient areas beyond the 100-foot line.

D. Any proposed work in a Protected Resource Area and any proposed work that involves a new storm drain system or connection to an existing storm drain system that discharges to a Protected Resource Area shall not result in an increase in the peak rate of surface runoff during either a two-, ten- or 100-year storm event to areas beyond the boundaries of the property on which the activity is to be conducted, or any resource area within the site. All filings involving a new storm drain system or connection to an existing storm drain system shall provide the Commission with a detailed stormwater pollution prevention plan for during construction, as well as for long-term maintenance of the stormwater system. This plan shall specify detailed construction methods for erosion control, identify responsible parties and shall include a signed affidavit that all conditions of the pollution prevention plan shall be met. The discharge of any substances in to the storm drain system, other than stormwater, is strictly prohibited.

E. New proposed side slopes within 100 feet of a resource area shall have a finished grade according to the following:

(1) The Commission requires a 3:1 slope unless the 2:1 slope will eliminate the proposal for wetland alteration.

(2) Vegetated and mulched slopes shall be no greater than a 3:1 slope.

(3) Stone rip-rapped slopes shall be no greater than a 2:1 slope. The use of jute matting, landscaped slopes, or other methods of slope stabilization may be required.

### § 400-1.6. Burden of proof.

The applicant shall have the burden of proof by clear and convincing evidence that the work proposed in an application shall not have unacceptable significant cumulative or harmful effects upon the values protected under the Bylaw. Failure by the applicant to provide sufficient evidence to the Commission shall be sufficient cause for the Commission to deny the application along with any work or activity proposed therein.

### § 400-1.7. Waiver.

Strict compliance with these Regulations may be waived when, in the judgment of a majority of the Commission, such action is in the public interest, is consistent with the intent and purpose of the Bylaw, or when strict compliance would result in, but not necessarily be limited to, the following: severe economic, physical, legal, contextual hardship far greater in magnitude than the public interest to be served. Any request for a waiver must be submitted to the Commission in writing either prior to or concurrent with the filing of a request or notice and must state the provision(s) of the Regulations to be waived, and the justification for and the public interest(s) to be served by the requested waiver. The Commission shall act upon the request at a public hearing and shall notify the applicant, in writing, of its decision in accordance with the time frames for public hearings set forth in the Bylaw and Regulations. If so granted, the Commission shall include the public interest(s) that is protected or enhanced by issuance of a waiver from these Regulations.

### § 400-1.8. Emergencies.

The Chairman, Vice Chairman or the Conservation Agent may make binding decisions upon the Commission in cases of emergency as defined by § 230-4C of the Bylaw.

### § 400-1.9. Appeals.

Any decision by the Commission made under the jurisdiction of the Bylaw, including, but not limited to, Orders of Resource Area Delineation, Determinations of Applicability, Order of Conditions, Enforcement Orders, partial or full Certificates of Compliance, and Extension Permits, shall be reviewable in Superior Court in accordance with MGL c. 249, § 4 or as otherwise provided by law, but is subject to the filing of a notice of appeal, which must be received by the Commission within 10 business days of the issuance of the decision.

### § 400-1.10. Severability and invalidity.

The invalidity of any section of the Rules and Regulations shall not invalidate any other section or provision nor shall it invalidate any Abbreviated Notice of Resource Area Delineation, Orders of Resource Area Delineation, Request for Determination of Applicability, Determination of Applicability, Abbreviated Notice of Intent, Notice of Intent, Order of Conditions, Amended Order of Conditions, Extension Permit, partial and full Certificate of Compliance or Enforcement Order which previously has been received or issued.

### § 400-1.11. Effective date.

The effective date of these Regulations shall be the date on which these rules and regulations are approved by a majority of the Commission after conducting a public hearing. These Regulations shall apply to all Abbreviated Notices of Resource Area Delineation, Orders of Resource Area Delineation, Requests for Determination of Applicability, Determinations of Applicability, Abbreviated Notices of Intent, Notices of Intent, Orders of Conditions, Amended Orders of Conditions, Extension Permits, partial or full Certificates of Compliance or Enforcement Orders which are filed or issued after that date.

ARTICLE II
**Procedures**

(See Exhibit I.[85])

## § 400-2.1. Receipt of filings.

A. A Request for Determination, Notice of Intent or other applications and/or requests shall be considered filed with the Commission when a complete application in accordance with the checklist provided in Appendix A[86] is submitted to the Commission, its Agent, or Town staff at its office during the Commission's regular business hours. A completed checklist shall be filed with all applications. Guidance for the preparation/completion of forms, plans and other application materials is provided in Appendix B.[87]

B. If an application is deemed to be insufficient to fully describe the proposed activity and its effect on the environment, the Commission may:

(1) Notify the applicant, by certified mail within 10 days of receipt of the application, of the additional information that will be necessary to render the application sufficiently complete for acceptance by the Commission. The 21-day review period shall not begin until a complete application is submitted; or

(2) Inform the applicant at or prior to the public hearing of the additional information required, and offer the applicant the opportunity to continue the public hearing so that the additional information can be submitted for review.

## § 400-2.2. Forms.

The Commission may accept as the permit application submittal under this bylaw the permit applications filed under the MA Wetlands Protection Act, MGL c. 131, § 40 and in accordance with regulations set forth in 310 CMR 10.00.

## § 400-2.3. Deadline for filing.

The deadline for filing an Abbreviated Notice of Resource Area Delineation, Request for Determination of Applicability, Abbreviated Notice of Intent or Notice of Intent under the MA Wetlands Protection Act or the Bylaw is 10:00 a.m. on the Monday, 14 days prior to the public meeting. If the Monday is a holiday, it must be filed by the Friday before the deadline date.

## § 400-2.4. Meetings.

The meetings of the Commission are generally held on the second and fourth Mondays of the month at the Ashburnham Town Hall or at a previously posted date and location. Changes of meeting dates may occur due to conflicts with other Town functions and holidays.

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**85. Editor's Note: Exhibit I is included as an attachment to this chapter.**

**86. Editor's Note: Appendix A is included as an attachment to this chapter.**

**87. Editor's Note: Appendix B is included as an attachment to this chapter.**

## § 400-2.5. Public hearings.

All hearing procedures and time lines shall be as provided in MGL c. 131, § 40 and regulations hereunder. The public hearing required by this Bylaw and the one required under MGL c. 131, § 40 may be combined into one hearing and notification process.

A. Within 21 days of receipt of a complete Abbreviated Notice of Resource Area Delineation, Request for Determination of Applicability, Abbreviated Notice of Intent or Notice of Intent application, the Commission shall hold a public hearing to consider the application filed under the Bylaw. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission at the expense of the person(s) making the request or notice (i.e., the "applicant") not less than five business days (excluding Fridays and holidays) prior to such meeting by publication in a newspaper of general circulation in Ashburnham. With the exception of Requests for Determinations of Applicability, the applicant shall be responsible for providing the Commission evidence of notification of abutters by certified mail, by obtaining signatures, or by other means previously approved by the Commission.

B. Prior to or during the public hearing process, the Commission may require the work area/limits of disturbance or other existing or proposed feature to be staked. The Commission also may require drainage and/or hydrological studies and calculations; habitat studies per the Department of Environmental Protection's (MA DEP) Wildlife Habitat Protection Guidance for Inland Wetlands (MA DEP 2006); detailed replication plans as may be applicable, and any other information necessary to determine the extent to which proposed action(s) may result in adverse impacts to resource areas protected by the Bylaw and these Regulations.

C. If more information is needed and/or the Commission needs to conduct an on-site inspection, the Commission may continue the public hearing until its receipt of the requested information and/or completion of the on-site inspection. Under such conditions, the public hearing may be continued with the mutual agreement of the Commission and the applicant. Upon receipt of all information requested and/or completion of the on-site inspection, the Commission shall close the public hearing at its next scheduled meeting unless other circumstances warrant otherwise.

D. With respect to vernal pool habitat, the Commission may require the public hearing to be postponed until such time (generally spring and early summer) when the status of the vernal pool relative to its potential for certification by the MA Natural Heritage and Endangered Species Program can be determined either by the applicant and/or the Commission.

E. All supplemental filings associated with an Abbreviated Notice of Resource Area Delineation, Request for Determination of Applicability, Abbreviated Notice of Intent or Notice of Intent applications shall be submitted to the Conservation/Land Use Office no later than seven days prior to the Commission's next scheduled meeting.

F. Within 21 days of closing the public hearing, providing all fees and expenses have been paid and all necessary information has been received and evaluated, the Commission shall issue an Order of Resource Area Delineation approving or disapproving the delineation of wetland resource boundaries. Within this same time period, the Commission shall issue or deny a permit for the requested activities. All such determinations, orders or other permit shall be valid for three years from the date of issuance, unless otherwise permitted and/or extended.

G. Determinations of Applicability and Orders of Conditions shall contain those conditions which the Commission deems necessary to protect the statutory interests of and the areas subject to protection under the MA Wetlands Protection Act (MGL c. 131, § 40), the Bylaw and these Regulations. The

Commission may reserve the right to require additional protective conditions upon the receipt of additional permit-specific information or following site-specific inspections.

H. If the Commission issues a Determination of Applicability or Order of Conditions, the approved work may commence no sooner than 10 business days (excluding Fridays and holidays) from the date the Order of Conditions is issued or delivered, providing no appeal has been received and proof of the order's recording at the Registry of Deeds has been received by the Commission. Determinations of Applicability issued by the Commission do not need to be recorded at the Registry of Deeds.

I. If the Order of Conditions is appealed to Superior Court under the appeal provisions of the Bylaw, no work may commence until a final decision has been rendered by the Court's approving the activity and all further appeal periods have expired.

### § 400-2.6. Concurrent issuance of Order of Conditions.

Any Order of Conditions issued under the Bylaw may be issued concurrently with and by using the same form as an Order of Conditions under the Massachusetts Wetlands Protection Act, MGL c. 131, § 40.

### § 400-2.7. Recording of orders.

The original copy of the Order of Resource Area Delineation, Order of Conditions, Amended Order of Conditions or Extension Permit shall be recorded in the Land Court or the Registry of Deeds in the appropriate district at the expense of the applicant. Proof of recording shall be sent to the Commission.

### § 400-2.8. Amendment to Order of Conditions.

An applicant shall follow all of the same procedures as required for the filing of the Notice of Intent, including notification to abutters, public notice, and corresponding filing fee.

### § 400-2.9. Extension of orders.

A. At least 30 days prior to the expiration of an Order of Resource Area Delineation or Order of Conditions, an applicant may request, in writing, an extension of said orders.

B. In conjunction with the extension request, an on-site visit, re-flagging/staking of wetland resource areas or additional information may be required by the Commission. The orders also may be changed or modified by the Commission. The Commission may deny the request for an extension and require the filing of a new Abbreviated Notice of Resource Area Delineation, Abbreviated Notice of Intent or Notice of Intent in the following circumstances, among others:

(1) Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in obtaining other necessary permits;

(2) Where new information, not available at the time of the order was issued, has become available and indicates the order is not adequate to protect the interests identified in the Bylaw and these Regulations;

(3) Where incomplete work is causing damage to the wetland resource area interests identified in the Bylaw;

(4) Where work has been done in violation of the order, Bylaw or these Regulations;

(5) Where a resource area delineation or certification under the state wetland regulations at 310

CMR 10.02(2)(b)2 as set forth in an Order of Resource Area Delineation is no longer accurate.

(6) Where state and/or municipal regulations have changed.

C. The extension of an order under the Bylaw may be issued concurrently with and by using the same form as an Extension Permit of an Order under the MA Wetlands Protection Act, MGL c. 131, § 40.

### § 400-2.10. Certificate of Compliance and Partial Certificate of Compliance.

A. Within 30 days of completion of all of the work approved in the Order of Conditions and shown on the approved plans and documents of record, the applicant shall request in writing a Certificate of Compliance.

B. Unless waived by a majority of the Commission, the request shall include an "as-built plan" prepared by a registered professional engineer or registered professional land surveyor. This plan shall indicate any deviation from the approved plans and Order of Conditions, along with a narrative which shall include the reasons for those deviations. Alternatively, the Commission may require a letter signed, stamped and dated by either a professional engineer or registered professional land surveyor certifying that the project was constructed in accordance with the approved plans and the Order of Conditions.

C. For sewer/septic repairs and new systems, the Commission shall also require a written certification from the installer that the old system was properly abandoned, as defined in Title 5 of the State Environmental Code, and the new system was installed in accordance with the approved plans and the Order of Conditions.

D. Prior to the issuance of a Certificate of Compliance, the Commission or its Agent shall conduct an on-site visit to determine the extent of the project completion and compliance with the Order of Conditions.

E. The Commission shall approve or deny a Full Certificate of Compliance or issue a Partial Certificate of Compliance within 21 days of receipt of the written request. The applicant and the Commission may request a continuance of the request when such a continuance may allow correction by the applicant of minor site-specific conditions which can be completed in a short period of time.

F. The Certificate of Compliance or Partial Certificate of Compliance under the Bylaw may be issued concurrently with and using the same form as the Certificate of Compliance under the Massachusetts Wetlands Protection Act, MGL c. 131, § 40.

### § 400-2.11. Enforcement and Enforcement Orders; violations and penalties.

When the Commission determines that an activity is in violation of the Bylaw, these Regulations, or a final Determination of Applicability or Order of Conditions, the Commission may issue an Enforcement Order to the owner of record and/or the violator ordering that the illegal activity cease immediately.

A. An Enforcement Order shall be issued on a form provided by the Commission, and shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by the Agent of the Commission (with the consent of at least one member of the Commission) or a single member, provided said order is ratified by a majority of the members at the next scheduled meeting of the Commission.

B. The Bylaw, these Regulations, and all Determinations of Applicability and Orders of Conditions may be enforced (in accordance with the Bylaw) pursuant to MGL c. 40, § 21D, by the Commission, its

Agent(s), Town police officers or other agent(s) allowed by law. In this regard, the members and Agent(s) of the Commission may enter upon privately owned land for the purposes of performing their duties under the Bylaw and these Regulations.

C. Any person who violates any provision of the Bylaw, the Regulations promulgated thereunder, or any conditions of a valid permit shall be subject to a fine of not more than $100 per day for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense. In the event of multiple violations, each condition violated shall constitute a separate offense. In the case of any unauthorized work, the offense shall be deemed to continue each day until the area is restored to the condition that existed prior to the commencement of unauthorized work.

ARTICLE III
**Filing Fees, Performance Bonds and Consultant Fees**

### § 400-3.1. Purpose.

The purpose of the fee system is to defray the costs of administering the Bylaw and requests for action from the Commission, provide for engineering and consultants services, and to secure and ensure the satisfactory performance of work required by any permit.

### § 400-3.2. Authority.

A. The filing fee schedule is promulgated pursuant to § 230-5 of the Bylaw.

B. The escrow account, performance bond or other security mechanism used to ensure satisfactory performance of work is promulgated in accordance with § 230-15 of the Bylaw.

### § 400-3.3. Time of payment; waiver of fee.

A. At the time of submission of a Request for a Determination of Applicability, Notice of Intent, or other permit application, the applicant shall pay a filing fee.

B. The filing fee may be waived for a Request for Determination of Applicability, Notice of Intent, or other permit application filed by a government agency.

C. After a duly noticed public hearing, the Commission shall have the right to change the fee schedule shown in Table I, below.[88] Any change of the fee schedule must be advertised and posted at the Town Hall at least 30 days prior to the date the changes become effective.

### § 400-3.4. Disputes over filing fees.

A. Whenever the Commission or its Agent determines that an inadequate fee has been paid, the time period for the Commission to act may be stayed by the Commission until the balance of the fee is paid.

B. The applicant may appeal the fee(s) pursuant to the Massachusetts General Laws.

C. The applicant may bring the matter of applicable filing fees to the Commission at a regularly scheduled meeting for the Commission's approval prior to the filing of an application.

### § 400-3.5. Filing fee schedule.

A. The schedule of filing fees pursuant to the Bylaw and these Regulations is set forth in Table I, below.

**88. Editor's Note: See Table I, included in § 400-3.5.**

| Table I: Filing Fee Schedule | | |
|---|---|---|
| Type of Activity | | Activity Fee |
| 1. | Determination of negligible impact (see Appendix D for a list of allowable DNI activities[89]) | $25 |
| 2. | Abbreviated Notice of Resource Area Delineation | $50 plus $1/linear foot of each resource area to be confirmed (total fee shall not exceed $1,000) |
| 3. | Borings/Monitoring wells (minus roadway) | $50 per boring/monitoring well |
| 4. | Resource Area/Buffer Zone improvement (e.g., invasive species control, resource enhancement/restoration/ creation) | $250 |
| 5. | Nourishment of existing beaches | $50 + $0.50/square foot of nourishment area |
| 6. | Work on a single-family lot: | |
| | Site modifications (e.g., additions, pools, work on a septic system, and site work without a house) | $75 |
| | Construction of a single-family house | $250 |
| 7. | Multifamily dwelling units | $250 + $100/dwelling unit wholly or partially within 100-foot Buffer Zone |
| 8. | Commercial, industrial and institutional facilities (plus parking lots and stormwater management measures/BMPs) | $250 + $0.50/square foot of Buffer Zone alteration |
| 9. | Roadways and utilities | $250 + $2/linear foot based on the maximum length of roadway/utility crossing within 100-foot Buffer Zone |
| 10. | Parking lots (plus stormwater management measures/BMPs) | $250 + $0.50/square foot of Buffer Zone alteration |

**89. Editor's Note: Appendix D is included as an attachment to this chapter.**

Table I: Filing Fee Schedule

| Type of Activity | | Activity Fee |
|---|---|---|
| 11. | New agriculture/aquaculture project | $250 + $0.50/square foot of Buffer Zone alteration |
| 12. | Wetland resource crossings/ alterations (e.g., roadways, bridges, utilities, general site development and dredging) | $350 + $0.50/square foot of resource alteration |
| 13. | Dam/Sluiceway work | $350 |
| 14. | Work within the riverfront area | Applications filed for work within Riverfront Areas shall require the appropriate activity fee(s) plus 50% additional fee |
| 15. | Water level fluctuations: (For: Billy Ward Pond, Lake Wampanoag, Lake Watatic, Lake Winnekeag, Lower Naukeag Lake, Stodge Meadow Pond, Sunset Lake and Upper Naukeag Lake) | $250 ($100 for all other water bodies not listed, e.g., Factory Village Pond, Marble Pond and Wallace Pond) |
| 16. | Control of aquatic vegetation (chemical/mechanical) (For: Billy Ward Pond, Lake Wampanoag, Lake Watatic, Lake Winnekeag, Lower Naukeag Lake, Stodge Meadow Pond, Sunset Lake and Upper Naukeag Lake) | $250 ($100 for all other water bodies not listed, e.g., Factory Village Pond, Marble Pond and Wallace Pond) |
| 17. | New docks, piers, revetments, dikes, etc. | $50 |
| 18. | Hazardous waste discharges, response actions and clean-up operations | $350 + $0.50/square foot of Resource/Buffer Zone alteration (direct and indirect) |
| 19. | Time extensions | $50 |
| 20. | Amendments to Orders of Conditions | Amendments to Existing Orders of Conditions shall require the appropriate activity fee(s) for activities of similar extent, in accordance with the filing fee schedule |
| 21. | Certificate of compliance | $50 (due upon issuance of Certificate of Compliance) |

| Table I: Filing Fee Schedule | | |
|---|---|---|
| Type of Activity | | Activity Fee |
| 22. | After-the-fact applications | After-the-fact applications without an Enforcement Order shall require the appropriate activity fee(s) plus 50% additional fee |
| 23. | Release of enforcement orders | $50 |
| 24. | After-the-fact applications associated with an enforcement order | Applications filed in conjunction with an Enforcement Order shall require the appropriate activity fee plus 100% additional fee(s) (i.e., double the activity fee) |
| | Noncompliance with Ashburnham Wetlands Protection Bylaw and Rules/ Regulations | A fine of $100/day for unauthorized activities/ violations affecting Wetland Resource Areas and/or Resource Buffer Zones (Each day or portion thereof during which an unauthorized activity/ violation continues shall constitute a separate offense; if there is more than one violation, each violation shall constitute a separate offense.) |

**Note:** Filing fees shall be additive when multiple activities are proposed. For example, a roadway crossing a perennial waterway potentially may require the cumulative sum of Activity Fee #s 9 + 12 + 14.

B. Inspections, listed in Appendix C,[90] are free and shall be requested in writing. If more than two site visits are required for an applicant to satisfy an inspection requirement, however, a $25 fee per additional site visit may be imposed. Failure to provide the Commission with a written request for each required inspection shall result in a $50 fee plus an additional $25 for each related site visit conducted by the Commission or its Agent.

### § 400-3.6. Refund of fee.

If, at any time, the applicant withdraws a previously filed Request for Determination of Applicability, Notice of Intent or other permit application requiring a filing fee, there will be no refund of the fee paid by the applicant.

### § 400-3.7. Consultant fees.

**90. Editor's Note: Appendix C is included as an attachment to this chapter.**

A. As provided by MGL c. 44, § 53G, the Commission may impose reasonable fees for the employment of outside consultants, engaged by the Commission for specific expert services deemed necessary to the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirements of the MA Wetlands Protection Act (MGL c. 131, § 40) and the Bylaw, the State Conservation Commission Act (MGL c. 40, § 8C), or any other state or municipal statute, bylaw or regulation as may be enacted or amended from time to time.

B. Funds received by the Conservation Commission pursuant to these Regulations shall be deposited with the Ashburnham Treasurer, who shall establish a special account for this purpose. Expenditures from this special account may be made at the discretion of the Commission without further appropriation as provided in MGL c. 44, § 53G. Further, expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

C. The consultant shall be chosen by, and report only to, the Commission and/or its Agent. Specific consultant services may include, but are not limited to, resource area survey and delineation, analyses of resource area functions/values, hydrogeologic and drainage analyses, the evaluation of wetland mitigation and compensation plans, the assessment of impacts on municipal conservation lands, and environmental or land use law.

D. The Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for the payment of the fee in its entirety. Such notice shall be deemed to have been given on the date it was mailed or hand delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within 10 business days of the date the notice is given.

E. The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary consultant review requires a larger expenditure than originally anticipated or new information requires additional consultant services.

F. Failure by the applicant to pay the consultant fee specified by the Commission within 10 business days of the date the written notice referenced in Subsection D above was mailed or hand delivered shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state as such in a letter to the applicant, a copy of which shall be forwarded to the MA DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee.

G. The applicant may appeal the selection of the outside consultant to the Board of Selectmen, who may disqualify the outside consultant only on the grounds that the consultant has a conflict of interest or does not possess the required qualifications. Such qualifications shall consist of either an educational degree in or three or more years of practice in the field at issue or a related field (In the case of engineering issues the consultant must be licensed by the Commonwealth of Massachusetts.). The applicant may not appeal on the basis of the scope of the work and/or the amount of the fees. Such an appeal must be in writing and received by the Board of Selectmen and a copy received by the Commission within 10 business days of the date consultant fees were requested by the Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal. In this regard, the Board of Selectmen must act upon the appeal within one month or the Commission's choice is sustained (see MGL c. 44, § 53G, as amended by Chapter 46, Section 36 of the Acts of 2003).

**§ 400-3.8. Performance bond.**

A. The Commission may require the establishment of an escrow account or other security for the benefit of the Town of Ashburnham, sufficient in the opinion of the Commission as to form and surety to secure faithful and satisfactory performance of work required by any Order of Conditions.

B. Notwithstanding the above, the amount of such escrow account or security shall not exceed the estimated cost, including inflation, for the Commission to complete the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such escrow account or security shall be as detailed in MGL c. 41, § 81U.

C. For replication projects, the applicant also may be required to provide an escrow bond for the duration of a monitoring program plus one year to cover the correction costs of any deficiencies revealed by the program. Said bond, at a minimum, shall be equal to the initial cost of the replication.

## Planning Board Regulations

# Chapter 410

# ACCESSORY DWELLING UNITS

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 2-28-2008. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Zoning Bylaw: Accessory Dwelling Units — See Ch. 250, Sec. 5.12.**

## § 410-1. Findings and intent.

A. In the Town of Ashburnham, accessory dwelling units are allowed by special permit from the Planning Board in the following use districts: R-A, R-B, V-C and G-B. The Planning Board is authorized to allow a special permit for both attached and detached accessory dwelling units. See Ashburnham Zoning Bylaw, Chapter 250, Section 5.12,Accessory Dwelling Units, and § 3.2.2, m and n, Schedule of Use Regulations.[91]

B. The Planning Board's decision to grant a special permit depends on the circumstances and conditions peculiar to each application.

C. The applicant may request a meeting to review an accessory dwelling unit plan before a formal filing of an application.

## § 410-2. Planning Board as special permit granting authority.

A. When the Planning Board acts as a special permit granting authority (SPGA), the SPGA shall consist of the five Planning Board members and the officers of the Planning Board shall fill the same positions with the SPGA as they occupy as Planning Board members. The Chairperson shall preside over all hearings, subject to the rules as stated herein, and shall decide all points of order unless overruled by a majority of the Planning Board in session at the time. The Chairperson shall appoint such committees as may be deemed necessary or desirable from time to time. The Chairperson shall handle all correspondence of the Planning Board, the sending of all notices required by law and the rules and orders of the Planning Board and shall receive and scrutinize all petitions and applications for compliance with the rules of the Planning Board.

B. A quorum for the purpose of conducting public hearings shall consist of four members.

C. Hearings of the Planning Board shall be held at the time and place specified in the hearing notice.

## § 410-3. Submission requirements.

A. The applicant shall submit 10 copies of "Application for Accessory Dwelling Unit Special Permit."

B. Ten copies, no less than 11 inches by 17 inches, showing the proposed interior and exterior changes. Plan should show all room dimensions. Plan to show that the accessory dwelling unit is a complete and separate housekeeping unit. Any new outside entrance shall be located on the side or rear of the

**91. Editor's Note: The Schedule of Use Regulations is included as an attachment to Ch. 250, Zoning.**

building.

C. Parking plan showing at least one additional parking space along with the requirements of Chapter 250, Zoning, § 5.3.2, of the Zoning Bylaw.

D. An Assessor's certified list of names of all abutters and owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list.

E. A notarized letter stating that the owner will occupy one of the dwelling units on the premises.

F. The applicant must provide documentation, endorsed by the Board of Health or its Agent, that the proposed accessory apartment conforms with all state and Town health and sewage disposal regulations.

G. Additional information may be requested from the applicant by the Planning Board.

## § 410-4. Procedures.

The following steps are required by MGL c. 40A, § 9 for the issuance of a special permit:

A. The applicant must file the application with the Town Clerk (the date of such filing is hereafter referred to as the "filing date");

B. The applicant must file a copy of the application (showing the date and time of filing as certified by the Town Clerk) with the Planning Board;

C. The Planning Board must post a notice of public hearing; have the notice published in the newspaper; and mail the notice to parties in interest as defined by MGL c. 40A, § 11;

D. The Planning Board shall request recommendations from the Fire Department, Conservation Commission, Building Inspector, Board of Health, DPW Director and the Historical Commission (Village Center Zoning District only).

E. The Planning Board must hold a public hearing within 65 days from the date of filing of the application with the Town Clerk, unless the applicant and the Planning Board agree in writing to an extension;

F. Within 90 days after the close of the public hearing, the Planning Board must make a decision, file it with the Town Clerk, and notify the parties in interest;

G. If the permit is granted, the applicant must record it at the Registry of Deeds. (See § 410-10.)

## § 410-5. Fees and charges.

All Planning Board fees are nonrefundable filing fees to cover the cost of processing applications. All expenses for advertising, abutter notices, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The Board, at its discretion, may waive certain fees. The Fee Schedule is available in the Land Use Office.[92]

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**92. Editor's Note: See Ch. 427, Fees.**

### § 410-6. Public hearing.

A. The Planning Board must hold a public hearing within 65 days of the filing date unless the applicant and the Planning Board agree in writing to an extension. A copy of any written extension agreement must be filed with the Town Clerk.

B. The Planning Board must mail notices of public hearing to the applicant and all parties in interest and must publish the first newspaper notice at least 14 days before the hearing.

### § 410-7. Decision.

A. The Planning Board must make its decision on the special permit within 90 days of the close of the public hearing or within such extension of time as may have been agreed in writing between the applicant and the Board. A decision to grant a special permit requires four out of five votes in favor of the grant.

B. The Planning Board must:

(1) File with the Town Clerk a copy of its decision, including a detailed record of its proceedings;

(2) Promptly mail a copy of its decision to the applicant; and

(3) Promptly mail notices of decision to the parties in interest and to the Town departments.

C. The date of filing of the decision is the date when the decision of the Planning Board has been filed with the Town Clerk.

D. If the Planning Board fails to make a decision within 90 days of the close of the public hearing or within such extension of time as may have been agreed upon in writing between the applicant and the Board, the special permit shall be deemed to have been granted (MGL c. 40A, § 9).

### § 410-8. Appeal period.

Any person aggrieved by the special permit decision may file an appeal. The appeal period lasts 20 days from the date of filing of the decision. Notices of any appeal made to the Superior Court or Land Court must be received by the Town Clerk within those 20 days (MGL c. 40A, § 17).

### § 410-9. Lapse of special permit.

A. Failure to record the special permit, covenants, agreements, easements and all documents associated with the approval within 60 days of the completion of the appeal period shall cause the special permit to lapse unless approval has been extended by the Board and said extension filed in the Town Clerk's office.

B. The rights granted by the special permit shall lapse if they are not exercised within two years of either of the following:

(1) The expiration of the appeals period; or

(2) If appeal has been taken from the decision to grant the special permit, the date on which the court has dismissed or denied such appeal.

### § 410-10. Conditions prior to construction.

Conditions necessary before the special permit is effective:

A. The appeal period has elapsed without appeal, or, if appealed, the court has dismissed or denied the appeal;

B. The special permit and covenants, agreements and easements must be recorded by the applicant in the Northern Worcester County Registry of Deeds ("Registry"). Proof of recording must be submitted to the Planning Board;

> **NOTE:** The copy of the special permit to be recorded must bear the certification of the Town Clerk that the appeal period has elapsed (MGL c. 40A, § 11). A separate certification prepared by the Town Clerk shall meet this requirement.

### § 410-11. Amendments to special permit.

Submission requirements for requests to amend a special permit are the same as for the original application for a special permit.

### § 410-12. Administration.

A. Waivers. A waiver of strict compliance from these Rules and Regulations and/or Article XIX of the Zoning Bylaw may be granted if the Planning Board determines that such a waiver is in the public interest and not inconsistent with the Zoning Bylaw. All requests shall identify the provision or provisions of the regulations from which relief is sought. The request shall also include a statement explaining why the applicant thinks that granting a waiver would be in the public interest and not inconsistent with the purpose and intent of these rules and regulations and the Zoning Bylaw.

B. Amendments. These Rules and Regulations may be amended by a majority vote of the Planning Board at a regularly scheduled meeting after a public hearing duly advertised once in a paper of general circulation no less than seven days prior to the date of the public hearing.

C. Validity. The validity of any section or provision of these rules and regulations shall not invalidate any other section or provision thereof.

D. Effective date. The effective date of any amendment shall be the date such amendments are filed with the Town Clerk.

# Chapter 418

# COMMON DRIVEWAYS

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 9-2004; as amended 9-14-2006. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**

**Zoning Bylaw: Common Driveways — See Ch. 250, Sec. 5.11.**

## § 418-1. Findings and intent.

A. In the Town of Ashburnham, up to three lots may share a single driveway. However, in order to construct a driveway which will serve more than one lot, you must obtain a special permit from the Planning Board. See Chapter 250, Section 5.11, of the Ashburnham Zoning Bylaw.

B. The Planning Board's decision to grant a special permit depends on the circumstances and conditions peculiar to each application. Since the construction and maintenance of a common driveway is not an obligation of the Town of Ashburnham, but rather a private matter among those served by the driveway, the Planning Board, by means of the special permit granting process, attempts to see that all lots served by the driveway are provided both with safe and convenient access so as to secure safety in case of fire, flood, panic and other emergencies and with a legally enforceable vehicle by which such access may be maintained by the private parties thereto in the future. The decision of the Planning Board will be based upon what it considers to be the best interests of the neighborhood and the Town in general. To this end, it shall be incumbent upon the petitioner to show that the construction and use of the common driveway represent the best plan for the provision of adequate access for emergency vehicles, safety of the approach to the public way, development of the land, preservation of the natural environment, drainage and maintenance of neighborhood character.

C. The applicant may request a meeting to review a conceptual common driveway plan before a formal filing of a common driveway application.

## § 418-2. Planning Board as special permit granting authority.

A. When the Planning Board acts as a special permit granting authority (SPGA), the SPGA shall consist of the five Planning Board members and the officers of the Planning Board shall fill the same positions with the SPGA as they occupy as Planning Board members. The Chairperson shall preside over all hearings, subject to the rules as stated herein, and shall decide all points of order unless overruled by a majority of the Planning Board in session at the time. The Chairperson shall appoint such committees as may be deemed necessary or desirable from time to time. The Chairperson shall handle all correspondence of the Planning Board, the sending of all notices required by law and the rules and orders of the Planning Board and shall receive and scrutinize all petitions and applications for compliance with the rules of the Planning Board.

B. A quorum for the purpose of conducting public hearings shall consist of four members.

C. Hearings of the Planning Board shall be held at the time and place specified in the hearing notice.

## § 418-3. Coordination of submission and review of other permits issued by Planning Board.

A. Submission of concurrent applications. If approval under the MGL c. 41, §§ 81A-81GG (Subdivision Control Law) or any other special permits are required from the Board for the proposed development project, it is strongly advised that the applicant submit the applications for these additional permits concurrently with the application for a common driveway special permit.

B. Coordination of review of special permits.

(1) If the lots served by the proposed common driveway require the filing of an application for a major residential development special permit pursuant to § 5.15 of the Ashburnham Zoning Bylaw,[93] as may be amended from time to time, a number of the requirements of these rules and regulations may be waived in view of equivalent information required to be submitted with the major residential development special permit application. In this case, the applicant may combine the required information and plans for the shared driveway with the proposed major residential development plans, provided that all information required as part of these rules and regulations is included.

(2) The applicant shall provide a written statement demonstrating that all the information required for a common driveway special permit is included in the major residential development application. The application fee for the common driveway special permit will be as required, unless otherwise authorized by the Board.

C. Coordination of review of definitive subdivision plan. If the lots served by the proposed common driveway require the filing of a definitive subdivision plan under MGL c. 41, §§ 81A-81GG (Subdivision Control Law) and the Ashburnham Subdivision Rules and Regulations,[94] a number of the requirements of these rules and regulations may be waived in view of equivalent information required to be submitted with the definitive subdivision plan application. The applicant shall provide a written statement demonstrating that all the information required for a common driveway special permit is included in the definitive subdivision plan application. The application fee for the common driveway special permit will be as required, unless otherwise authorized by the Board.

## § 418-4. Procedures.

The following steps are required by MGL c. 40A, § 9 for the issuance of a special permit:

A. The applicant must file the application with the Town Clerk (the date of such filing is hereafter referred to as the "filing date");

B. The applicant must file a copy of the application (showing the date and time of filing as certified by the Town Clerk) with the Planning Board;

C. The Planning Board must post a notice of public hearing; have the notice published in the newspaper; and mail the notice to parties in interest as defined by MGL c. 40A, § 11;

D. The Planning Board shall request recommendations from the Fire Department, Police Department, Historical Commission, Highway Department, Conservation Commission, and Town Engineer;

E. The Planning Board must hold a public hearing within 65 days from the date of filing of the

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**93. Editor's Note: Original Sec. 5.15, Major Residential Development (MRD), of the Zoning Bylaw was repealed 5-5-2012 ATM, AG approved 8-30-2012.**

**94. Editor's Note: See Ch. 475, Subdivision of Land.**

application with the Town Clerk, unless the applicant and the Planning Board agree in writing to an extension;

F. Within 90 days after the close of the public hearing, the Planning Board must make a decision, file it with the Town Clerk, and notify the parties in interest;

G. If the permit is granted, the applicant must record it at the Registry of Deeds. (See § 418-11.)

**§ 418-5. Submission requirements.**

A. The applicant shall submit seven copies of an "Application for Common Driveway."

B. Two copies, 24 inches by 36 inches, and 13 copies, 11 inches by 17 inches, of a site plan prepared by a professional engineer or land surveyor, licensed in the State of Massachusetts, containing the following information:

(1) A locus plan at a scale of one inch equals 500 feet;

(2) The project name, North arrow, date, and scale; name of record owner and applicant; engineer name and proper seals of registration; and abutters to the proposal;

(3) All lots to be served by the common driveway, including the existing and proposed topography; the location of proposed houses, septic systems and wells; location of utilities and any proposed drainage structures;

(4) Location of the common driveway with slope and elevation information;

(5) Location of any wetlands as defined by the Ashburnham Conservation Commission;

(6) A driveway cross section showing construction and subsurface materials and width of shoulders;

(7) Location of all stone walls and large trees which will be affected by the common driveway;

(8) Sight distances which meet current AASHTO Standards for the existing speed limit of the way intersecting with the common driveway;

(9) Location, type and drawings of all signage required by Chapter 250, § 5.11.3D, of the Ashburnham Zoning Bylaw shall be shown on the plan.

C. Driveway permit application per Ashburnham General Bylaws, Chapter 196, § 196-1.

D. A scenic road application if the common driveway requires the removal of stonewalls or public shade trees. See MGL c. 40, § 15C and Town of Ashburnham Scenic Road Rules and Regulations.[95]

E. Drainage calculations certified by the engineer who prepared them.

F. Copies of all proposed easements, covenants and agreements regarding the ownership and maintenance of the private common driveway.

G. A certified list of names of all abutters and owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list.

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**95. Editor's Note: See Ch. 471, Scenic Roads.**

H. A letter of consent from the property owner if different from the applicant.

I. All common driveway applications require engineering review. Engineer to be specified by the Planning Board and fees to be borne by the applicant.

J. Common driveway shall be staked at 100-foot intervals along the center line of the proposed common driveway.

K. Additional information may be requested from the applicant by the Planning Board.

### § 418-6. Fees and charges.

All Planning Board fees are nonrefundable filing fees to cover the cost of processing applications. All expenses for advertising, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The Board, at its discretion, may waive certain fees. The Fee Schedule is available in the Land Use Office.[96]

### § 418-7. Public hearing.

A. The Planning Board must hold a public hearing within 65 days of the filing date unless the applicant and the Planning Board agree in writing to an extension. A copy of any written extension agreement must be filed with the Town Clerk.

B. The Planning Board must mail notices of public hearing to the applicant and all parties in interest and must publish the first newspaper notice at least 14 days before the hearing.

### § 418-8. Decision.

A. The Planning Board must make its decision on the special permit within 90 days of the close of the public hearing or within such extension of time as may have been agreed in writing between the applicant and the Board. A decision to grant a special permit requires four out of five votes in favor of the grant.

B. The Planning Board must:

(1) File with the Town Clerk a copy of its decision, including a detailed record of its proceedings;

(2) Promptly mail a copy of its decision to the applicant; and

(3) Promptly mail notices of decision to the parties in interest and to the Town departments.

C. The date of filing of the decision is the date when the decision of the Planning Board has been filed with the Town Clerk.

D. If the Planning Board fails to make a decision within 90 days of the close of the public hearing or within such extension of time as may have been agreed upon in writing between the applicant and the Board, the special permit shall be deemed to have been granted (MGL c. 40A, § 9).

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**96. Editor's Note: See Ch. 427, Fees.**

### § 418-9. Appeal period.

Any person aggrieved by the special permit decision may file an appeal. The appeal period lasts 20 days from the date of filing of the decision. Notices of any appeal made to the Superior Court or Land Court must be received by the Town Clerk within those 20 days (MGL c. 40A, § 17).

### § 418-10. Lapse of special permit.

A. Failure to record the special permit, covenants, agreements, easements and all documents associated with the approval within 60 days of the completion of the appeal period shall cause the special permit to lapse unless approval has been extended by the Board and said extension filed in the Town Clerk's office.

B. The rights granted by the special permit shall lapse if they are not exercised within two years of either of the following:

(1) The expiration of the appeals period; or

(2) If appeal has been taken from the decision to grant the special permit, the date on which the court has dismissed or denied such appeal.

### § 418-11. Conditions prior to construction.

Conditions necessary before the special permit is effective:

A. The appeal period has elapsed without appeal, or, if appealed, the court has dismissed or denied the appeal;

B. The special permit and covenants, agreements and easements must be recorded by the applicant in the Northern Worcester County Registry of Deeds ("Registry"). Proof of recording must be submitted to the Planning Board;

C. The Board may require that a performance guarantee be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized by a permit issued by the Board pursuant to these rules and regulations. The form of the performance guarantee shall be generally as required in the Town of Ashburnham Subdivision Rules and Regulations, § 475-3.28, Performance Guarantee.

**NOTE:** The copy of the special permit to be recorded must bear the certification of the Town Clerk that the appeal period has elapsed (MGL c. 40A, § 11). A separate certification prepared by the Town Clerk shall meet this requirement.

### § 418-12. Amendments to special permit.

Submission requirements for requests to amend a special permit are the same as for the original application for a special permit.

### § 418-13. Common driveway restrictive covenants and easements.

An application for a common driveway special permit shall include a draft document providing for restrictive covenants and easements binding present and future owners of all lots served by the shared driveway, which must be reviewed and approved by the Planning Board. If the application for a common

driveway special permit is approved, the final document(s) shall be recorded at the Worcester North County Registry of Deeds and shall also be recited in and attached to every deed to every lot served by the shared driveway. Such document(s) must include the following information:

A. The right to use in common the driveway for all purposes for which private driveways are customarily used, including the right to install, maintain, and repair drains, culvert and underground utilities in, along, under and across the driveway;

B. The obligation of repair, maintenance and snow removal so as to cause the driveway (including the drains and culverts) to be repaired and maintained and snow to be removed therefrom in such a manner as to insure continuous year-round access to each lot by fire, police, ambulance/rescue and other vehicles. In appropriate cases, the maintenance agreement might provide for the clearing of brush and foliage that obstructs vision;

C. The right of each and every owner of the lots served by a common driveway to enforce the obligations to repair and maintain the common driveway so as to provide to all lots safe and convenient access by fire, police, ambulance/rescue, moving, construction and maintenance vehicles;

D. A clear expression of construction specifications so that the initial condition and intended maintained condition of the common driveway are understood by all present and future owners of the lots served;

E. A clear expression that the Town of Ashburnham, under no circumstances, shall now or in the future be held liable for construction, reconstruction, repairs or snow removal on private common driveways;

F. A procedure for the resolution of disagreements.

### § 418-14. Construction standards.

A. All private/common driveways shall meet the construction standards in Chapter 250, Section 5.11, of the Ashburnham Zoning Bylaw.

B. Drainage requirements. Because drainage at the point of intersection between the common driveway and the public way is a concern, the applicant should demonstrate that the proposed driveway does not exacerbate existing drainage problems or create new ones. The Board may require the installation of culverts or drains. It is recommended that the applicant consult with the Town's Highway Department to review any proposed drainage.

C. Failure to construct the common driveway in accordance with the plan approved by the Planning Board and with the conditions of the special permit, if any, may result in revocation of the special permit and the imposition of fines for continuing violation of the Zoning Bylaw.

D. A sign with the following wording "Common Driveway Permit # _____" shall be posted at the driveway entrance prior to construction. Sign size to be no less than 18 inches by 18 inches with contrasting background.

### § 418-15. Inspections.

All common driveways require inspection for completeness by the Town Engineer (PB Consulting Engineer) and the Planning Board prior to issuance of an occupancy permit.

### § 418-16. As-built-plans.

As-built-plans prepared and certified by a registered engineer shall be submitted to the Board prior to issuance of an occupancy permit.

### § 418-17. Administration.

A. Waivers. A waiver of strict compliance from these rules and regulations may be granted if the Planning Board determines that such a waiver is in the public interest and not inconsistent with the Zoning Bylaw.[97] All requests shall identify the provision or provisions of the regulations from which relief is sought. The request shall also include a statement explaining why the applicant thinks that granting a waiver would be in the public interest and not inconsistent with the purpose and intent of these rules and regulations and the Zoning Bylaw.

B. Amendments. These rules and regulations may be amended by a majority vote of the Planning Board at a regularly scheduled meeting after a public hearing duly advertised once in a paper of general circulation no less than seven days prior to the date of the public hearing.

C. Validity. The validity of any section or provision of these rules and regulations shall not invalidate any other section or provision thereof.

D. Effective date. The effective date of any amendment shall be the date such amendments are filed with the Town Clerk.

**97. Editor's Note: See Ch. 250, Zoning.**

# Chapter 427

# FEES

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 9-14-2006. Amendments noted where applicable.]**

## § 427-1. Purpose and intent.

These regulations and fee schedules have been adopted to produce a more equitable schedule of fees which more accurately reflects the costs of technical and legal review of applications to the Planning Board; to take advantage of the procedures offered by MGL c. 44, § 53G; to establish a review procedure in the selection of consultants; and to promote more informed decision-making by the Planning Board. This document, subject to revision from time to time in a manner spelled out herein, constitutes the Planning Board's rules governing the imposition of fees and its current fee schedules.

## § 427-2. Fee structures and regulations.

The Planning Board shall impose reasonable fees for the review of applications which come before it. The Planning Board may impose administrative fees and project review fees as may be applicable to the types of applications set forth below.

## § 427-3. Administrative fees.

A. Applicability. An administrative fee shall be assessed to offset the expense of review by the Planning Board and its office with regard to all applications set forth in Subsection C below.

B. Submittal. Administrative fees shall be submitted at the time of the submittal of the application. Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

C. Schedule of administrative fees. The following schedule applies to the types of applications to the Planning Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the Rules and Regulations for the Subdivision of Land,[98] and any listings which may have been compiled from time to time for the benefit of applicants. **[Amended 12-27-2007]**

(1) Approval not required (ANR) plans:

(a) One new lot or marked to be made part of an existing lot: $50.

(b) For plan of two or more lots: $100 plus $100 per lot.

(2) Preliminary subdivision plan: $500.

(3) Definitive subdivision plan: $2,000 + $100 per lot ($500 credit if preliminary plan submitted and approved).

(4) Open space residential development (OSRD) special permit:

(a) No definitive plan submitted in conjunction with OSRD: $500 + $50 per lot.

(b) If submitted in conjunction with an OSRD: $500 + definitive plan fee.

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**98. Editor's Note: See Ch. 475, Subdivision of Land.**

(5) Modification to approved plan:

(a) Definitive plan (minor modification): $50.

(b) Definitive plan (major modification): $250.

(c) OSRD (minor modification): $50.

(d) OSRD (major modification): $250.

(6) Request for extension of time to complete road: $200.

(7) Request for covenant release: $100 per request.

(8) Site plan review:

(a) Existing construction (minor): $50.

(b) New construction (major): $200.

(9) Site plan modification: $50.

(10) Scenic road hearing: $100.

(11) Common driveway special permit: $200.

(12) Accessory dwelling special permit: $50.

(13) LID applications. **[Amended 5-8-2008]**

(a) Simplified LID application: $100.

(b) Simplified LID engineering review: $100/lot.

(14) Special permit not otherwise specified: $100. **[Amended 12-8-2011]**

D. Fee waivers. The Planning Board may waive or reduce any administrative fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.

E. Refund. Once the review process has been commenced, the Planning Board shall not refund administrative fees, including in the case of withdrawal of the application by the applicant.

**§ 427-4. Project review fees.**

A. Applicability. In addition to an administrative fee, the Planning Board shall impose a project review fee on those applications which require, in the judgment of the Planning Board, review by outside consultants due to the size, scale or complexity of a proposed project, the project's potential impacts, or because the Town lacks the necessary expertise to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, ordinances, bylaws and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulations, or inspecting a project during construction or implementation.

B. Submittal. Project review fees shall be submitted at the time of the submittal of the application for deposit in an account established pursuant to MGL c. 44, § 53G (53G Account). Any application filed

without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

C. Schedule of project review fees. The following schedule applies to the types of applications to the Planning Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the Rules and Regulations for the Subdivision of Land,[99] and any listings which may have been compiled from time to time for the benefit of applicants. Where more than one type of application has been submitted for Planning Board action, only the largest of the applicable project review fees shall be collected for deposit into the 53G Account, and not the sum of those fees.

(1) Definitive plan/open space residential development:

| Project Size | Fee |
|---|---|
| 2 to 15 Lots/Units | $4,000 |
| 16 to 20 Lots/Units | $6,000 |
| 21 to 25 Lots/Units | $10,000 |
| More than 25 Lots/Units | $15,000 |

(2) Performance guarantee cost calculations: $1,500.

(3) Common driveway special permit: $2,000.

(4) Site plan review: $1,000.

Type and extent of work to be completed may dictate a review fee more than indicated above.

Initial project review fees are to be submitted with application and administrative fees.

The exact fee will be determined after consultation with the Town Engineer (PB Consulting Engineer).

Additional project review fees may be required after consultation with the Town Engineer (PB Consulting Engineer).

D. Waivers. The Planning Board may waive or reduce any project review fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.

E. Replenishment. When the balance in an applicant's 53G Account falls below 25% of the initial project review fee, as imposed above, the Planning Board shall require a supplemental project review fee to cover the cost of the remaining project review.

F. Inspection phase.

(1) After the granting of a special permit, site plan review or definitive plan approval, the Planning Board shall require an inspectional review fee for the purpose of ensuring the availability of funds during the inspection phase of the review process.

(2) Normal inspections covered by inspection phase are outlined in § 475-7.4 of the Planning Board Subdivision Regulations for roadways in subdivisions and for roadways, drainage and parking

**99. Editor's Note: See Ch. 475, Subdivision of Land.**

areas for site plan projects, as well as other site development, exclusive of buildings, as required by the Planning Board for special permit projects. Inspection fees to be determined by the Town Engineer (PB Consulting Engineer) and a "Scope of Inspections" must be submitted prior to start of any work. Inspection fees for projects submitted under a phasing schedule may be calculated and submitted for each phase.

(3) A reinspection fee will be charged for additional inspections beyond those listed above that are made necessary due to unsatisfactory materials or construction that leads to a failure to pass the original inspection.

(4) Inspection fees specified above shall be submitted to the Board within 20 calendar days following the approval of any special permit and/or definitive subdivision plan and prior to the Board's endorsement of any subdivision plan or special permit decision.

(5) Any reinspection fees due shall be submitted prior to the release of any roadway covenant or performance bond for road construction or other facilities covered by a subdivision or special permit approval.

G. Handling of project review and inspectional fees.

(1) Pursuant to the provisions of MGL c. 44, § 53G, the Planning Board may impose reasonable fees for the employment of outside consultants to review preliminary or definitive subdivision applications submitted for approval by the Board. The decision to seek consultant assistance, the selection of a consultant, the establishment of a consultant fee or fee schedule and any request to the applicant for payment shall be made by majority vote of the Board at a public meeting.

(2) Said funds shall be paid by the applicant within 20 calendar days of a request by the Board for payment and shall be deposited in a special account established by the Town Treasurer and be kept separate and apart from other monies. Failure to pay the required fees may be considered grounds for disapproval of the application.

(3) Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. Standard Town accounting and reporting procedures relative to special accounts and consistent with the provisions of MGL c. 44, § 53G shall be followed. The special account, including any accrued interest, shall be expended at the direction of the Planning Board without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Subjects for which consultant assistance may be sought may include, but are not limited to, water quality impacts of a project, stormwater management systems, wastewater collection and treatment systems, traffic and transportation impacts, mitigation and facilities, including bicycle and pedestrian facilities, public safety, site design, wetlands delineation or other subjects relevant to the proposed project and its impacts on neighboring properties, the Town or adjacent towns. Such assistance may be sought either to develop original information and reports to the Board, or to review plans, reports and other information submitted on behalf of an applicant.

(4) Selection of any consultant will be by the Board, in conformance with any applicable General Laws or regulations of the commonwealth, and may include use of consultants retained on a continuing basis by the Board.

(5) Any applicant may file an administrative appeal from the Board's choice of consultant to the Board of Selectmen. Grounds for administrative appeal from the selection of the outside consultant to the Board of Selectmen shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications, consisting either of an educational degree in or related to the field at issue, or three or more years of practice in the field at issue or a related field.

(6) The required time limits for action upon an application by the Planning Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by Board of Selectmen within one month following the filing of the appeal, the selection made by the Planning Board shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in MGL c. 44, § 53G.

**§ 427-5. Off-site inspection fees.**

A. If an approved definitive subdivision plan requires the construction of new infrastructure or the modification of existing infrastructure that extends beyond the ownership limits of the development (e.g., off-site improvements), the Planning Board may, at its discretion (or at the request of the Town Engineer), engage the services of a qualified consultant to inspect the construction of the improvements. Examples of off-site improvements would include, but are not necessarily limited to:

(1) Extensions or improvements to sewer or water main piping systems.

(2) Construction or modification to off-site pumping facilities.

(3) Extensions or improvements to existing drainage systems.

(4) Improvements to existing streets, such as reconstruction, widening, repaving, or signalization. Extensions or connections of sidewalks.

B. Fees for off-site inspections shall be in addition to the "inspection fees" listed above for subdivisions, and will be established on a case-by-case basis, depending upon the type of work involved and the level of inspection determined to be warranted by the Planning Board. Funding for off-site inspections shall be as provided for herein and in accordance with MGL c. 44, § 53G.

**§ 427-6. Revision of fee schedules and regulations governing fees.**

A. The Planning Board may review and revise its regulations and fee schedules, from time to time, as it sees fit.

B. Any new regulations or alterations to the fee schedule shall take effect upon filing a copy of the amendments with the Town Clerk.

C. Appendix A - MGL c. 44, § 53G.

# Chapter 436

# HOUSE NUMBERING

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 1-12-2006. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Building Numbering General Bylaw — See Ch. 117, Art. IV.**

## § 436-1. Authorization.

Authorized under the Town of Ashburnham General Bylaws[100] and MGL c. 148, § 59, the Ashburnham Planning Board adopts the following regulations on street numbering in the Town of Ashburnham effective January 12, 2006.

## § 436-2. Purpose.

The standards and regulations set forth within the provisions of the bylaw and these regulations shall have the purpose and effect of promoting the general health, safety, welfare and convenience of the inhabitants of the Town of Ashburnham by reducing the difficulty in responding to individual residences in cases of police, fire, medical or other emergency situations requiring immediate location and response; by facilitating the delivery efforts of the United States Postal Service through the creation of a numbering system for all delivery locations; by decreasing the potential for traffic accidents caused by motorists searching for address locations; by improving local census data gathering capabilities; by improving the accuracy of important legal documents requiring address location information; and by assisting the planning efforts of a growing community.

## § 436-3. Numbering system (40-foot rule).

The numbers shall be assigned by the following method:

A. The street numbering system shall begin at the Town Hall and extend out with the odd numbers assigned to the left side and even numbers to the right side of the street, except Main Street, which shall retain its current number system.

B. Number assignment shall be based on forty-foot (40 feet) intervals along the street starting at the beginning of the street.

C. The front door of the building shall be the key for determining the building's number. If the structure is lacking a front door, then the center of the foundation shall be used. If the building is not visible from the street, then the driveway shall determine the building number.

D. Multifamily houses shall have each unit designated alphabetically; Unit A starting on the left when units are horizontal and on the first floor when units are vertical.

**100.Editor's Note: See Ch. 117, Art. IV, Numbering of Buildings.**

### § 436-4. Compliance.

A. All dwellings, public buildings, businesses and structures used as a place of business or gathering shall be identified by their properly assigned street number (as assigned by the Town of Ashburnham) in a position easily observed from the street on a year-round basis. It is the responsibility of each property owner to obtain their correct street number from the Land Use Office in the Ashburnham Town Hall.

B. Under no circumstances should a street number, other than that which is properly assigned, be displayed. New structures must have their number displayed at the time the building permit is issued (see "New structures" below).

(1) New structures. Upon application for a building permit for a residence or other structure, it shall be the responsibility of the applicant and/or developer to procure an assigned number or numbers from the Land Use Office. A temporary house number sign shall be installed at the end of the driveway upon issuance of the building permit. Lot numbers are not acceptable and shall not be used.

(2) New subdivisions and approval not required plans. A prospective subdivider shall show the proposed lot numbering system on all plans submitted to the Planning Board. The lot numbering shall meet the requirements of the Planning Board's rules and regulations and guidelines provided herein.

### § 436-5. Sign specifications.

The size, color, location, style and visibility of numbers shall be as follows:

A. The minimum height of such number shall be three inches.

B. In order to provide sufficient visibility from the street, the number shall be of a color so as to clearly contrast with its background.

C. The numbers shall be affixed as closely as possible to the front door of the house, either upon the structure or upon a post or similar support, and at a height readily visible from the street.

D. In cases where a house, business or structure is not visible from the street, or the distance is greater than 50 feet from the street, a sign, no larger than 12 inches by 12 inches, with numbers not less than three inches in height, shall be posted at the street end of the driveway, and on the same side of the street, in such a way as to be seen by emergency vehicles approaching from either direction. This sign may be substituted by numbers not less than three inches in height on both sides of the mailbox only if the mailbox is located at the end of the appropriate driveway. Mailbox may be located on opposite side of street from driveway.

E. Common or shared driveways.

(1) In cases where more than one house, business or structure shares a common or shared driveway, a sign shall be posted at the street end of the driveway on the same side of the street in such a way as to easily be seen by emergency vehicles approaching from either direction. This sign shall designate the range of numbers which the driveway serves.

(2) This sign may not exceed the twelve-inch by twelve-inch dimension in order to accommodate the full set of numbers in a way easily seen from emergency vehicles. The numbers shall not be less than three inches in height. Each driveway branching off of the common or shared

driveway, and all subsequent branching, must have additional sign(s), dimensioned and visible as outlined above, at that immediate junction indicating which number(s) are served by that driveway.

F. Numbers placed on signs must be placed at a height of not less than four feet from ground level and not exceed six feet from ground level. Signs on posts must be kept clear of brush, snow and other obstacles that would limit visibility of said sign by emergency vehicles.

### § 436-6. Enforcement.

Enforcement of these regulations is contained in the Ashburnham General Bylaws.

# Chapter 449

# LOW-IMPACT DEVELOPMENT

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 5-8-2008. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Low-Impact Development Bylaw — See Ch. 167.**

ARTICLE I
**Regulations**

## § 449-1. Purpose.

The purpose of these Simplified Low-Impact Development (LID) Regulations is to protect the public health, safety, environment, and general welfare by establishing requirements and procedures for new development and redevelopment to prevent water pollution and maintain groundwater recharge as provided by the Low-Impact Development Bylaw of the Town of Ashburnham.[101] The purpose of the Simplified LID Permit is to streamline the permitting process under the LID Bylaw by eliminating many of the standard requirements for minor residential projects.

## § 449-2. Definitions.

Definitions are in Article II of these regulations and shall apply to issuance of a Simplified LID Permit established by the Town of Ashburnham LID Bylaw and implemented through these Low-Impact Development Simplified Regulations. Terms not defined in Article II shall be understood according to their customary and usual meaning.

## § 449-3. Authority.

A. These Simplified Regulations have been adopted by the Planning Board acting as the LID Authority in accordance with the Town of Ashburnham LID Bylaw.

B. These Simplified Regulations are adopted to administer the LID Bylaw and do not replace the requirements of the Town of Ashburnham Wetlands Protection Bylaw,[102] Open Space Residential Development Bylaw[103] or any rules and regulations adopted thereunder.

C. These Simplified LID Regulations may be periodically amended by the LID Authority in accordance with the procedures outlined in § 167-6 of the Town of Ashburnham LID Bylaw.

## § 449-4. Administration.

A. The Planning Board, acting as the LID Authority, shall administer, implement and enforce these Simplified LID Regulations. The Planning Board shall solicit comments on applications filed for a LID Permit from various Town boards and departments. The boards and departments shall include the Conservation Commission, Board of Health, Department of Public Works and the Zoning Board of Appeals.

   (1) Town boards, including the Conservation Commission, Zoning Board of Appeals, Department of Public Works, and the Board of Health, who have formally adopted these regulations, either directly or by reference, shall have approval authority under these Simplified LID Regulations.

   (2) Each approving board or department must forward written comments, documentation of said approval and recommended conditions of approval to the LID Authority within 14 days of said approval. Upon receipt of written approval from the Conservation Commission, Zoning Board of Appeals, Department of Public Works, or Board of Health, the Planning Board shall issue a Simplified LID Permit to the applicant within 21 days.

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**101. Editor's Note: See Ch. 167, Low-Impact Development.**

**102. Editor's Note: See Ch. 230, Wetlands Protection, and the regulations found in Ch. 400.**

**103. Editor's Note: See Ch. 250, Sec. 5.10, Open Space Residential Development; and the regulations found in Ch. 458.**

B. Projects or activities approved by the LID Authority shall be deemed in compliance with the intent and provisions of these Simplified LID Regulations.

### § 449-5. Simplified LID Permit applicability.

These Simplified LID Regulations shall apply to subdivision applications where approval is not required under the Subdivision Control Law and the construction of a deck, patio, addition, garage, retaining wall, driveway expansion, accessory building, shed, swimming pool, tennis or basketball court associated with an existing single-family dwelling for which resulting runoff discharges untreated into a resource area. The applicant may request an exemption from the LID permitting process by filing a written request and describing the scope and size of the project in a narrative form.

### § 449-6. Permit procedures and requirements.

A. Projects requiring a Simplified LID Permit shall submit the materials specified in this section, and meet the Simplified LID criteria as specified in § 449-7.

B. Simplified LID Permit required.

(1) Applicants shall not receive any building, grading or land development permits without first meeting the requirements of these Simplified LID Regulations.

(2) The project shall begin within one year after issuance of the Simplified LID Permit. If the project does not begin within one year, the applicant may apply for a permit extension. A permit extension shall be granted unless the LID Authority finds that the approved Simplified LID Management Plan is inadequate, in which case the applicant shall submit a modified plan that requires approval prior to the commencement of land-disturbing activities.

C. Filing application.

(1) The applicant shall file with the LID Authority one original hard copy, along with 13 additional copies, and an electronic file of an application for a Simplified LID Permit. A permit must be issued prior to any site-altering activity. The permittee must be the owner of the site or its designee. Where any plan is submitted by an individual or agency other than the owner of the affected land, the applicant must provide an original letter from the owner authorizing the applicant to submit the plan with an original notarized signature. A copy of any purchase and sale agreement, along with evidence of the owner's rightful ownership of the land, such as a deed, must be submitted with all applications. Where the owner is a corporation, corporate documents must be submitted indicating who has signed authority to enter into agreements on behalf of the corporation. All applications shall include a municipal lien certificate, or similar document, indicating no outstanding taxes or assessments are due on the property.

(2) The Simplified LID Application package shall include:

(a) A completed application form and checklist with original signatures of all owners;

(b) A Simplified LID Management Plan and project description; of the 14 required Simplified LID Management Plan submissions, three shall be submitted as 24-inch by 36-inch sized plan copies as well as 11-inch by 17-inch sized plan copies.

(c) Payment of the application and review fee;

(d) Inspection and maintenance agreement.

D. Entry. Filing an application for a permit grants the LID Authority, or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with the resulting permit.

E. Application fees and expenses.[104]

(1) Administrative fees. All Planning Board fees are nonrefundable filing fees to cover the cost of processing applications. All expenses for advertising, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The Administrative Fee Schedule is available in the Land Use Office.

(2) Legal and engineering costs. Legal, engineering and other professional review costs of proposed plans and documents submitted during the consideration of a Simplified Low Impact Development Permit Application are the responsibility of the applicant. See Planning Board Regulations Governing Fees and Fee Schedule.

F. Public hearings. The LID Authority need not hold a public hearing to review an application for a Simplified LID Permit. However, if the LID application is submitted with another application such as a notice of intent or request for a variance that requires a public hearing, elements of the LID Plan may be discussed at the public hearing.

G. Actions. The LID Authority's action, rendered in writing, shall consist of either:

(1) Approval of the Simplified LID Permit Application based upon determination that the proposed plan meets the Standards in § 449-7 and is in compliance with the requirements in the LID Bylaw and Simplified Regulations;

(2) Approval of the Simplified LID Permit Application, subject to any conditions, modifications or restrictions required by the LID Authority;

(3) Disapproval of the Simplified LID Permit Application based upon a determination that the proposed plan, as submitted, does not meet the requirements for a Simplified LID Permit, but which may be resubmitted under the regular LID Regulations; or

(4) Disapproval of an application "without prejudice" where an applicant fails to provide requested additional information that in the LID Authority's opinion is needed to adequately describe the proposed project.

H. Failure of the LID Authority to take final action upon a completed application within 45 calendar days of receipt of a complete application shall be deemed to be approval of that application unless an extension of the time frame is granted by the applicant.

I. Plan changes. The permittee must notify the LID Authority in writing of any change in a LID Permit before any change or alteration is made. If the change or alteration is significant, the LID Authority may require that an amended application be filed.

J. Appeals of actions of the LID Authority. A decision of the LID Authority shall be final. A decision of the LID Authority shall be reviewable in the Superior Court by an appeal filed within 60 days of

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**104.Editor's Note: See Ch. 427, Fees.**

the decision in accordance with MGL c. 249, § 4. An appeal of a decision by a delegated Town board shall be conducted under the applicable appeal provisions of that board. An appeal shall result in revocation of the written approval until the appeal process has been resolved.

K. Project completion. The permittee shall submit a statement to the Land Use Office describing all stormwater controls, including all LID practices and techniques within or on an individual lot, and that all LID components were constructed in accordance with the approved plans.

L. Simplified LID Management Plan contents.

(1) The Simplified LID Management Plan submitted with the permit application shall contain sufficient information for the LID Authority to evaluate the environmental impact and effectiveness of the measures proposed for reducing adverse impacts from stormwater runoff. This plan shall comply with the criteria established in these Simplified Regulations and must be submitted with the stamp and signature of a registered professional engineer (PE) licensed in the Commonwealth of Massachusetts.

(2) The Simplified LID Management Plan shall fully describe the project in drawings, narrative, and calculations. It shall include:

(a) Contact information. The name, address and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected;

(b) A locus map;

(c) The existing zoning, and land use at the site;

(d) The proposed land use;

(e) The location(s) of existing and proposed easements;

(f) The location of existing and proposed utilities;

(g) The project's existing and proposed topography with contours at two-foot intervals; in areas where the slope is 2% or less, contours at a one-foot interval and spot elevations shall be used to clearly convey the topography.

(h) A description and delineation of existing stormwater conveyances, impoundments, and wetlands, water supply areas, swimming beaches or other environmental resources on or adjacent to the site into which stormwater flows;

(i) A delineation of one-hundred-year floodplains, if the floodplain does not exist on the site, a note stating such shall be added to the plan, and as information is available in the Land Use Office;

(j) Estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention, or infiltration;

(k) The existing and proposed vegetation and ground surfaces with runoff coefficients for each (See Article III for runoff coefficients.);

(l) Description and drawings of all components of the proposed LID Management system, including:

[1] All measures for the detention, retention or infiltration of water;

[2] Descriptions of nonstructural best management practices (BMPs);

[3] All measures for the protection of water quality;

[4] Proposed site plan, including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable;

[5] Any other information requested by the LID Authority.

(m) Soils information from test pits performed at the location of proposed LID management facilities, including soil descriptions, depth to seasonal high groundwater, depth to bedrock, and percolation rates. Soils information will be based on site test pits logged by a Massachusetts certified soil evaluator;

**NOTE:** Information required on a plan as part of the LID Application may be incorporated into plans submitted as part of another application.

M. Operation and maintenance of stormwater structures. All property owners are responsible for maintaining the proper operation of all permitted stormwater control features on their property.

## § 449-7. Performance objectives.

The objectives of the LID Permit program are to prevent and reduce existing and future stormwater flooding and stormwater pollution and to maintain the after-development runoff characteristics for development and redevelopment projects as equal to or less than the pre-development runoff characteristics to reduce stormwater flooding, stormwater pollution, stream bank erosion, siltation, property damage, and to maintain groundwater levels, the integrity of stream channels, surface water, terrestrial and aquatic habitats and to prevent degradation of the water resources of the Town. The LID Permit program also promotes the use of nonstructural or low-impact development techniques to accomplish the above-stated objectives.

## § 449-8. Waivers.

A. The LID Authority may waive strict compliance with these regulations if such action is allowed by federal, state and local statutes and/or regulations; is in the public interest; and is consistent with the purposes of the Town of Ashburnham LID Bylaw.

B. Any applicant may submit a written request for a waiver, accompanied by supporting information explaining how the waiver will comply with the purposes of the LID Bylaw.

## § 449-9. Construction inspections.

A. The applicant must notify the LID Authority at least three business days before starting a land-disturbing activity. The applicant must also notify the LID Authority at least three business days before constructing the key components of the stormwater management system.

B. At the discretion of the LID Authority, periodic inspections of the stormwater management system construction shall be conducted by the Town Engineer or its designee.

C. At a minimum, inspections shall include: initial site inspection, prior to approval of any plan; inspection of the stormwater management system prior to backfilling of any underground drainage or

stormwater conveyance structures; and a final inspection before issuance of a certificate of completion. A reasonable inspection fee may be charged to the applicant.

D. If at any time prior to the issuance of a certificate of completion the system is found to be inadequate due to operational failure, even though built according to the LID Management Plan, the system shall be corrected by the applicant. If the system does not comply with the plan, the applicant shall be notified in writing of the violation and the required corrective actions. A stop-work order shall be issued until any violations are corrected and all work previously completed has received approval by the LID Authority.

### § 449-10. Certificate of completion.

A. Upon completion, the applicant shall certify that the project is in accordance with plan specifications.

B. The LID Authority will issue a letter certifying completion within 30 days upon its receipt and a determination that all work was completed in conformance with these regulations.

### § 449-11. Perpetual inspection and maintenance.

A. Maintenance responsibility. Stormwater management facilities and practices shall be inspected to document maintenance and repair needs and ensure compliance with the requirements of the LID Management Plan and these regulations. The owner of the property shall maintain in good condition and promptly repair all grade surfaces, walls, drains, dams, vegetation, and erosion controls and other protective measures in accordance with approved plans.

B. Right-of-entry for inspection. An inspection agreement shall allow the LID Authority or its designee to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.

C. Failure to maintain. If a responsible person fails to meet the requirements of the maintenance agreement, the LID Authority may take action to restore the stormwater facility or practice after 30 days' written notice. If the violation is an immediate threat to public health or public safety, 24 hours' notice shall be sufficient prior to actions required to return the facility or practice to proper working condition. The LID Authority may assess the owner(s) of the facility for the cost of repair work, which shall be a lien on the property.

### § 449-12. Enforcement; violations and penalties; appeals.

A. The LID Authority or its designee shall enforce these regulations, and may pursue all remedies for violations, including a written enforcement order. If remediation is required, the order may set forth a deadline when work shall be completed. Said order may advise that failure to remedy violations may require the Town of Ashburnham to correct violations and to obtain reimbursement from the property owner. Within 30 days after correcting the violation, the violator and the property owner shall be notified of the costs incurred by the Town of Ashburnham, including administrative costs.

B. Any person who violates any provision of the Town of Ashburnham LID Bylaw, or any regulation or permit issued thereunder, may be ordered to correct the violation and/or shall be punished by a fine of not more than $150 for the first day of violation and $300 for each day thereafter. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

C. Appeals. The decisions or orders of the LID Authority may be appealed in Superior Court in an action filed within 60 days thereof, in accordance with MGL c. 249, § 4. The remedies described in these regulations do not exclude other remedies available under any applicable federal, state or local law.

### § 449-13. Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of these regulations shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

ARTICLE II
**Definitions**

**§ 449-14. Terms defined.**

ALTER — Any activity which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. "Alter" may be similarly represented as "alteration of drainage characteristics" and "conducting land disturbance activities."

APPLICANT — A property owner or agent of a property owner who has filed an application for a LID Permit.

BEST MANAGEMENT PRACTICE (BMP) — Structural, nonstructural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

BETTER SITE DESIGN — Site design approaches and techniques that can reduce a site's impact on the watershed through the use of nonstructural LID management practices. Better site design includes conserving and protecting natural areas and green space, reducing impervious cover, and using natural features for LID management.

CERTIFICATE OF COMPLETION (COC) — A document issued by the LID Authority after all construction activities have been completed which states that all conditions of an issued LID Permit have been met and that a project has been completed in compliance with the conditions set forth in a LID permit.

CONVEYANCE — Any structure or device, including pipes, drains, culverts, curb breaks, paved swales or man-made swales of all types designed or utilized to move or direct stormwater runoff or existing water flow.

DEVELOPER — A person who undertakes or proposes to undertake land disturbance activities.

DEVELOPMENT — The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBANCE OF LAND — Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material.

DRAINAGE EASEMENT — A legal right granted by a landowner to a grantee allowing the use of private land for LID management purposes.

EROSION CONTROL — The prevention or reduction of the movement of soil particles or rock fragments.

EROSION CONTROL PLAN — A plan that shows the location and construction detail(s) of the erosion and sediment reduction controls to be utilized for a construction site.

FLOOD CONTROL — The prevention or reduction of flooding and flood damage.

FLOODING — A local and temporary inundation or a rise in the surface of a body of water, such that it covers land not usually under water.

GRADING — Changing the level or shape of the ground surface.

GROUNDWATER — All water beneath any land surface, including water in the soil and bedrock beneath water bodies.

HOTSPOT — Land uses or activities with higher potential pollutant loadings, such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high-intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas.

IMPERVIOUS SURFACE — Any material or structure on or above the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved parking lots, sidewalks, rooftops, driveways, patios, and paved, gravel and compacted dirt surfaced roads.

INFILTRATION — The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

LID AUTHORITY — The Town of Ashburnham Planning Board has the authority to administer, implement, and enforce the LID Bylaws and Regulations. The Planning Board, or other Town boards or departments to which the Planning Board has delegated its authority under the LID Bylaw, is responsible for coordinating the review, approval and permit process as defined in these regulations. Other boards and/or departments participate in the review process as defined in § 167-6 of the LID Bylaw and § 449-4 of these Simplified LID Regulations.

LID MANAGEMENT — The use of structural or nonstructural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

LOW-IMPACT DEVELOPMENT PERMIT (LIDP) — A permit issued by the LID Authority for projects in the categories and meeting the standards defined in these regulations, after review of an application, plans, calculations, and other supporting documents. Projects in these categories that meet these generic standards and are properly implemented are assumed to meet the requirements and intent of these regulations which is designed to protect the environment of the Town of Ashburnham from the deleterious effects of uncontrolled and untreated stormwater runoff.

MASSACHUSETTS STORMWATER MANAGEMENT REGULATIONS — The regulations issued by the Department of Environmental Protection, and as amended, that coordinate the requirements prescribed by state laws promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131, § 40 and Massachusetts Clean Waters Act MGL c. 21, §§ 23-56. The regulations addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

NEW DEVELOPMENT — Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain alteration by man-made activities.

NONPOINT SOURCE POLLUTION — Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

OPERATION AND MAINTENANCE PLAN — A plan that defines the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a LID management system to insure that it continues to function as designed.

OWNER — A person with a legal or equitable interest in a property.

PERSON — Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Ashburnham, and any other legal entity, its legal representatives, agents, or assigns.

POINT SOURCE — Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may

be discharged.

POST-DEVELOPMENT — The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. "Post-development" refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

PRE-DEVELOPMENT — The conditions that exist on a site prior to any human activity that would alter the site.

RECHARGE — The replenishment of underground water reserves.

REDEVELOPMENT — Any construction, alteration, transportation, improvement exceeding land disturbance of 7,500 square feet, where the existing land use is commercial, industrial, institutional, or multifamily residential. Any activity or proposal that would increase the area or severity of the previously disturbed area shall not be considered redevelopment beyond the limits of the previously disturbed area.

RESOURCE AREA — Any area protected under including without limitation: the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Town of Ashburnham Wetlands Protection Bylaw.[105] For the purposes of these LID Regulations, a resource area includes all land lying within 100 feet of a wetland and 200 feet of a perennial stream.

RUNOFF — Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENTATION — A process of depositing material that has been suspended and transported in water.

SITE — The parcel of land being developed, or a designated planning area in which the land development project is located.

STOP-WORK ORDER — An order issued which requires that all construction activity on a site be stopped.

TSS — Total suspended solids.

WATER QUALITY VOLUME (WQv) — The storage needed to capture a specified average annual stormwater runoff volume. Numerically (WQv) will vary as a function of drainage area or impervious area.

**105.Editor's Note: See Ch. 230, Wetlands Protection.**

ARTICLE III
**Stormwater Runoff Coefficients**

**§ 449-15. Purpose.**

The formula below is designed to arrive at an approximation of the runoff from a site during a rain storm.

**§ 449-16. Runoff coefficients.**

A. Each land use type can be assigned a runoff coefficient, or C Value. The C Values are used in the "Rational Formula."

$Q = C*I*A$

Where:

| | | |
|---|---|---|
| Q | = | peak runoff rate (cfs) |
| C | = | dimensionless runoff coefficient used to adjust for abstractions from rainfall |
| I | = | rainfall intensity for a duration that equals the time of concentration (in/hr) |
| A | = | the area of the tributary basin (acres) |

B. It is common for regulators and engineers to use the Rational Formula for local infrastructure design. The C Values for land uses are shown below, as shown in Mays, 2001.** They are not affected by soil types.

| | |
|---|---|
| Lawn | 0.30 |
| Impervious surfaces | 0.90 |
| Woods/Trees | 0.10 |
| Porous pavement | 0.50 |
| Swale/Garden | 0.15 |
| Green roof | 0.75 |

C. A weighted average C Value can be calculated for each scenario.

** Mays, Larry W., P.E, 2001. Stormwater Collection Systems Design Handbook, McGraw-Hill, NY.

# Chapter 458

# OPEN SPACE RESIDENTIAL DEVELOPMENT

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 9-2004; as amended 9-14-2006. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**

**Zoning Bylaw: Open Space Residential Development — See Ch. 250, Sec. 5.10.**

## § 458-1. Purpose and intent.

A. The Planning Board may grant a special permit for an "open space residential development" (OSRD) in accordance with Chapter 250, Section 5.10, of the Ashburnham Zoning Bylaw on one or more parcels of land in common ownership, except for parcels located in the Floodplain District. The OSRD may consist of any combination of single-family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this bylaw. The land not included in the building lots shall be preserved as open space.

B. The Planning Board's decision to grant a special permit for an OSRD depends on the circumstances and conditions peculiar to each application. The decision of the Planning Board will be based upon what it considers to be the best interests of the neighborhood and the Town in general, and shall meet the purpose of an OSRD as outlined in Chapter 250, § 5.10.2, of the Ashburnham Zoning Bylaw.

C. The applicant is encouraged to request a meeting to review a conceptual OSRD plan before a formal filing of an OSRD application.

## § 458-2. Planning Board as special permit granting authority.

A. When the Planning Board acts as a special permit granting authority, the SPGA shall consist of the five Planning Board members and the officers of the Planning Board shall fill the same positions with the SPGA as they occupy as Planning Board members. The Chairperson shall preside over all hearings, subject to the rules as stated herein, and shall decide all points of order unless overruled by a majority of the Planning Board in session at the time. The Chairperson shall appoint such committees as may be deemed necessary or desirable from time to time. The Chairperson shall handle all correspondence of the Planning Board, the sending of all notices required by law and the rules and orders of the Planning Board and shall receive and scrutinize all petitions and applications for compliance with the rules of the Planning Board.

B. A quorum for the purpose of conducting public hearings and transacting other business pertaining to special permits shall consist of four members.

C. Hearings of the Planning Board shall be held at the time and place specified in the hearing notice.

## § 458-3. Procedures.

The following steps are required by MGL c. 40A, § 9 for the issuance of a special permit:

A. The applicant must file the application with the Town Clerk (the date of such filing is hereafter

referred to as the "filing date");

B. The applicant must file a copy of the application (showing the date and time of filing as certified by the Town Clerk) with the Planning Board;

C. The Planning Board must post a notice of public hearing; have the notice published in the newspaper; and mail the notice to parties in interest as defined by MGL c. 40A, § 11;

D. The Planning Board must hold a public hearing within 65 days from the date of filing of the application with the Town Clerk, unless the applicant and the Planning Board agree in writing to an extension;

E. Within 90 days after the close of the public hearing, the Planning Board must make a decision, file it with the Town Clerk, and notify the parties in interest;

F. If the permit is granted, the applicant must record it at the Registry of Deeds. (See § 458-10 below.)

**§ 458-4. Submission requirements.**

A. The applicant shall submit eight copies of an "Application for Open Space Residential Development."

B. Two copies, 24 inches by 36 inches, and 16 copies, 11 inches by 17 inches, of a site plan prepared by a professional engineer or land surveyor, licensed in the State of Massachusetts, containing the following information:

(1) A locus plan at a scale of one inch equals 2,000 feet;

(2) The project name, North arrow, date, and scale; name of record owner and applicant engineer name and proper seals of registration; and abutters to the proposal;

(3) Site Context Map that illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resources areas or features that cross parcel lines or that are located on adjoining lands. This map will enable the Planning Board to understand the site in relation to what is occurring on adjacent properties;

(4) Existing Conditions/Site Analysis Map to familiarize officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that shall be left protected through sensitive subdivision layouts. These resources include wetland areas, floodplains and steep slopes, but also may include farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stonewalls), unusual geologic formations and scenic views into or out from the property. By overlaying this plan officials can clearly see where conservation priorities and desired development overlap/conflict;

(5) Development plan clearly depicting the OSRD and meeting the submission requirements of Article XVII of the Ashburnham Zoning Bylaws and § 475-3.12 of the Ashburnham Planning Board Rules and Regulations;

(6) Location, type and drawings of all signage required by Chapter 250, § 5.10.12G, of the Ashburnham Zoning Bylaw shall be shown on plan.

C. Drainage calculations certified by the engineer who prepared them.

D. A certified list of names of all abutters, and owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list.

E. A letter of consent from the property owner if different from the applicant.

F. All OSRD applications require engineering review. Engineer to be specified by the Planning Board and fees to be borne by the applicant.

G. Roadways, common driveways and lots shall be staked out as required under the Planning Board Rules and Regulations § 475-3.14B.

H. Additional information may be requested from the applicant by the Planning Board.

### § 458-5. Fees and charges.

All Planning Board fees are nonrefundable filing fees to cover the cost of processing applications. All expenses for advertising, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The Board, at its discretion, may waive certain fees. The Fee Schedule is available in the Land Use Office.[106]

### § 458-6. Public hearing.

A. The Planning Board must hold a public hearing within 65 days of the filing date unless the applicant and the Planning Board agree in writing to an extension. A copy of any written extension agreement must be filed with the Town Clerk.

B. The Planning Board must mail notices of public hearing to the applicant and all parties in interest and must publish the first newspaper notice at least 14 days before the hearing.

### § 458-7. Decision.

A. The Planning Board must make its decision on the special permit within 90 days of the close of the public hearing or within such extension of time as may have been agreed in writing between the applicant and the Board. A decision to grant a special permit requires four out of five votes in favor of the grant.

B. The Planning Board must:

(1) File with the Town Clerk a copy of its decision, including a detailed record of its proceedings;

(2) Promptly mail a copy of its decision to the applicant; and

(3) Promptly mail notices of decision to the parties in interest and to the Town departments.

C. The date of filing of the decision is the date when the decision of the Planning Board has been filed with the Town Clerk.

D. If the Planning Board fails to make a decision within 90 days of the close of the public hearing or

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**106.Editor's Note: See Ch. 427, Fees.**

within such extension of time as may have been agreed upon in writing between the applicant and the Board, the special permit shall be deemed to have been granted (MGL c. 40A, § 9).

### § 458-8. Appeal period.

Any person aggrieved by the special permit decision may file an appeal. The appeal period lasts 20 days from the date of filing of the decision. Notices of any appeal made to the Superior Court or Land Court must be received by the Town Clerk within those 20 days (MGL c. 40A, § 17).

### § 458-9. Lapse of special permit.

A. Failure to record the special permit, covenants, agreements, easements and all documents associated with the approval within 60 days of the completion of the appeal period shall cause the special permit to lapse unless approval has been extended by the Board and said extension filed with the Town Clerk.

B. The rights granted by the special permit shall lapse if they are not exercised within two years of either of the following:

(1) The expiration of the appeals period; or

(2) If appeal has been taken from the decision to grant the special permit, the date on which the court has dismissed or denied such appeal.

### § 458-10. Conditions prior to construction.

Conditions necessary before the special permit is effective:

A. The appeal period has elapsed without appeal, or, if appealed, the court has dismissed or denied the appeal.

B. The special permit and covenants, agreements and easements must be recorded by the applicant in the Northern Worcester County Registry of Deeds. Proof of recording must be submitted to the Planning Board.

**NOTE:** The copy of the special permit to be recorded must bear the certification of the Town Clerk that the appeal period has elapsed (MGL c. 40A, § 11). A separate certification prepared by the Town Clerk shall meet this requirement.

### § 458-11. Amendments to special permit.

Submission requirements for requests to amend a special permit are the same as for the original application for a special permit.

### § 458-12. Inspections.

Inspections shall meet the requirements of § 475-7.4 of the Ashburnham Planning Board Rules and Regulations.

### § 458-13. As-built plans.

Open space residential developments not submitted with a definitive subdivision plan require as-built plans

prepared and certified by a registered engineer prior to the issuance of any occupancy permits.

### § 458-14. Performance guarantee.

Open space residential developments not submitted with a definitive subdivision plan may require a performance guarantee as required in § 475-3.28 of the Ashburnham Planning Board Rules and Regulations.

### § 458-15. Administration.

A. Waivers. A waiver of strict compliance from these rules and regulations may be granted if the Planning Board determines that such a waiver is in the public interest and not inconsistent with the Zoning Bylaw.[107] All requests shall identify the provision or provisions of the regulations from which relief is sought. The request shall also include a statement explaining why the applicant thinks that granting a waiver would be in the public interest and not inconsistent with the purpose and intent of these rules and regulations and the Zoning Bylaw.

B. Amendments. These rules and regulations may be amended by a majority vote of the Planning Board at a regularly scheduled meeting after a public hearing duly advertised once in a paper of general circulation no less than seven days prior to the date of the public hearing.

C. Validity. The validity of any section or provision of these rules and regulations shall not invalidate any other section or provision thereof.

D. Effective date. The effective date of any amendment shall be the date such amendments are filed with the Town Clerk.

**107.Editor's Note: See Ch. 250, Zoning.**

# Chapter 462

# PROCEDURAL RULES

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 12-14-2006. Amendments noted where applicable.]**

## § 462-1. Purpose and intent.

A. These procedural rules and regulations govern the operation of the Planning Board and prescribe the procedures for submitting plans and petitions to the Board. They are intended to serve the general public and to educate new Board members by describing the Board's powers, duties and mode of operation.

B. The Planning Board was established pursuant to the Subdivision Control Law, MGL c. 41, § 81A et seq. Its powers and duties are set forth therein. Additional responsibilities are set forth in the Zoning Act, MGL c. 40A, and in the Ashburnham Zoning Bylaw.[108] This document is not intended to supersede any of the above laws.

C. The Planning Board has the power to hear and decide applications for Site Plan Review under Chapter 250, Section 5.7, of the Zoning Bylaws and acts as the special permit granting authority (SPGA) for open space residential developments (OSRD) and common driveways under Chapter 250, Sections 5.10 and 5.11, of the Zoning Bylaws of the Town of Ashburnham.

D. The Planning Board is most frequently called upon to make decisions on:

(1) Endorsing "approval not required" (ANR) plans;

(2) Approving subdivisions;

(3) Granting special permits;

(4) Reviewing site plans;

(5) Amending the Zoning Bylaw;

(6) Scenic road permits.

E. The details of such review are covered in the Planning Board "Rules and Regulations Governing the Subdivision of Land"[109] and various special permit rules and regulations.

F. Consult with Planning Board. The Board is available for consultation to help ensure that the application and plans will contain such information as the Board requires in making its decision.

## § 462-2. Organization of Planning Board.

A. Members and officers. The Planning Board shall consist of five members elected pursuant to Section 13 of Chapter 428, An Act Establishing a Selectmen Form of Government for the Town of Ashburnham ("Town Charter"). The Planning Board, when acting as the special permit granting authority, shall also have one Associate Member. The Board of Selectmen and Planning Board shall appoint the Associate Member for a period of three years. The members of the Board shall annually

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**108. Editor's Note: See Ch. 250, Zoning.**

**109. Editor's Note: See Ch. 475, Subdivision of Land.**

elect from themselves all officers of the Planning Board, to include a Chairman, Vice Chairman, Clerk, a delegate to the Montachusett Regional Planning Commission (MRPC), and a representative of the Montachusett Joint Transportation Committee (MJTC).

B. The Chairman.

(1) The Chairman shall vote and be recorded on all matters coming before the Board. Subject to these rules, the Chair shall decide all points of order, unless overruled by a majority of the Board in session at the time. The Chairman shall appoint such committees as may be found necessary or desirable. The Chair, on behalf of the Board, may, subject to appropriation, employ experts and clerical and other assistants.

(2) In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning Bylaw of the Town of Ashburnham, and subject to these rules and further instructions of the Board, the Chairman shall transact the official business of the Board and supervise the work of the Town Planner and the Land Use Administrator on Planning Board matters. The Chairman may call upon an Associate Member to sit on the Board for the purpose of acting on a special permit application in the case of absence, an inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board. The Chairman shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

C. Vice Chairman. The Vice Chairman shall act as Chairman if the Chairman is absent, disabled or otherwise unable to perform his duties. If both the Chairman and the Vice Chairman are absent, the Clerk shall act as the Chairman and appoint an Acting Clerk.

D. Clerk. The Clerk shall keep a record of all hearings and meetings of the Planning Board. If the Clerk is not present at any such meeting or hearing, a temporary Clerk shall be appointed to perform the duties of the Clerk at such meeting or hearing.

E. Montachusett Regional Planning Commission (MRPC) representative. The MRPC Representative of the Ashburnham Planning Board shall attend monthly MRPC meetings of the same as the representative of the Town of Ashburnham. The MRPC representative shall keep the Board informed of the actions and programs of the MRPC which have an effect on the Town of Ashburnham. Appointment shall run from July 1 to June 30 of the current fiscal year.

F. Montachusett Joint Transportation Committee (MJTC). The Planning Board shall appoint a representative to the MJTC. It is not a requirement that the representative be a member of the Planning Board. Appointment shall run from July 1 to June 30 of the current fiscal year.

G. Quorum. Three members shall constitute a quorum for normal business. The quorum requirement for special permit hearings and decisions is four members.

H. Meetings.

(1) All meetings, both regular and special, shall be open to the public in accordance with MGL c. 39, § 23A-24[110] unless the Board votes to go into executive session. Notice of any meeting shall be filed with the Town Clerk and must be publicly posted in the office of the Town Clerk or on the principal official bulletin board of the Town at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to the meeting in conformance with the Commonwealth of

**110.MGL c. 39, §§ 23A to 23C were repealed in 2009. See now the Open Meeting Law in MGL c. 30A, §§ 18 through 25.**

Massachusetts' Open Meeting Law. The Board's agenda should also be posted.

(2) If it becomes necessary to adjourn or extend a meeting to another time, these same notice requirements apply to the adjourned or extended meeting.

(3) All decisions and votes taken by the Board shall take place at meetings.

(4) All meetings, while open to the public, are not all public hearings. The Board will seek information or testimony, as it deems necessary. The Chairman may rule unsolicited comments from the public out of order.

(5) No meeting or hearing may be opened without a quorum of three Board members present (or four members for a special permit hearing) except for the purpose of continuing the meeting or hearing to a future date due to lack of a quorum.

(6) All meetings, public hearings and executive sessions shall be held in conformance with the Commonwealth of Massachusetts' Open Meeting Law.

(7) It should be remembered that "telephone meetings" (discussion by telephone among members of a governmental body on an issue of public business within the jurisdiction of the body) are a violation of the Open Meeting Law. This is true even if individual telephone conversations occur in serial fashion.

(8) With the advent of computers, it has become more common for persons, both at home and at work, to communicate through electronic mail, or "e-mail." Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail "meeting." Thus it is a violation to e-mail to a quorum messages that can be considered invitations to reply in any medium, and would amount to deliberation on business that must occur only at proper meetings. It is not a violation to use email to distribute materials, correspondence, agendas or reports so that committee members can prepare individually for upcoming meetings.

(9) Except when a meeting is held in executive session, any person in attendance may record the meeting with a tape recorder or any other method of sonic reproduction, so long as no active interference with the conduct of the meeting arises as a result of the recording. Except when a meeting is held in executive session, any person attending the meeting may videotape the meeting from one or more fixed locations determined by the Chair, so long as there is no active interference with the meeting.

(10) Board meetings will not continue past 11:00 p.m. unless voted by a quorum (three members) of the Board.

(11) All persons testifying before the Board should address the Board members only. Discussions between persons testifying before the Board and non-Board members should only occur as authorized by and through the Chair. All other persons shall be silent at the request of the Chair. If a person persists in disorderly behavior during a meeting after warning from the Chair, the Chair may order him or her to withdraw from the meeting. If the disorderly person does not withdraw, the Chair may order the person removed until the meeting is adjourned. See MGL c. 39, § 23C.[111]

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**111.Editor's Note: MGL c. 39, § 23C was repealed in 2009. See now MGL c. 30A, § 20.**

(12) No signs may be displayed in the meeting room during the Board's meetings.

(13) Where possible, a draft of the meeting's minutes shall be transmitted to the Board members for their review prior to the next regularly scheduled meeting.

I. Regular meetings.

(1) Regular meetings of the Planning Board are normally held at 6.30 p.m. on the second and fourth Thursdays of the month at the Town Hall. If a regular meeting day falls on a holiday or any day of national, state, or municipal election or caucus or primary or is in conflict with session of Town meeting, the regular meeting will be cancelled and instead a special meeting may be held at some proximate time.

(2) The Chairman or his designate shall draw up the agenda for regular meetings. Agenda items are to be in the Land Use Office no later 10 days prior to the next regularly scheduled meeting. Exceptions may be made for filing of "approval not required" plans or for any other items authorized prior to the meeting by the Chair, or at the meeting by a quorum (three members) of the Board. Agenda packets are to be mailed out no later than the Friday preceding the next regular meeting. 7:00 p.m. - 7:15 p.m. of each regular Planning Board meeting is set aside for "Open Discussion and/or Public Comment," with no appointment necessary. During "Open Discussion", the Board may suggest an appointment at a future meeting. All "approval not required" (ANR) plans submitted for Board endorsement shall be scheduled on the agenda for 7:15 p.m. in order of submission. The Board may entertain items not placed on the agenda under the category "Other Business", as time permits. See Appendix A for sample agenda.[112]

J. Special meetings. Special meetings may be called by the Chairman, or at least two members. Notice, either written or verbal, thereof shall be given to each member at least 48 hours before the time set, or notice at any meeting attended by all members shall suffice. A notice shall be filed with the Town Clerk, and a notice or a copy thereof shall be publicly posted on the principal or official bulletin board in the Town Hall at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to such meetings.

K. Executive sessions. Executive sessions may be called by the Chairman, or at least two members. All executive sessions are required to meet the requirements of MGL c. 39, §§ 23A - 23C.[113][114]

## § 462-3. Public hearing guidelines.

A. Notice of any public hearing must be mailed to all parties in interest as specified in the applicable statute, bylaw or Board regulation or to those parties specified by the Board for hearings regarding items not covered by said statutes, bylaws or regulations, be submitted to the Town Clerk for posting on the Town's principal bulletin board and be published in a newspaper in general circulation in the Town of Ashburnham as required by the applicable statute.

B. The Chair should strive for balance in all public hearings, providing the applicant and other proponents, and opponents an equal opportunity to speak.

C. Continued hearings may be held at the discretion of the Board and should be held when additional information and/or negotiations are necessary. The Chair should allow only new information to be

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**112. Editor's Note: Appendix A is on file in the Town offices.**

**113. MGL c. 39, §§ 23A to 23C were repealed in 2009. See now the Open Meeting Law in MGL c. 30A, §§ 18 through 25.**

**114.**

presented at subsequent hearings and provide all interested persons with an opportunity to rebut information presented. Hearings should be continued as needed until all information is presented and issues requiring negotiation are resolved. In certain cases, although not required by law, it may be appropriate to provide additional notice to abutters, as in a case where a hearing is opened only for procedural reasons and substantive testimony is expected to begin at a later date, or when there will be an extensive period of time until the continued public hearing.

D. During the public hearing it is appropriate to explore areas in which conditions might be needed. During the public hearing Board members should:

(1) Be careful to avoid the appearance of partiality.

(2) Be careful to avoid negotiation of final conditions too early in the process.

E. Negotiation of specific conditions is likely premature at the beginning of the public hearing process. Conditions should be negotiated after substantial testimony is received and it is clear exactly what the impacts from the proposed development are likely to be. Mitigation must be based upon the actual impacts of a proposed development. If mitigation takes the form of a financial contribution, the financial contribution shall be the estimated full or proportional share of the cost of mitigating such impacts.

F. Board members should refrain from making statements about their ultimate decision until after the hearing and record are closed.

### § 462-4. Ex parte communications.

Board members should not have direct contact with applicants or their representatives outside of the public meeting or hearing process. If contacted by an applicant or representative, one should explain that such communications may only occur during a public meeting or hearing. Applicants are encouraged to contact the Town Planner for consultation and advice concerning proposed projects.

### § 462-5. Processing multiple requests.

When an applicant is seeking more than one determination from the Board (i.e., an open space residential development special permit and a definitive subdivision plan approval), the Board will hold concurrent hearings on each request. The Chair should state the criteria for each request at the start of the hearing process.

### § 462-6. Public hearing procedure.

A. Open hearing(s), noting time each hearing is begun, and noting what date each hearing was originally opened if applicable.

B. At the opening of the initial session of the public hearing, read the applicable hearing notice out loud. Remind members of the audience to identify themselves before speaking to the Board.

C. Ask the staff to report regarding any procedural or application deficiencies.

D. Reference for the record the receipt of written materials submitted for the record.

E. The Chair may read or summarize letters and other written materials submitted for the record.

F. Invite the applicant or his or her representative to address the Board and present their case.

G. Invite Board members to question the applicant.

H. Ask the staff for its report on the project.

I. Invite Board members to question the staff.

J. Invite any public officials in the audience to make comments.

K. Invite other interested persons in the audience, beginning with proponents and then opponents, to make comments. Provide an opportunity for rebuttal.

L. Ask the applicant and the staff for final comments.

M. Entertain and act on a motion (including continuing the hearing to a later date).

**§ 462-7. Receiving testimony.**

A. Identify speaker. People speaking to the Board should always identify themselves before speaking.

B. Credentials. Anyone intending to testify about a matter of a technical nature may be required by the Board to provide, verbally or in writing, the credentials qualifying them to make such technical statements. (For example, a lawyer is not necessarily qualified to make a technical determination about a traffic impact issue. If the attorney is speaking about a technical issue based upon a report prepared by someone else, then you may inquire as to the qualifications of the preparer.) This is particularly important during the applicant's testimony. Abutters should not be required to state their qualifications for impressions or opinions expressed about a project.

C. Time for presentation. Provide the applicant with enough time to state his or her case. The Board may encourage an applicant to "pick up the pace" of a presentation.

D. Requiring some testimony in written form. So many people may show up to speak about a project that they cannot all be heard within a reasonable amount of time. In this case, the Chair may limit each speaker to a specified amount of time (i.e., five or two minutes) and require that further testimony from those speakers be submitted in writing. Allow each interested person to speak, even if only briefly. When speakers cannot make all of their comments within the allotted time, provide the address and time frame (final date and time) for submission of further written testimony. Written testimony should be sent to: Ashburnham Planning Board, 32 Main Street, Ashburnham, MA 01430.

**§ 462-8. Recessing, continuing or closing hearing.**

A. Recessing the public hearing. At any point in the public hearing, the Chair may recess the public hearing, conduct other Board business, and then re-open the public hearing.

B. Continuations. A continued hearing must always be continued to a date, time and place certain. This may include continuation to a later time during the same meeting when, for example, another posted hearing is due to be opened or a presenter whose testimony, in the opinion of the Chair, is important to the hearing, cannot be in attendance until later in the hearing. Check with staff for future meeting dates and available times. Staff will provide an update on any discussions between the staff and the applicant or others which have taken place since the last public hearing or any relevant materials received.

C. Closing the hearing. The Board shall provide an opportunity for applicants, public officials and other interested persons to address the Board during the public hearing process. Once the Board is satisfied

that all relevant testimony has been received, it may close the hearing. It should be noted that the statutory time frame for the filing of the Board's decision with the Town Clerk will begin upon closure of the hearing, so it may be appropriate to keep the hearing open in order to ensure that all necessary information is received prior to the Board's decision and that sufficient time remains to file the decision in a timely manner.

D. After the close of the Board's hearing, no new evidence should be considered, with the exception of specific information or materials required by the Board prior to its decision on the application, or prior to signature of the plan or special permit or as a condition of the Board's decision on the project. Information which is the basis for discussions with the applicant must be in the public record.

### § 462-9. Motions.

A. The Chair may entertain motions made by other Board members sitting on the application. After a second, the Chair should open the floor for discussion by the Board members and, if requested, staff. After discussion, the Chair should call for a vote, with the vote of each member to be identified for the record.

B. Sample motion to continue the hearing:

"I move to continue this hearing until (date) at (time) at (place) for the purpose of accepting further testimony on this application."

C. Sample motion to close a hearing:

"I move to close this hearing."

### § 462-10. Preparing and adopting decisions.

A. After the hearing(s) are closed or, for applications not involving a public hearing, when the Board begins discussion of its decision, only Board members who are eligible to vote on the application should discuss the Board's decision and any newly received information that was required by the Board to be submitted prior to its decision. (Nonvoting members may comment through the close of the public hearing, or prior to the Board's discussion of its decision on an application not involving a public hearing.) If there is disputed factual testimony or conflicting expert opinions, Board members should state which testimony they found to be more credible (case law requires credibility determinations to be made by the decision makers who actually hear the testimony). The Board may solicit technical assistance from the staff in preparing its decision.

B. Whenever possible, the Board should vote on a decision or draft decision on the same date that the hearing and record are closed, including any proposed conditions. (We should talk about this one, as it is not always possible for me to have Draft Decisions together.) For special permits, the Board should then direct staff to prepare a written decision document for final approval at a subsequent meeting. (The Board may also direct staff earlier in the process to prepare initial drafts of a proposed decision.) For subdivision approvals and other matters, the Board may vote on a final decision and conditions and direct staff to prepare a written decision for filing with the Town Clerk. The Board may require that said decision be reviewed and signed by the Chair or another Board member before filing, or authorize the Town Planner to file the decision on their behalf.

C. The Board's decision regarding decisions under the Subdivision Control Law must be filed with the Town Clerk prior to any deadline established by statute or bylaw. As an alternative, the applicant may

request, in writing, an extension of the time required for filing of the Board's decision on a definitive subdivision plan, or the applicant and Board may enter into a written agreement extending the time for filing the Board's decision on a special permit application. Form S, Request for Extension of Statutory Deadline, should be used for this purpose. (We have that Form for extensions. We should add that Form # here.) In either case, the extension must be for a specified number of days or to a specified date and must be approved by the Board with the same plurality required for the decision regarding which the filing period is being extended. Notice of any such extension must be filed forthwith with the Town Clerk. No such extension of time is permissible for a preliminary subdivision plan or an "approval not required" (ANR) plan. See § 475-3.9 of the Planning Board Rules and Regulations Governing the Subdivision of Land.

D. Upon filing of the Board's decision, notice must then be sent to all parties in interest as specified in the applicable statute, bylaw or Board regulation.

## § 462-11. Zoning Bylaw amendments.[115]

The Zoning Bylaw and Map contain the regulations for determining what type of development is permitted throughout Town. The Planning Board plays a pivotal role in amending them. This outlines the steps that should be followed to make successful amendments. To avoid having an amendment disapproved due to a procedural mistake, strict adherence is required to the process established by state law for enacting zoning changes.

A. General information. According to MGL c. 40A, § 5, a zoning amendment may be proposed at any time and be placed on the warrant of a Special or Annual Town Meeting. Proposals which will have a significant impact on the Town should be presented well in advance of Town Meeting to allow for careful consideration by local officials and the general public.

B. Origination. Amendments may be submitted by:

(1) The Board of Selectmen.

(2) The Zoning Board of Appeals.

(3) An individual owning land affected by the proposal.

(4) Ten or more registered voters for consideration at an Annual Town Meeting.

(5) One hundred or more registered voters, or 10% of the total number of registered voters, whichever is less, for consideration at a Special Town Meeting.

(6) The Planning Board.

(7) The Montachusett Regional Planning Commission (MRPC).

C. Steps required to ensure legal acceptance. Each of the following steps must be followed precisely. The Planning Board should document each step as it happens because such documentation is required when the revised bylaw is submitted by the Town Clerk to the Attorney General for approval. The requisite documentation is described parenthetically below:

(1) An amendment is initiated by submitting the proposed bylaw or map change to the Board of Selectmen in the form of an article for Town Meeting. (Document who initiated the amendment

115.Editor's Note: See Ch. 250, Zoning.

proposal and when it was submitted to the Board of Selectmen.)

(2) The Board of Selectmen has 14 days to submit the proposal to the Planning Board for its review. (Retain a copy of the Selectmen's transmittal memo to the Planning Board.)

(3) The Planning Board must hold a public hearing within 65 days of its receiving the proposal. Notification of the hearing must be advertised, posted and mailed to certain parties as described below. The hearing notice must contain the following information:

(a) The time, date and place of the public hearing;

(b) The subject matter of the hearing "sufficient for identification." This must contain enough detail so the reader can make an informed decision on whether to attend the hearing or Town Meeting;

(c) The place where the texts and maps may be inspected. (Retain a copy of the hearing notice.)

(4) The Board must advertise the hearing notice in a local paper in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing. Do not include the date of the publication when counting the 14 days. (Document the name of the paper and the dates of publication.)

(5) The Board must post the hearing notice in the Town Hall for a period of not less than 14 days before the date of the hearing. (Document when the notice was posted.)

(6) The Board must mail the hearing notice to the Commonwealth's Department of Housing and Community Development. (Mail with return receipt.)

(7) The Board must mail the hearing notice to the Montachusett Regional Planning Commission (MRPC). (Mail with return receipt.)

(8) The Board must mail the hearing notice to the Planning Boards of the neighboring communities of Fitchburg, Gardner, Ashby, Westminster, and Winchendon. (Mail with return receipt.)

(9) No more than six months can elapse between the hearing and the Town Meeting vote on the zoning change.

(10) The Town Meeting warrant must be properly posted: seven days before an Annual Town Meeting, 14 days before a Special Town Meeting.

(11) The Planning Board public hearing must be held at least 21 days before the Town Meeting. If not, the Planning Board must submit a report with recommendations or else the amendment cannot be acted upon. The report of the Board is advisory only, but usually carries considerable weight at Town Meeting since it is the Board's responsibility by law to thoroughly evaluate all aspects of the proposal and consider its overall impact on the Town. In its review, the Planning Board may wish to revise the original proposal to take into account testimony received at the hearing or for a variety of other reasons. In its report to Town Meeting, the Planning Board may recommend amendments to the original proposal without another public hearing if the fundamental character and identity of the proposal are not changed but are designed merely to perfect the proposals. (Document whether the Board's report to the Town was oral or written. If written, retain a copy.)

(12) A two-thirds vote at Town Meeting is required for adoption of a zoning amendment. Town

Meeting may amend the original proposal without a new notice, public hearing, and Planning Board report unless the Town Moderator rules that the amendment is outside the scope of the article or the amendment:

(a) Changes the identity or substantial character of the original proposal;

(b) Fundamentally departs from the original proposal; or

(c) Radically differs from the original proposal.

(13) If the proposed amendment is voted down by Town Meeting, it may not be brought back for a period of two years, unless adoption is recommended in the final report of the Planning Board.

(14) Within 30 days of adjournment of the Town Meeting in which an amendment was adopted, the Town Clerk must submit to the Attorney General a certified copy of the amendment, a statement explaining the bylaw or map change (may be prepared by the Planning Board), and proof that all of the procedural requirements have been followed. The Attorney General has 90 days after submission by the Town Clerk to act on the amendment; if 90 days lapse without action by the Attorney General, the bylaw is deemed approved.

(15) After the proposal has received the approval of the Attorney General, it must be published in a Town bulletin or pamphlet and be posted in at least five public places in the Town, or the amendment can be published twice at least one week apart in a newspaper of general circulation in the Town. (MGL c. 40, § 32)

(16) After approval by the Attorney General, a copy of the latest effective Zoning Bylaw must be sent by the Town Clerk to the Department of Housing and Community Development.

(17) For 90 days following the posting or the second publication in a newspaper, legal action may be commenced on the grounds that there were procedural defects in the adoption process. A copy of the petition submitted to the court must be filed with the Town Clerk within seven days after the court action is commenced. After 90 days, no zoning amendment may be invalidated due to procedural defects.

D. Effective date. A zoning amendment legally takes effect immediately upon adoption by Town Meeting. The Attorney General, after receiving notification of the amendment, has 90 days to approve or disapprove the amendment. The Attorney General may invalidate the amendment in full or in part if it is inconsistent with the Constitution or laws of the commonwealth or if procedures required by law were not followed.

## § 462-12. Policies and advice.

Whereas all decisions of the Board take place only at its meeting, any advice, opinion or information given by any Board member, or any other official or employee of the Town of Ashburnham shall not be binding on the Board.

## § 462-13. Adoption.

The foregoing procedural rules and regulations governing the Planning Board and appendices are hereby adopted this 14th day of December, 2006, by the Planning Board. These Procedural Regulations may be amended from time to time by a quorum of the Planning Board.

# Chapter 471

# SCENIC ROADS

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 9-2004, as amended 9-14-2006. Subsequent amendments noted where applicable.]**

## § 471-1. Purpose and intent.

These rules and regulations are adopted by the Ashburnham Planning Board, hereinafter called the "Board," as the permit granting authority as provided for in MGL c. 40, § 15C (Scenic Roads Law) for the purpose of establishing uniform rules and procedures for the regulation of certain types of work within the public right-of-way of scenic roads.

## § 471-2. Definitions.

In the absence of contrary meaning established through legislative or judicial action pursuant to MGL c. 40, § 15C, the following terms shall be defined as follows:

CUTTING OR REMOVAL OF TREES — The removal of one or more trees, trimming of major branches or cutting of roots.

REPAIR, MAINTENANCE, RECONSTRUCTION, OR PAVING WORK — Any work done within the right-of-way by any person, organization, or municipal agency. This shall include any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a scenic road pursuant to MGL c. 40, § 15C. Construction of new driveways or alteration of existing driveways is also included, insofar as the construction takes place within the right-of-way.

ROAD — A right-of-way of any way used and maintained as a public way, including the vehicular traveled way in addition to necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. When the boundary of the right-of-way is at issue so that a dispute arises as to its precise location, any trees or stone walls shall be presumed to be within the right-of way until the contrary is shown.

SCENIC STONE — A native granite fieldstone undisturbed in character that varies in shape and size with express patina from weathering.

TEARING DOWN, REMOVAL OR DESTRUCTION OF STONE WALLS — The removal of more than one cubic foot of wall material per linear foot above existing grade, but shall not be construed to include temporary removal and replacement at the same location with the same materials.

TREES — Includes a tree whose trunk has a diameter of four inches or more as measured one foot above grade.

## § 471-3. Submission requirements.

A. Official application form. Any person, organization, or municipal agency seeking a permit from the Planning Board pursuant to MGL c. 40, § 15C for the cutting or removal of trees or the tearing down or destruction of stone walls within a public right-of-way, or portions thereof, shall file an official Scenic Roads Application Form.

B. Certified abutters list. A certified list of names of all abutters, and owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list.

C. Location of work. A locus map of the location of the proposed work within the right-of-way of the scenic road. A Town of Ashburnham Assessor's Map is sufficient for this purpose.

D. Statement of work.

(1) A written statement which describes in reasonable detail the proposed work within the right-of-way of the scenic road, including all proposed changes to trees and/or stone walls as defined in these rules and regulations.

(2) No stones or scenic stone are to be removed from work site.

(3) Removed stone should be aesthetically incorporated into the design of the opening created.

E. Number of copies. At the time of application, the applicant shall provide 10 copies of the official Scenic Roads Application Form and all plans, exhibits, analyses and any other information and/or attachments with the Planning Board. The applicant shall also file one full copy of the application with the office of the Town Clerk.

F. Additional information. The applicant may submit additional information that the applicant feels is relevant to properly inform the Board about the proposed work within the right-of-way of the scenic road, which may include site plans, legal opinions, deeds, historical data, studies and reports. To a reasonable degree, the Board may also require additional information in addition to that specifically required by Massachusetts General Law or these rules and regulations.

### § 471-4. Site visit.

In some cases, the Planning Board may request a site visit to the site in which the work is proposed. The date and time for such visit shall be satisfactory to both the Planning Board and applicant. The Planning Board may request that any work subject to these rules and regulations be clearly flagged or otherwise delineated prior to the scheduled site visit.

### § 471-5. Application fee.

All Planning Board fees are nonrefundable filing fees to cover the cost of processing applications. All expenses for advertising, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The Board, at its discretion, may waive certain fees. The Fee Schedule is available in the Land Use Office.[116]

### § 471-6. Referral to other boards and departments.

A. The Planning Board may transmit copies of the application, together with such information as the Board deems appropriate, to the Tree Warden, Highway Department, Police Department, Fire Department, Conservation Commission, Historical Commission and Board of Selectmen for their review and recommendation within 21 days of the filing of the application. The Board may also transmit copies of the application to other boards and departments as it deems appropriate. Copies of such reviews and recommendations shall be sent to the Planning Board; provided, however, that failure of any such board or department to make recommendations prior to or at the public hearing

**116.Editor's Note: See Ch. 427, Fees.**

shall be deemed a lack of opposition. These rules and regulations do not preclude compliance with any other local, state or federal laws.

B. Scenic road applications may require engineering review. Engineer to be specified by the Planning Board and fees to be borne by the applicant.

**§ 471-7. Public hearings.**

A. Hearing. A public hearing shall be held within 30 days after the date of filing of an application for work within a scenic road with the Planning Board and office of the Town Clerk. Notice of the public hearing, which shall include the size, type and location of the tree(s) and/or stone wall to be cut or removed, shall be given by publication in a newspaper of general circulation in the Town of Ashburnham once in each of two successive weeks, the last publication of said notice to occur at least seven days before the day of such hearing. Notice shall also be sent by mail, postage prepaid, to the applicant and abutters as described in § 471-3B of these rules and regulations. In all cases, notice of such public hearing shall be given by the Board. The required time limits for a public hearing may be extended by written agreement between the applicant and Board, which shall be filed in the office of the Town Clerk. The applicant shall be responsible for all expenses for hearing notice and abutter notifications.

B. Rules of procedure for public hearings. An applicant may appear in his own behalf or may be represented by an authorized agent or attorney. In the absence of an appearance on behalf of an applicant, without cause, the Board may make a decision on the basis of available information otherwise received. The Board Chairman shall preside at all public hearings and meetings. The Vice Chair of the Board shall preside as Acting Chairman and perform the duties of the Chairman in his absence. The applicant or his duly authorized representative shall present evidence, testimony or other information in support of the application. After the applicant's presentation, the Board may question the applicant regarding the evidence, testimony or other information presented. Any persons in attendance will then be given the opportunity to speak or provide testimony. No person shall speak until recognized by the Chairman and has provided his name and address for the record. All written communication shall be submitted into the record if delivered at the public hearing or postmarked or delivered to the Board prior to the close of the public hearing. No further evidence, testimony or information shall be presented or entered into the record after the close of the public hearing.

C. Public shade tree law consolidated public hearing. MGL c. 87, § 1 defines all trees within a public way or on the boundaries thereof as public shade trees. When a public hearing must be held pursuant to the provisions of MGL c. 40, § 15C and MGL c. 87, § 3 (Public Shade Tree Law) prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the Tree Warden and Planning Board. Notice of the public hearing, which shall include the size, type and location of the tree(s) to be cut or removed, shall be given by publication in a newspaper of general circulation in the Town of Ashburnham once in each of two successive weeks, the last publication of said notice to occur at least seven days before the day of the public hearing. Notice shall also be sent by mail, postage prepaid, to the abutters as described in § 471-3B of these rules and regulations. In all cases, notice of such consolidated public hearing shall be given by the Tree Warden or deputy. The required time limits for a public hearing may be extended by written agreement between the applicant, Tree Warden and Board, which shall be filed in the office of the Town Clerk. The consent of the Planning Board to a proposed action pursuant to MGL c. 40, § 15C shall not be regarded as to infer consent by the Tree Warden, and the consent of the Tree Warden pursuant to MGL c. 87, § 3 (Public Shade Tree Law) is not to be regarded as to infer consent by the Planning Board. The decision of the Planning Board pursuant to MGL c. 40, § 15C (Scenic Roads Law) shall contain a condition that no work should be done until the applicant has complied with all applicable

provisions of MGL c. 87 (Public Shade Tree Law).

**§ 471-8. Decision.**

A. Considerations.

(1) The decision of the Planning Board on any application for proposed action affecting scenic roads shall be based on consideration of the following:

(a) Preservation of natural resources;

(b) Environmental values;

(c) Historical values;

(d) Scenic and aesthetic characteristics;

(e) Public safety;

(f) Compensatory actions proposed, such as replacement of trees or stone walls;

(g) Other sound planning considerations.

(2) A sign with the following wording "Scenic Road Permit # _____" shall be posted at the driveway entrance prior to construction. Sign size to be no less than 18 inches by 18 inches with contrasting background.

B. Vote. The affirmative vote of a minimum of three members of the five-member Board shall be required to issue a permit authorizing work within the right-of-way of a scenic road. The record shall show the vote of each member or indicate if absent or failing to vote. The decision shall state clearly the specific findings for the action.

C. Decision. The decision of the Board shall be made and filed with the office of the Town Clerk within 30 days following the close of the public hearing. The required time limits for a public hearing may be extended by written agreement between the applicant and Board, which shall be filed in the office of the Town Clerk.

D. Notification of decision. A notice of the decision shall be mailed, postage prepaid, to the applicant and to persons present at the public hearing requesting such notice.

E. Provision of security. The Board may require that a performance guarantee be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized by a permit issued by the Board pursuant to these rules and regulations. The form of the performance guarantee shall be generally as required in the Town of Ashburnham Subdivision Rules and Regulations, § 475-3.28, Performance guarantee.

**§ 471-9. Administration.**

A. Waiver of full compliance. Full compliance with these rules and regulations may be waived by the Board, provided such waivers are deemed to serve the public interest.

B. Adoption and amendment. These rules and regulations may be adopted and from time to time amended by majority vote of the Board. Prior to the initial adoption of these rules and regulations and any subsequent revisions or amendments, the Board shall hold a public hearing. Notice of the public

hearing shall be given by publication in a newspaper of general circulation in the Town of Ashburnham once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing.

C. Severability. If any section, paragraph, sentence, clause or provisions of these rules and regulations shall be adjudged not valid, the adjudication shall apply to the material so adjudged and the remainder of these rules and regulations shall be deemed to remain valid and effective.

D. Effective date. These rules and regulations become effective when voted on affirmatively by a majority of the Board and filed with the office of the Town Clerk.

**§ 471-10. Scenic roads. [Voted 5-11-1974]**

Bush Hill Road

Cashman Hill Road

Corey Hill Road

Cushing Street

East Rindge Road

Hastings Road

Lashua Road

Packard Hill Road

River Styx Road

Russell Hill Road

Wilker Road

Willard Road

Young Road

ASHBURNHAM CODE

# Chapter 475

# SUBDIVISION OF LAND

**[HISTORY: Adopted by the Planning Board of the Town of Ashburnham 9-6-1967; as amended 2-12-1986; 7-28-1988; 9-25-2004 and 9-14-2006. Subsequent amendments noted where applicable.]**

# Part 1
# Purpose And Authority

## § 475-1.1. Purpose.

(MGL c. 41, § 81M)

"The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The power of the planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision for adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring the compliance with the applicable zoning and ordinances or bylaws; for securing adequate provision for water, sewerage, drainage and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivision."

## § 475-1.2. Authority.

Under the authority vested in the Planning Board of the Town of Ashburnham by MGL c. 41, § 81Q, said Board hereby amends those rules and regulations governing the subdivision of land in the Town of Ashburnham which took effect on the 26th day of April 1955. Such amended rules and regulations shall be effective on and after September 14, 2006.

# Part 2
# General

## ARTICLE I
## Definitions

### § 475-2.1. Terms defined.

For the purposes of these regulations, the terms and words defined in the Subdivision Control Law shall have the meanings given herein, unless a contrary intention clearly appears in these definitions. The following other terms and words are defined as follows:

AASHTO — American Association of State Highway and Transportation Officials.

APPLICANTS — Person applying for approval of plan hereunder, including owner, agent or assigns of the owner.

BENCHMARK — Mark made in durable object of known position and elevation as reference point.

BOARD — The Planning Board of Ashburnham.

CERTIFICATION/ENDORSEMENT BY THE PLANNING BOARD — As applied to an instrument required or authorized by the Subdivision Control Law to be recorded, shall mean certification/ endorsement signed by a majority of the members of the Board, or any other person authorized by it to certify/endorse, and named by written statement to the Register of Deeds and Recorder of the Land Court, signed by a majority of the Board (MGL c. 41, § 81L).

EASEMENT — A right in land acquired in public authority or other person to use or control property for a utility or other purpose.

ENGINEER OR SURVEYOR — Person registered by the Commonwealth of Massachusetts to perform professional civil engineering or land surveying services.

FORMS/CHECKLISTS — The forms, applications and checklists for the administration of these regulations are available in the Town of Ashburnham Land Use Office. These documents are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing.

LOT — Area of land in one ownership with definite boundaries used, or available for use, as the site of one or more buildings. Areas endorsed by the Board upon a plan as "not available for building purposes" shall not be considered lots.

OWNER — The person(s), partnership, association, group, corporation, or other legal entity holding fee simple title to a parcel of land shown on record of the Registry of Deeds of Northern Worcester County, Registry of Probate, or Land Court.

RECORDED — Recording in the Registry of Deeds for Worcester County and, where registered land is affected, filing with the Recorder of the Land Court (MGL c. 41, § 81L).

SIDEWALK — A way within the right-of-way of a street normally parallel to the street designed primarily for pedestrian use.

STREET, ARTERIAL — A street of regional significance which carries high volumes of traffic between and through towns; such streets may also provide direct access to abutting parcels.

STREET, CUL-DE-SAC — A single continuous stretch of road which, in the opinion of the Planning Board, is open at one end and closed at the other end by a paved circle or bulb.

STREET, DEAD-END — A single continuous stretch of road which, in the opinion of the Planning Board, is open at one end and closed at the other end which is not a cul-de-sac.

STREET, MINOR ROADS AND STREETS — A street which, in the opinion of the Planning Board, is likely to be used only by vehicles traveling to or from lots on that street.

STREET, PRIMARY COLLECTOR — A street which, in the opinion of the Planning Board, is likely to carry large volumes of through traffic.

STREET, SECONDARY COLLECTOR — A street, other than a primary collector or arterial, which, in the opinion of the Planning Board, is likely to carry traffic other than just to or from lots on that street.

SUBDIVISION — Division of a tract of land into two or more lots, including resubdivision, provided that such division shall not be deemed to constitute a subdivision under the Subdivision Control Law (MGL c. 41, §§ 81K to 81GG) if, at the time it is made, every lot within the tract has sufficient frontage on a public way, a way which the Town Clerk certifies as maintained and used as a public way, a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law, or a way in existence as of February 18, 1954 meeting the standards of the Board as set out in § 475-3.3 of these regulations. (For other provisions, see MGL c. 41, § 81L.)

TOWN ENGINEER — The Town's engineer or the Planning Board's consulting engineer.

UTILITIES — Private and municipal services to be furnished within the subdivision, including telephone, cable TV, electric light and power, gas lines, sanitary sewers, water drains, water pipes and appurtenances.

WAY AND PUBLIC — Any road which has been accepted as a public way pursuant to MGL c. 82, plus any way known as public before 1846, or any way established by court decree to be a public way of dedication, prescription or otherwise.

WAY IN EXISTENCE WHEN SUBDIVISION CONTROL LAW BECAME EFFECTIVE IN THE TOWN — For purposes of determining whether a proposed division of lots is a subdivision, a way in existence as of February 18, 1954 shall not be deemed adequate by the Board except if it meets standards of § 475-3.3.

WAY MAINTAINED AND USED AS A PUBLIC WAY — For purpose of determining whether a proposed division of lots is a subdivision, a way shall be certified as used and maintained as a public way only if it meets the standards of § 475-3.3.

ARTICLE II
**General Requirements**

### § 475-2.2. Basic requirement.

No person shall make a subdivision within the meaning of the Subdivision Control Law of any land within the Town, or proceed with the improvements or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein, unless and until a plan has been endorsed "PLANNING BOARD APPROVAL NOT REQUIRED," or a definitive plan of such subdivision has been submitted to, approved and endorsed by the Planning Board as herein provided, and recorded at the Registry of Deeds.

### § 475-2.3. Limitation of one dwelling on any lot.

Not more than one building designed or available for use for human habitation shall be erected, or placed, or converted to use as such on any lot in a subdivision, or elsewhere in the Town, without the consent of the Board, and such consent may be made conditional upon the providing of adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision.

### § 475-2.4. Effect of prior recording.

The recording of a plan of subdivision within the Town in the Registry of Deeds of Northern Worcester County prior to the effective date of the Subdivision Control Law in the Town of Ashburnham shall not exempt the land within such subdivision from the application and operation of these rules and regulations except as specifically exempt by MGL c. 41, § 81FF.

### § 475-2.5. Completeness of application.

A. Before the Planning Board may act on an application filed pursuant to these rules and regulations, the Board shall first determine whether the submitted application is complete and properly submitted. In order for an application to be considered a proper submittal, the submission requirements and the plan form application, corresponding plan form checklist, and contents requirements shall be fulfilled.

B. If additional required application material is submitted after the initial submission date, the date when all required items or data are furnished to the Planning Board shall be considered the legal date of submission for the entire application. In order to have the additional information considered part of the application, the applicant shall complete Form D acknowledging the new submission date and file them with the Planning Board and Town Clerk.

C. If an application is determined not to be a proper submittal, it shall be denied without need of a public hearing but with prior written notice to the applicant that the Planning Board will be considering whether the application is a proper submittal. A determination that an application is not a proper submittal shall be filed with the Town Clerk within seven days following the vote of the Planning Board.

D. For purposes of clarification, "incomplete" plans can be defined as lacking critical information and/or entire sections of the subdivision regulations that would be cause for the Board or staff member to not have sufficient information to determine compliance with, or meeting the requirements of, the subdivision regulations; e.g., not including drainage analysis when required is considered incomplete.

### § 475-2.6. Waivers.

A. A subdivision approved and endorsed by the Planning Board must still comply with all rules and

regulations for the subdivision of land, unless a specific waiver is granted, regardless of what is shown on the endorsed plan.

B. The Planning Board may, in special and appropriate cases, waive strict compliance with such portions of these rules and regulations, as provided for in MGL c. 41, § 81R, where such action is in the public interest and not inconsistent with the purpose and intent of the Subdivision Control Law. Waivers are only granted for projects which provide, in the sole opinion of the Planning Board, clear and significant improvements to the quality of a project compared with a project which meets the minimum of the subdivision regulations.

C. A request for a waiver of a requirement, rule, or regulation shall be made in writing by the applicant, and submitted, whenever feasible, with the submission of the preliminary plan. If the Planning Board approves the request for a waiver, it shall endorse conditions of such waiver (if any) on the plan or set them forth in a separate instrument attached to and referenced to the plan, which shall be deemed a part of the plan. The Planning Board shall notify the applicant in writing of its approval, disapproval, or approval with conditions.

### § 475-2.7. More restrictive standards to apply.

These regulations are not intended to interfere with, abrogate or annul any other bylaw, regulation, statute, or other provision of law. If any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other regulation, bylaw or other provision of law, whichever provision is more restrictive or imposes a higher standard shall apply.

### § 475-2.8. Submission of plans to Planning Board.

It is the preference of the Planning Board that the submission of plans for the Planning Board's consideration is done by delivering all required application materials to the Land Use Office during weekday office hours. However, the Planning Board will accept other procedures for submission as provided for in MGL c. 41, §§ 81O, 81T, and 81U. Plans intended for review at a regular meeting of the Planning Board shall be forwarded to the Planning Board at least 10 days prior to the next scheduled meeting. The day of the next regular Board meeting shall be considered to be the date of submission for all plans, except the date of mailing shall be the date of submission for definitive plans sent by registered mail to the Planning Board in care of the Town Clerk. For plans transmitted to the Planning Board other than at a regular Board meeting or other than through the Town Clerk, the date of submission shall be considered to be the day of the next regular Planning Board meeting after such transmittal. Plans shall in no case be considered "submitted" until all required documentation and fees have been received and the application is considered complete per § 475-2.5. All submitted materials will be date stamped and one copy of all materials will be transmitted to the Town Planner to verify completeness of the application.

### § 475-2.9. Authorization to submit plan.

Where any plan is submitted by an individual or agency other than the owner of the affected land, the applicant must provide an original letter from the owner authorizing the applicant to submit the plan with an original notarized signature. A copy of any purchase and sale agreement, along with evidence of the owner's rightful ownership of the land, such as a deed, must be submitted with all applications. Where the owner is a corporation, corporate documents must be submitted indicating who has signed authority to enter into agreements on behalf of the corporation. All applications shall include a municipal lien certificate, or similar document, indicating no outstanding taxes or assessments are due on the property.

### § 475-2.10. Request for extension.

A. An applicant may request an extension to the statutory limits for the Planning Board to take action on an application in order to provide additional time to discuss issues related to an application filed pursuant to these rules and regulations. The request shall be made in writing on Form S, giving a description of the application and plan, the statutory deadline for action, any previously approved extensions, the length of the requested extension, and the proposed date for final action. A request greater than six months shall require renotification of all abutters and readvertising the legal notice at the owner's expense.

B. A copy of the request for an extension, once approved, shall be filed with the Town Clerk.

### § 475-2.11. References.

A. The attention of all applicants submitting a plan for approval under these rules and regulations is also directed to the provisions of the Wetland Protection Act (MGL c. 131, § 40), Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policy requirements, Stormwater Pollution Prevention Plan (SWPPP), all of the Massachusetts General Laws, MEPA requirements, NPDES permit requirements, State of Massachusetts' Standard Specifications for Highways and Bridges, as amended, Manual on Uniform Traffic Control Devices (MUTCD), all requirements of the Federal Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (AAB) and applicable Ashburnham Zoning Bylaws, Ashburnham General Bylaws and Ashburnham Wetland's Bylaws, Board of Health, Board of Water/Sewer Commissioners, Board of Selectmen, Highway Department, Police Department, and Fire Department. Compliance with the requirements of the aforementioned provisions may necessitate major or minor changes/ modifications in any subdivision plan submitted to the Board.

B. Approved definitive subdivision plans modified under an order of conditions of the Conservation Commission may require a modification to the definitive plan as authorized by MGL c. 41, § 81W.

C. For matters not covered by these rules and regulations, reference is made to the provisions of MGL c. 41, §§ 81K through 81GG, inclusive.

### § 475-2.12. Snow plowing and sanding on unaccepted public ways.

A. Upon the occasion of a snow and/or ice event requiring the Town to snow plow and/or sand the Town accepted public ways (see definition of "way and public" in § 475-2.1), the owner and/or applicant shall snow plow and/or sand unaccepted ways within their subdivision in a timely fashion. In the event that the owner and/or applicant fails to snow plow and/or sand unaccepted ways within their subdivision in a timely fashion, the Town may do so at the owner's and/or applicant's expense when so ordered by a Town Selectman or when, in the opinion of the DPW Director, Police Chief, Fire Chief, and Planning Board, it becomes a matter of public safety.

B. Upon the occupancy of one or more single-family residences or residence units within a subdivision, it is the responsibility of the owner and/or applicant to insure that arrangements are made to snow plow and/or sand unaccepted ways [roads] within their subdivision in a timely fashion to ensure that the residents and emergency vehicles have safe, unimpeded access to and from an existing Town-accepted public way. The surface area of the unaccepted way shall be maintained at a condition equal to or better than Town-accepted public ways.

# Part 3
# Procedure For Submission And Approval Of Plans

## ARTICLE III
## Plans Not Requiring Approval Under Subdivision Control Law

### § 475-3.1. Submission.

A. Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan of land and who believes a plan does not require approval under the Subdivision Control Law may submit a plan, a description of the land and application Form A, and corresponding Form A Checklist, and application fee, Mylar and two full-size 24-inch by 36-inch copies and seven copies in an 11 x 17 inch format to the Planning Board accompanied by the necessary evidence to show that the plan does not require approval. See Form A and corresponding Form A Checklist for additional requirements.

B. Electronic filing requirements. All plans submitted under this section shall also be submitted on a Windows compatible 3.5-inch diskette(s) or CD in DXF (drawing exchange file) format. All plans with six or more lots shall be referenced to Massachusetts State Plane coordinates using the North American Datum of 1983 (NAD83) and the North American Vertical Datum of 1988 (NAVD88). Whenever possible, plans with five or less lots shall also be "tied into" real world State Plane coordinates using the datum specified above. To demonstrate this tie down, all features shall be stored in the Massachusetts State Plane Coordinate System and the plan location and coordinate values of at least two points shall be included in the submitted CAD file. To ensure that all plans are submitted to the Town in a consistent format, the CAD file shall use the layering scheme listed in Appendix A.[117]

### § 475-3.2. Contents.

A. Title boundaries, North point, date and scale;

B. Locus map showing location of subdivision with adjacent streets and landmarks clearly indicated;

C. Name and address of record owner and engineer or surveyor, with appropriate certification of a registered land surveyor;

D. Frontage and area of any remaining adjoining land owned by the applicant;

E. Suitable space to record the action of the Board, the signatures of the members of the Board and the following words shall be inscribed on each "approval not required" plan endorsed under this section:

**PLANNING BOARD ENDORSEMENT OF THIS PLAN INDICATES ONLY THAT THE PLAN IS NOT A SUBDIVISION UNDER MGL C. 41, § 81L AND DOES NOT INDICATE THAT THE LOT IS BUILDABLE OR THAT IT MEETS ZONING, HEALTH, CONSERVATION OR GENERAL BYLAW REQUIREMENTS.**

F. Sufficient data to determine existing lines of every street and way line, to include both side lines of the streets and abutters on both sides of the street;

G. House numbers shall be shown on each and every lot according to the practice of the Town of

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**117.Editor's Note: Appendix A is included as an attachment to this chapter.**

Ashburnham, i.e., 40-foot rule;

H. Proposed lot boundaries, with areas of lots (shown in square feet if less than two acres) and lot frontage; and

I. Evidence that each lot on the plan, or altered by it, meets one of the following four criteria:

(1) Has all the frontage required under zoning on:

(a) A public way; or

(b) A way which the Town Clerk certifies is maintained and used as a public way;

(c) A way shown on a plan theretofore approved, endorsed and registered in accordance with the Subdivision Control Law and adequate assurances to complete such way or ways have been met under § 475-3.28 of the Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land.

(d) A private way in existence on February 18, 1954 having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon;

(2) Has been clearly marked on the plan to be either joined to or made a part of an adjacent lot, or "not available for building purposes"; or

(3) Contains a building which existed prior to February 18, 1954; or

(4) Constitutes an existing parcel with no new lot divisions.

**§ 475-3.3. Standards of adequacy.**

A. In determining whether an existing way is adequate to qualify a plan as not constituting a subdivision, the Board shall consider following standards, among others:

| | Development 1-5 Lots | Potentially Served 5 or More Lots |
|---|---|---|
| Minimum right-of-way | 40 feet | 40 feet |
| Gravel foundation minimum | 12 inches | 12 inches |
| Surface type | Gravel | 3 inches bituminous concrete |
| Surface width minimum | 18 feet | 24 feet |
| Sight distance minimum | Shall meet current AASHTO Standards for existing speed limit (Police Department to provide current speed limit) | |
| Maximum grade* | 8% | 8% |

* And meet the requirements of § 475-4.3B below

B. Have provisions been made for public utilities and drainage without cost to the Town?

C. Where direct access to a lot from the abutting street is not possible due to nonaccess strips or

easements or due to steep grades, wetlands, watercourses or other physical constraints, the Planning Board may consider the lot as not having sufficient frontage to allow a division of land without approval under the Subdivision Control Law.

### § 475-3.4. Board action.

A. Determination of access.

(1) The Board shall evaluate the ANR plan to determine if it shows a subdivision. The Board shall determine, first, whether each and every lot shown on the plan has the minimum frontage required by the Ashburnham Zoning Bylaw[118] on a suitable way (§ 475-3.2I); and second, whether vital, direct, practical, and traversable access exists from an abutting way to the buildable portion of the lot(s).

(2) The Board shall determine whether vital, direct, practical and traversable access to municipal services exists from the abutting way to the buildable portion of a lot. The access shall be safe and convenient for travel. Where access is illusory due to the existence of steep grades, or other physical barriers, constraints or impediments, the Board shall not consider the lot as having sufficient frontage to allow a division of land without approval under the Subdivision Control Law.

B. If the Board determines that the plan does not require approval, it shall forthwith, without hearing and within 21 days of submission, endorse on the plan by a majority of the Board, or by a person authorized by the Board, the words "Planning Board approval under Subdivision Control Law not required," or words of similar impact with appropriate name or names signed thereto. Such endorsement shall not be withheld unless such plan shows a subdivision. Said plan shall be returned to the applicant and the Board shall notify the Town Clerk of its action in writing.

C. If the Board determines that the plan does require approval under the Subdivision Control Law, it shall, within 21 days of submission of said plan, give written notice of its determination to the Town Clerk and to the applicant. Said plan shall be returned to the applicant.

D. If the Board fails to act upon the plan, or fails to notify the Town Clerk and the applicant of its action within 21 days after its submission, it shall be deemed to have determined that approval under the Subdivision Control Law is not required, and the Board shall forthwith make such endorsement on said plan; and on its failure to do so forthwith, the Town Clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the Board, or in the case of the certificate, by the Town Clerk, to the applicant.

### § 475-3.5. Administration.

One print of the plan shall be retained in the files of the Planning Board and one print shall be transmitted to the Board of Assessors.

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**118.Editor's Note: See Ch. 250, Zoning.**

ARTICLE IV
**Preliminary Plans**

### § 475-3.6. General.

A preliminary plan of a subdivision may be submitted by the applicant to the Board of Health, Conservation Commission and to the Board for discussion and approval by the Board. The submission of such a preliminary plan will enable the subdivider, the Board, and other municipal agencies to discuss and clarify the problems of such subdivision before a definitive plan is prepared. Therefore, it is strongly recommended that a preliminary plan be filed in every case. Prior to submitting a preliminary plan, the applicant should discuss the proposed plan with the Town Planner and the Board. All preliminary plan submittals shall meet § 5.15 "Major Residential Development" of the Town of Ashburnham Zoning Bylaw.[119]

### § 475-3.7. Submission.

If such review and approval are desired, a properly executed application Form B shall be filed with two full-size 24-inch by 36-inch copies of the preliminary plan and 11 copies in an 11-inch by 17-inch format submitted to the Board. The preliminary plan shall be submitted by delivery at a regularly scheduled meeting of the Board, or by registered mail, postage prepaid, to the Board. If so mailed, the date of mailing shall be the date of submission of the plan. In addition, written notice of such submission using application Form B shall be given by the applicant to the Town Clerk by delivery or by certified mail, postage prepaid. If notice is given by delivery, the Town Clerk shall, if requested, give a written receipt to the person who delivered such notice.

### § 475-3.8. Contents.

The preliminary plan shall be drawn on blueprint or similar type media 24-inch by 36-inch format at a scale of one inch equals 100 feet. Said preliminary plan shall show sufficient information about the subdivision to form a clear basis for discussion of its problems and for the preparation of the definitive plan. Such information shall include the following:

A. Proposed subdivision name or identifying title, boundaries, North point, date, scale, legend and title "Preliminary Plan," and block for approval;

B. Name and address of record owner or owners, applicant, engineer or surveyor or other designer of preliminary plan layout, with professional stamp, if any;

C. Names and Assessor's Map and parcel numbers of all abutters, and owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list;

D. Existing or proposed lines of streets, sidewalks, ways, lots, easements and public or common areas within the subdivision in a general manner. The center line of the proposed roadway and all property lot lines shall be adequately and accurately staked or flagged on the site sufficient for identification by the Planning Board members and their agents;

E. Easements and rights-of-way appurtenant to the land;

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**119. Editor's Note: Original Sec. 5.15, Major Residential Development (MRD), of the Zoning Bylaw (see Ch. 250, Zoning), was repealed 5-5-2012 ATM, AG approved 8-30-2012.**

F. Locus map at a scale of one inch equals 2,000 feet, showing location of subdivision with adjacent streets and landmarks clearly indicated;

G. Approximate boundary lines of all proposed lots or divisions of land with their approximate areas and dimensions. Lots to be numbered in sequence;

H. Topography of the land in a general manner at contour intervals of 10 feet minimum, based on USGS data, including major features such as wooded areas, ditches, wetland water bodies, stonewalls and fences;

I. Proposed system of drainage, including the location of all swamp, marsh and lowland, water bodies, streams, open drains and ditches, natural or man-made, and flowage rights, public and private, adjacent to or within the proposed subdivision, in a general manner;

J. Estimates of the grades of proposed streets and ways or profiles of the same;

K. Statement of existing zoning and any easements, covenants or restrictions applying to the area proposed to be subdivided.

### § 475-3.9. Action by Board.

The preliminary plan will be studied by the Board, and within 45 days after submission, the Board shall approve, approve with modifications suggested by the Board, or agreed upon by the person submitting the plan, or disapprove the preliminary plan. Disapproval by the Board will be accompanied by a detailed statement of reasons for the action. Notice of its action must be given by the Board to the applicant and the Town Clerk within 45 days of the date of submission. Prior to taking action, the Board may request comments from the Board of Health, Fire Department, Police Department, Water/Sewer Commission and Building Commissioner.

ARTICLE V
**Definitive Plans**

## § 475-3.10. Preapplication.

A. Prior to investing in extensive professional design costs for preparation of subdivision plans, the applicant is invited to review the proposed development of the parcel of land with the Town Planner and the Board, in order to explore general conditions involving the site and to discuss potential problems. Pencil sketches, which need not be professionally prepared, will assist in this discussion, and should show the critical features of a preliminary plan.

B. The definitive plan shall conform substantially to the preliminary plan as approved, but may constitute only the portion which is proposed to be recorded and developed at that time. The Planning Board may disapprove a definitive plan if it violates sound land use planning principles and design, even though all requirements hereafter enumerated are met. All definitive plan submittals shall meet § 5.15 "Major Residential Development" of the Town of Ashburnham Zoning Bylaw.[120]

C. The subdivision rules and regulations and zoning in effect at the time of the submission of the preliminary plan shall govern the definitive plan if it is duly submitted within seven months.

D. No tract of land proposed for use in a subdivision shall be stripped of its vegetation or have earth removed until approval of the definitive plan has been granted and the appeal period expired. See Article V for tree and planting requirements.

## § 475-3.11. Submission requirements.

A. Any person who submits a definitive plan of a subdivision to the Planning Board for approval shall file with the Board the following:

(1) Two complete full-size 24-inch by 36-inch sets of prints drawn on blueprint or similar type media. Multiple color lines are acceptable. Original Mylar drawing(s) to be submitted at time of final endorsement;

(2) A properly executed application Form C and corresponding Form C Checklist;

(3) Two copies of drainage calculations certified by the engineer who prepared them;

(4) A certified list of names of all abutters, and owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list;

(5) Eight copies of the street plans and complete set of prints submitted in an 11-inch by 17-inch format;

(6) Eight copies of lotting and street profile plans only, submitted in an 11-inch by 17-inch format;

(7) Electronic filing requirements. All plans submitted under this section shall also be submitted on a Windows compatible 3.5-inch diskette(s) or CD in DXF (drawing exchange file) format. All plans with six or more lots shall be referenced to Massachusetts State Plane coordinates using the North American Datum of 1983 (NAD83) and the North American Vertical Datum of 1988

**120. Editor's Note: Original Sec. 5.15, Major Residential Development (MRD), of the Zoning Bylaw (see Ch. 250, Zoning), was repealed 5-5-2012 ATM, AG approved 8-30-2012.**

(NAVD88). Whenever possible, plans with five or less lots shall also be "tied into" real world State Plane coordinates using the datum specified above. To demonstrate this tie down, all features shall be stored in the Massachusetts State Plane Coordinate System and the plan location and coordinate values of at least two points shall be included in the submitted CAD file. To ensure that all plans are submitted to the Town in a consistent format, the CAD file shall use the layering scheme listed in Appendix A.[121]

B. Submit to the Town Clerk by delivery or certified mail:

(1) A notice stating the date of definitive plan submission to the Planning Board; and

(2) A copy of the completed application Form C.

C. Submit to the Board of Health:

(1) One copy of the definitive plan;

(2) Applicant shall supply Board with proof that plan was received by the Board of Health and the date that it was received.

D. Within three weeks of the definitive plan's filing with the Planning Board, evidence that a professionally prepared sign, nine square feet (three feet by three feet), has been erected on the parcel which is the subject of said subdivision plan, conspicuously located and visible from at least one public or private way. Said sign to read: "This parcel is subject of a public hearing for land subdivision. Plans available at Land Use Office, Town Hall."

### § 475-3.12. Contents.

The definitive plan shall be prepared by a registered engineer and registered land surveyor. The plan shall be at a scale of one inch equals 40 feet, or such other scale as the Board may accept to show details clearly and adequately. Sheet sizes shall not exceed 24 inches by 36 inches. If multiple sheets are used, they shall be accompanied by an index sheet showing the entire subdivision. The definitive plan shall contain the following information:

A. Subdivision name, boundaries, North point, legend, date and scale;

B. Locus map at a scale of one inch equals 2,000 feet;

C. A title block, in the lower right-hand corner, with subdivision name, boundaries, North point, date, scale, names and address of owner of record and applicant, names, signatures and seals of the engineer and surveyor that actually prepared the plan, and space for revision dates. Certification that the plans have been prepared in accordance with these regulations;

D. A list of all other local, state and federal permits required, with status of each at time of filing;

E. Location and names, with current Assessor's Map and parcel number, of all the abutters as they appear on the most recent tax list, including property owners on the opposite side of the any streets abutting the subdivision. Abutting land owned or under control of the owner/applicant;

F. Existing and proposed lines of streets, ways, lots, easements, and public or common areas within the subdivision. Street names to be shown as Road A, Road B, etc. until official names have been approved by the Board;

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**121.Editor's Note: Appendix A is included as an attachment to this chapter.**

G. Sufficient data to determine the location, direction and length of every way and street line, lot line and boundary line, and to establish these lines on the ground;

H. Location of all permanent monuments properly identified as to whether existing or proposed;

I. Location, names and present widths of streets bounding, approaching or within reasonable proximity of the subdivision;

J. The frontage and area of each lot in square feet. Lot frontage shall meet the requirements of Chapter 250, § 4.2.2, of the Ashburnham Zoning Bylaw;

K. Lot numbers shown enclosed in a circle and street numbers enclosed in a square;

L. Existing and proposed watercourses and ponds;

M. Reference identifying applicable street plans and profiles, covenants, or other relevant documents, whether recorded or not;

N. At two-foot intervals, existing topography, including topography within 100 feet of the site, and topography resulting from development of streets, drainage, and other required improvements. One-foot intervals may be required in flat areas, and additional topographic detail may be required if requested by the Planning Board or its engineer;

O. Existing and proposed drainage, drainage easements, including drainage areas inside the subdivision, areas outside the subdivision which drain into it, and the route, for existing and proposed drainage discharging from the subdivision, to the primary receiving watercourse or other body of water. Cross sections of each drainage ditch or pond shall be included. If surface water drains will discharge onto adjacent existing streets, or onto adjacent properties not owned by the applicant, the applicant shall clearly indicate what course the discharge will take, and shall present to the Board evidence from his engineer that such discharge is satisfactory;

P. Proposed layout of water supply; size and location of existing and proposed water supply mains and their appurtenances and hydrants; and storm drains and their appurtenances, and easements pertinent thereto, and curb and curb dimensions;

Q. Location of base flood elevation if encountered within 100 feet of the subdivision;

R. Suitable space for endorsement by the Planning Board, with spaces for annotating date of approval and date of endorsement. If approval of the definitive subdivision plan is conditional, endorsement space shall read:

CONDITIONALLY APPROVED

ASHBURNHAM

PLANNING BOARD

**§ 475-3.13. Street plans and profiles.**

For each street there shall be a separate plan at one inch equals 40 feet, and profile at one inch equals 40 feet horizontal, one inch equals four feet vertical, elevation referenced to the Town datum, showing the following data:

A. The plan shall show bearings and distances, radii and arcs, central angle and tangent distances on all

curves with stationing on the center line;

B. The profile shall show the existing ground on the center line in a solid black line, the existing right side in a short dash line, and the existing left side in a long dash line, the proposed grade shall be shown in a heavy black line with the elevation shown at each fifty-foot station, with the rate of grade indicated;

C. The grade of all streets intersecting the proposed streets shall be shown for at least 100 feet each side of the intersection of the street center line;

D. The proposed drainage, catch basins, manholes, pipes and any other drainage facilities shall be shown on both plan and profile;

E. Existing and proposed sidewalks, bikeways and walkways shall be shown with widths and grade elevations;

F. All plans and profiles shall include a notation on each drawing that the same is one of an indicated total number of sheets;

G. Site distance. The applicant must demonstrate that, for vehicles entering from a proposed street onto an existing street, adequate site distance exists in accordance with current AASHTO standards. Applicants also must demonstrate that adequate site distance exists along the proposed roadways in accordance with AASHTO standards. Sight distance computations shall be prepared by a professional engineer registered in the Commonwealth of Massachusetts. This information shall be shown on the definitive plan. Existing road speed limits to be determined by the Ashburnham Police Department;

H. Existing and proposed fire protection mechanisms (i.e., fire cisterns, hydrants, etc.);

I. Such additional information as the Board may deem necessary.

### § 475-3.14. Accompanying statements, data, and staking requirements.

The definitive plan shall be accompanied by eight copies of written statements on:

A. Existing zoning and any easements, covenants, and restrictions applying to the area proposed to be subdivided;

B. Staking.

(1) To facilitate review of the definitive plan by the appropriate authorities, at the time of filing the definitive plan, the applicant shall stake the lot boundaries and the center line, right-of-way, and approximate limits of grading of all proposed streets on fifty-foot center line stations. Cut or fill dimensions to finished grade profile shall be marked on the stakes.

(2) Roads staked in connection with a preliminary plan submittal shall be updated to include any alignment or grade changes made.

C. Drainage calculations prepared by the applicant's engineer, including design criteria, drainage area and other information sufficient for the Board to verify the size of any proposed drain, swale, drain-field, culvert, bridge or catch basin. Said calculations shall be made separately for each drainage facility, showing its location, the total upstream drainage area, and the percentage of impervious surfaces, the run-off per acre, the design run-off, facility size, slope and capacity, and the velocity of water through it. See § 475-4.9, Street drainage, for additional details.

D. Logs of results of all test pits made.

**§ 475-3.15. Development impact statements.**

A. The applicant shall submit eight copies of all impact statements, the purpose of which is to enable the officials of the Town to determine what methods are to be used by the applicant to promote the environmental health of the community and to minimize adverse effects on the natural resources of the Town. This statement will also address the economic impact resulting to the Town as the result of the development, as well as its effects on Town demographics and traffic during and after construction. The statement shall be a technical document with references for all statements whenever possible. The development impact statements shall clearly and methodically assess the relationship of the proposed development to the natural and man-made environment of Ashburnham. This report shall be prepared by an interdisciplinary team of professionals qualified, experienced and, where applicable, licensed in their fields. The applicant shall bear the cost of this analysis.

B. In reviewing the statements, the Town boards, department heads and other officials will consider the degree to which water is recycled back into the ground, the maintenance and improvement of the flow and quality of surface waters, historic sites, unique geological, botanical, zoological, and archaeological features, existing or potential trails and accesses to open space area, proposed land management, and the health and safety of the inhabitants of the area.

C. The Planning Board may waive any section or sections of the impact statements which it deems inapplicable to the proposed project. The subdivider should discuss the requirements with the Board prior to the preparation of the statement and prior to the submission of the definitive plan.

D. Environmental impact statements shall contain the following:

(1) Physical environment:

(a) Description of the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, scenic and historical features, stonewalls, tree preservation per Article X, trails and open space links and indigenous wildlife;

(b) Description of how the project will affect these features;

(c) A complete physical description of the project and its relationship to the surrounding area.

(2) Surface water and soils:

(a) Description of the location, extent and type of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the project;

(b) Description of the methods to be used during construction to control erosion and sedimentation; i.e., use of sediment basins and type of mulching, matting or temporary vegetation; description of approximate size and location of land to be cleared at any given time and length of time of exposure; covering of soil stockpiles and other control methods to be used;

(c) Evaluation of the effectiveness of the proposed methods on the site and on the surrounding areas;

(d) Description of the permanent methods to be used to control erosion and sedimentation.

This description shall include a description of:

[1] Any areas subject to flooding or ponding;

[2] Proposed surface drainage system;

[3] Proposed land grading and permanent vegetation cover;

[4] Methods to be used to protect existing vegetation;

[5] The relationship of the development to the topography;

[6] Any proposed alterations of shore lines, marshes or seasonal wet areas;

[7] Any existing or proposed flood control or wetland easements;

[8] Estimated increase of peak run-off caused by altered surface conditions and methods to be used to return water to the soils.

(e) Complete description of the sewage disposal methods.

(f) Evaluation of the impact of the disposal methods on surface water, soils and vegetation.

(3) Subsurface conditions:

(a) Description of any limitations on the proposed project caused by subsurface soil and water conditions and methods to be used to overcome them;

(b) Description of the procedure and findings of percolation tests conducted on the site;

(c) Evaluation of the impact of sewage disposal methods on the quality of subsurface water.

E. General impact statement on shall contain the following:

(1) On Town services:

(a) Description of the locations and numbers of vehicles accommodated in parking areas;

(b) Description of the effect of the project on police and fire protection services;

(c) Description of the effect of the project on Public Works Department services;

(d) Description of the effect of the project on educational services;

(e) Description of the effect of the project on the Town water supply and distribution system.

(2) On the human environment:

(a) Tabulation of the proposed buildings by type, size (number of bedrooms, floor area), ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, parking and other paved vehicular areas, and usable open land;

(b) Description of the type of construction, building materials used, location of common areas, location and type of service facility (laundry, trash, garbage disposal);

(c) Description of the lighting, screening and security provisions;

(d) Statement of the proximity to transportation, shopping and educational facilities;

(e) Description of the proposed recreational facilities, including active and passive types, and age groups participating and a statement of the extent to which recreational facilities and open space will be available to all Ashburnham residents.

**§ 475-3.16. Erosion and sedimentation control plans.**

A. A plan for erosion and sedimentation control covering all proposed excavation, filling and grade work for improvements shall be required. Said plan shall be prepared and certified by a registered professional engineer.

B. Such plans shall show proper measures to control erosion and reduce sedimentation, as set forth in § 475-3.16. Such erosion and sedimentation control plan shall consist of:

(1) Location of areas to be stripped of vegetation and other exposed or unprotected areas.

(2) A schedule of operations, to include starting and completion dates for major development phases, such as land clearing and grading, street, sidewalk, and storm sewer installation, and sediment control measures.

(3) Seeding, sodding, or revegetation plans and specifications for all unprotected or unvegetated areas.

(4) Location and design of structural sediment control measures, such as diversions, waterways, grade stabilization structures, debris basins, etc.

(5) General information relating to the implementation and maintenance of the sediment control measures.

C. The Planning Board may require the applicant to post a performance guarantee, to insure proper implementation of the erosion and sedimentation control plan during construction. The intent of the performance guarantee is to provide the Planning Board with a specific surety designated for:

(1) Construction and ongoing maintenance of measures outlined in the erosion and sedimentation control plan;

(2) Construction and maintenance of additional erosion and sedimentation controls, as may be warranted by particular site conditions;

(3) Construction of interim measures, as may be required, for stabilization of disturbed areas and/or repairs to eroded areas.

D. If, in the opinion of the Planning Board, the developer fails to adequately execute the erosion and sedimentation control plan, or fails to satisfactorily control sediment at the site, the proceeds of the performance guarantee shall be made available to the Town of Ashburnham, for the purpose of correcting sedimentation and erosion control issues, and for the purpose of bringing the site into compliance with the erosion and sedimentation control plan.

E. The form of the performance guarantee shall be as agreed by the Planning Board and shall be maintained and extended by the applicant/developer until such time as earthwork operations are completed and all disturbed areas have been adequately vegetated. The dollar amount of the performance guarantee shall be based on the area (in square feet) of land to be disturbed, as shown on the definitive plans, times the unit price of $0.25 per square foot. The Planning Board may, at its

reasonable discretion, modify the amount of the performance guarantee in response to particular site conditions or constraints.

### § 475-3.17. Landscape plan.

A landscape plan prepared and stamped by a registered landscape architect shall be submitted with all applications for a definitive plan. The landscape architect should be included in the design process to assure integration of landscaping with other features of the subdivision and to promote the preservation and enhancement of the natural landscape. The landscape plan shall show the following:

A. All proposed landscaping, including plantings at the entrance, planted cul-de-sac islands, screening for stormwater management facilities such as detention/retention basins, and other landscaped areas.

B. All land proposed to remain in an undisturbed, natural state, either through designation as a no-cut zone, subject to a deed restriction or conservation easement, or otherwise intended to be dedicated as open space, with boundaries clearly defined and type of protection indicated by a note on the plan. See Article V for detailed requirements.

C. Existing and proposed stone walls, existing and proposed fencing, existing and proposed retaining walls, unique specimen trees, existing trees with diameters greater than 10 inches (dbh), wooded areas, and other significant vegetation.

D. The number, size, species and cultivated variety of proposed plantings shall be shown on the landscape plan. Plant names shall include both botanical and common names. See Article V for detailed requirements.

E. Details of the proposed method for planting trees and shrubs shall be shown.

F. Construction details of proposed retaining wall(s), including location, length, height, and detail of stone facing or other surface treatment.

G. Specified times for plantings and seeding.

### § 475-3.18. Draft homeowner's agreement.

The applicant shall submit a draft homeowner's agreement establishing a homeowner's association with any application for a definitive plan showing detention/retention drainage devices, other stormwater facilities and fire protection systems serving the subdivision which are proposed to be located outside the layout of the subdivision's street(s). This agreement shall include maintenance of all subdivision roads until such time as they are accepted by the Town, and may include maintenance of shared on-site sewage disposal systems if shared maintenance is recommended and approved by the Board of Health. The homeowner's agreement shall allocate the costs of operation and maintenance of specified components of drainage, stormwater management systems, fire protection systems, and streetlighting to a homeowner's association. The homeowner's agreement shall include an operation and maintenance plan prepared by a registered professional engineer and shall identify:

A. The present owner of the drainage system and the land on which it is located.

B. The components of the drainage system, and the parties proposed to be responsible for their operation and maintenance for the following time periods: during construction, after the road is completed but before it is accepted by Town Meeting, and after the road is accepted by Town Meeting.

C. The source of funding for operation and maintenance for each major component of the drainage

system during construction, before road acceptance and after road acceptance.

D. A detailed description of the type and frequency of inspections and maintenance for each component of the drainage system. This shall typically include inspections and/or maintenance required after accumulation of specific depths of sediment, after major storm events and at regularly established time intervals. The method for disposal of sediment shall be described. The Board may require that certain technical inspections be performed by a registered professional engineer.

E. A requirement that the homeowner's association report the results of inspections no less frequently than once per year, and provide a description of maintenance to the Board and Highway Department within 30 days after any maintenance has been performed. The Board may require that inspections or maintenance be performed at specific times of the year when they are expected to be most effective.

F. A requirement that the homeowner's association informs the Board and Highway Department of the name, address and telephone number of a current responsible party or contact person for the homeowner's association. The homeowner's association shall inform the Town of changes of this responsible party as soon as possible, but no later than seven days after the change has been made.

G. A requirement that the homeowner's association maintain any fencing or other appurtenances associated with detention/retention devices or other components of the drainage system it maintains.

H. A mechanism to enforce maintenance by the homeowner's association and maintains funding for maintenance.

I. The Board may require a performance guarantee to ensure the continued operation and maintenance of drainage and other common facilities.

J. The Board may require submission of the first year's contracts for maintenance of the detention basin and other common facilities.

K. A requirement that the Highway Department shall have the right of access to the detention basin and other drainage facilities. The homeowner's agreement shall be provided to the Board for its approval and reviewed by Town Counsel at the applicant's expense prior to endorsement of the definitive plan. Applicants may use a standard format available in the Planning Board office to help in drafting the homeowner's agreement.

### § 475-3.19. Easements.

Draft language for proposed easements shall be provided to the Board prior to approval of the definitive plan.

### § 475-3.20. Aerial photograph.

An aerial photograph at 1:1,200 or scale showing greater detail, from 2001 or later, indicating the property to be subdivided, the proposed street layout, lot lines, and easements. Information on where aerial photographs may be obtained for this purpose is available from the Town Planner.

### § 475-3.21. Location of endangered species habitat.

A copy of the appropriate quadrangle map(s) from the most recent published edition of the Massachusetts Natural Heritage Atlas, showing the location of the project site relative to estimated habitats of rare wildlife and certified vernal pools unless already submitted as part of a preliminary plan application.

### § 475-3.22. Traffic study.

For all nonresidential subdivisions and for residential subdivisions of 15 dwelling units or more, the applicant shall submit a traffic study to address the impact the subdivision will have on congestion, safety and convenience of the roadway system providing access to the subdivision. The Planning Board may request a traffic study on subdivisions with less than 15 dwelling units if special conditions warrant. Impacts on both vehicular and pedestrian travel shall be addressed. The study shall be prepared by a registered professional engineer qualified in the field of traffic engineering. Seven copies of the traffic study shall be submitted. The traffic study shall include the following:

A. Review of available prior studies for the area, including studies by other consultants, Mass Highway, the regional planning agency, the Town and other recent in-house efforts, as may be available.

B. Visit to the site to observe conditions and gather information that can affect site access and traffic circulation.

C. Contact the Town to identify other roadway and development projects that might affect traffic volumes in the area and planned or recently completed area roadway improvements.

D. Based on available data and field observations, the applicant and Town staff will jointly identify the potential study area for subsequent detailed analyses and traffic study.

E. Perform morning, evening, and/or weekend peak-hour traffic counts at intersections in the vicinity of the proposed development to understand the existing characteristics of the area and develop a baseline condition for traffic in the area of the proposed development. The locations will be specifically identified after preliminary discussions with the Town.

F. Perform two three-day traffic counts along area roadways serving the site using automatic traffic recorders (ATRs) to identify the hourly and daily traffic volumes along the roadways. One three-day traffic count shall include Saturday and Sunday.

G. Research existing vehicular crash information along study area roadways using the Mass Highway Department's Accident Record System for the most recent three-year period. In specific instances, the Ashburnham Police Department may need to be contacted to identify specific issues relating to the proposed development's traffic impact.

H. Perform trip generation calculations using standard industry procedures using the most recent version of the ITE Trip Generation Manual. This will be performed in order to determine the potential number of vehicular trips that could be generated by the proposed development. If empirical data is available and is relevant, the developer may elect to use this information in addition to the ITE data.

I. Develop a trip distribution pattern to understand the distribution of the projected site traffic onto the local roadway network. This would be based on an evaluation of population densities, U.S. Census journey-to-work data, the efficiency of the existing roadway system, and available empirical data.

J. Review the development plan for adequate access and circulation for vehicles, emergency vehicles and pedestrians.

K. Qualitatively evaluate existing roadway conditions and site access and describe potential traffic impacts and possible mitigation measures. This will include an evaluation of the study area intersections using the means and methods contained in the most recent version of the Highway Capacity Manual.

L. Develop and propose mitigation actions aimed at addressing the locations where traffic impacts of the proposed development reduce the level of service (LOS) of any individual intersection and/or approach to an intersection to a LOS of E or F.

M. Summarize the findings of the assessment in a traffic memorandum for submission to the Board.

### § 475-3.23. Waivers.

If the application requires waivers of the Subdivision Rules and Regulations, a statement shall be submitted including a description of the waiver, identification of the applicable section of the rules and regulations, and the reason the waiver should be considered in the public interest. Refer to § 475-2.6 above.

### § 475-3.24. Additional information that may be required.

Before approval of a definitive subdivision plan is granted, the Planning Board may request additional information in order to evaluate the submission with respect to adequacy of stormwater facilities, adequacy of access, traffic circulation and safety, coordination of improvements with existing municipal road, drainage and sewer infrastructure and other public or private utilities, and compliance with objectives of the Master Plan, such as protection of natural, historic and cultural resources, proper provision of affordable housing when proposed, and provision of amenities consistent with neighborhood or community character. To assist the Board in this regard, it may request additional input or review, or completion of studies.

### § 475-3.25. Board of Health review procedures.

A. The Board of Health shall, within 45 days of filing, report to the Planning Board in writing with signatures of a majority of its members or the Board's agent its approval or disapproval of the plan, as required by MGL c. 41, § 81U. If the Board of Health disapproves said plan, it shall make specific findings as to which, if any, of the lots shown on such plans cannot be used for building sites without injury to the public health, and include such specific findings and the reason therefor in such report, and, where possible, shall make recommendations for the adjustment thereof. Approval of the plan by the Planning Board shall then only be given, provided that the applicant documents having reviewed his plan with the Board of Health, and only on condition that the lots or land as to which specific findings were made shall not be built upon without prior consent of the Board of Health. The Board shall notify the Planning Board of any lots or land to which said conditions apply. In the event approval by the Board of Health is by failure to make a report within 45 days, the Planning Board shall note on the plan that health approval is by failure to report.

B. Any lot so located that it cannot be served by a connection to the municipal sewer system shall be provided with an on-site system satisfactory to the Board of Health.

### § 475-3.26. Action by Board.

A. Public hearing. Before approval of the definitive plan is given, a public hearing shall be held by the Planning Board. Notice of such hearing shall be given by the Board at the expense of the applicant by advertisement in a newspaper of general circulation in the Town of Ashburnham in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing. A copy of such notice shall be mailed to the applicant and to all owners of land abutting upon the subdivision, including those on the opposite side of the street, as appearing in the most recent tax list.

B. Decision.

(1) After the public hearing and within 90 days of submission of the definitive plan the Planning

Board shall approve, modify and approve, or disapprove the definitive subdivision plan submitted. Criteria for action by the Board shall be the following:

(a) Completeness and technical adequacy of all submissions;

(b) Conformity with all applicable zoning requirements;

(c) Consistency with the purposes of the Subdivision Control Law;

(d) Conformity with the Board's design and construction standards;

(e) Conformance with the recommendations of other boards as may be required; i.e., Conservation Commission, Board of Health, etc.

(2) Following such action, the Board shall file a certificate of its action with the Town Clerk, and shall send notice of its action by registered mail to the applicant at his address stated in the application.

**§ 475-3.27. Endorsement of plan.**

A. Before requesting that the Planning Board endorse the definitive subdivision plan, the subdivider shall be the owner of record, agent, or representative.

B. Unless an appeal is taken from the action of the Planning Board to the Massachusetts courts, and a written notice of such appeal is received by the Town Clerk within 20 days of the Town Clerk receiving written determination of the Planning Board's final action, the Town Clerk shall endorse the definitive subdivision plan with a certificate that no appeal has been filed. Endorsement shall be made by a majority of the Planning Board. All lotting plans required to be recorded with the Registry of Deeds shall have the endorsement of a majority of Planning Board members. All other plan sheets may be initialed by the Chairman. The Planning Board shall endorse an approved definitive subdivision plan only after the Town Clerk has certified that no appeal has been filed as indicated above and all necessary legal documents have been approved by the Board. The Planning Board shall require that the definitive subdivision plan contain reference to its conditions of approval or any instrument describing such conditions.

C. If an appeal is filed, the Planning Board shall endorse the plan only if the appeal is not successful in overturning the approval and no further court appeal is initiated within the permitted time limits.

D. If a definitive subdivision plan is approved by the failure of the Planning Board to act within the required time, the Town Clerk shall issue a certificate stating the date of submission of the plan, any extensions to that time period that were recorded with the Town Clerk, that the Planning Board has failed to file notice of final action with the Town Clerk within the required time and that the approval by failure of the Planning Board to act has occurred. If 20 days following the issuance of the certificate pass without notice of an appeal, the Town Clerk shall, at the request of the applicant, endorse the subdivision plan certifying that no appeal has been received.

E. If the applicant fails to submit the required performance guarantees, easements and other documentation and the endorsement of the definitive plan by the Planning Board is delayed more than six months after the expiration of the twenty-day appeal period, the Planning Board, on its own motion, may exercise its power to modify, amend, or rescind its approval of the subdivision plan or to require a change in the plan as a condition of said plan retaining the status of an approved plan.

**§ 475-3.28. Performance guarantees.**

A. Prior to endorsement by the Planning Board of a definitive subdivision plan, the subdivider shall provide for long-term provisions for the maintenance of proposed streets within the subdivision. Such provisions shall be in the form of a recordable instrument. The subdivider, or any heir or successor, shall be bound by such provisions until such time as the street or streets are formally accepted by the Town. The Planning Board/Town does not want ownership of infrastructure outside rights-of-way.

B. Before endorsing an approved definitive subdivision plan, the Planning Board shall require that the subdivider file with the Planning Board a performance guarantee to secure the construction of ways and the installation of municipal services. The following section outlines the kinds of performance guarantees permitted under MGL c. 41, § 81U. The guarantees are of two kinds: a covenant as described in Subsection C(1), and sureties as described in Subsections C(2) and (3). While the method may be selected and varied from time to time by the subdivider or successor in interest, the Planning Board prefers the use of a covenant and may submit other forms of performance guarantee to Town Counsel for review as to form, and manner of execution.

C. Listed below are the methods by which the installation of ways and municipal services are secured, and which are allowed and specified in MGL c. 41, § 81U:

(1) By a covenant, executed and duly recorded by the owner of record and running with the land, providing that the ways and services shall be constructed to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed. However, a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provides that no lot shall be built upon until such ways and services have been provided to serve such lot; and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the definitive subdivision plan or of all lots not previously released by the Planning Board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three years from the date of such deed. See Form F for covenant format. This covenant shall be referred to on the definitive subdivision plan as follows:

"A Conditional Approval Covenant between the Ashburnham Planning Board and _____ (the subdivider and owner) to secure the completion of required ways and utilities has been executed and is recorded at the Worcester North County Registry of Deeds with this plan. Book _____ and Page_____."

(2) By a deposit of money or negotiable securities, or by proper bond, sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan; each bond or deposit shall be contingent upon the construction and such installation within such period as the Planning Board shall determine.

(a) All cost estimates submitted by the subdivider shall be reviewed by the Town Engineer for adequacy. The bond amount submitted to the Planning Board shall include 40% of the subtotal as contingency against any damages to the subdivision and estimated inflation, and 10% of the subtotal as contingency to cover administrative overhead, and bidding for the completion of the outstanding subdivision improvements in the event that the subdivision is declared in default.

(b) If the Planning Board shall decide at any time during the term of the performance guarantee that the character and extent of the subdivision requires additional

improvements, previously waived, then the Planning Board may modify its requirements in accordance with MGL c. 41, § 81W for any or all such improvements, and the face value of such performance bond, or amount of deposit of money or value of securities, may be increased by an appropriate amount. Such increase may be requested by the Planning Board and consented to by the applicant, or imposed through the procedure for amending an approved definitive subdivision plan.

(3) By delivery to the Planning Board of an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, which agreement shall be executed by the applicant, and the lender shall provide for the retention by the lender of funds sufficient, in the opinion of the Planning Board and otherwise due the applicant, to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisturbed shall be available to the Town of Ashburnham Planning Board for completion of the required ways and utilities.

D. Time period and extensions for construction of required improvements.

(1) Construction of all required improvements shall be completed within three years of the date of recordation of the approved definitive subdivision plan. A subdivider may request an extension to the three-year period in which the required improvements must be constructed. The request must be submitted in writing to the Planning Board stating what further time period to complete the required improvements is required and the reasons why an extension is requested. The Planning Board may grant an extension of not more than one year on the motion of four members. More than one extension may be granted.

(2) As a condition of permitting the extension, the Planning Board shall have the right to revise the amount of sureties to ensure that sufficient adequate funds to insure the completion of the required improvements are retained and shall have the right to revise the covenant to reflect the increased construction period and any additional conditions to ensure satisfactory completion of the subdivision improvements. The cost estimate to complete the required improvements shall be reviewed by the Town Engineer, and any bonds held by the Planning Board shall be adjusted as necessary to reflect any increased cost of construction, and to require that the bond amount include 40% of the subtotal as contingency against any damages to the subdivision and estimated inflation, and 10% of the subtotal as contingency to cover administrative overhead, and bidding for the completion of the outstanding subdivision improvements in the event that the subdivision is declared in default.

**§ 475-3.29. Recording of plan.**

A. After an acceptable performance guarantee has been provided to the Planning Board and the definitive subdivision plan has been endorsed, the applicant shall record the endorsed plan, together with any related easements, covenants, conditional approval covenant, and any other required documents. The applicant is responsible for paying the cost of recording.

B. Where the subdivision has been approved subject to a conditional approval covenant as noted on the definitive subdivision plan, the Building Commissioner shall not issue a permit for the construction of a building on any lot within the subdivision until the Planning Board releases the lot from the title restrictions of the covenant. (Form K)

**§ 475-3.30. Calculation of amount of guarantee.**

A. Amount.

(1) The amount of a bond or deposit of money required shall include, but shall not be limited to:

(a) The estimated costs of all materials to be used in the construction of proposed ways and other public improvements calculated by linear foot, cubic yard, square foot, and other appropriate itemizations of quantities. All other related installation and construction costs, including but not limited to engineering fees, construction management, supervision fees, contingencies, and any increased cost due to inflation over the proposed construction period; and

(b) Amount of estimated cost to complete as-built plans, and street acceptance plans for ways proposed to be offered for acceptance as public ways; plus

(c) Amount of increased construction and contingency costs estimated for a period of twice the proposed construction completion date, plus one year.

Total amount not to exceed 150% of estimated costs.

(2) All estimates shall be reviewed by the Planning Board Town Engineer at the expense of the applicant. The amount of such guarantee shall be recalculated in the manner provided herein when the applicant may request this or when the construction completion date is requested to be extended by the applicant, and the agreement shall be amended accordingly.

(3) The sum of any such financial guarantee may, from time to time, be reduced by the Planning Board and the obligations of the parties thereto released by said Board in whole or in part.

B. Use of performance guarantee in case of default.

(1) If the developer fails to complete such work to the satisfaction of the Planning Board and in accordance with all applicable agreements, plans, regulations, and specifications, the Planning Board shall be entitled to enforce such bond or to use such deposit or other securities for the benefit of the Town to the extent necessary to complete all such required work without delay. The performance guarantees shall be used to cover all costs to the Town of completing such construction and installation.

(2) The Town, at its option, may enter upon the premises and itself or through others supply whatever materials and perform whatever work it deems necessary to remedy such failure and complete all work called for to be performed by the applicant. If the financial guarantee posted by the applicant is not sufficient to complete the required subdivision improvements and/or to remedy any failure of installed improvements, the Town, at its option, may initiate proceedings to recover the additional costs necessary from the subdivider to correct and complete all required work. The proceedings shall include an amendment to the approved subdivision plan to increase the amount of the financial security. If the subdivider does not provide the additional security, the Planning Board may initiate action in the Massachusetts courts to ensure compliance.

**§ 475-3.31. Procedures for release or reduction in performance guarantee.**

A. Upon completion of some or all of the improvements for which a performance guarantee was given, the subdivider may request a full or partial release of the bond, deposit, or covenant by sending a statement of completion and a request for release by registered mail to the Planning Board.

B. Such written request shall be accompanied by two copies of a certificate by a registered professional engineer which shall describe work completed in the subdivision and its conformity with the approved definitive subdivision plan. The Planning Board, upon receipt of such written notice and certificate, shall consult with the Town Planner and Town Engineer to determine whether the subdivider or developer has complied with all requirements of the approved definitive subdivision plan and these rules and regulations.

C. In the event of deviation from the approved definitive subdivision plan, such deviation shall be described in the certificate from the registered professional engineer, and shall be accompanied by two copies of the street layout plan and road profile showing the deviation.

D. If the Planning Board, in consultation with the Town Engineer, determines that said construction or installation has been completed in accordance with these rules and regulations, it shall release the full or partial interest of the Town in such land, or deposit to the person who furnished the same, or release the covenant or specific lots within the covenant by an appropriate instrument, duly acknowledged, which may be recorded. (Form K)

E. If the Planning Board determines that required construction or installation has not been completed, it will specify the details wherein the construction or installation fails to comply with its rules and regulations in a notice sent to the applicant and delivered to the Town Clerk.

**§ 475-3.32. Requirements for partial release of performance guarantee.**

A. Request.

(1) For a partial release of a covenant, surety, or deposit, the subdivider shall submit a written request as set forth below, detailing what work is claimed to be satisfactorily completed, and which lots, if any, are to be released.

(2) The subdivider or developer shall also provide a detailed estimate, specifying the remaining incomplete improvements and their construction costs, and shall calculate the amount of guarantee to secure the remaining work. All estimates shall be reviewed by the Town Engineer.

B. Partial release of a surety. The Planning Board, if satisfied that the work has been satisfactorily completed as specified in the subdivider's request, and satisfied that the proposed reduced amount of surety is sufficient to cover the cost of completing the remaining work, shall accept a new surety in the revised amount and release the previously provided surety.

C. Partial release of lots from a covenant.

(1) When only a portion of the streets and other improvements shown on the definitive subdivision plan have been constructed or installed and a release of covenant is requested, the Planning Board shall consider as satisfactorily completed only such lengths and parts as will in and of themselves form convenient and adequate systems without the necessity of further extension or improvement, and shall consider as eligible for release only such lots that front on, are connected, or are otherwise served by such streets, utilities, and other improvements. Work on the ground adjacent to a particular lot will normally be considered by the Planning Board as work necessary to adequately serve such lot, regardless of the degree to which the lot is dependent on said work for its access or utility service.

(2) No release of lots from the restrictions of a covenant shall be granted by the Planning Board unless the subdivider constructs a temporary turnaround at the end of the constructed portion of

each street in the subdivision (except where such street ends in a junction with another existing street) and such other interim facilities as are necessary to provide a reasonable operating system of streets and utilities. The subdivider shall also propose appropriate arrangements for later disposition of such interim facilities, including temporary turnarounds, which must be acceptable to the Planning Board as part of the partial release.

D. Conversion of a covenant to another performance guarantee.

(1) If the developer desires that lots be released from a covenant and secured by means of another form of guarantee or surety the remaining public improvements related to a subdivision, a formal written request shall be given to the Planning Board which sets forth and includes:

(a) The extent and scope of remaining work to be completed to satisfy the requirements for the installation of all proposed ways and municipal services;

(b) An estimate, pursuant to § 475-3.30 of these regulations, which reflects all remaining costs related to the construction of all proposed ways and the installation of municipal services; and

(c) The form and type of guarantee being given to the Planning Board to secure all remaining improvements.

(2) The Planning Board, in consultation with its professional staff and other municipal departments, including the Town Engineer, will make a determination on the sufficiency of the submitted estimate, and, if such estimate is accepted, a new performance guarantee will be given to the Planning Board. Upon acceptance by the Planning Board of the new performance guarantee, all applicable lots shall be released from the covenant.

E. Conversion of a surety to a covenant. If the developer desires to secure, by means of a covenant, the construction of ways and the installation of municipal services in a portion of a subdivision for which no building permits have been granted nor any lots have been sold, and to have the Planning Board release the bond, deposits, or negotiable securities previously furnished to secure such construction and installation, the developer shall submit to the Planning Board three copies of the definitive subdivision plan, limited only to that part of the plan which is to be subject to such covenant. Upon approval of the covenant by the Planning Board, reference thereto shall be inscribed on such section of the plan, and it shall be endorsed by the Planning Board and recorded with the covenant at the expense of the developer. Certified copies of all documents which the subdivider records at the Registry of Deeds shall be provided to the Planning Board as set forth in § 475-3.29A of these rules and regulations.

F. Requirements for final release and durability of required improvements. No subdivision shall be accepted and no final release of a performance guarantee shall be given by the Planning Board until:

(1) The integrity of road pavement and drainage has been verified following a full winter in place. The Planning Board shall retain a surety in the sum of 15% of the total cost of improvements, which shall be released following the verification that the utilities have withstood the winter or have been repaired to the Planning Board's satisfaction.

(2) Any required planting areas have been installed for a sufficient time and are in a healthy condition so that the Planning Board may be satisfied that the vegetation has been established. The required time period shall be one year plus whatever time through to July 1 for grassed area and two years plus whatever time through to July 1 for shrubs and trees. The Planning Board

shall retain a surety in the amount of 5% of the total cost of improvements to ensure the establishment of the vegetation.

(3) All improvements proposed in the definitive subdivision plan have been completed and have been verified as completed by the Town Engineer.

G. Conveyance of utilities and services.

(1) Before the Planning Board will release a surety bond or deposit, or in the case of a covenant, issue a certificate of performance, for subdivisions in which the ways and utilities are proposed to be offered for acceptance as public ways, the developer shall execute an instrument transferring to the Town valid, unencumbered title to all sanitary sewers, stormwater drains, water mains and all appurtenances thereto constructed and installed in the subdivision and conveying to the Town, without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate, and forever maintain such sanitary sewers, stormwater drains, water mains, and all appurtenances thereto and to do all acts incidental thereto, in, through and under the whole of all streets in the subdivision, and if such sewers, stormwater drains, water drains, and water mains have been constructed and installed in land not within such streets, then in, through and under the easements, as shown on the definitive subdivision plan, and if such sewers, storm drains, water drains, and water mains have been constructed and installed in land not within streets, then in, through and under the easements, as shown on the definitive subdivision plan, and where no easements are shown, in, through, and under a strip of land extending 10 feet in width on each side of the center line of all such drains and mains. (The Planning Board/Town does not want ownership of infrastructure outside rights-of-way.) The above shall not be construed to relieve the developer and his successors in title to a portion of land or street in the subdivision of responsibility to complete all construction, as required by developer's covenants and agreements with the Town, and to thereafter maintain all streets and utilities in a satisfactory condition until they are accepted by the Town.

(2) Acceptance by the Planning Board of the improvements required for a definitive subdivision plan does not constitute the laying out or acceptance of by the Town of any streets, bikeways, or footpaths within a subdivision.

(3) If the Town must maintain a portion of or enter the subdivision for the purposes of public safety, emergency purposes, or otherwise, the Town reserves the right to charge the applicant for services rendered.

(4) The subdivider shall retain title to the fee of each street, path, or easement in or appurtenant to the subdivision until conveyed to the Town and accordingly accepted under MGL c. 82; and the subdivider shall maintain and repair the roads and drainage facilities in a manner satisfactory to the Planning Board during that period. In order to retain the fee in the street, the subdivider must clearly define lot lines when selling individual lots, to make it clear that the lot stops at the street layout. Otherwise, the owners of the individual lots will, by convention, own the street to the center line. If this occurs, the Town cannot accept the street, since any conveyance of the street from the subdivider to the Town will be meaningless.

(5) If the subdivider chooses not to offer the right-of-way and other access easements in fee to the Town, this shall be noted on the definitive subdivision plan and the subdivider will have proposed and implemented mechanisms for perpetual maintenance.

(6) If the subdivider declared the intent to offer the right-of-way and other access easements to the

Town, the subdivider shall submit all necessary documentation for street acceptance, including "Street Acceptance Plans" in a form acceptable to the Registry of Deeds and the Town Engineer, legal descriptions, easements, list of owners and mortgagees of lots having rights in the street, and any grants of rights necessary, for use by the Town for formal acceptance of the way by Town Meeting. A Street Acceptance Plan shall be prepared pursuant to the requirements of § 475-3.35. Any "as-built plan" prepared pursuant to § 475-3.34 shall not be suitable for use as a Street Acceptance Plan.

(7) Where a portion of a subdivision is serviced by an on-lot sewerage system or systems, the Planning Board shall not release the subdivision until satisfied that such system or systems were installed in accordance with the requirements of Title 5 of the Environmental Code of the Commonwealth of Massachusetts and the Ashburnham Board of Health.

### § 475-3.33. Rescission.

Failure of an applicant to record the definitive plan and covenant documents within six months of its endorsement at the Worcester North District Registry of Deeds or at the Land Court; or to comply with the construction schedule incorporated into the performance agreement; or to initiate construction of improvements in a subdivision within two years of the approval of the definitive plan; or to comply with the applicable Town of Ashburnham Zoning Bylaw requirements;[122] or to comply with the approved plans and any conditions of approval; shall constitute grounds for rescission of approval in accordance with the requirements and procedures set forth in MGL c. 41, § 81W.

### § 475-3.34. As-built plans.

A. Upon completion of construction, and before release of the performance guarantee, the subdivider shall have prepared and submitted as-built plans at the same scale as the street plans, which shall indicate the actual location of all of the following:

(1) Boundaries of the right-of-way;

(2) Street lines;

(3) Traveled way edges;

(4) Path locations;

(5) Permanent monuments;

(6) Location and inverts, with elevation of the required utilities and drainage;

(7) Locations of any other underground utilities, such as electricity, telephone lines, streetlighting, water and sewer mains;

(8) Driveway locations;

(9) Lot boundaries;

(10) Center line stationing;

(11) Location of all buildings, wells and septic systems;

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**122. Editor's Note: See Ch. 250, Zoning.**

(12) Required landscape improvements.

B. The accuracy of such as-built plans shall be certified by a registered land surveyor or registered professional engineer retained by the subdivider.

C. Electronic filing requirements. All as-built-plans submitted under this section shall also be submitted on a Windows compatible 3.5-inch diskette(s) or CD in DXF (drawing exchange file) format. All plans with six or more lots shall be referenced to Massachusetts State Plane coordinates using the North American Datum of 1983 (NAD83) and the North American Vertical Datum of 1988 (NAVD88). Whenever possible, plans with five or less lots shall also be "tied into" real world State Plane coordinates using the datum specified above. To demonstrate this tie down, all features shall be stored in the Massachusetts State Plane Coordinate System and the plan location and coordinate values of at least two points shall be included in the submitted CAD file. To ensure that all plans are submitted to the Town in a consistent format, the CAD file shall use the layering scheme listed in Appendix A.[123]

D. Approval by the Board of a definitive subdivision plan shall not constitute the laying out or acceptance by the Town of any streets, bikeways, or footpaths within the subdivision.

### § 475-3.35. Street acceptance.

For ways proposed to be offered to the Town as public ways, the subdivider shall have prepared and submitted a "Street Acceptance Plan" prior to final release of the performance guarantee. Such plans shall be suitable for recording at the Registry of Deeds. At a minimum, Street Acceptance Plans shall contain the following information:

A. Title block indicating the name of the subdivision, the name of the way, the name and address of the subdivider, the name and address of the engineer and/or surveyor, and the date of preparation;

B. Locus map;

C. The boundaries and area of the right-of-way;

D. The location and identification of the owners of lots and all properties abutting the way;

E. Additional pertinent information as may be required by the Planning Board shall be provided on the plan. Such plans shall be accompanied by deeds, easements, and other appropriate documentation required for the conveyance of the way to the Town. Any as-built plan prepared pursuant to § 475-3.34 shall not be suitable for use as a Street Acceptance Plan.

### § 475-3.36. Definitive plan changes after approval.

A. After approval of any definitive plan, the location and width of ways shown thereon, or any street or way subject to the Subdivision Control Law, shall not be changed unless the plan is amended in accordance with the provisions set forth in MGL c. 41, § 81W, and approved by the Planning Board.

B. In the event the applicant desires to alter or change the grade of a street or the size, location or layout of a storm sanitary or water line or appurtenant structure, he shall provide the Planning Board with a written statement requesting such alteration or change and with two prints of the original definitive plan with the proposed changes drawn on said prints in red. No change or alteration shall be permitted unless such change or alteration has been approved by the Planning Board.

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**123.Editor's Note: Appendix A is included as an attachment to this chapter.**

## Part 4
## Design Standards

All standards in these regulations shall be considered minimum standards, and may be varied from or waived where the Board considers that alternate conditions will serve substantially the same objective.

ARTICLE VI
**Streets**

## § 475-4.1. Location and alignment.

A. All streets in the subdivision shall be designed so that, in the opinion of the Board, they will provide safe vehicular travel. Due consideration shall also be given by the subdivider to the following features:

(1) Volume of cut and fill;

(2) Area over which existing vegetation will be disturbed, especially if within 200 feet of a river, wetland or water body, or in areas having a slope of more than 15%;

(3) Number of trees to be removed having a diameter over 10 inches;

(4) Extent of waterways altered or relocated;

(5) Dimensions of paved areas (including streets), except as necessary to safety and convenience, especially in aquifer/recharge areas;

(6) Use of collector streets to avoid traffic on streets providing house frontages;

(7) Visual prominence of natural features of the landscape;

(8) Maintenance within the subdivision of runoff and vegetative cover equivalent to conditions before development.

B. The proposed streets shall conform to a Master Plan as adopted by the Board.

C. Provision satisfactory to the Board shall be made for the proper projection of streets, or for access to adjoining property which is not yet developed.

D. Reserve strips prohibiting access to streets or adjoining property shall not be permitted, except where, in the opinion of the Board, such strips shall be in the public interest.

E. Access to arterial street. Intersections of collector and residential minor roads and streets with arterial streets will not normally be allowed at intervals of less than 450 feet. Subdivisions of 50 or more lots will be required to have more than one access to an existing arterial street which is built in conjunction with the proposed subdivision.

F. Street jogs. Street jogs in arterial and collector streets with center line offsets of less than 500 feet shall not be allowed. Street logs in residential streets with center line offsets of less than 125 feet should be avoided.

G. The minimum center line radii of curved streets shall be 100 feet for lanes and secondary streets; 150 feet shall be required for collector streets.

H. Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than 60°.

I. Property lines at street intersections shall be rounded or cut back to provide for a curb radius of not less than 25 feet.

J. Visibility from the center line of the street shall meet current AASHTO Standards.

K. Access through another municipality. In case access to a subdivision crosses land in another municipality, the Board may require certification by the appropriate officials that such access is in accordance with the zoning and subdivision requirements of such municipality, and that a legally adequate performance bond has been duly posted, and that such access is adequately improved to handle prospective traffic.

### § 475-4.2. Width.

A. The width for two-way, paved streets shall be as follows:

| Streets | Street Pavement Width (feet) | Right of Way Width (feet) |
|---|---|---|
| Minor roads and streets | 24 | 40 |
| Secondary collector | 26 | 50 |
| Primary collector | 28 | 50 |
| Arterial | (As per state highway department standards) | |

B. Greater width shall be required by the Board when deemed necessary for present and future vehicular travel.

C. The width may be reduced if approved by the Planning Board for the following reasons:

(1) The reduction in width is complemented by enforceable parking regulations for streets where widths are reduced.

(a) On culs-de-sac and lanes with no on-street parking, the width may be reduced to 20 feet, or 22 feet with parking permitted on one side only;

(b) On a secondary street with no on-street parking permitted on one side only, the width may be reduced to 24 feet.

(2) The minimum one-way width for each direction of a paired system shall be 20 feet. The minimum width for a one-way loop street shall be 20 feet.

(3) Reductions which are part of an overall drainage plan to reduce the impervious surfaces in the subdivision and reduce runoff from the parcel shall be permitted if plans for safety, parking, pedestrian circulation and other factors are deemed adequate by the Planning Board to accommodate the requested reductions.

### § 475-4.3. Grade.

A. Grades of streets shall be not less than 0.5%. Grades shall not be more than 6.0% for primary collector streets, nor or more than 8% for secondary collector streets, minor roads or streets.

B. A leveling area shall be provided having a maximum slope of 2% for the first 40 feet measured from the nearest exterior line of the intersecting street and a maximum slope of 4% for the next 30 feet.

C. Vertical curves are required wherever the algebraic difference in grade between the center line tangents is 2% or more. Vertical curves shall be 100 feet long for every 4% algebraic difference in grade.

### § 475-4.4. Dead-end streets and culs-de-sac.

Dead-end streets, designed to be so permanently, shall not exceed a length of 600 feet and shall have a turnaround area or back-up area, paved as required for streets, at the closed end. The minimum radius for a circular turnaround shall be 100 feet for the exterior line of a street and 50 feet for temporary turnaround easement. Hammerhead or T-shaped backup strips and alternative layouts may be permitted, under unusual circumstances, if designed to accommodate an emergency vehicle.

### § 475-4.5. Access streets.

A. Each subdivision shall be provided with more than one street for access and exit unless, in the opinion of the Planning Board, the area contained in the subdivision and/or the topography of the land would not allow for more than one access.

B. Where the street system within a subdivision does not connect with or have, in the opinion of the Planning Board, adequate vehicular access from a Town, county or state public way or private way, the Planning Board shall require, as a condition of approval of a plan, that such adequate access be provided by the developer, and/or that the developer make physical improvement(s) of access to and within such a way, in accordance with the provisions for these Subdivision Regulations, either from the boundary of the subdivision to a Town, county or state public way or private way, or along such public way for a distance which, in the opinion of the Planning Board, is sufficient to provide adequate access to the subdivision.

C. Where the physical condition or width of a public way from which a subdivision has its access is considered by the Planning Board to be inadequate to either provide for emergency services or carry the traffic which is expected, in the opinion of the Board, to be generated by such subdivision, the Planning Board shall require the developer to dedicate a strip of land for the purpose of widening the abutting public way to a width commensurate with that required within the subdivision and to make physical improvements to and within such public way to the same standards required within the subdivision or by these Subdivision Regulations. Any such dedication of land for the purpose of the way and any such work performed within such public way shall be made only with permission of the governmental agency having jurisdiction over such way, and all costs of any such widening or construction shall be borne by the developer.

D. The Planning Board shall disapprove of a subdivision plan where, in the opinion of the Planning Board, the existing surrounding municipal infrastructure (e.g., street width and construction, sanitary sewer, public water, storm sewer, etc.) is insufficient and/or incapable of handling the additional volumes (e.g., traffic, sewage, stormwater, etc.) anticipated, by the Planning Board, to be generated by the project. The Planning Board may accept or require off-site improvements to mitigate any of these impacts.

### § 475-4.6. Easements.

A. Easements for utilities across lots or centered on rear side lot lines shall be provided where necessary, and shall be at least 20 feet wide.

B. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, the Board may require that there be provided a stormwater easement or drainage right-of-way of adequate width to conform substantially to the lines of such watercourse, drainageway, channel or stream, and to provide for construction or other necessary purposes. In no case shall the width be less than 20 feet, or the side slope be steeper than two horizontal, or one vertical.

C. Access easements or parcels to adjacent property shall be provided, if required by the Board, for use by emergency vehicles and for the benefit of the Town. They shall be a minimum width of 20 feet. Bikeways or walkways may satisfy this requirement.

D. Slopes adjacent to roadways, natural or man-made, may be placed within easements on individual properties rather than acquired as rights-of-way.

E. Lots shall be prepared and graded consistent with drainage into the subdivision, and in such manner that development of one shall not cause detrimental drainage on another or on areas outside the subdivision, to the extent permitted by law. If provisions are necessary to carry drainage to or across a lot, an easement or drainage right-of-way of a minimum width of 20 feet and proper slope shall be provided.

### § 475-4.7. Protection of natural features.

A. Protection of natural features. In laying out a subdivision, the subdivider shall give due regard for all natural features such as large trees, watercourses, scenic or historic spots, aquifers, floodplains, habitats of rare or endangered species, and similar community assets which, if preserved, would add attractiveness and value to the subdivision. These features shall be left undisturbed wherever practical and the Board may waive design requirements in order to protect important natural features. See Article X, Trees and Plantings, for further requirements.

B. Unsuitable land. Land which the Planning Board finds to be unsuitable for development due to flooding, improper drainage or adverse drainage, adverse topography, poor soils, bedrock, location of utility easements, or other features which the Board has reason to believe would be harmful to the safety, health and general welfare of the present or future inhabitants of the subdivision and/or its surrounding area, shall not be subdivided or developed unless adequate measures are formulated by the subdivider and approved by the Board to eliminate any short-term or long-term impacts created by development of the unsuitable land.

C. Self-imposed restrictions. If, as part of a subdivision application, the subdivider or owner places voluntary restrictions on any of the land contained in the subdivision which are greater than the requirements of these regulations or of the Town of Ashburnham Zoning Bylaw,[124] such restrictions or references thereto shall be indicated on the definitive plan and recorded in the Worcester North Registry of Deeds.

### § 475-4.8. Erosion and sediment control.

In order to reduce erosion accompanying the installation of ways, utilities and drainage, and the resultant pollution of streams, wetlands and natural drainage areas, the applicant shall submit a sediment control plan achieving the following:

A. An absolute minimum of existing vegetative cover shall be disturbed during the construction period.

B. Only the smallest practical area of land shall be exposed at any one time during development.

C. When land is exposed during development, the exposure shall be kept to the shortest practical period of time.

D. Where necessary, as determined by Planning Board, temporary vegetation and/or mulching shall be

**124. Editor's Note: See Ch. 250, Zoning.**

used to protect areas exposed during development.

E. All disturbed areas shall be properly and neatly graded and shaped as soon as possible. Final grading shall include removal of all large rocks, stumps, debris, and all other deleterious materials from the finished surface.

F. At the toe of all cut and fill slopes in excess of 10 feet in height, staked baled hay or other erosion checks shall be installed.

G. All disturbed areas shall be protected from potentially erosive runoff from up-slope areas by means of diversions, benches, and/or other acceptable means.

H. Cuts and fills shall not endanger adjoining property.

I. Fill shall be placed and compacted so as to minimize sliding or erosion of the soil.

J. Grading shall not be done in such a way so as to divert water onto or impound water on the property of another landowner without the written consent of that landowner.

K. Fills shall not encroach on natural watercourses or constructed channels.

L. During construction, necessary measures for dust control shall be exercised.

**§ 475-4.9. Street drainage.**

A. Street drainage utilizing curbs and gutters shall be designed to keep the velocity of the flow of water in the gutter below levels which are hazardous to pedestrian safety.

B. Storm drains, culverts, and related facilities shall be designed to permit the unimpeded flow of all natural watercourses, to ensure adequate drainage at all low points along streets, to control erosion, and to intercept stormwater run-off along streets at intervals reasonably related to the extent and grade of the area being drained. To the maximum extent feasible, stormwater shall be recharged rather than piped to surface water.

C. New drainage systems shall be properly connected to any existing drains in adjacent streets or easements which may exist. Where no adequate drainage system exists, or where it is inadequate, it shall be the responsibility of the subdivider to extend his system outside the subdivision in a manner specified or approved by the Board to dispose properly of all the drainage from the proposed subdivision.

D. When the subdivision causes a requirement for drainage improvements outside its area, the subdivider shall be required to secure the necessary approvals and provide such improvements in the public interest.

E. Where the adjacent property is not subdivided, adequate provisions shall be made for the extension of the drainage system beyond the boundaries of the subdivision, and for it to carry the additional load that may be placed on the system. This shall be done by providing drains of adequate size and at proper slopes as specified by the Planning Board in order to permit their extension to the boundaries, and the proper connection of those of future subdivisions in the adjacent area.

F. Storm drains and culverts shall be a minimum of 12 inches inside diameter, and shall be greater when required by the Board. Minimum slope on pipes to be 0.5%. The proper drain size may be calculated by using "Manning's Formula" with a "Kutter's" "n" value of .013 for concrete pipe, and .024 for corrugated metal pipe.

G. All storm drains shall be reinforced concrete pipe of adequate strength, or equivalent as approved by the Planning Board and Town Engineer. In off-street locations, bituminous coated, galvanized, corrugated metal pipe or pipe arch may be used if approved by the Board and Town Engineer (PB consulting engineer). Concrete pipe shall conform to the State of Massachusetts' Standard Specifications for Highways and Bridges, as amended.

H. Water velocities in pipes and gutters shall be between two and 10 feet per second, and not more than five feet per second on ground surfaces. All undeveloped tributary areas shall be assumed to be fully developed in accordance with the Zoning Bylaw.[125] Consideration will be given to flatter slopes if adequate provisions are made for cleaning the pipes. All plans having drains with slopes which will produce pipe velocities less than two feet per second, flowing full, shall be accompanied by a letter stating the reason for approval by the Planning Board or its agent, and the drain shall not be constructed until the letter has been approved.

I. Catch basins shall be installed on both sides of the roadway on continuous grades at intervals not to exceed 300 feet, at low points and sags in the roadway, near the corners of the roadway at intersecting streets, and at other such locations as required by the Board. Such catch basins shall be provided with granite headers with storm inlets. Drain pipes shall extend through a maximum of three catch basins and, thereafter, through manholes to the point of discharge, with a manhole being required at every change in direction, slope or diameter in the drain pipes. All catch basins, except for the first three, shall discharge into the drain through a manhole. Any catch basins and manholes used shall be at least six feet deep and four feet diameter (inside measurements), with a 30-inch or greater sump below pipe invert, and shall be constructed of concrete blocks or precast concrete units. Manhole covers and grates shall be in conformance with Massachusetts DPW Specifications, designed and placed so as to cause no hazard to bicycles.

J. Inlets shall have an adequate waterway opening to pass the design storm with not more than 0.2 feet of surcharge. Grates and frames shall be cast iron suitable for the loads which can occur either during the construction or afterward. Inlets shall be constructed either of brick and mortar with eight-inch thick walls, precast segmental concrete blocks not less than six-inch thick mortared in place, or of precast pipe sections. Inlets shall be set on a base of either poured concrete eight inches in thickness, or precast segmental base blocks not less than four inches in thickness. Inlets shall be used in off-street locations, and the grate frame shall be mortared in position with the top 0.2 feet below the grade of a grate if the quantity of runoff exceeds the capacity of a grate of reasonable size, as approved by the Planning Board or its agent. Inlets shall be 4.0 feet inside diameter below the corbelling, and shall not be used on drains greater than 30 inches in diameter. A shaped invert is not required, but the bottom of the inlet shall be finished at the same grade as the lowest pipe invert. At inlets where the outlet pipe is larger than the inlet pipe, the crown of the outlet pipe shall be at the same elevation or lower than the crown of the inlet pipe.

K. A design analysis shall be submitted with each definitive plan submitted for approval. The design analysis shall include at least the following information:

(1) Storm drainage system. The data shall include consideration of the entire watershed, and the calculations used in designing the drainage system, including area calculations, intensity of rainfall, coefficient of runoff, and time of concentration, discharge, pipe coefficient of roughness and quantity and velocity of flow under design conditions. Design sketches showing the hydraulic gradient and the energy gradient for each run of sewer pipe shall be included. The hydraulic analysis shall be based on Soil Conservation Service TR-55 methodology for the two-

**125.Editor's Note: See Ch. 250, Zoning.**

, ten- and 100-year frequency storm events. The rainfall input data shall be from the National Weather Bureau TP-40. The average antecedent condition (AMC II) shall be used for the analysis.

(2) Storm sewers and retention basins shall be based on a 25-year frequency storm, and culverts shall be based on a 50-year frequency storm, with consideration given to damage avoidance for a 100-year storm.

(3) Any areas designed as drainage areas are tested for adequate permeability and mounding calculation for infiltration components of drainage system.

(4) Stormwater design and management shall meet the requirements of the Massachusetts Stormwater Policy, as amended.

**§ 475-4.10. Curbing.**

A. Curbing shall be installed as required by the Planning Board, and may consist of granite, bituminous concrete, portland cement or other materials, depending upon factors of safety, convenience and cost.

B. Curbs and gutters will be required when they are:

(1) Necessary to handle run-off for the section of the roadway to which they are applied;

(2) Necessary for the maintenance of the pavement and the prevention of pavement edge reveling;

(3) Necessary for safety;

C. Curbs and gutters may be eliminated along certain roadways when drainage is provided in swales which are designed to reduce the rate of run-off, restore and/or supply needed water to vegetation in the street right-of-way.

ARTICLE VII
**Utilities**

### § 475-4.11. Utilities and municipal services.

Where adjacent property is not subdivided, or where all the property of the applicant is not being subdivided at the same time, provisions shall be made for the extension of the utility system by continuing the mains the full length of streets and to the exterior limits of the subdivision at such grade and size which will, in the opinion of the Board, permit their proper extension at a later date.

### § 475-4.12. Utilities.

All electric utilities, including telephone, cable and fire alarm, shall be installed underground and meet the specifications and requirements of the Ashburnham Municipal Light Plant, telecommunications companies and the Ashburnham Fire Department. All above-ground utility appurtenances should include screening from the roadway.

### § 475-4.13. Sanitary sewers.

A. Town sanitary sewers will be required if the subdivision connects with a way which has an existing Town sanitary sewer or if the Town sanitary sewer is accessible to the subdivision.

B. Sanitary sewers, including all appurtenances, shall be designed to serve as many lots in a subdivision as possible, and to provide connection to municipal sewerage system, as approved by the Sewer Commissioners.

C. Sewer mains, laterals and appurtenances shall be of the size, material and location as directed by the Sewer Commissioners or its agent.

D. Manholes shall be no more than 300 feet apart.

### § 475-4.14. Water supply.

A. Town water supply will be required if the subdivision connects with a way which has an existing Town water supply or if the Town water supply is accessible to the subdivision.

B. Water mains, laterals and appurtenances shall be of the size, material and location as directed by the Water Commissioners or its agent.

C. Hydrants, with valves of a type approved by the Chief of the Fire Department and the Water Commissioners, shall be installed on all water mains at a spacing of not more than 500 feet. In addition, there shall be a hydrant or blow-off and valve placed at the end of every water main, as directed by the Chief of the Fire Department or the Water Commissioners. Minimum fire flow requirements (gallons per minute required to control a fire) shall meet National Fire Protection standards and be approved by the Fire Department.

D. Evidence shall be submitted to satisfy the Board of Health that adequate and potable water supply is available for each lot in the subdivision. Where a connection to the public water system is not feasible, the Planning Board shall approve a subdivision only upon its determination that the well(s) on each lot is likely to be able to provide a sustained yield of five gallons per minute with water quality meeting the Massachusetts Department of Environmental Protection's "Drinking Water Regulations of Massachusetts," as may be amended from time to time. One test well may be required of the

applicant per 10 potential lots, or the Planning Board's determination may be based upon the written statement of a hydrogeologist following his analysis of well records on nearby premises, subsurface conditions, and potential sources of contamination.

E. Rural fire protection. Provision shall be made for fire protection in the subdivision. The applicant shall review plans for fire protection with the Chief of the Fire Department and reach an agreement as to the method of providing adequate fire protection. A subdivision plan shall be approved only upon presentation of evidence to the Board, subject to the approval of the Fire Chief, that adequate provisions for fire protection have been made. No certificate of occupancy shall be issued for any dwelling unit in a subdivision until all components of the fire protection system are fully operational. Where a connection to the public water system is not feasible, the Planning Board shall approve a subdivision only upon its determination that the following provision for fire protection shall be met and approved by the Fire Chief:

(1) A reliable year-round water supply readily accessible to the Fire Department shall be provided from natural or constructed bodies of water, such as ponds, streams or cisterns. Said water supply shall be as designated by the Planning Board after consultation with the Fire Chief.

(2) Design, construction and capacity of natural and constructed bodies of water shall be approved by the Fire Department and shall comply with National Fire Protection Association (NFPA) standard 1142, "Water Supplies for Suburban and Rural Fire Fighting." See Appendix B.[126]

(3) Cisterns shall have a minimum capacity of 30,000 gallons available for firefighting as provided for in NFPA 1142.

(4) Cisterns shall be inspected by the Fire Department during construction.

(5) Subdivisions in which all houses have residential sprinklers installed in conformance with NFPA 13, 13D or 13R shall not require additional fire protection.

### § 475-4.15. Streetlighting.

A. Streetlighting shall be installed at the direction of the Planning Board. Street lighting light post and lamp shall be installed to meet the specifications of the Ashburnham Municipal Light Plant at the expense of the developer. All streetlight energy costs are to be assumed by an applicable homeowner's association.

B. All lighting systems should comply with the recommendations of the International Dark-Sky Association. See Appendix D for additional information.[127]

### § 475-4.16. Fire alarms.

Fire alarm boxes shall be installed, if directed by the Ashburnham Fire Department. The applicant shall furnish and install the necessary ducts, fire alarm boxes and electric cable.

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**126. Editor's Note: Appendix B is included as an attachment to this chapter.**

**127. Editor's Note: Appendix D is included as an attachment to this chapter.**

ARTICLE VIII
**Pedestrian and Bicycle Circulation System**

### § 475-4.17. Sidewalk location.

Sidewalks shall be placed parallel to the roadway(s) providing direct access to:

A. Commercial/retail facilities.

B. Schools.

C. Public recreational facilities.

D. Elsewhere in accordance with the pedestrian circulation system as necessary.

### § 475-4.18. Elimination of sidewalks.

Sidewalks may also be eliminated along one or both sides of the streets if the subdivision provides an alternative pedestrian circulation system. Ordinarily, only one sidewalk will be required except on major collectors.

### § 475-4.19. Pedestrian-vehicular separation.

Pedestrian-vehicular separation shall be considered where possible. Design solutions that achieve this separation shall receive priority consideration. Planting strips shall be a minimum of two feet.

### § 475-4.20. Trail connections.

Walkways connecting existing trails should be created wherever reasonable, and developed in new locations.

### § 475-4.21. Location within right-of-way.

Paths or sidewalks shall be located within the street right-of-way. However, horizontal alignment may be varied to minimize disturbance of land vegetation. If necessary, a sidewalk easement shall be obtained when the sidewalk goes outside the minimum street right-of-way.

### § 475-4.22. Water runoff.

Sidewalks shall be pitched or sloped towards the roadway to maximize run-off of water.

### § 475-4.23. Sidewalk width and grade.

Sidewalks shall have a minimum width of four feet and conform to the grade of the road unless otherwise specified by the Board.

### § 475-4.24. Access.

Sidewalks shall be constructed in accordance with the latest revision of the Rules and Regulations of the Massachusetts Architectural Access Board (521 CMR).

### § 475-4.25. Bus waiting areas for schoolchildren.

All subdivisions with 10 or more lots located in an area where school busing is provided or is likely to be provided in the future must provide at least one bus waiting area for school children. This area must be between 30 square feet and 100 square feet, depending on the size of the subdivision (number of students generated). The waiting area shall be located at the entrance(s) to the subdivision, abut the edge of the sidewalk and shall contain a bench. The waiting area may be incorporated with the requirements of the United States Postal Service pertaining to mailboxes.

### § 475-4.26. Alternate location.

The Planning Board may require construction of sidewalks or bike paths along road frontage of external roadway(s).

ARTICLE IX
**Lots**

## § 475-4.27. Compliance with zoning.[128]

Lots, buildings and structures involved in subdivision shall comply with the Town Zoning Bylaw then in effect as varied thereunder.

**128.Editor's Note: See Ch. 250, Zoning.**

ARTICLE X
**Trees and Plantings**

### § 475-4.28. Purpose.

To protect the critical identified forested areas in Ashburnham from deforestation; to preserve trees in order to prevent erosion on disturbed areas and control stormwater drainage; and to protect the forested and rural character of Ashburnham.

### § 475-4.29. Tree preservation.

A. The landscape shall be preserved in its natural state insofar as practical by minimizing tree removal, except in connection with a property used for tree farming. If established areas are to be cleared, special attention shall be given to the planting of replacement trees. Land should not be clear-cut for the sole purpose of offering land for sale. Clear-cutting is defined as the removal of 65% of trees 10 inches in diameter at breast height (DBH) or larger, on a single parcel.

B. Every effort shall be made through the design, layout, and construction of a subdivision to save as many existing trees as possible, especially those over 10 inches DBH. Accordingly, the subdivider shall institute alternative site designs to assure the best chance of tree survival whenever the following criteria cannot be adhered to. The following is a list of recommended measures for the protection of existing trees:

(1) There should be no operation of heavy equipment or storage of any materials under said tree within its natural dripline.

(2) Wherever possible, no grading or filling should be done within the dripline.

(3) Supplemental irrigation should be provided to all trees as needed during the summer months to ensure healthy maintenance.

(4) No blacktop paving or vehicle parking should be located under evergreen trees.

(5) No more than 20% of the area under any deciduous trees natural dripline may be paved.

(6) All drainage from paved areas should be directed away from root zones.

C. On wooded lots, subdividers are required to submit a Tree Preservation Plan. The plan must be prepared by a registered landscape architect or forester. The Tree Preservation Plan must include a scaled site plan including the following information:

(1) A tree inventory indicating the size, species, location, and condition of all significant trees and clumps of not significant trees within the limits of the proposed activity; also location of existing and proposed structures, improvements, utilities, and existing and proposed contours. Significant trees are defined as any living, healthy tree measuring 10 inches DBH or greater.

(2) Specific protection techniques and disease control, if applicable, that will be utilized to minimize disturbance to all trees remaining on site.

(3) A reforestation plan indicating size, species, location, and planting specifications of all street trees, yard trees, and replacement trees.

(a) The reforestation plan shall utilize a variety of tree species, with emphasis on native species when possible.

(b) Replacement trees shall be a minimum of four-inch DBH if deciduous, or six feet in height if coniferous.

### § 475-4.30. Street trees.

A. The subdivider is required to plant suitable broad-leaved deciduous shade trees along all streets. Said trees shall be located outside the street right-of-way unless the Planning Board has approved otherwise. All trees shall be the equivalent of well-rooted nursery-grown stock, free of injury, harmful insects, and diseases. They shall be well-branched and the branching structure should be sound and not interfere with traffic visibility. In certain cases, where the subdivider's Tree Preservation Plan demonstrates, to the satisfaction of the Planning Board, that suitable trees will be retained within the right-of-way, the Board may waive a portion of all the required street trees.

B. The subdivider shall install street trees as follows:

(1) The distance between trees shall not exceed 30 feet along the way.

(2) All trees to be planted shall have a minimum height of 8-10 feet at planting and shall be of at least four inches DBH.

(3) The species and variety of the trees to be planted shall be species native to New England and selected and approved by the Tree Warden.

(4) No evergreen trees such as pine, fir, spruce or hemlock shall be planted as public shade trees along the way.

(5) No trees or shrubs shall be planted at any corner or intersection where they could become a traffic hazard by obstructing vision or preventing safe vehicular travel.

(6) All cut bankings that tend to wash or erode shall be planted with a low-growing evergreen shrub such as Creeping Juniper (Juniperus horizontalis) and seeded with a deep-rooted perennial grass or groundcover, such as Bearberry (Archtostaphylos uvaursa) to prevent erosion.

(7) All trees should be planted on 1/2 cubic yard of loam mulched with four inches of chips and shall be properly wrapped and guyed in a manner to ensure their survival.

(8) In a subdivision, the subdivider will be liable for all planted trees as to their erectness and good health for two calendar years after planting as determined by the Planning Board or its agent.

### § 475-4.31. Tree replacement.

A. The subdivider shall provide replacement trees on each lot at the ratio of at least one tree for each 2,000 square feet of open area on such lot. Such open area shall be calculated as the total area of the lot less the proposed impervious area on the lot as set forth in the hydraulic calculations submitted with the definitive subdivision plan. Any trees left in good growing condition, as judged by the Planning Board or its agent, on the site may be counted toward this requirement.

B. Selection of replacement trees in regard to their number, size and species shall be determined by the Planning Board or its agent, on the basis of an analysis of tree canopy conditions, soil conditions, and other relevant factors.

C. When possible, trees shall be species native to New England. Please see "List of Recommended Trees" for preferred tree species. See Appendix C.[129]

D. Use of exotic plants, such as Norway Maple (Acer platanoides), Crimson King Norway Maple (Acer platanoides 'Crimson King'), Ailanthus (Ailanthus altissma), Amur Corktree (Phellodendron amurense), Rhamnus cathartica (Common Buckthorn) and Fragula alnus (Glossy Buckthorn), is prohibited.

### § 475-4.32. Remediation.

A. Any tree shown to be saved on the above-mentioned Tree Preservation Plan which, however, is removed or whose survival is irredeemably jeopardized in violation of these conditions shall be replaced in a manner to be determined solely by the Planning Board or its agent in accordance with the following guidelines:

(1) Each such removed or jeopardized tree of less than six-inch DBH shall be replaced in kind by a tree of not less than four-inch DBH in as close to the original location as possible;

(2) Each such removed or jeopardized tree of a caliper between six inches and 12 inches DBH shall be replaced in kind by two trees of not less than four inches DBH in as close to the original location as possible;

(3) Each such removed or jeopardized tree of greater than twelve-inch DBH shall be replaced in kind by two trees of not less than six-inch DBH at locations determined by the Planning Board or its agent.

B. Failure by the subdivider to comply with these conditions expeditiously may result in the Planning Board rescinding its approval of the definitive subdivision plans and cause the revocation of any or all construction issued in connection with the subdivision; in addition, the Planning Board reserves the right to withhold from bond reductions or releases in connection with the subdivision sufficient sums to cover the Town's costs of remediation.

### § 475-4.33. Enforcement.

The Planning Board or its agent shall conduct periodic inspections of the site during land clearance and construction in order to ensure compliance with these conditions. Should the Conservation Agent, Building Inspector, Town Engineer, police officer, or any other Town official observe violations or possible violations of these conditions, such official shall immediately report same to the Town Planner.

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**129.Editor's Note: Appendix C is included as an attachment to this chapter.**

## Part 5
## Required Improvements For An Approved Subdivision

### § 475-5.1. Construction guides.

A. All streets, street drains, catch basins and appurtenances thereto shall be installed without expense to the Town of Ashburnham;

B. All wells shall be located to prevent street drainage contamination;

C. As each construction operation is completed, approval of it must be obtained from the Board or its agent before work may be started on the succeeding operation or operations, according to a schedule of inspections to be promulgated by the Board for the subdivision. See § 475-7.4, Inspection schedule;

D. All construction details, materials, methods and specifications shall conform to the current requirements of the "Commonwealth of Massachusetts, Standard Specifications for Highways and Bridges, Boston, Massachusetts" and shall be under the supervision of the Board or an agent designated by the Board.

E. All rolling on roadways shall be done with a roller of not less than 10 tons.

F. All right-of-way lines, all drain lines and all underground municipal services shall be laid out as to line and grade by a registered professional engineer or registered land surveyor.

G. A pre-construction meeting shall be held prior to any construction. The meeting will be between the applicant and Town Planner, Planning Board, Conservation Agent, Conservation Commission, Town Engineer or Planning Board consulting engineer. A "project construction" schedule shall be presented at the pre-construction meeting.

H. All construction activities shall be limited to 7:00 a.m. - 7:00 p.m. Monday through Friday and 8:00 a.m. - 6:00 p.m. on Saturday. No construction activities shall be permitted on Sunday. Construction activity includes starting and/or warming up construction vehicles.

### § 475-5.2. Roadway construction.

A. Each street shall be constructed on the center line of the right-of-way unless otherwise authorized by the Board;

B. Clearing. The roadway shall be cleared of all obstruction of any kind for a distance equal to the sum of the specified width of the pavement plus the required shoulder and any sidewalk or swale on each side of the pavement. A greater width may be required at corners and on the inside of curves for visibility;

C. Preparation of the roadway.

(1) All materials shall be removed for the full length and width of the roadway (pavement and shoulder) to a depth of at least 15 inches below the finished surface as shown on the profile plan; provided, however, that if the soil is soft and spongy, or contains undesirable material, such as clay, sand pockets, tree stumps, stones over six inches in diameter, or any other material detrimental to the subgrade, a deeper excavation below the subgrade shall be made, as directed by the Board or its designated agent.

(2) At this point of preparation, all pipes shall be laid in accordance with appropriate specifications.

(3) The excavated area below the subgrade shall be filled to subgrade with good, clean bank gravel or other well-compacted material satisfactory to the Board or its designated agent.

(4) The entire roadway then shall be rolled, forming the subgrade with a 3/8 inch per foot crown.

D. Completion of roadways:

(1) An inspection must be made of the subgrade by the Board or the Town Engineer before any foundation gravel is spread. All underground utilities, such as telephone, cable, fire alarm and electricity, shall be installed prior to placing of roadway surfaces; the gravel base shall be spread in two layers per SSH&B Section 401.60 - Gravel Subbase. Before the gravel is spread, the roadbed shall be shaped to a true surface conforming to the proposed cross-section of the road. The bottom right eight-inch layer shall be spread and rolled (minimum 10-ton roller) with a gravel meeting SSH&B M.1.03.0 Type A (no stones over six inches in diameter). The top four-inch layer shall be spread and rolled with a gravel meeting SSH&B M.1.03.0 Type B (no stones over three inches in diameter);

(2) The roadway shall have a crown of 3/8 inch per foot and be paved with SSH&B Section 460 - Class I bituminous pavement. The paving shall consist of a binder course 2 1/2 inches compacted measure on collector streets, 1 1/2 inches on other streets, followed by a finished course 1 1/2 inches compacted measure (minimum 10-ton roller).

E. Shoulders.

(1) Roadways shall have shoulders with minimum widths as follows:

(a) Primary and secondary collector: five feet.

(b) Minor roads and streets: five feet.

(c) Cul-de-sac: three feet.

(2) Shoulders shall pitch at 3/8 inch per foot towards the curb or swale. This area shall have a nine-inch gravel foundation, and be loamed or other good topsoil conducive to the growing of grass, rolled and seeded with lawn grass seed.

F. Wall or slope support.

(1) Embankments outside, within or adjoining the right-of-way shall be evenly graded and pitched at a slope of not greater than two horizontal to one vertical in fill. Where cuts are made in ledge, other slopes may be determined with the approval of the Planning Board. Where terrain necessitates greater slopes, retaining walls, terracing, fencing, or rip-rap may be used either alone or in combination to provide safety and freedom from maintenance, but must be done in accordance with plans filed with and approved by the Planning Board. Whenever embankments are built in such a way as to require approval by the Planning Board, the developer must furnish to the Town duly recorded access easements free of encumbrances for maintenance of the slopes, terraces or retaining walls. All such slopes shall be grassed in accordance with the specifications for the area between the roadway and sidewalk or roadway and boundary of the right-of-way.

(2) Except as otherwise provided, all cut bankings shall be planted with a low-growing shrub or vine and wood chipped to a minimum depth of six inches or seeded with a deep-rooted,

perennial grass to prevent erosion. Every effort shall be made to preserve existing trees within the proposed right-of-way as well as within individual lots shown on the subdivision plan.

**§ 475-5.3. Other improvements.**

A. Sidewalk construction shall have a foundation of eight inches or more of compacted gravel. The pavement shall be Class I bituminous concrete rolled to 1 1/2 inch thickness, with a 1/4 inch per foot cross-slope.

B. Private driveways.

(1) Driveway entrances shall be constructed so to prevent drainage onto public ways. Driveways at intersections and culs-de-sac shall be spaced so as to facilitate snow removal.

(2) All driveways extending from the completed road surface to the lot lines must have a topping of at least three inches of bituminous concrete. All driveway slopes must end at the street right-of-way, and then continue forward to the completed road surface in the same grade as the sidewalk strip and/or shoulder in order to allow proper drainage of surface water.

(3) Curb cuts for driveways shall be at least 10 feet wide and shall have a three-foot-radius flare at the pavement.

(4) Driveways shall meet the requirements of Chapter 196, § 196-1, of the Ashburnham General Bylaws.

C. Monuments.

(1) Street lines shall have bounds placed at all angle points, at the beginning and end of all curves, and every 1,000 feet on straight lines. Such bounds shall be of sound granite, not less than three feet long and not less than five inches square, with a dressed top and 1/2-inch drill hole;

(2) Four major corners of each lot shall be marked with bounds. Where not coincident with the above, such bounds shall be sound granite, not less than three feet long and not less than three inches square, with 1/2-foot drill hole; any other permanent marker, such as steel survey mark, may be substituted for sound granite at the rear of the lot.

(3) Monuments shall be installed only after all construction which would disturb them is completed, and shall, in general, have their top a minimum of three inches above final grade surface.

D. Traffic control signs.

(1) Street signs shall be installed at all intersections in conformity with the Manual on Uniform Traffic Control Devices (MUTCD) and the specifications of the Ashburnham Highway Department. Until such time as each street is accepted by the Town as a public way, the sign posts at the intersection of such street with any other street shall have affixed thereto a sign designating such street as a private way. Temporary street signs shall be maintained by the developer during construction.

(2) The Planning Board may require additional traffic control signage, if conditions warrant, on existing public rights-of-way. The applicant shall obtain approval from the Board of Selectmen for any such street signage to be located within an existing public right-of-way.

E. The entire area must be cleaned up so as to leave a neat and orderly appearance free from debris and other objectionable materials and without unfilled holes or other artificially created hazards.

## Part 6
## Center Village District

### § 475-6.1. General principles.

A. Every reasonable effort shall be made to preserve the distinguishing original qualities of a building, structure or site and its environment. The removal or alteration of any historic material or architectural features should be avoided when possible.

B. All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.

C. Stylistic features distinctive to the architecture of a specific building, structure or landscape, or examples of skilled craft which characterize a building, structure or site shall be conserved or preserved where feasible and appropriate, and may be considered for use as the basis for design additions. Their removal or alteration should be avoided whenever possible.

D. Contemporary design for new structure or sites, and alterations or additions to existing properties shall not be discouraged when such new development, alterations or additions do not destroy significant historical, architectural or cultural material, and when such design is compatible with the design character of the surrounding environment.

E. The design of alterations and additions shall, where reasonable and appropriate, strive to improve the quality, appearance and usability of existing buildings, structures and sites.

F. Development shall be reasonably consistent with respect to setbacks. Placement of parking, landscaping and entrances and exits with surrounding buildings and development. (See Zoning Bylaws, Chapter 250, § 4.1.2, Schedule of Dimensional Regulations, and Section 5.3, Off-Street Parking and Loading Requirements.)

G. If there is more than one building on the site, the buildings should relate harmoniously to each other in architectural style, site location and building exits and entrances.

H. The location and number of curb cuts shall be such as to minimize turning movements and hazardous exits and entrances.

### § 475-6.2. Design review standards.

A. The Planning Board shall consider, at a minimum, the following standards in the course of the design review of a proposed action.

B. Height. The height of any proposed alteration should be compatible with the style and character of the building, structure or site being altered and that of the surroundings. (See Zoning Bylaw, Chapter 250, § 4.1.2, Schedule of Dimensional Regulations.)

C. Proportions. The proportions and relationships of height to width between windows, doors, signs and other architectural elements should be compatible with the architectural style, character and period of the building or structure and that of the surroundings.

D. Relation of structures and spaces. The relation of a structure to the open space between it and adjoining structures should be compatible with such relations in the surroundings. Facades and their parts should reflect the characteristic rhythm of facades along the street. If the building is large it can be broken into smaller bays to reflect neighboring rhythms. (See Zoning Bylaw, Chapter 250,

§ 4.1.2.)

E. Shape. The shape of the roofs, windows, doors and other design elements should be compatible with the architectural style, character and period of a building or site, and that of its surroundings.

F. Landscape. Proposed landscape development or alteration should be compatible with the character and appearance of the surrounding area. Landscape and streetscape elements, including topography, plantings and paving patterns, should provide continuity and definition to the street, pedestrian areas and surrounding landscape. Screening should be provided for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features. (See Zoning Bylaws, Chapter 250, §§ 4.1.2, 5.7.7C, Table A, Required Landscaping, and § 5.7.7B.)

G. Scale. The scale of a structure or landscape alteration should be compatible with its architectural or landscape design style and character and that of the surroundings. The scale of ground-level design elements such as building entryways, windows, porches, plazas, parks, pedestrian furniture, plantings and other street elements should be determined by and directed toward the use, comprehensions and enjoyment of pedestrians. The addition of elements, which maintain a human scale, should be encouraged. (See Zoning Bylaw, Chapter 250, § 4.1.2 and § 5.7.7C.)

H. Directional expression. Building facades and other architectural and landscape design elements shall be compatible with those of others in the surrounding area with regard to the dominant vertical or horizontal expression or direction related to use and historical or cultural character, as appropriate.

I. Architectural and site details. Architectural and site details, including signs, lighting, pedestrian furniture, planting and paving, along with materials, colors, textures and grade, shall be treated so as to be compatible with the original architectural and landscape design style of the structure or site and to preserve and enhance the character of the surrounding areas. In the downtown business districts, these details should blend with their surroundings to create a diverse functional and unified streetscape. (See Zoning Bylaw, Chapter 250, § 5.2.5C, Signs in the Village Center District.)

J. Signs. The design of signs should reflect the scale and character of the structure or the site and its surroundings. Signs should simply and clearly identify individual establishment, buildings, locations and uses, while remaining subordinate to the architecture and larger streetscape. (See Zoning Bylaw, Chapter 250, § 5.2.5C, Signs in the Village Center District.) The choice of materials, color, and size, method of illumination and character of symbolic representation on signs should be compatible with the architectural or landscape design style of the structure or site, and those of other signs in the surroundings.

# Part 7
# Administration

## ARTICLE XI
## Inspections

### § 475-7.1. Purpose.

All work performed as a consequence of these rules and regulations shall be subject to the review of the Board, which shall approve and accept, or disapprove and reject, each phase or portion of such work and at completion shall recommend the acceptance of all work or disapproval of the work with reasons therefor. The Board may employ a registered professional engineer to act as its agent in the inspection of the work to insure compliance with these rules and regulations, and to report to the Board his recommendations as to the approval or disapproval of the work. Such engineer will make certain inspections as prescribed herein in order to check the adequacy of the work at various stages, prior to such work being covered by subsequent work. However, the Board, its engineer, and such other persons as the Board may designate, shall have the right to inspect the work at any time. Inspection fees to be at the developer's expense. See Planning Board "Regulations Governing Fees and Fee Schedule".[130]

### § 475-7.2. Access.

The applicant will provide safe and convenient access to all parts of the subdivision, for the purposes of inspection, to representatives of the Board or other Town agencies and boards.

### § 475-7.3. Notification.

A. After approval of the definitive plan, the Board will notify the applicant of the name and address of the engineer designated as its representative to perform the inspections as required herein, and otherwise act as the Board's agent to insure compliance with these rules and regulations. The applicant shall keep the engineer fully informed as to the status and progress of the work, and shall notify the engineer directly (by mail or in person by telephone) at least 48 hours (excluding weekends and holidays) in advance that the work has progressed to a stage that an inspection is required.

B. In the event that the engineer is unable for 48 hours (excluding weekends and holidays) after the work is ready to make such inspection or examination, the applicant shall notify the Chairman of the Board of such effect, who will designate an alternate to make such inspection, and shall so notify the applicant.

C. In the event that the engineer makes an inspection of the work at the time designated and finds that such work is not at the proper stage of completion, or that the work has been covered or otherwise obscured, the engineer shall notify the applicant and the Board as to the additional steps the applicant shall take to complete the work to the point required, or to the extent the work shall be uncovered or exposed to full view. The applicant shall notify the engineer again when the work is ready as prescribed in Subsections A and B above.

D. The applicant shall notify all applicable Town agencies and boards when prepared for other inspections not within the jurisdiction of the Planning Board. Such inspections shall include water line and sewer line tests and inspections.

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**130.Editor's Note: See Ch. 427, Fees.**

**§ 475-7.4. Inspection schedule.**

A. It is assumed that under normal conditions work will proceed in accordance with the following construction schedule and site inspections will occur as indicated, or as approved by the Planning Board. The contractor will provide the Planning Board with a detailed construction schedule. Phasing will require a repeat of site inspections.

B. Inspection shall be for the following purposes:

(1) Site Inspection #1:

(a) Establish construction control.

(b) Clearing and grubbing; including excavating or stripping poor material.

(c) Preparation of subbase; including necessary cuts and fills.

(d) Confirm erosion and sedimentation controls.

(2) Site Inspection #2:

(a) Installation of drainage pipes, retention/detention basins.

(b) Installation of other underground utilities.

(c) Confirm erosion and sedimentation controls.

(3) Site Inspection #3:

(a) Application of material for subbase.

(b) Application of gravel in or above subbase.

(c) Confirm erosion and sedimentation controls.

(4) Site Inspection #3:

(a) Removal or application of material for slopes.

(b) Application of bituminous concrete base course.

(c) Confirm erosion and sedimentation controls.

(5) Site Inspection #4:

(a) Installation of curbing.

(b) Application of gravel in sidewalks.

(c) Application of and installation of sidewalks.

(d) Application of bituminous concrete finish course.

(e) Final installation of drainage appurtenances.

(f) Application of loam for lawns and slopes.

(g) Installation of bounds, street signs and other items.

(h) Clean up/punch list.

C. Inspectional services are provided by the Planning Board's authorized engineer at the expense of the developer. See Planning Board "Regulations Governing Fees and Fee Schedule".[131]

**131.Editor's Note: See Ch. 427, Fees.**

ARTICLE XII
**Application Fees and Expenses**

### § 475-7.5. Administrative fees.

All Planning Board fees are nonrefundable filing fees to cover the cost of processing applications. All expenses for advertising, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The administrative fee schedule is available in the Land Use Office.

### § 475-7.6. Legal and engineering costs.

Legal, engineering and other professional review costs of proposed plans and documents submitted during the consideration of preliminary plans, definitive plans, as-built-plans, street acceptance plans are the responsibility of the applicant. See Planning Board "Regulations Governing Fees and Fee Schedule".[132]

**132.Editor's Note: See Ch. 427, Fees.**

ARTICLE XIII
**Validity; Separability; Amendments**

### § 475-7.7. Invalidation by state law.

Any part of these rules and regulations subsequently invalidated by a new state law or modifications of an existing state law shall automatically be brought into conformity with the new or amended law, and shall be deemed to be effective immediately, without recourse to a public hearing and the customary procedures for amendment or repeal of such regulation.

### § 475-7.8. Severability.

If any section, paragraph, sentence, clause or provisions of these rules and regulations shall be adjudged not valid, the adjudication shall apply to the material so adjudged and the remainder of these rules and regulations shall be deemed to remain valid and effective.

### § 475-7.9. Amendments.

These rules and regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Board after a public hearing, on its own motion or by petition.

# Public Works Department Regulations

# Chapter 500

# SEWER USE

**[HISTORY: Adopted by the Water/Sewer Commission of the Town of Ashburnham 1-2-1996; AG approved 7-21-1997. Amendments noted where applicable.]**

## § 500-1. General provisions.

A. Purpose and policy.

(1) These rules and regulations set forth uniform requirements for users of the publicly owned treatment works (POTW) for the Town of Ashburnham and enables the Town to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. § 1251 et seq), and the General Pretreatment Regulations (40 CFR Part 403). The objectives of these rules and regulations are:

(a) To prevent the introduction of pollutants into the POTW that will interfere with its operation;

(b) To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into the receiving waters, or otherwise be incompatible with the POTW;

(c) To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(d) To promote reuse and recycling of industrial wastewater and sludge from the POTW;

(e) To enable the City of Gardner to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other federal and state laws to which the POTW is subject.

(2) These rules and regulations shall apply to all users of the POTW. The rules and regulations authorize the issuance of wastewater discharge permits; provide for monitoring, compliance, and enforcement activities; establish administrative review procedures; and require user reporting.

B. Administration. Except as otherwise provided herein, the Board of Water/Sewer Commissioners shall administer, implement, and enforce the provisions of these rules and regulations. Any powers granted to or duties imposed upon the Board may be delegated by the Board to other Town employees or officers.

C. Abbreviations. The following abbreviations shall have the designated meanings:

| | |
|---|---|
| A.S.T.M. | American Society for Testing and Materials |
| BOD | Biochemical Oxygen Demand |
| CFR | Code of Federal Regulations |
| COD | Chemical Oxygen Demand |
| EPA | U.S. Environmental Protection Agency |
| gpd | gallons per day |

| | |
|---|---|
| mg/l | milligrams per liter |
| NPDES | National Pollutant Discharge Elimination System |
| POTW | Publicly Owned Treatment Works |
| RCRA | Resource Conservation and Recovery Act |
| SIC | Standard Industrial Classification |
| TSS | Total Suspended Solids |
| U.S.C. | United States Code |
| W.P.C.F. | Water Pollution Control Federation |

D. Definitions. Unless a provision explicitly states otherwise, the following terms and phrases, as used in these rules and regulations, shall have the meanings hereinafter designated.

ACT or THE ACT — The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.

APPROVED AUTHORITY — The Region 1 U.S. Environmental Protection Agency Administrator or a designee.

AUTHORIZED REPRESENTATIVE OF THE USER —

(1) If the user is a corporation:

(a) The president, secretary, treasurer, or a vice president of the corporation a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(b) The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the user is a federal, state or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or a designee.

(4) The individuals described in Subsections (1) through (3) above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Town.

BIOCHEMICAL OXYGEN DEMAND — The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 centigrade, usually expressed as a concentration (e.g., mg/l).

BUILDING DRAIN — That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

BUILDING SEWER — The extension from the building drain or other nonpublic sewers from residential, commercial and industrial areas to the public sewer or other place of disposal.

CATEGORICAL PRETREATMENT STANDARD or CATEGORICAL STANDARD — Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (o) of the Act (33 U.S.C. § 1317) which apply to a specific category of users and which appear in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

CITY — Being City of Gardner or its authorized agent.

COLOR — The optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent transmittance is equivalent to zero optical density.

COMPOSITE SAMPLE — The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

DIRECTOR BOARD OF WATER/SEWER COMMISSIONERS — Town of Ashburnham - or their authorized representative(s)/Director.

EASEMENT — An acquired right for the specific use of land owned by others.

ENVIRONMENTAL PROTECTION AGENCY or EPA — The U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.

EXISTING SOURCE — Any source of discharge, the construction or operation of which commenced prior to the publication of the EPA proposed categorical pretreatment standards, which will be applicable to such source, if the standard is thereafter promulgated in accordance with Section 307 of the Act.

GARBAGE — The solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.

GRAB SAMPLE — A sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

INDIRECT DISCHARGE or DISCHARGE — The introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

INDUSTRIAL WASTES — The wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.

INSTANTANEOUS MAXIMUM ALLOWABLE DISCHARGE LIMIT — The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

INTERFERENCE — A discharge which, alone or in conjunction with a discharge of discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City of Gardner's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

MEDICAL WASTE — Isolation wastes, infectious agents, human blood and blood by-products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

NEW SOURCE —

(1) Any building, structure, facility, or installation which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act. The construction of which there is (or may be) a discharge of pollutants, the construction will be applicable to such source if such standards are thereafter promulgated in accordance with the section, provided that:

(a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(c) The production or wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Subsection (1)(b) or (c) above but otherwise alters, replaces, or adds to the existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(a) Begun, or caused to begin, as part of a continuous on-site construction program:

[1] Any placement, assembly, or installation of facilities or equipment; or

[2] Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(b) Entered into a binding contractual obligation for the purchase of facilities or equipment, which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

NONCONTACT COOLING WATER — Water used for cooling, which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

PASS THROUGH — A discharge which exits the POTW into waters within the boundaries of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit, including an increase in the magnitude or duration of a violation.

PERSON — Any individual, partnership, copartnership, firm, company, corporation, association,

joint-stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all federal, state, or local governmental entities.

pH — A measure of the acidity or alkalinity of a solution, expressed in standard units.

POLLUTANT — Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

PRETREATMENT — The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

PRETREATMENT REQUIREMENTS — Any substantive or procedural requirement related to pretreatment is imposed on a user, other than a pretreatment standard.

PRETREATMENT STANDARDS or STANDARDS — Pretreatment standards shall mean prohibitive discharge standards, categorical pretreatment standards, and local limits.

PROHIBITED DISCHARGE STANDARDS or PROHIBITED DISCHARGES — Absolute prohibitions against the discharge of certain substances; these prohibitions appear in § 500-3A of this ordinance.

PUBLICLY OWNED TREATMENT WORKS or POTW — A "treatment works" as defined by Section 212 of the Act (33 U.S.C. § 1292) which is owned by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

SEPTIC TANK WASTE — Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

SEWAGE — Human excrement and gray water (household showers, dishwashing operations, etc.).

SIGNIFICANT INDUSTRIAL USER —

(1) A user subject to categorical pretreatment standards; or

(2) A user that:

   (a) Discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

   (b) Contributes a process waste stream which makes up 5% or more of the average dry weather hydraulic organic capacity of the POTW treatment plant; or

   (c) Is designated as such by the Town on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(3) Upon finding that a user meeting the criteria in Subsection (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or

requirement, the Town may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

SLUG LOAD or LOAD — Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in § 500-3A of these rules and regulations.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE — A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

STORMWATER — Any flow occurring during or following any form of natural precipitation and resulting from such precipitation, including snowmelt.

SUSPENDED SOLIDS — The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

TOWN — Town of Ashburnham.

USER or INDUSTRIAL USER — A source of indirect discharge.

WASTEWATER — Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

WASTEWATER TREATMENT PLANT or TREATMENT PLANT — That portion of the POTW designed to provide treatment of municipal sewage and industrial waste.

**§ 500-2. Building sewers and connections.**

A. No unauthorized person shall uncover, make any connections with or opening into, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Director. Any person, except significant industrial users, proposing a new discharge into the system shall notify the Director in writing at least 10 working days prior to the proposed change or connection.

B. There shall be three classes of building sewer permits: (a) for residential, (b) for commercial service not producing industrial waste and (c) for service to establishments producing industrial wastes. In each case, the owner or an agent shall make application on a form furnished by the Town. The application shall be supplemented by a plan, drawn to scale (not less than one inch equals 40 inches), showing the building location (proposed or existing), the location of the proposed connection to the sewer, proposed or existing sill elevation of the building to be connected, roadway or right-of-way center line elevation, invert of sewer main at the point of connection, rim and invert elevations of any sewer manholes, location of connection from nearest manhole. If a pump is required, the applicant shall submit a plan, drawn to scale (not less than one inch equals 40 inches), showing the location of the pump and force main. Additional information may be required if it is considered pertinent in the judgment of the Director. A permit and inspection fee shall be made payable to the Ashburnham Water/Sewer Department at the time application is filed.

C. All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

D. A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, or where it is not

able to be subdivided, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

E. Reserve for Ashburnham requirements.

F. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall conform to the requirements of all applicable building and plumbing codes or other applicable rules and regulations of the Town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

G. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor in all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by a method approved by the Director and discharged to the building sewer. A minimum of four feet of cover shall be required for all building sewers, unless otherwise authorized by the Director.

H. The connection of the building sewer shall conform to the requirements of all applicable building and plumbing codes or other applicable rules and regulations of the Town. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials shall be approved by the Director in writing before installation.

I. The applicant for the building sewer permit shall notify the Director 24 hours prior to installation and when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Director or his representative. Failure to give proper notice will require the building sewer to be re-excavated for inspection purposes. The cost for re-excavation shall be borne by the owner.

J. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Director. All applicable permits must be obtained prior to excavation. A street opening permit shall be obtained from the Highway Superintendent prior to any work done in the public way. The Highway Superintendent reserves the right to deny street openings from November 1 to April 15, if adverse weather conditions exist.

K. Relation of water mains and sewer mains.

(1) Sewer mains or services shall be laid at least 10 feet, horizontally, from any existing or proposed water mains or services.

(2) Should conditions prevent a lateral separation of 10 feet, a sewer main or service may be laid closer than 10 feet to a water main or service if, for absolutely essential reasons, it is not possible to achieve such separation. The sewer may be located not less than three feet horizontally from a water main or service, provided there are at least 18 inches below the bottom of the water main or service and the top of the sewer, with the sewer below the water main or service.

L. Sewer extension on or to a new development.

(1) In the case of a sewer extension on or to a new development, the owner shall install the sewer main in accordance with the rules pertaining to the subdivision of land and the laying-out of public ways as required by the Planning Board.[133]

(2) Prior to any work, the owner shall file a plotted plan and profile prepared by a licensed professional engineer with the Director.

(3) The owner shall furnish the Director with a complete set of reproducible as-built plans detailing the location of wyes with measurements and elevations.

(4) Service location as-built drawings shall be submitted prior to the issuance of an occupancy permit.

**§ 500-3. General sewer use requirements.**

A. Prohibited discharge standards.

(1) General prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW, whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.

(2) Specific prohibitions.

(a) No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

[1] Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140F (60 c) using the test methods specified in 40 CFR 261.21.

[2] Wastewater having a pH less than 5.0, or otherwise causing corrosive structural damage to the POTW or equipment;

[3] Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than 1/2 inch or 1.27 centimeters in any dimension;

[4] Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

[5] Wastewater having a temperature greater than 150F (65 c), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 103F (40 c);

[6] Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

[7] Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

[8] Trucked or hauled pollutants;

[9] Noxious or malodorous liquids, gases, solids, or other wastewater which, either

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**133.Editor's Note: See Ch. 475, Subdivision of Land.**

singly or by interaction with other wastes, are sufficient to create a public nuisance, or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

[10] Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit;

[11] Wastewater containing any radioactive wastes or isotopes, except in compliance with applicable state or federal regulations;

[12] Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, de-ionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized in writing by the City of Gardner DPW prior to any discharge;

[13] Sludge, screenings, or other residues from the pretreatment of industrial wastes;

[14] Medical wastes, except as specifically authorized by the Director in a wastewater discharge permit;

[15] Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;

[16] Detergents, surface active agents, or other substances which may cause excessive foaming in the POTW; or

[17] Fats, oils, or greases containing substances which may solidify or become viscous at temperatures between 0° C. (32 F.) and 65° C. (150 F.).

(b) Pollutants, substances, or wastewater prohibited by this subsection shall not be processed or stored in such a manner that they could be discharged to the POTW.

B. National categorical pretreatment standards. The national categorical pretreatment standards found at 40 CFR Chapter 1, Subchapter N, Parts 405-471 are hereby incorporated.

(1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

(2) When wastewater subject to a categorical pretreatment standard is mixed prior to treatment with wastewater not regulated by the same standard, the Director shall impose an alternate limit using the combined waste stream formula in 40 CFR 402.6(e).

(3) A user may obtain a variance from a categorical pretreatment standard if the user can prove to the satisfaction of the Director and the approval authority, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

(4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

C. Local limits. The following pollutant limits are established to protect against pass through and

interference. No person shall, unless otherwise approved by the EPA, discharge wastewater containing concentrations in excess of the following:

| Parameter | Limit (mg/l) |
|---|---|
| Aluminum | 11.323 |
| Arsenic | 3.084 |
| Cadmium | 0.028 |
| Copper | 0.300 |
| Cyanide | 1.046 |
| Lead | 0.020 |
| Mercury | 0.002 |
| Nickel | 3.278 |
| Silver | 0.025 |
| Zinc | 0.553 |

D. Town's right of revision. The Town reserves the right to establish, by rules and regulations or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

E. Dilution. No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

**§ 500-4. Pretreatment of wastewater.**

A. Pretreatment facilities. Users shall provide wastewater treatment as necessary to comply with these rules and regulations and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in § 500-3A of these rules and regulations within the time limitations specified by the EPA, the state, or the Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed written plans describing such facilities and operating procedures shall be submitted to the Director for review and acceptance before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Director under the provisions of these rules and regulations.

B. Additional pretreatment facilities.

(1) Whenever he deems it necessary, the Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of these rules and regulations.

(2) The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(3) Grease, oil and sand interceptors shall be provided when, in the opinion of the Director, they are necessary for the proper handling of wastewater excessive amount of grease and oil, or sand, except that such interceptors may not be required for residential users. All interception units shall be of type and capacity approved in writing by the Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

C. Accidental discharge/slug control plans. At least once every two years, the Director shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The Director may require any user to develop, submit for approval, and implement such plan. Alternatively, the Director may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the Director of any accidental or slug discharge as required by § 500-7F of these rules and regulations; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures shall include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

D. Hauled wastewater. Per Intermunicipal Agreement, June 22, 1995. No septic waste from Ashburnham will be accepted by the City of Gardner.

**§ 500-5. Wastewater discharge permit application.**

A. Wastewater analysis. If requested by the Director, a user shall submit information on the nature and characteristics of its wastewater within 15 days of the request. The Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

B. Wastewater discharge permit requirement.

(1) No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Director, except that a significant industrial user that has filed a timely application pursuant to § 500-5C of these rules and regulations may continue to discharge for the time period specified therein.

(2) The Director may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of these rules and regulations.

(3) Any violations of the terms and conditions of a wastewater discharge permit shall be deemed a violation of these rules and regulations and subjects the wastewater discharge permit holder to the sanctions set out in §§ 500-10 through 500-12 of these rules and regulations. Obtaining a wastewater discharge permit does not relieve a permit holder of its obligation to comply with

all federal and state pretreatment standards or requirements or with any other requirements of federal, state and local law.

C. (Reserved)

D. Wastewater discharge permitting: new connections. Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW shall obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with § 500-5E of these rules and regulations, shall be filed at least 90 days prior to the date upon which any discharge will begin or recommence.

E. Wastewater discharge permit application contents.

(1) All users required to have a wastewater discharge permit shall submit a permit application to the Director. The Director shall require all users to submit as part of an application the following information:

(a) All information required by § 500-7A(2) of these rules and regulations;

(b) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

(c) Number and type of employees, hours of operation, and proposed or actual hours of operation;

(d) Each product produced by the user, identifying the type, amount, process or processes, and rate of production;

(e) Type and amount of raw materials processed (average and maximum per day);

(f) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances, by size, location and elevation, and all points of discharge;

(g) Time and duration of discharges;

(h) Any other information as may be deemed necessary by the Director to evaluate the wastewater discharge permit application.

(2) The Director shall not process incomplete or inaccurate applications and shall return said applications to the user for revision.

F. Application signatories and certification. All wastewater discharge permit applications and user reports shall be signed by an authorized representative of the user and contain the following certification statement: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

G. Wastewater discharge permit decisions. The Director shall evaluate the data furnished by the user and may require additional information. Within 30 days of receipt of a complete wastewater discharge

permit application, the Director shall determine whether or not to issue a wastewater discharge permit. If the Director fails to make a determination within this time period, the application shall be deemed denied.

**§ 500-6. Wastewater discharge permit issuance process.**

A. Wastewater discharge permit duration. A wastewater discharge permit shall be issued for a specified time period, not to exceed five years. Each wastewater discharge permit shall state the specific date upon which it shall expire.

B. Wastewater discharge permit contents. Wastewater discharge permits shall include, but are not limited to, such conditions as are reasonably deemed necessary by the Director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(1) Wastewater discharge permits shall, at a minimum, contain:

(a) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five years;

(b) A statement that the wastewater discharge permit is nontransferable without prior approval by the Town in accordance with § 500-6E of these rules and regulations, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(c) Effluent limits based on applicable pretreatment standards;

(d) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, or local law; and

(e) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state and local law.

(2) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

(a) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(b) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(c) Requirements for the development and implementation of spill control plans or other special conditions, including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;

(d) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(e) The unit charge or schedule of industrial user charges and fees for the management of the

wastewater discharged to the POTW;

(f) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

(g) A statement that compliance with the wastewater discharge permit does not relieve the permit holder of responsibility for compliance with all applicable federal and state and local pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and

(h) Other conditions as deemed appropriate by the Director to ensure compliance with these rules and regulations, and local, state and federal laws, rules, and regulations.

C. Wastewater discharge permit appeals. Any aggrieved person, including the user, may petition the Director to reconsider the terms of a wastewater discharge permit within 30 days of its issuance.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal. A timely petition for review shall be a prerequisite to an aggrieved person's appeal to a court of competent jurisdiction.

(2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge.

(3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(4) If the Director fails to allow the request within 15 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative action for purposes of judicial review.

(5) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the Superior Court for the Commonwealth of Massachusetts within 30 days after notice of any action or refusal to act.

D. Wastewater discharge permit modification. The Director may modify a wastewater discharge permit upon his own initiative or, upon the petition of an aggrieved person, within 30 days of issuing of the underlying permit for good cause, including, but not limited to, the following reasons:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(2) To address significant alterations to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

(3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) Information indicating that the permitted discharge poses a threat to the Town's POTW, Town of Gardner's personnel, the public, or the receiving waters and/or City of Gardner's wastewater treatment plant;

(5) Violation of any terms or conditions of the wastewater discharge permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

(8) To correct typographical or other errors in the wastewater discharge permit; or

(9) To reflect a transfer of the facility ownership or operation to a new owner or operator.

E. Wastewater discharge permit transfer. Wastewater discharge permits may be transferred to a new owner or operator only if the permit holder gives at least 60 days' advance notice to the Director and the Director approves in writing the wastewater discharge permit transfer.

(1) The notice to the Director shall include a written certification by the new owner or operator which:

(a) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

(b) Identifies the specific date on which the transfer is to occur; and

(c) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

(d) Such additional information as the Director deems necessary.

(2) Failure to provide advance notice of a transfer renders the wastewater discharge permit void on the date of facility transfer.

F. Wastewater discharge permit revocation.

(1) The Director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(a) Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;

(b) Failure to provide prior notification to the Town and City of changed condition pursuant to § 500-7E of these rules and regulations;

(c) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(d) Falsifying self-monitoring reports;

(e) Tampering with monitoring equipment;

(f) Refusing to allow the Director access to the facility premises and records;

(g) Failure to meet effluent limitations;

(h) Failure to pay fines;

(i) Failure to pay sewer charges;

(j) Failure to meet compliance schedules;

(k) Failure to complete a wastewater survey or the wastewater discharge permit application;

(l) Failure to provide advance notice to the Director of the transfer of business ownership of a permitted facility; or

(m) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or these rules and regulations.

(2) Wastewater discharge permits shall be void upon cessation of operations or transfer of business ownership in the absence of prior approval by the Director. All wastewater discharge permits are void upon issuance of a new wastewater discharge permit to that user.

G. Wastewater discharge permit reissuance. A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with § 500-5E of these rules and regulations, a minimum of 90 days prior to the expiration of the user's existing wastewater discharge permit.

H. Waste received from other jurisdictions. Not allowed.

**§ 500-7. Reporting requirements.**

A. Baseline monitoring reports.

(1) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Director a report which contains the information listed in Subsection A(2) below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Director a report which contains the information listed in Subsection A(2) below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants to be discharged.

(2) Users described above shall submit the information set forth below:

(a) Identifying information. The name and address of the facility, including the name of the operator and owner.

(b) Environmental permits. A list of any environmental control permits held by or for the facility.

(c) Description of operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description shall include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.

(d) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(e) Measurement of pollutants.

[1] The categorical pretreatment standards applicable to each regulated process.

[2] The results of sampling and analysis, identifying the nature and concentration, and/or mass, where required by the Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in § 500-7J of these rules and regulations.

[3] Sampling shall be performed in accordance with procedures set out in § 500-7K of these rules and regulations.

(f) Certification. A statement, reviewed by the user's authorized representative and certified by a licensed professional engineer, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(g) Compliance schedule. If additional pretreatment and/or O&M is required to meet the pretreatment standards, the shortest schedule by which the user shall provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section shall meet the requirements set out in § 500-7B of these rules and regulations.

(h) Signature and certification. All baseline monitoring reports shall be signed and certified in accordance with § 500-5F of these rules and regulations.

B. Compliance schedule progress reports. The following conditions shall apply to the compliance schedule required by § 500-7A(2)(g) of these rules and regulations:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring a licensed professional engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(2) No increment referred to above shall exceed nine months;

(3) The user shall submit a progress report to the Director no later than 14 days following each date in the schedule and the final date of compliance, including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(4) In no event shall more than nine months elapse between such progress reports to the Director.

C. Reports on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Director a report containing the

information described in § 500-7A(2)(d) through (f) of these rules and regulations. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports shall be signed and certified in accordance with § 500-5F of these rules and regulations.

D. Periodic compliance reports.

(1) All significant industrial users shall, at a frequency determined by the Director, but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports shall be signed and certified in accordance with § 500-5F of these rules and regulations.

(2) All wastewater samples shall be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(3) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Director, using the procedures prescribed in § 500-7K of these rules and regulations, the results of this monitoring shall be included in the report.

E. Reports of changed conditions. Each user must notify the Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 90 days before the change.

(1) The Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under § 500-5E of these rules and regulations.

(2) The Director may issue a wastewater discharge permit under § 500-5 of these rules and regulations or modify an existing wastewater discharge permit under § 500-6D of these rules and regulations in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow increases or decreases of 20% or greater, or the discharge of any previously unreported pollutants.

F. Reports of potential problems.

(1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the Director of the incident. This notification shall include location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(2) Within five days following such discharge, the user shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken

by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to these rules and regulations or any and all other applicable laws.

(3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in Subsection F(1) above. Employers shall ensure that all employees, who may cause or suffer such a discharge to occur, are advised of the emergency notification procedure.

G. Reports from unpermitted users. All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Director as the Director may require.

H. Notice of violation; repeat sampling and reporting. If sampling performed by a user indicates a violation, the user shall notify the Director within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within 30 days after becoming aware of the violation or in such time as the Director may, in writing, require.

I. Notification of the discharge of hazardous waste.

(1) Any user who commences the discharge of hazardous waste shall notify the Town and City, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known or readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste-stream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under § 500-7E of these rules and regulations. The notification requirement in this subsection does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of § 500-7A, C and D of these rules and regulations.

(2) Dischargers are exempt from the requirements of Subsection I(1), above, during a calendar month in which they discharge no more than 15 kilograms of hazardous waste, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user shall notify the Director, the EPA Regional Waste Management Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the

effective date of such regulations.

(4) In the case of any new notification made under this subsection, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by these rules and regulations, a permit issued thereunder, or any applicable federal or state law.

J. Analytical requirements. All pollutants analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses shall be performed in accordance with procedures approved by EPA.

K. Sample collection.

(1) Except as indicated in Subsection K(2), below, the user shall collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Director may authorize use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

(2) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds shall be obtained using grab collection techniques.

L. Timing. Written reports submitted to the Director shall be deemed to have been submitted on the date received.

M. Recordkeeping. Users subject to the reporting requirements of these rules and regulations shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by these rules and regulations and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. The user shall insure these records remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the Town or where the user has been specifically notified of a longer retention period by the Director.

## § 500-8. Compliance monitoring.

A. Right of entry: inspection and sampling. The Director shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of these rules and regulations, and any wastewater discharge permit or order issued hereunder. Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where a user has security measures in force, which require proper identification and clearance

before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(2) The Director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(3) The Director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated in accordance with the manufacturer's operating instructions to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the user.

(5) Unreasonable delays in allowing the Director access to the user's premises shall be a violation of these rules and regulations.

B. Refusal of access. If the Director has been refused access to a building, structure or property or any part thereof, the Director may petition the Superior Court for an order to authorize such entry.

## § 500-9. Confidential information.

Information and data on a use obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Director's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Director, that such information may be kept as confidential in compliance with applicable local, state, and federal law, including but not limited to Chapter 66 of the Massachusetts General Laws. Any such request shall be asserted to the time of submission of the information or data or shall be deemed waived. If the Director determines that the user has satisfied all the above criteria, then the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement and proceedings involving and the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

## § 500-10. Publication of industrial users in significant noncompliance.

The Director shall publish annually, in the largest daily newspaper in the area where the POTW is located, a list of the users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall mean:

A. Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of wastewater measurements taken during a six-month period exceed the daily maximum limit for the same pollutant parameter by any amount;

B. Technical review criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a six-month period equal or exceed the product of the daily maximum limit criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all

other pollutants except pH).

C. Any other discharge violation which the Director believes caused, alone or in combination with other discharges, interference or pass through, including endangering the health of Ashburnham's or Gardner's personnel or the general public;

D. Any discharge of pollutants which caused imminent danger to the public or to the environment, or resulted in the Director's exercise of emergency authority to halt or prevent such a discharge;

E. Failure to meet, within 90 days after the due date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide, within 30 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance; or

H. Any other violation(s) which the Director determines will adversely affect the operation or implementation of the local pretreatment program.

**§ 500-11. Administrative enforcement remedies.**

A. Notification of violation. If the Director finds that any user has violated, or continues to violate, any provision of these rules and regulations, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that user a written notice of violation. Within 10 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

B. Consent orders. The Director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to § 500-11D and E of these rules and regulations and shall be judicially enforceable.

C. Show cause hearing. The Director may order a user which has violated, or continues to violate, any provision of these rules and regulations, a wastewater discharge permit or orders issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action available by local, state, or federal law, against the user.

D. Compliance orders. If the Director finds that a user has violated, or continues to violate, any provision of these rules and regulations, a wastewater discharge permit or orders issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified period of time. If the user does not come into compliance to the satisfaction of the Director within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order does not relieve the user of liability for any violation, including any continuing violation. Issuance of compliance order shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against the user.

E. Cease and desist orders.

(1) If the Director finds that a user has violated, or continues to violate, any provision of these rules and regulations, a wastewater discharge permit or any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

(a) Immediately comply with all requirements; and

(b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(2) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against the user.

F. Emergency suspensions.

(1) The Director may immediately suspend a user's discharge whenever such suspension is necessary in order to stop an actual or threatened discharge, which reasonably appears to present or cause an imminent or substantial danger to the health or welfare of persons. The Director shall immediately inform the user of such a suspension in writing or verbally, and if verbally, then followed in writing within 48 hours. The Director may also immediately suspend a user's discharge, after giving the user an opportunity to cease the violation in no less than 24 hours, that threatens to interfere with the operation of the POTW, or which presents, or may present, danger to the environment.

(a) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including, but not limited to, immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or danger to any individuals or the public. The Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director that the period of danger is passed, unless termination proceedings set forth in § 500-11G of these rules and regulations are initiated against the user.

(b) A user that is responsible, in whole or in part, for any discharge presenting imminent

danger shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under § 500-11C and G of these rules and regulations.

(2) Nothing in this subsection shall be interpreted as requiring a hearing prior to any emergency suspension under this subsection.

G. Termination of discharge permit.

(1) In addition to those provisions in § 500-6F of these rules and regulations, any user who violates the following conditions is subject to discharge permit termination:

(a) Violation of wastewater discharge permit conditions;

(b) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(c) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

(d) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling;

(e) Violation of the pretreatment standards in § 500-3 of these rules and regulations.

(2) The Director shall notify such user of the proposed termination of its discharge permit and offer to the user an opportunity to show cause under § 500-11C of these rules and regulations why the termination action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action available by local, state, or federal law, against the user.

**§ 500-12. Judicial enforcement remedies.**

A. Injunctive relief. If the Director finds that a user has violated, or continues to violate, any provision of these rules and regulations, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may petition the Superior Court through the Town Solicitor for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by these rules and regulations on activities of the user. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including, but not limited to, a requirement that the user is to perform environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against a user.

B. Civil penalties.

(1) Any user that violated, or continues to violate, any provision of these rules and regulations, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Town for a maximum civil penalty of $5,000 per violation per day. In the case of a monthly or long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) The Director may recover reasonable attorney's fees, court costs, and other expenses associated

with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town.

(3) In determining the Town's actual damages, the Director may take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user.

(4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against a user.

C. Remedies nonexclusive. The remedies provided for in these rules and regulations are not exclusive. The Director may take any, all, or any combination of these actions against a noncomplying user. Enforcement of pretreatment violations shall generally be in accordance with the Town's enforcement response plan. However, the Director may take other action against any user when the circumstances warrant.

## § 500-13. Supplemental enforcement action.

A. Performance bonds. The Director may decline to issue or reissue a wastewater discharge permit to any user that failed to comply with the provisions of these rules and regulations, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the Town, in a sum not to exceed a value determined by the Director, to be necessary to achieve consistent compliance.

B. Liability insurance. The Director may decline to issue or reissue a wastewater discharge permit to any user that failed to comply with any provision of these rules and regulations, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained liability insurance or other financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

C. Informant rewards. The Director may be authorized by the Town to pay up to $500 for information leading to the discovery of noncompliance by a user. In the event that the information provided results in a civil penalty levied against the user, the Director may be authorized by the Town to disperse up to 5% of the collected penalty to the informant. However, a single reward payment may not exceed $1,000.

D. Contractor listing. Users that have not complied with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or service to the Town. Existing contracts for the sale of goods or services to the Town held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the Town, at the request of the Director.

## § 500-14. Affirmative defenses to discharge violations.

A. Upset.

(1) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of Subsection A(3), below, are met.

(3) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly authenticated, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user has identified the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The user has submitted the following information to the Director within 24 hours of becoming aware of the upset (if this information is provided orally, written submission shall be provided with five days):

[1] A description of the indirect discharge and cause of noncompliance;

[2] The period of noncompliance, including exact dates and times or, if not corrected, the time the user anticipates the noncompliance to continue; and

[3] Steps the user is taking or has taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(6) Users shall control production of all discharges as necessary to maintain compliance with categorical pretreatment standards in the event of reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of payment is provided. In addition to other situations, this requirement shall apply where the primary source of power of the treatment facility is reduced, lost or fails.

(7) Notwithstanding the above affirmative defenses, the user shall not be excused from its responsibility to clean up the violating discharge, at its own expense, and in compliance with local, state and federal law, and further to pay for any and all damages arising from said discharge, whether to the Town or third parties.

B. Prohibited discharge standards. A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in § 500-3A(1) of these rules and regulations or the specific prohibitions in § 500-3A(2)(c) through (q) of these rules and regulations if it proves that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

(1) A local limit exists for each pollutant discharged and the user was in compliance with each limit immediately prior to, and during, the pass through or interference; or

(2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the Town was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements;

(3) Notwithstanding the above affirmative defenses, the user is not excused from cleaning up the violating discharge, as set forth in § 500-14A(7).

C. Bypass.

(1) For the purposes of this section:

BYPASS — Means the intentional diversion of wastestreams from any portion of a user's treatment facility.

SEVERE PROPERTY DAMAGE — Means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Enforcement action.

(a) Bypass is prohibited, and the Director may take enforcement action against a user for a bypass, unless:

[1] Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

[2] There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

[3] The user submitted notices as required under Subsection C(3) of this section.

(b) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Subsection C(4)(a) of this section.

(3) A user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of Subsection C(3) and (4) of this section.

(4) Notice.

(a) If a user knows in advance of the need for a bypass, it shall submit prior written notice to the Director at least 10 days before the date of the bypass, if possible.

(b) A user shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the time the user expects it to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been

received within 24 hours.

(5) Notwithstanding the above affirmative defenses, the user is not excused from cleaning up the violating discharge, as set forth in § 500-14A(7).

**§ 500-15. Miscellaneous provisions.**

A. Severability. If any provision of these rules and regulations is invalidated by a court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

B. Conflicts. All other rules and regulations and part of other rules and regulations inconsistent or conflicting with any part of these rules and regulations are hereby repealed to the extent of the inconsistency or conflict.

**§ 500-16. Sewer service charges and industrial cost recovery.**

A. Sewer service charges for the use of the public sewage shall be based upon the actual use of such system or contractual obligation for a level of use in excess of current actual use, or property value as permitted by federal law. The sewer service charges shall be based on such factors which significantly affect the cost of treatment in accordance with the Town's approved User Charge System.

B. The cost for operation and maintenance of the sewage works shall be shared by the municipalities of Gardner, Ashburnham, and Templeton in proportion to their actual use of the facilities as determined by actual measurement and analysis of each user's discharge in accordance with § 500-3, or as otherwise agreed to in a signed intermunicipal agreement.

C. The following criteria shall be used in assessing sewer service charges for users in Ashburnham.

(1) For users that discharge more than 25,000 gallons per day or the equivalent of 25,000 gallons per day of domestic sanitary sewage, the use of the Town's sewage works shall be based upon actual measurement and analysis of each user's discharge in accordance with the provisions of § 500-3 to the extent such measurement and analysis is considered feasible by the Director. Where measurement of actual discharge is considered not feasible, determination of use of the facilities shall be based upon the quantity of water used, whether purchased from the public water utility or obtained from a private source. The Director, when determining actual use of the Town's sewage works based on water use shall consider consumptive, evaporative, or other use of water, which results in a significant difference between a discharger's water use and discharge. Where appropriate, such consumptive water use may be metered to aid in determining actual use of the sewage works.

(2) For tax-exempt users, sewer service charges shall be based upon the water used, whether purchased from the public water utility or obtained from a private source. Tax-exempt users with septic tanks will be assessed a septage dumping fee.

(3) For users not included in the above categories, charges for the use of sewer work shall be based upon assessed valuation of property.

D. Discharge of septage from septic tanks located on properties outside of the City of Gardner shall not be permitted.

E. Users of the Town's and City's sewage works shall also be assessed industrial cost recovery charges as required by federal law.

### § 500-17. Applications.

A. All applications for use of the Town's sewer system must be made at the office of the Director by the owner of the premises or his properly authorized agent.

B. The Director reserves the right to defer action on any application between November 1 and April 15.

### § 500-18. Sewer entrance fee.

A. All properties shall pay a sewer entrance fee as a condition of connection into the public sewage works system.

B. A schedule of rates for the sewer entrance fee is available at the Water/Sewer Office.

C. For all premises not provided for in the schedule of rates, the question of charges in connection with entrance fees shall be determined by the Director.

D. For any additional use of or further connection made with any sewer, at any time, other than that stated in the original application for connecting any estate with the public sewers, said estate shall make due application for same, and shall pay such fees as established by the Water/Sewer Commission.

E. All connection with the system of sewers shall be made in such manner as the Director shall direct, and only by and with his consent or his authorized agents. The cost of connecting any estate with any main drain or sewer, together with the construction and maintenance of the connecting private drain, shall be paid by the owner of the estate thereby connected with the public sewer. Payment in advance of the sewer entrance fee is required to cover the cost of connecting any estate with the public sewer.

# Chapter 505

# SEWER INSTALLATION

**[HISTORY: Adopted by the Water/Sewer Commission of the Town of Ashburnham 1-2-1996; as last amended 7-7-2016. Subsequent amendments noted where applicable.]**

## § 505-1. Purpose; conflicts.

The Ashburnham Board of Water and Sewer Commissioners (WSC) has adopted the following rules and regulations for the installation of residential and commercial building sewer connections, and for the licensing of installers, inspection of work, and penalties for violations. In the event of any conflict of interpretation between this document and the rules and regulations agreed to with the City of Gardner, the more stringent shall apply.

## § 505-2. License for sewer installers.

A. Sewer installers must obtain a license from the WSC before performing any work. Licenses are issued to individuals only, not companies. More than one person may be listed on an individual license at the discretion of the WSC. Licenses shall be issued for one calendar year commencing January 1, names to be listed in a policy to be set by the WSC. A $200 fee will be required with the completed license application. The applicant will supervise and be responsible for all work performed under the license. Any blasting required shall be done by a person licensed to perform blasting in the commonwealth, and only after receiving a blasting permit from the Ashburnham Fire Department. The applicant shall submit certificates of insurance in the sum of $1,000,000 to cover general liability, including bodily injury, property damage and $300,000 from XCU coverage for explosion, collapse, or underground damage. No insurance policy may be canceled without 30 days' prior written notice by registered mail to the Superintendent and Fire Department. Such insurance shall indemnify the Town against all claims, liabilities, or actions for damages incurred in, or in any connected with, the performance of work by a sewer installer and for or by reason of, any acts of omission of said sewer installer in the performance of his work. If insurance or bond is canceled or expires, the sewer installer license shall become void.

B. The license will be renewed annually upon review of the WSC with a fee of $25.

C. Any sewer work involving excavation in Town roads will require a bond, cash deposit, or certified check in an amount determined by the WSC upon review of the proposed work.

## § 505-3. Residential one- and two-family (gravity sewers).

A. All pipe and fittings installed shall be new and clean four-inch PVC, unibell type SDR 35 conforming to and compatible with that required in Ashburnham by Ashburnham Sewer Contract #1, 1995 (SEA Consultants, Inc.).

B. Pipe exiting foundation shall be Schedule 40 PVC for a distance of 10 feet for all new dwellings and all existing dwellings where the exit is relocated. Where exit location is not changed, existing four-inch cast iron pipe only may remain if inspection determines its condition to be suitable (free from damage or excessive residue). In such case, acceptable cast iron pipe may remain but only for the distance from the foundation to the first joint, the length of which must be exposed for inspection and for compliance with applicable requirements of this section.

C. A Fernco type (or equal) fitting may be used for transition from cast iron to SDR 35 pipe, but not

otherwise. The connection from Schedule 40 pipe to SDR 35 pipe shall be made by use of an approved PVC transition coupling. The transition from four-inch pipe to the six-inch stub shall be made with SDR 35 fittings.

D. Pipeline must be laid straight and at a uniform slope of no less than 0.01 (1/4 inch per foot).

E. Fittings of no greater than 45° may be used to correct alignment of pipe.

F. Where site layout indicates an alignment change which exceeds 45° or where the length of pipeline exceeds 100 feet, an approved cleanout or manhole may be required. It is the responsibility of the installer to present a proposed design, in writing, to be accepted by the Board prior to construction. For specification of manholes refer to Ashburnham Sewer Contract #1, 1995 (SEA Consultants, Inc.). Manhole covers may be of a lesser rating if approved by the WSC. See attached sketch for cleanout specifications.[134]

G. Pipe must be installed to a minimum depth of four feet from finish grade to top of pipe. Where pipe must pass below driveways or walkways customarily cleared of snow, a depth of five feet is required. Installations where minimum depths cannot be met require use of approved pipe insulation.

H. Pipe shall be installed below the footing wherever possible.

I. Excavation shall be made to provide for a four-inch minimum depth of clean 3/4-inch stone bedding. Any excavation below the required four-inch bedding shall be filled with additional stone bedding, or select backfill (common fill - dry and free of stones larger than 1 1/2 inch) mechanically compacted in lifts of eight inches.

J. Pipeline shall be backfilled with 3/4-inch stone to the level of the top of pipe, chinked and compacted to prevent lateral movement of the pipe. An additional four inches of 3/4-inch stone or eight inches of select backfill shall be placed and compacted for the width of the trench.

K. The remainder of backfill shall be free of debris, stumps or rocks exceeding one foot in diameter and placed in a manner so as to prevent settling.

L. Installer shall provide a firm, stable excavation, to required grade, prior to opening six-inch stub.

M. Groundwater shall be controlled by means of pumping before the six-inch stub can be opened and for the duration of the pipeline assembly.

N. The six-inch stub fitting can be removed only in the presence of the Town Inspector.

O. An appropriate size plug shall be available at all times and used to plug the end of the pipe during assembly whenever the work is interrupted or left unattended.

P. For a distance of five feet from the foundation the requirement for 3/4-inch stone will be replaced by clay-type material, placed and compacted so as to provide an impervious dam.

Q. All backfill beneath a footing shall be 3/4-inch stone.

R. Any installation requiring the removal of ledge by means of blasting must be done in accordance with procedures and permits from the Ashburnham Fire Department.

S. Any damage to Town roads resulting from the installation of sewer connections will be repaired

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**134. Editor's Note: The diagrams are included in an attachment to this chapter.**

promptly by the installer as directed by the Highway Superintendent. Failure to do so will be considered a violation against the sewer installer's license and subject to the same penalties described in § 505-7.

T. Any variations to these regulations must be proposed in writing and accepted by the Board prior to construction.

### § 505-4. Commercial, residential (more than two-family) gravity sewers.

A. Pipe size shall be six inches.

B. Rules and regulations of the previous section shall be included in every way applicable.

C. Manholes only (not cleanouts) will be used where required. For specifications of manholes refer to Ashburnham Sewer Contract #1, 1995 (SEA Consultants, Inc.). Manhole covers may be a lesser rating if approved by the WSC.

D. The WSC may require grease traps (specification to equal or exceed those of Title V) in addition to plumbing code requirements.

E. Any variations to these regulations must be proposed in writing and accepted by the Board prior to construction.

### § 505-5. Pressure sewers, residential and commercial.

A. For installation requiring a pump system, the installer shall submit the manufacturer's installation manual and specifications for the proposed sewage pump.

B. The minimum standard shall be a sewage pump having the capability of handling spherical solids of at least two-inch diameter.

C. Existing precast concrete septic tank may be modified for use as a pump chamber if tested and proven to be watertight.

D. Where a new pump chamber is proposed, manufacturer's specifications must be submitted for WSC approval.

E. Discharge shall be two-inch Schedule 40 PVC pipe.

F. Refer to § 505-3G for depth of pipe requirements.

G. The transition to gravity sewer shall be to four inches SDR35 for a minimum distance of five feet before transition to six-inch stub.

H. The gravity sewer shall conform to all applicable standards of § 505-3.

### § 505-6. Inspection.

The licensed installer shall notify the WSC 24 hours prior to any excavation and arrange for inspections at the following stages of work:

A. When the requirements are met for the sewer stub to be opened.

B. When the pipeline is completely assembled and the required 3/4-inch stone and clay dam material are

in place to the level of the top of pipe.

C. When special circumstances require additional inspections.

### § 505-7. Violations and penalties.

Failure to comply with any rules, regulations, specifications or inspection procedures will result in, but not be limited to, those penalties described in the application for licensing. Additional monetary penalties and/or immediate revocation of license can be imposed on the installer by the Superintendent and/or WSC if the severity of the violation so dictates.

### § 505-8. Extensions.

The extension of sewers in Town roads and proposed Town roads shall conform to all regulations and specifications of Ashburnham Sewers Contract #1, 1995 (SEA Consultants, Inc.).

### § 505-9. Wastewater metering.

In the event a user is not connected to the public water supply, but is connected to the public sewer, said user shall install and maintain a water meter, at their expense, from which the Town may monitor the use of the sewer. The type of meter and the method of installation shall be acceptable to the WSC.

### § 505-10. Non-sewer use water.

The Board, after receiving a written request from a user, may credit the user for disposal charges associated with water that is not discharged to the wastewater collection system from his property (e.g., outside watering, filling swimming pools, etc.). The volume of non-sewer use water must be measured with a second water meter, or other means that are acceptable to the Water Department and the Superintendent. The user will receive a credit on his user charge bill for non-sewer use water. All water meter and plumbing costs shall be borne by the user.

ASHBURNHAM CODE

# Chapter 525

# WATER RULES AND REGULATIONS

**[HISTORY: Adopted by the Water Department of the Town of Ashburnham as amended through 7-7-2016. Subsequent amendments noted where applicable.]**

ARTICLE I
**General Provisions**

## § 525-1. Agreement terms; violations.

These regulations and all subsequent changes, amendments or additions thereto shall be considered part of the agreement and contract with every water taker. Violation of any of those regulations or evidence of fraud or abuse of equipment shall be deemed sufficient cause for shutting off the water supply of the offender.

## § 525-2. Modifications to rules and regulations.

Modifications, additions to or rescinding of these rules and regulations may take place from time to time as the Board of Selectmen may elect; printing of such in a newspaper having local circulation will constitute notice and make same a part of the foregoing rules or a modification of same.

## § 525-3. Use restrictions.

A. The Director of the Public Works Department shall have the right to restrict the use of lawn hoses or Town sprinklers, or place any other restrictions on the use of water in any and all parts of Town if he deems necessary for the purpose of maintaining adequate pressure for fire protection or for conservation of water.

B. The Town of Ashburnham Water Department reserves the right to refuse or curtail service wherever excessive demand for water results in inadequate service to others.

C. No private well or water supply shall be connected to the Town water service.

D. Private wells may be used for irrigation but must be completely separate from the Town's water system and must be approved by the Ashburnham Health Department.

## § 525-4. General conditions.

A. The Water Department shall have free access to all premises and apparatus supplied with water.

B. Other utilities.

(1) No other utility line shall be installed within three feet of any water pipe trench.

(2) No sewer main or sewer connection shall be installed within 10 feet of any water service pipe or water main without the approval of the DPW Director.

C. The Water Department is not responsible for discolored water or clogged water lines on private property caused by excessive use, hydrant flushing, line breaks or for firefighting purposes.

D. No person shall tap any water main or connect any service pipe therewith, take off or repair meters, nor turn on or shut off the water from any pipe or hydrant without permission of the Director of the Public Works Department or his authorized agent. Water may be shut off at the meter by closing a valve. If the owner shuts off the water at the curb stop or corporation, they will be responsible for any damage caused.

E. No water taker will be allowed to take water from any hydrant without the consent of the Director of the Public Works Department.

F. No water service line shall be installed to service more than one consumer.

G. When two or more parties take water through one service pipe, the provisions in regard to shutting off the water apply to the whole supply through that service, although one or more of the parties may be innocent of any cause or offense.

H. Any change in location of a meter shall be by the approval of the Water Department and at the customer's expense. All water meters must be accessible for maintenance and replacement. They must be protected from the weather or other physical damage. The owner is responsible for replacement of a damaged meter. The cost for a new meter is $250, which includes labor.

I. The Town or Public Works Department shall not be held liable for nor shall any claims be made against it in consequence for the breaking of any pipe or fixture.

J. There shall be a charge of $50 to turn the water off and $50 to turn it on unless the service has been discontinued for cause, in which case other sections of the regulations will apply.

K. The Town of Ashburnham Water Department is not responsible for any damage to pipes or other property which may be attributed to electrical ground wires attached to water pipes. It is strongly recommended that no ground wires be attached to a water pipe.

**§ 525-5. Cross-connection control.**

A. No unprotected cross-connection is permitted between the public water supply and any other private source of water or any process which could contaminate the public water supply without a permit issued for the same by the Commonwealth of Massachusetts, Department of Environmental Quality Engineering under MGL c. 111, § 160A. The Water Superintendent shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow or backsiphonage from contaminates or pollutants through the water service connection. If, in the judgement of said Water Superintendent, an approved backflow prevention device is required at the Town's water service connection to any customer's premises, for the safety of the water system, the Director or his designated agent shall give notice in writing to said customer to install such an approved backflow prevention device at each service connection to his premises. The customer shall, within 30 days, install such approved device or devices at his own expense and failure, refusal or inability on the part of the customer to install said device or devices within 30 days shall constitute grounds for discontinuing water service to the premises until such device or devices have been properly installed.

B. Definitions.

AIR GAP — The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood rim of said vessel. An approved air-gap shall be as required by the Water Department Standards.

APPROVED — Accepted by the Superintendent as meeting an applicable specification stated or cited in this regulation, or as suitable for the proposed use.

AUXILIARY WATER SUPPLY — Any water supply on or available to the premises other than the purveyor's approved public potable water supply.

BACKSIPHONAGE — The flow of water or other liquids, mixtures or substances into the distributing pipes of a potable water supply system from any source other than its intended source caused by the sudden reduction of pressure in the potable water supply system.

BACKFLOW — The flow of water or other liquids, mixtures or substances under pressure into the distributing pipes of a potable water supply system from any source or sources other than its intended source.

BACKFLOW PREVENTER — A device or means designed to prevent backflow or siphonage.

CONTAMINATION — An impairment of the quality of the potable water by sewage, industrial fluids or waste liquids, compounds or other materials to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease.

CROSS-CONNECTION — Any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems, one of which contains potable water and the other nonpotable water or industrial fluids of questionable safety, through which, or because of which, backflow or backsiphonage may occur into the potable water system.

CROSS-CONNECTION CONTROL BY CONTAINMENT — The installation of any approved backflow prevention device at the water service connection to any customer's premises or the installation of an approved backflow prevention device on the service line leading supplying a portion of a customer's water system where there are actual or potential cross-connections which cannot be effectively eliminated or controlled at the point of cross-connection.

CROSS-CONNECTION-CONTROLLED — A connection between a potable water system and a nonpotable water system with an approved backflow prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard.

DOUBLE CHECK VALVE ASSEMBLY — An assembly of two independently operating approved check valves with tightly closing shut-off valves on each side of the check valves plus properly located test cocks for the testing of each check valve.

HAZARD - HEALTH (HIGH HAZARD) — Any condition, device or practice in the water supply system and its operation which could create, or, in the judgment of the Water Superintendent, may create a danger to the health and well-being of the water consumer.

HAZARD - PLUMBING (HIGH HAZARD) — A plumbing-type cross-connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation or backflow prevention device. Unprotected plumbing-type cross-connections are considered to be a health hazard.

HAZARD - POLLUTIONAL (LOW HAZARD) — An actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer's potable water system but which would constitute a nuisance or be aesthetically objectionable or could cause damage to the system or its appurtenances, but would not be dangerous to health.

HAZARD, DEGREE OF — The term is derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

INDUSTRIAL FLUIDS SYSTEM — Any system containing a fluid or solution which may be chemically, biologically or otherwise contaminated or polluted in a form or concentration such as would constitute a health, system, pollutional or plumbing hazard if introduced into an approved water supply.

POLLUTION — The presence of any foreign substance (organic, inorganic or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic use.

PRESSURE VACUUM BREAKER — A device containing one or two independently operating loaded check valves and an independently operating loaded air inlet valve located on the discharge side of the check or checks.

REDUCED PRESSURE PRINCIPLE DEVICE — An assembly of two independently operating approved check valves with an automatically operating differential relief valve between two check valves, plus properly located test cocks for the testing of the check and relief valves.

WATER, NONPOTABLE — Water which is not safe for human consumption or which is of questionable potability.

WATER, POTABLE — Water from a source which has been approved by the Massachusetts Water Supply and Pollution Control Commission for human consumption.

WATER, USED — Any water supplied by a water purveyor from a public potable water system to a customer's water system after it has passed through the point of delivery and is no longer under the sanitary control of the water purveyor.

WATER - SERVICE CONNECTIONS — The terminal end of a service connection from the public potable water system; i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water service connections from the public potable water system.

WATER SUPERINTENDENT — The Superintendent, or his designated agent, in charge of the Water Department is invested with the authority and responsibility for the implementation of an effective cross-connection control program and for the enforcement of the provision of this ordinance.

C. An approved backflow prevention device, where required, shall be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but, in all cases, before the first branch line leading off the service line wherever the following conditions exist:

(1) In the case of premises having an auxiliary water supply which is not or may not be of safe bacteriological or chemical quality and which is not acceptable as an additional source by the Water Supply and Pollution Control Commission, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line appropriate to the degree of hazard.

(2) In the case of premises on which any industrial fluids or any other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line appropriate to the degree of hazard.

(3) In the case of premises having (1) internal cross-connection that cannot be permanently corrected and controlled, or (2) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross-connections exist, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line.

D. The type of protective device required shall depend upon the degree of hazard which exists as follows:

(1) In the case of any premises where there is an auxiliary water supply; or where there is any material dangerous to health which is handled in a fashion to create an actual or potential hazard to the public water system; or where there are "uncontrolled" cross-connections, either actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device at the service connector.

(2) In the case of any premises where there is water or substance that would be objectionable but not hazardous to health, if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.

(3) In the case of any premises where, because of security requirements or other prohibitions or restrictions it is impossible or impractical to make a complete in-plant cross-connection survey, the public water system shall be protected against backflow or backsiphonage from the premises by the installation of a backflow prevention device in the service line. In this case, maximum protection will be required; that is, an approved air-gap separation or an approved reduced pressure principle backflow prevention device shall be installed in each service at the premises.

E. Any backflow prevention device required herein shall be a model and size approved by the Water Superintendent. The term "approved backflow prevention device" shall mean a device that is on the "approved list of backflow preventers and double check valves" as revised by the N.H. Water Supply and Pollution Control Commission, or is on the University of Southern California Approval List. Said approval lists have been adopted by the Water Superintendent.

F. It shall be the duty of the customer-user at any premises where backflow prevention devices are installed to have certified inspections and operational tests made at least once per year as required under Mass Regulation and this regulation. The Water Department will conduct testing on these devices twice a year. The owner of device will be charged for these tests. The Water Department may have these tests performed by a designated representative at the cost of the customer-user.

G. In those instances where the Water Superintendent deems the hazard to be great enough he may require certified inspections at more frequent intervals, the Water Superintendent's review in determining if the hazard is great enough for more frequent testing intervals. This will be based on the degree of hazard and/or health hazard (high hazard) and/or plumbing hazard (high hazard) and/or pollutional hazard (low hazard) and/or industrial fluids systems as defined under definitions of the section. These inspections and tests shall be at the expense of the water user and shall be performed by the Water Department personnel or by a certified tester approved by the Water Superintendent and approved by the State of Massachusetts. It shall be the duty of the Water Superintendent to see that these timely tests are made. The Water Superintendent shall notify the customer-user in advance to when the tests are to be undertaken so that he or his representative may witness the test if so desired. These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever said devices are found to be defective. Records of such tests shall be kept by the Water Superintendent and the customer-user.

H. All presently installed backflow prevention devices which do not meet the requirements of this section but were approved devices for the purposes described herein at the time of installation and which have been properly maintained shall, except for the inspection and maintenance requirements, be excluded from the requirements of these rules so long as the Water Superintendent is assured that they will satisfactorily protect the utility system. Whenever the existing device is moved from the present location or requires more than minimum maintenance or when the Superintendent finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow prevention device meeting the requirements of this section.

I. All decisions relating to determination of backflow devices will be made by the Ayer Water Department. Failure to comply with any directive from this office will result in the termination of service.

J. All testing and/or maintenance performed on backflow devices by the Water Department or its agent will be charged to the owner of the device.

**§ 525-6. Application for service connections and water use; installation specifications.**

A. All applications for service connections and the use of water must be made in writing to the Water Department on the form furnished by the Town and available at the Department of Public Works, 17 Central Street. There shall be an application and inspection fee for this service which is designated in the Water and Sewer Rate Schedule and subject to change annually.

B. Service pipes shall be of a size and material approved by the Director of Public Works. They shall be laid by plumbers or private contractors of established reputation and experience and approved by the Director of Public Works. The expense for installing said service pipe from the main to the property to be serviced shall be at the expense of the owner of the property.

C. Service line installed by a private contractor in a public way must be guaranteed for one year from date of charge, and meet all requirements pertaining to private contractors.

D. All water line installed on public or private property must be inspected and approved by the Water Department personnel of the Town of Ashburnham's Department of Public Works before it is backfilled.

E. Work on private property shall be done by a private contractor.

F. No new water service will be turned on until the water meter is installed.

G. No water services will be installed after November 1 of each year, or before April 15 of each year, or in frozen ground.

H. All water service lines must be one-inch copper bedded in sand and have five feet of cover.

**§ 525-7. Installers.**

A. Water main and water service installers.

(1) Plumbers and private contractors of established reputation and experience will be licensed by the Superintendent of Public Works as an authorized water main and water service installer.

(2) Applicants for licenses are required to pay a filing fee of $100 as water main and water service installers payable to the Town, all of which will be refunded to the applicants if rejected.

(3) If approved by the Director of Public Works, applicants for licenses as water main and water service installers shall obtain a license and permit bond in the amount of $5,000 or an amount equal to 100% of the construction cost of any proposed water connection located within or on public property or an amount approved by the Director of Public Works, whichever is greater, and shall remain in full force and effect for a period of one year from date of acceptance by the Town of the contractor's last service connection. This bond will guarantee that the contractor will comply with the statutes, regulations, or ordinances of the Town of Ashburnham's bylaws and Water Rules and Regulations. The license and permit bond shall be duly executed by the

principal of the contractor and by a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Director of Public Works shall be submitted to the Director of Public Works within 30 days from date of written notice that the contractor is approved as a licensed water main and water service installer.

(4) Insurance requirements.

(a) In order for a private contractor to do any work in, on, under or around streets, sidewalks and property belonging to the Town of Ashburnham, it will be necessary for him to furnish simultaneously with the submittal of the license and permit bond, a certificate of insurance with the following coverages:

[1] General liability: $100,000 property damages; $100,000 - $300,000 bodily injury.

[2] Automobile liability: $100,000 property damages; $100,000 - $300,000 bodily injury.

[3] Workmen's compensation and employer's liability.

[4] Insurance shall include coverage for collapse and underground structures.

[5] Insurance shall include coverage for projects/completed operations.

(b) All above insurance coverage shall remain in full force and effect for a period of at least one year from the date of acceptance by the Town of the last service connection installed by the contractor. The contractor shall take all responsibility for the work, and take all precautions for preventing injuries to persons and property in or about the work. The contractor shall pay all debts for labor and materials contracted for or by him on account of the work and shall assume the defense of, and indemnify and save harmless, the Town of Ashburnham and its officers and agents, from all claims relating to labor and/or alleged infringement of inventions, patents, or from injuries to any person or corporation or to damages to any property or any person or corporation caused by the acts of negligence of the contractor or any of his agents or employees, or any subcontractor or any agents or employees of any subcontractor in doing the work or in consequence of any improper materials, implements or labor used therein.

(5) The contractor shall not perform any work in, on, under or around streets, sidewalks and property belonging to the Town of Ashburnham until a license and permit bond and a certificate of insurance is approved by the Director of Public Works and the contractor has received written notice that they are approved and are on file at the Department of Public Works' office.

(6) Approved applicants will renew licenses, license and permit bond and insurance by January 1 of each ensuing year.

B. Supervision by Town engineering firm.

(1) An engineering firm which will be an independent contractor will be designated by the Town of Ashburnham and will represent the interest of the Town during construction of the subdivisions and/or residential dwellings with four or more and/or commercial developments with five or more water closets or whenever the Director deems it to be for the best interest of the Town of Ashburnham so to do and/or industrial's utilities installations (water, sewer, drainage and highway) and will supervise, monitor, and inspect the ongoing progress of the work (full-time observation is required). The costs for the services performed by said Town Engineers will be

borne by the developer or owner of the subdivision and/or residential dwellings with four or more dwelling units and/or commercial developments with five or more water closets or whenever the Director deems it to be for the best interest of the Town so to do and/or industrial project. The utilities of the subdivision and/or residential dwelling with four or more dwelling units and/or commercial developments with five or more water closets or whenever the Director deems it to be for the best interest of the Town so to do and/or industrial project will not be accepted and no flows will be permitted to be discharged from the development until a certificate of compliance is submitted by the Town's engineer and reviewed by the Town and all outstanding invoices of the Town's engineer have been paid. Outstanding invoices not paid within 30 days from billing date will be charged interest at 1.5% per month starting from date of billing.

(2) After completion of the subdivision and/or residential dwellings with four or more dwelling units and/or commercial developments with five or more water closets or whenever the Director deems it to be for the best interest of the Town of Ashburnham so to do and/or industrial project the developer or owner will furnish a completed reproducible Mylar "as-built" map (40 feet equals one inch) to the Department of Public Works. The map shall contain highway layouts, drainage layouts with profiles, water layouts with a description of the services to each building, curb stops, main gates and hydrant gates, using building or other marks as reference points an sewer layouts with profiles, force mains, force main gates, pump stations, pump station details and description of the services to each building showing the depth of all connections, using buildings or other marks as reference points. The map shall also contain any information deemed necessary by the Department of Public Works.

ARTICLE II
**Installation of Water Service Connection and Ductile Iron Water Pipes**

### § 525-8. Plans and specifications.

A. Plans and specifications for the installation of water mains and pipes that are to be connected to the Town's system shall be submitted simultaneously with the submittal of the application for the connection to water mains to the Director of Public Works for approval. All labor and materials, except meters less than one inch, required for the installation shall be furnished by the owners of the property at no cost to the Town.

B. Drawings indicating gate and curb box locations, in relation to nearby structures, must be furnished to the Department on completion of the installation and prior to the testing of the lines and final acceptance by the Town and before the water line is charged.

### § 525-9. Water pipe.

Under this item the contractor shall furnish, lay, join and test all water pipe and fittings, and appurtenant material and equipment as indicated on the drawings and in accordance with the relevant provisions of Sections 230, 300 and M5.05.3 of the Commonwealth of Massachusetts Standard Specifications, and/or amended.

### § 525-10. Notification of service shutdown.

The contractor shall be responsible for notifying the Ashburnham Water Department, Fire Department and all water users affected by his shutdown of service 36 hours prior to the actual shut down.

### § 525-11. Lines and grades.

Piping shall be installed at the locations indicated on the drawings and as designated in these specifications. Unless otherwise shown or stated. The minimum total of finished cover over the top of the barrel of all water pipes shall be five feet with a minimum of 12 inches of sand above and below the water pipe.

### § 525-12. Adapters.

Where it is necessary to join pipes of different types, the contractor shall notify the Ashburnham Water Department for approval, furnish and install the necessary adapters as required or as indicated on the drawings. Adapters shall have ends conforming to specifications for the appropriate type of joint to receive the adjoining pipe.

### § 525-13. Temporary plugs.

At all times when pipe laying is not actually in progress, the open ends of pipe shall be closed by temporary watertight plugs or by other approved means. If water is in the trench when work is resumed, the plug shall not be removed until all danger of water entering the pipe is passed.

### § 525-14. Pipe supports.

A. The contractor shall furnish and install all supports necessary to hold the piping and appurtenance in a firm, substantial manner at the lines and grades indicated on the drawings or specified.

B. Where required, bends, tees and other fittings in pipe lines buried in the ground shall be backed up

with Class A concrete placed against undisturbed earth where firm support can be obtained. If the soil does not provide firm support, then suitable bridle rods, clamps and accessories to brace the fittings properly shall be provided. Such bridle rods, etc. shall be coated thoroughly and heavily with an approved bituminous paint after assembly or, if necessary, before assembly.

### § 525-15. Connections to other facilities.

The water pipe shall be connected to existing or new structures and piping as shown on the drawings. The contractor shall furnish and install all such fittings and appurtenances as are necessary to make the connections shown, whether all such fittings are detailed or not.

### § 525-16. Field testing.

A. The water pipe shall be given pressure and leakage tests in sections of approved length. For these tests, the contractor shall furnish a water meter and a pressure gauge. The contractor shall also furnish and install suitable temporary testing plugs or caps for the pipeline; and all labor required. The meter and gauge shall be installed by the contractor in such a manner that all water entering the section under test will be measured and the pressure in the section indicated, and they shall be kept in use during both tests.

B. The scheduling of pressure and leakage tests shall be as approved and attended by the Town of Ashburnham Water Department.

C. Unless it has already been done, the section of pipe to be tested shall be filled with water of approved quality, and all air shall be expelled from the pipe. If air release assemblies are not available at high points for releasing air, the contractor shall make the necessary excavations and do the necessary backfilling, and the contractor shall make the necessary taps at such points and shall plug said holes after completion of the test with brass or bronze plugs.

### § 525-17. Assembling sleeve-type coupling.

Prior to the installation of sleeve-type couplings, the pipe ends shall be cleaned thoroughly for a distance of eight inches. Soapy water may be used as a gasket lubricant. A follower and gasket, in that order, shall be slipped over each pipe to a distance of about six inches from the ends, and the middle ring shall be placed on the already laid pipe end until it reaches the pipe stop or is properly centered over the joint. The other pipe end shall be inserted into or in relation to the pipe already laid. The gaskets and follower shall then be pressed evenly and firmly into the middle ring flares. After the bolts have been inserted and all nuts have been made up finger-tight, diametrically opposite nuts shall be progressively and uniformly tightened all around the joints, preferably by use of a torque wrench of the appropriate size and torque for the bolts.

### § 525-18. Handling and cutting pipe.

A. The contractor's attention is directed to the fact that the cement lining is comparatively brittle. Every care shall be taken in handling and laying pipe and fittings to avoid damaging the pipe or lining, scratching or marring machined surfaces, and abrasion of the pipe coating or lining.

B. Any fitting showing a crack and any fittings or pipe which has received a severe blow that may have caused an incipient fracture, even though no such fracture can be seen, shall be marked as rejected and removed at once from the work.

C. If any pipe showing a distinct crack and in which it is believed there is no incipient fracture beyond the limits of the visible crack, the cracked portion, if so approved, may be cut off by and at the

expense of the contractor before the pipe is laid so that the pipe used may be perfectly sound. The cut shall be made in the sound barrel at a point at least 12 inches from the visible limits of the crack.

### § 525-19. Laying pipe and fittings.

Gasket-type joints shall be made up by first inserting the gasket into the groove of the bell and applying a thin film of special nontoxic gasket lubricant uniformly over the inner surface of the gasket which will be in contact with the spigot end of the pipe. The end of the plain pipe shall be chamfered to facilitate assembly. The end shall be inserted into the gasket and then forced past it until it seats against the bottom of the socket.

### § 525-20. Tapped connections to ductile iron pipe and A.C. pipe.

A. The connection at the junction of the Town's water main to the proposed service connection shall be made by the contractor at the owner's expense.

B. A tapping saddle will be used on asbestos/cement pipe and plastic only by the contractor to connect a water service less than two inches to the Town's water main.

### § 525-21. Installation of pipe fittings.

A. All pipe and fittings shall be carefully handled by equipment of sufficient capacity and proper design to avoid damage to the pipe and fittings. No defective pipe or fittings shall be laid or placed in the piping. Any piece discovered to be defective after having been laid shall be removed and replaced by a sound and satisfactory piece at the expense of the contractor.

B. Each pipe and fitting shall be cleaned of all debris, dirt, etc., before being laid and shall be kept clean until accepted in the complete work.

C. Pipe and fittings shall be laid accurately to the lines and grades indicated on the drawings. Care shall be taken to ensure alignment both horizontally and vertically, and to give buried pipe a firm bearing along its entire length. Pipe shall not be laid in water, nor shall water be allowed to flow through them. The contractor shall take all necessary precautions to prevent flotation to the pipe in the trench.

D. Backfilling of the pipe trench shall be done as specified under Sections 230 and 300 of the Commonwealth of Massachusetts Standard Specifications, and the Town of Ayer's Specifications. All asphalt shall be saw cut and repaired at owner's expense. The trench shall be the contractor's responsibility for a two-year period. If the trench settles, it must be repaired within a reasonable time period (one week). Failure to comply will result in loss of license to do work in Ashburnham.

E. Following chlorination, the pipe shall be flushed again to remove any evidence of the contamination, as determined by bacteriological analysis. The bacteriological test and analysis shall be acceptable when a zero count is achieved.

F. For this work, the contractor shall furnish all equipment, material and labor required.

### § 525-22. Flexible connections.

Where flexible connections in the piping are specified or indicated on the drawings, they shall be obtained by the use of sleeve-type couplings. Such couplings, pipe, and/or fittings shall be as herein specified.

### § 525-23. Sleeve -type couplings.

A. Sleeve-type couplings shall be equal to Style 38 steel couplings for plain-end ductile iron pipe, made by Dresser Manufacturing Division, Bradford, Pennsylvania, Style 248 Clow Corp., or approved equal. The couplings shall be furnished with the pipe stop removed. Couplings shall be provided with plain, Grade 27, rubber gaskets and with black steel, track-head bolts with nuts. When buried in the ground, the bolts and nuts shall be thoroughly coated with an approved bituminous paint.

B. A tap and sleeve and gate, or tee and gate, will be used for connection larger than two inches. If a tap and sleeve and gate is used the tapping sleeve shall encompass the entire barrel of the main to be tapped so that a watertight joint is formed around the entire pipe barrel. Tapping sleeve shall be approved by the Superintendent of Public Works prior to installation.

C. Direct taps on ductile or cast pipe only.

D. No taps shall be scheduled on a Friday or the day before a holiday.

E. Connection to the Town's water main is not to be made without a representative of the Public Works Department being present to inspect the work.

F. All drilling and tapping of the water main shall be done normal to longitudinal axis of the pipe (2:00); fittings shall be drilled and tapped similarly, as appropriate. Drilling and tapping shall be done only by skilled mechanics. Tools shall be adapted to the work and in good condition so as to produce good, clean-cut threads of the correct size, pitch and taper.

## § 525-24. Connection service shut off.

A. A curb stop with stainless steel rod or gate shall be installed at the property line between the street layout and the property to be served.

B. All gates and valves must be readily accessible and in good working order before final acceptance of the installation is made by the Department.

C. All installations shall be made in a neat and workmanlike manner and be subject to the inspection and approval of the authorized representative of the Public Works Department. Before backfilling is commenced, all bends in the pipe and all hydrants shall be backed with 2000# concrete to a solid unbroken trench wall. When laying pipe on soft or swampy ground or through ledge, at least 12 inches of approved gravel or crushed stone shall be placed under and around the pipe. When, in the opinion of the Public Works Department Inspector, the excavated material is not suitable for backfilling, it shall be removed and clean gravel substituted.

## § 525-25. Materials.

A. Ductile iron pipe.

(1) General provisions.

(a) All mains along proposed streets and ways shall not be less than eight-inch inside diameter and shall be constructed in accordance with the requirements of the Underwriters Laboratories, Inc., and the standards of the American Water Works Association specifications covering pipes for public water supply systems.

(b) All water pipe shall be Class 52 cement-lined ductile iron pipe, and conform to the ANSI A21.50, A21.51 Specification for Ductile Iron Pipe.

(c) The pressure and leakage tests shall be as specified in Section 300 of the Commonwealth of Massachusetts Standard Specifications.

(d) The contractor shall make a leakage test metering the flow of water into the pipe while maintaining in the section being tested a pressure equal to 1.5 times average pressure to which the pipe will be subjected under normal conditions of service or 150 psi, whichever is greater. This shall be done by placing the section under system pressure or by pumping. This test must run for two hours.

(e) The lengths of joint to be used in determining the allowable leakage shall be based on the nominal diameter of the pipe. The allowable leakage shall be less than 30 gallons per inch diameter per mile of water main to be tested per day.

(f) If the section shall fail to pass the pressure test, the contractor shall repair or replace the defective pipe, fitting, or joint, all at his own expense.

(g) If, in the judgment of the engineer, it is impracticable to follow the foregoing procedure exactly for any reason, modifications in the procedures shall be made as required or approved, but in any event the contractor shall be responsible for the ultimate tightness of the line within the above leakage requirements.

(2) Disinfection and flushing. After the pipe has been tested and found acceptable, it shall be flushed thoroughly by the contractor. After completion of the flushing operation, the contractor shall disinfect the pipe with a solution consisting of 50 ppm of chlorine in accordance with the AWWA Specifications for Disinfecting Water Mains (C601). This work shall be done with the attendance of a representative of the Ashburnham Water Department.

(3) Pipe foundations. All pipe, fittings and appurtenances to be laid in open trench excavations shall be bedded in and uniformly supported over its full length, 12 inches above and below the pipe.

(4) Inspection of pipe before installation.

(a) All pipe fittings and appurtenances shall be carefully inspected in the field before lowering into the trench. All pieces found to be defective, as determined by the Town's Engineer, shall be removed from the work. Such rejected pipe shall be clearly tagged in such a manner as not to deface or damage it, and the pipe shall then be removed from the job site by the contractor at his own expense. Results of shop tests which are required in the following material specifications shall be submitted to the Town's Engineer prior to this installation of the pipe for which such test results were ordered.

(b) Jointing shall be of the rubber ring push-on type, field locking gaskets conforming to ANSI A21.11.

(c) Cast iron fittings shall be Class 250, cement-lined, and shall meet the requirements of ANSI A21.4 and A21.10.

B. Ductile iron lining and coating.

(1) Lining and coating.

(a) The inside of ductile iron pipe and fittings shall be given a cement lining in accordance with ANSI A21.4.

(b) The inside and outside of the pipe shall receive a bituminous seal coat in accordance with

ANSI A21.4.

(c) Machined surfaces shall be cleaned and coated with a suitable rust preventative coating at the shop immediately after being machined.

(2) Copper pipe and tubing.

(a) House service to the meter shall be of Type "K" copper tubing having a one-inch minimum inside diameter.

(b) All hydrants, gates, fittings, corporation cocks, tapping saddle, tapping sleeves, curb cocks, meter horns and house shut-off valves shall in general conform to AWWA Specifications and be of the same make and type as now used in the Ashburnham Public Works Department. All gates and hydrants must open clockwise/right.

ARTICLE III
**Fire Service; Meters**

### § 525-26. Private fire service.

A. Private fire service pipes may be installed by an industry at the owner's expense, including the street connection. The layout of check valves, type and size of pipe, control valves and meter shall be subject to the approval of the Director of Public Works Department, the Fire Department, the Fire Underwriter and the Massachusetts Department of Environmental Quality Engineering.

B. Cross-connection and backflow device will be installed on the fire service line wherever they are required under § 525-5 of these Water Rules and Regulations.

C. No service line or tap is to be taken from any private fire line. Failure to comply with this regulation will subject the customer to discontinuance of service, or payment for quantity of water used as estimated by the Town of Ashburnham Water Department.

D. No consumption is permitted through fire connections except for the extinguishing of fires.

E. The Ashburnham Water Department is not responsible for the maintenance of pressures, volume or supply of water. The service may be subject to shut downs or variations in pressure as system operations require.

### § 525-27. Hydrants.

A. The Fire Department will have control of the hydrants in case of fire; in no other case will any person be allowed to handle hydrants or other water apparatus without permission of the Director of the Public Works Department or his authorized agent.

B. Any connection to a hydrant must be metered and receive the approval of the Director of the Public Works Department, and all use must be controlled by a separate valve other than the hydrant valve. The installing and supplying of said meter and valve will be at the owner's expense. The installation will be inspected by the Water Department before the Water Department puts it into service.

C. Each hydrant shall be served directly from the water main through a six-inch lateral connection. A six-inch open left (counterclockwise) gate valve will be located at the tap of water main. Hydrant valve opening shall be a bottom valve with an area of at least equal to that area of a 5 1/4-inch minimum diameter circle and be obstructed only by the valve rod. Each hydrant shall be able to deliver 500 gallons minimum through its 2 1/2-inch hose nozzles when opened together with a loss of not more than two psi in the hydrant. The hydrant shall be equipped with one five-inch pump outlet. Make of hydrant shall be approved by the Director of Public Works Department. Hydrants shall be located no more than 1,000 feet apart. Valves shall be located in such a manner and number so that lines by individual block may be isolated for maintenance purposes. Length of water main shall not exceed 1,000 feet between valves.

### § 525-28. Meters.

A. All water must be metered. The Town will furnish the approved type of meter one-inch or smaller. All meters must be approved by the Director of Public Works. Meters larger than one inch shall be purchased by the property owner and must be a type acceptable to the Director of Public Works.

B. All water that passes through a meter will be charged for, whether used or wasted. If a meter fails to

register, the charge for water will be based on the average daily amount recorded by the meter when registering correctly.

C. Any meter over 1 1/2-inch shall have an approved bypass installed by the applicant and approved by the Superintendent of the Public Works Department of his authorized representative.

D. All persons taking water through a meter larger than one inch must keep their meter and fixtures in thorough repair and protected from frost at their own expense, and they will be held liable for all damages resulting from their failure to do so.

E. All persons taking water through a meter less than one inch must keep their meter protected from frost at their own expense, and they will be held liable for all damages resulting from their failure to do so.

F. The owner shall provide a location for a meter easily available for reading and for repair; said location to be subject to approval of the Water Department. Wherever circumstances do not permit a suitable location for the meter within the property, the meter will be placed within a manhole, at the expense of the owner.

G. All meters are owned by the Water Department and remain the property of the Water Department, except such extra meters as customers may have purchased for their own account or deduct meters.

H. Meters may be removed for repairs at any reasonable time by the Director or his authorized agents, who may enter any property served by the Town of Ashburnham Water Department at reasonable hours for purposes of inspection or repair.

I. No meter shall be disconnected or moved except by Water Department employees or a licensed plumber with the approval of the Ashburnham Water Department.

J. The Water Department will test meters upon written application by the customer accompanied by a deposit of $100, subject to the following conditions:

(1) If meter is found to over-register by an average amount exceeding 2%, a tested meter will be furnished and proper reduction made on water bill, for a period not exceeding six months. No charge for test of meter in error over 2% will be made.

(2) If meter does not over-register by an amount exceeding 2% it will be returned to service. The $100 deposit will be retained to cover the expense of the test. Any cost over $100 for testing meter over one inch will be at the owner's expense.

K. If a meter installed on the consumer's premises is stolen, or is damaged in any other way due to the act or neglect of the consumer, the cost of repairs or replacement shall be paid for by the consumer.

L. The Water Department is not responsible for leaks on the customer's premises.

## Select Board Regulations

# Chapter 550

# VEHICLES AND TRAFFIC

**[HISTORY: Adopted by the Select Board of the Town of Ashburnham 4-23-1990, effective 7-1-1990. Amendments noted where applicable.]**

ARTICLE I
**Definitions**

## § 550-1.1. Terms defined.

For the purpose of these rules and orders, the words and phrases used herein shall have the following meanings except in those instances where the context clearly indicates a different meaning.

BUS STOP — An area in the roadway set aside for the boarding of or alighting from and the parking of busses.

CROSSWALK — That portion of a roadway ordinarily included within the prolongation or connection of curblines and property lines at intersections, or at any portion of a roadway clearly indicated for pedestrian crossing by lines on the road surface or by other markings or signs.

CURB MARKING, OFFICIAL — That portion of a curbing, the painting of which has been authorized by the Board of Selectmen, and which has the written approval of the Department of Public Works, Commonwealth of Massachusetts.

EMERGENCY VEHICLE — Vehicles of the Fire Department (fire patrol), police vehicles, ambulances and emergency vehicles of federal, state and municipal departments or public service corporations when the latter are responding to any emergency in relation to the Police Department.

FUNERAL — Any procession of mourners properly identified as such accompanying the remains of a human body.

INTERSECTION —

A. The area embraced within the extensions of the lateral curblines or, if none, then the lateral boundary lines, of intersecting ways as defined in MGL c. 90, § 1, including divided ways.

B. The rules and regulations herein contained governing and restricting the movement of vehicles at and near intersecting ways shall apply at any place along any way at which drivers are to be controlled by traffic control signals, whether or not such place is an intersection as herein defined.

LANE — A longitudinal division of a roadway into a strip of sufficient width to accommodate the passage of a single line of vehicles.

OFFICER — Any officer of the Town of Ashburnham Police Department or any officer authorized to direct or regulate traffic or to make arrests for the violation of traffic regulations.

PARKING — The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading, or in obedience to an officer or traffic signs or signals, or while making emergency repairs or, if disabled, while arrangements are being made to move such vehicle.

PARKING METER — Any mechanical device, not inconsistent with the provisions of this regulation, and placed or erected on any public way or municipal off-street parking area within the Town of Ashburnham for the regulation of parking. Each parking meter installed shall indicate by proper legend the legal parking time established by this regulation and when operated shall at all times indicate the balance of legal parking time permitted and at the expiration of such period shall indicate illegal or overtime parking.

PARKING METER SPACE — Any space within a parking meter zone, adjacent to a parking meter which is duly designated for the parking of a single vehicle by lines painted on the surface of the street or municipal off-street parking area adjacent to or adjoining each parking meter.

PARKING METER ZONE — Includes any street or portion thereof or municipal off-street parking area

upon which parking of vehicles is permitted for a limited time subject to compliance with the further provisions of this regulation.

PEDESTRIAN — Any person afoot or riding on a conveyance moved by human muscular power, except bicycles or tricycles, as defined in MGL 90, § 18A.

PERSON — Includes any individual, firm, copartnership, association or corporation.

RAILROAD CROSSING — Any intersection of ways with a railroad right-of-way.

ROADWAY — That portion of a street or highway between the regularly established curblines or that part, exclusive of shoulders, improved and intended to be used for vehicular traffic.

ROTARY TRAFFIC — The counterclockwise operation of a vehicle around an object or structure.

SAFETY ZONE — Any area or space set aside within a roadway for the exclusive use of pedestrians and which has been indicated by signs, lines or markings, having the written approval of the Department of Public Works, Commonwealth of Massachusetts.

SERVICE ZONE — An area in the roadway set aside for the accommodation of commercial and transient vehicular traffic.

STREET MARKING, OFFICIAL — Any painted line, legend, marking or marker of any description painted or placed upon any way which purports to direct or regulate traffic and which has been authorized by the Board of Selectmen and which has the written approval of the Department of Public Works, Commonwealth of Massachusetts.

STREET OR HIGHWAY — The entire width between property lines of every way open to the use of the public for purposes of travel.

TAXICAB STANDS — An area in the roadway in which certain taxicabs are authorized and required to park while waiting to be engaged.

TRAFFIC — Pedestrians, ridden or herded animals, vehicles, street cars or other conveyances, either singly or together, while using any street or highway for the purpose of travel.

TRAFFIC CONTROL AREA — Any area along any way, other than an intersecting way, at which drivers are to be controlled by traffic control signals.

TRAFFIC CONTROL SIGNAL — Any device using colored lights which conforms to the standards as prescribed by the Department of Public Works of the Commonwealth of Massachusetts, whether manually, electrically or mechanically operated, by which traffic may be alternately directed to stop and to proceed.

TRAFFIC ISLAND — Any area or space set aside within a roadway, which is not intended for use by vehicular traffic.

TRAFFIC SIGNALS, OFFICIAL — All signals, conforming to the standards as prescribed by the Department of Public Works of the Commonwealth of Massachusetts, not inconsistent with these rules and orders, placed or erected by authority of a public body or official having jurisdiction, for the purpose of directing or warning traffic.

TRAFFIC SIGNS, OFFICIAL — All signs, markings and devices, other than signals, not inconsistent with these rules and orders, and which conform to the standards prescribed by the Department of Public Works of the Commonwealth of Massachusetts and placed or erected by authority of public body or official having jurisdiction for the purpose of guiding, directing, warning, or regulating traffic.

U-TURN — The turning of a vehicle by means of a continuous turn whereby the direction of such vehicle is reversed.

VEHICLE — Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including bicycles when the provisions of these rules are applicable to them, except other devices moved by human power or used exclusively upon stationary rails or tracks and devices which derive their power for operation from stationary overhead wires.

VEHICLE, COMMERCIAL — Any vehicle being used in the transportation of goods, wares or merchandise for commercial purposes.

VEHICLE, HEAVY COMMERCIAL — Any commercial vehicle of over 2 1/2-ton capacity.

ARTICLE II
**Authority and Duties of Police**

### § 550-2.1. Police to direct traffic.

It shall be the duty of officers designated by the Chief of Police to enforce the provisions of these rules and orders. Such officers are hereby authorized to direct all traffic either in person or by means of visible or audible signal in conformance with the provisions of these rules and orders, provided that in the event of a fire or other emergency, to expedite traffic or safeguard pedestrians, officers of the Police or Fire Department may direct traffic as conditions may require, notwithstanding the provisions of these rules and orders.

### § 550-2.2. Police may close streets temporarily.

The Chief of Police is hereby authorized to close temporarily any street or highway in an impending or existing emergency, or for any lawful assemblage, demonstration or procession.

### § 550-2.3. Police may prohibit parking temporarily.

The Chief of Police is hereby authorized to prohibit, temporarily, parking on a way, street or highway or part thereof in an impending or existing emergency, or for a lawful assemblage, demonstration or procession. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of an officer.

### § 550-2.4. Exemptions.

The provisions of these rules and orders shall not apply to drivers actually engaged in work upon a street or highway closed to travel or under construction or repair, to officers when engaged in the performance of public duties nor to drivers of emergency vehicles while operating in an emergency and in performance of public duties when the nature of the work of any of these necessitates a departure from any part of these rules and orders. These exceptions shall not, however, protect the driver of any vehicles from the consequences of a reckless disregard of the safety of others.

ARTICLE III
**Traffic Signs, Signals, Markings and Zones**

### § 550-3.1. Bus stops, taxicab stands and service zones.

The location of all bus stops, taxicab stands and service zones shall be specified by the Board of Selectmen; and in the case of taxicab stands, the Chief of Police, with the approval of the Board of Selectmen, shall designate who may use them as such.

### § 550-3.2. Interference with signs, signals and markings prohibited.

Any person who willfully defaces, injures, moves, obstructs or interferes with any official traffic signs, signals or marking shall be liable to a penalty not exceeding $20 for each and every offense.

### § 550-3.3. Obedience to traffic signs, signals and markings.

No driver of any vehicle or of any street car shall disobey the instructions of any official traffic control signal, sign, marking, marker or legend unless otherwise directed by a police officer.

### § 550-3.4. Traffic signs and signals.

A. The Superintendent of Highways is hereby authorized, and as to those signs and signals required hereunder it shall be his duty, to place and maintain or cause to be placed and maintained all official traffic signs, signals, markings and safety zones. All signs, signals, markings and safety zones shall conform to the standards as prescribed by the Department of Public Works of the Commonwealth of Massachusetts.

B. Sections 550-2.2 and 550-2.3 of Article II and §§ 550-5.2 and 550-5.3 and 550-5.6 and 550-5.8 to 550-5.10, inclusive, of Article V relating to parking and §§ 550-7.7 and 550-7.10 of Article VII concerning turning movements and § 550-7.20 of Article VII pertaining to exclusion shall be effective only during such time as official signs are erected and maintained in each block designating the provisions of such sections and located so as to be easily visible to approaching drivers.

C. Sections relating to one-way streets shall be effective only during such time as a sufficient number of official signs are erected and maintained at the entrance and each of the exits for each one-way street, so that at least one sign will be clearly visible for a distance of at least 75 feet to drivers approaching such an exit.

### § 550-3.5. Display of unauthorized signs, signals and markings prohibited.

No person or corporation shall place, maintain or display upon or in view of any street any unofficial device, sign, signal, curb marking or street marking which purports to be or is an imitation of or resembles an official traffic device, sign, signal, curb marking or street marking or which attempts to direct the movement of traffic or which hides from view any official sign, signal, marking or device. The Chief of Police is hereby empowered to remove every such prohibited sign, signal, marking or device or cause it to be removed without notice.

### § 550-3.6. Experimental regulation.

For the purpose of trial, the Board of Selectmen may make temporary rules regulating traffic or test under actual conditions traffic signs, markings, or other devices. No such experimental rules relating to traffic shall remain in effect for a period longer than 30 days.

ARTICLE IV
**Zones of Quiet**

### § 550-4.1. Establishment of zones.

The Chief of Police may temporarily establish a zone of quiet upon any street where a person is seriously ill. Said temporary zone of quiet shall embrace all territory within a radius of 200 feet of the building occupied by the sick person. Said temporary zones of quiet shall be designated by the Chief of Police by causing to be placed at a conspicuous place in the street a sign or marker bearing the words "ZONE OF QUIET."

ARTICLE V
**Stopping, Standing and Parking**

### § 550-5.1. General prohibitions.

No person shall allow, permit or suffer any vehicle registered in his name to stand or park in any street, way, highway, road or parkway under the control of the Town of Ashburnham in violation of any of the Traffic Rules or Orders adopted by the Board of Selectmen and in particular in any of the following places except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic sign or signal.

A. Within an intersection, "except within those intersections where the installation of parking meters has been specifically approved by the Massachusetts Department of Public Works."

B. Upon any sidewalk.

C. Upon any crosswalk.

D. Upon the roadway in a rural or sparsely settled district.

E. Upon a roadway where parking is permitted unless both wheels on the right side of the vehicle are within 12 inches of the curb or edge of the roadway, except upon those streets which are designated as one-way streets. On such one-way streets, vehicles shall be parked in the direction in which said vehicle is moving and with both wheels within 12 inches of the curb. This shall not apply to streets or parts of street where angle parking is required by these regulations.

F. Upon any roadway where the parking of a vehicle will not leave a clear and unobstructed lane at least 10 feet wide for passing traffic.

G. Upon any street or highway within 10 feet of a fire hydrant.

H. In front of any private road or driveway.

I. Upon any street or highway within 20 feet of an intersecting way, except alleys.

J. Within 15 feet of the wall of a fire station or directly across the street from such fire station, provided signs are erected acquainting the driver of such restriction.

K. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.

L. Within 25 feet of the nearest rail of a railroad crossing when there are no gates at such crossing, or otherwise within five feet from the gate.

M. On a bridge and the approach thereto.

### § 550-5.2. Service zones.

No person shall park a vehicle upon any street in any service zone for a period of time longer than 30 minutes and except while actually engaged in loading or unloading.

### § 550-5.3. Diagonal parking.

A. The Board of Selectmen shall determine the street upon which diagonal parking will be permitted and

shall cause said streets to be designated by signs and the surfaces thereof to be marked as directed by the Chief of Police.

B. Diagonal parking is permitted upon certain sections of a number of streets as designated in Schedule No. I, hereto appended to which reference is made and which Schedule No. I, relative to diagonal parking, is herewith specifically incorporated in this section.[135] Where such diagonal parking is permitted, vehicles shall be parked with one wheel within 12 inches of the curb and at the angle to the curb indicated by official marks and signs. The vehicle shall be parked so that all four wheels thereof shall be placed wholly within the area indicated for parking, and headed to the curb.

### § 550-5.4. Parking vehicle for sale prohibited.

It shall be unlawful for any person to park upon a street or highway any vehicle displayed for sale.

### § 550-5.5. All-night parking prohibited (winter season).

No person shall allow, permit or suffer any vehicle registered in his name, other than one acting in an emergency, to be parked on any street for a period of time longer than one hour between the hours of 12:00 midnight — 5:00 a.m. from November 15 to April 1.

### § 550-5.6. Parking location and prohibitions.

Parking is prohibited, restricted or limited as to time, space and streets in accordance with a schedule of streets designated as Schedule No. I, hereto appended to which reference is made and which Schedule No. I is specifically incorporated in this section.[136] No operator shall park a vehicle in the designated prohibited locations or in the restricted locations for a period longer than is designated in Schedule No. I, except as otherwise provided in this schedule, or where there is a time limit as to parking.

### § 550-5.7. Metered parking.

A. Parking meter locations and regulations.[137]

(1) Parking is restricted or limited as to time, space, streets, and municipal off-street parking areas on the streets and municipal off-street parking areas designated as Schedule I-A hereto appended to which reference is made and which Schedule I-A is specifically incorporated in this section. No person shall park a vehicle for a period of time longer than one hour between the hours of 8:00 a.m. and 6:00 p.m. on any of the streets or for a period of time longer than two hours in any municipal off-street parking area hereinafter designated in Schedule I-A or as may hereafter be fixed by amendment, except that on Friday the limited parking time shall apply between the hours of 8:00 a.m. and 9:00 p.m. This restriction shall not apply on Sundays or during the hours of legal holidays during which business establishments are required by law to remain closed.

(2) In accordance with the foregoing, parking meter zones are hereby established in the streets, parts of streets or municipal off-street parking areas listed in Schedule I-A.

B. The Superintendent of Highways is hereby empowered, with the approval of the Board of Selectmen, to contract, in accordance with provisions of Chapter 40 of the General Laws, for the acquisition and

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**135. Editor's Note: Schedule I is included as an attachment to this chapter.**

**136. Editor's Note: Schedule I is included as an attachment to this chapter.**

**137. Editor's Note: See Schedule I-A, which is included as an attachment to this chapter.**

installation of parking meters provided for by this regulation and to maintain said meters in good workable condition.

C. The Superintendent of Highways is hereby authorized and directed to install parking meters within the areas described in this regulation or cause the same to be so installed. The meters shall be placed at intervals of not less than 20 feet apart, except that beginning and ending spaces may be 18 feet and except where angle parking is permitted, and not less than 12 inches nor more than 24 inches from the face of the curb adjacent to individual meter spaces. Meters shall be so constructed as to display a signal showing legal parking upon the deposit therein of the proper coin or coins of the United States as indicated by instructions on said meters and for such period of time as is or shall be indicated by meter legend. Said signal shall remain in evidence until expiration of the parking period designated, at which time a dropping of a signal automatically or some other mechanical operation shall indicate expiration of said parking period.

D. The Superintendent of Highways is hereby authorized and directed to establish parking meter spaces in such parking meter zones as are herein specified, or as may be hereafter fixed by amendment, and to indicate the same by white markings upon the surface of the highway.

E. Method of parking.

(1) Whenever any vehicle shall be parked adjacent to a parking meter, the owner or operator of said vehicle shall park within the space designated by pavement marking lines and, upon entering such space, shall immediately deposit in said meter the required coin of the United States for a maximum legal parking period or proportionate period thereof, both as indicated or shown on the meter, and if so required set the mechanism in motion.

(2) The fee for the maximum parking time in on-street parking meter zones shall be $0.25 or $0.05 for each proportionate period of said maximum up to the limit of one hour.

(3) The fee for parking in municipal off-street parking areas shall be at the rate of $0.25 per hour or proportionate period thereof up to the maximum limit of two hours.

(4) It shall be unlawful for any person to deposit or cause to be deposited in a parking meter any coin for the purpose of permitting the vehicle of which he is in charge to remain in a parking space beyond the maximum period of time allowed in a particular zone.

(5) It shall be unlawful for any person to park a vehicle within a parking meter space unless such vehicle is wholly within the painted lines adjacent to such meter.

(6) It shall be unlawful for any unauthorized person to open, tamper with, break, injure or destroy any parking meter or to deposit or cause to be deposited in such meter any slugs, device or metallic substance or any other substitute for the coins required.

F. Operators of commercial vehicles may park in a metered space without depositing a coin for a period not to exceed 30 minutes for the purposes of loading or unloading. Parking in excess of this time limit without depositing the proper coin shall be deemed a violation of the provisions of this regulation.

G. The Chief of Police is hereby designated as the person authorized to collect monies deposited in parking meters or to cause the same to be so collected. Such monies shall be deposited forthwith with the Treasurer in a separate account to be known as the "Town of Ashburnham Parking Meter Account."

H. All fees received by said Treasurer from the operation and use of parking meters shall be used as

authorized by Chapter 40 of the General Laws (Ter. Ed.).

I. It shall be the duty of police officers to enforce the provisions of this section.

J. Any person who violates any parking provisions of this regulation shall be subject to the penalties provided by MGL c. 90, § 20A 1/2, and any other violation shall be punishable as may be provided by law.

K. No driver, while operating any vehicle owned and bearing indicia of ownership by the Town of Ashburnham, state or federal governments, shall be required to deposit any fee in a parking meter as provided in this section.

L. All other regulations or parts of regulations which are inconsistent herewith are hereby repealed.

### § 550-5.8. Parking prohibited at safety zones.

No person shall park a vehicle within 20 feet of either end of a safety zone which is located within 30 feet of the curb or edge of the roadway.

### § 550-5.9. Bus stops.

A. No person shall stop or park a vehicle other than a bus in a bus stop.

B. No person shall park a bus upon any street within a business district at any place other than a bus stop when a nearby bus stop is available for use.

### § 550-5.10. Taxicab stands.

A. No person shall park a vehicle other than a taxicab upon any street within a business district in any taxicab stand (Schedule No. II[138]).

B. No person shall park a taxicab upon any street within a business district at any place other than the taxicab stand or stands designated for the use of his taxicab or taxicabs.

**138. Editor's Note: Schedule II is included as an attachment to this chapter.**

ARTICLE VI
**One-Way Streets**

### § 550-6.1. Designation of one-way streets.

The streets or-portions thereof designated in Schedule No. III hereto appended and specifically incorporated in this section are declared to be one-way streets and all vehicular traffic shall move on those streets or portions thereof in the direction designated in said Schedule No. III.[139]

### § 550-6.2. Rotary traffic.

Within the area set forth below, vehicular traffic shall move only in a rotary counterclockwise direction except when otherwise directed by an officer.

**139.Editor's Note: Schedule III is included as an attachment to this chapter.**

ARTICLE VII
**Operation of Vehicles**

(MGL Chapter 89 governs)

### § 550-7.1. Overtaking vehicles.

The driver of a vehicle shall not overtake and pass a vehicle proceeding in the same direction unless there is sufficient clear space ahead on the right side of the roadway to permit the overtaking to be completed without impeding the safe operation of any vehicle ahead.

### § 550-7.2. Driver to give way to overtaking vehicle.

The driver of a vehicle when about to be overtaken and passed by another vehicle approaching from the rear shall give way to the right in favor of the overtaking vehicle on suitable and visible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

### § 550-7.3. Obstructing traffic.

A. No person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic upon any street or highway. Officers are hereby authorized to require any driver who fails to comply with this section to drive to the side of the roadway and wait until such traffic has been delayed or has passed.

B. No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk and on the right half of the roadway to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

### § 550-7.4. Following too closely.

The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the street or highway.

### § 550-7.5. Clinging to moving vehicles.

It shall be unlawful for any person traveling upon a bicycle, motorcycle, coaster, sled, roller skates, or any toy vehicle to cling to, or attach himself or his vehicle to any moving vehicle or street car upon any roadway.

### § 550-7.6. Care in starting, stopping, turning or backing.

A. The driver of any vehicle before starting, stopping, turning from a direct line or backing shall first see that such movement can be made in safety. If such movement cannot be made in safety or if it interferes unduly with the normal movement of other traffic, said driver shall wait for a more favorable opportunity to make such movement.

B. If the operation of another vehicle should be affected by a stopping or turning movement, the driver of such other vehicle shall be given a plainly visible signal as required by statute law.

### § 550-7.7. Prohibited and mandatory turning movements.

(Reserved)

### § 550-7.8. Emerging from alley or private driveway.

The operator of a vehicle emerging from an alley, driveway or a garage shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across an alleyway or driveway.

### § 550-7.9. Obedience to traffic control signals.

A. General provisions.

(1) Colors and arrow indications in traffic control signals shall have the commands ascribed to them in this section, and no other meanings, and every driver of a vehicle, railway car or other conveyance shall comply therewith, except when otherwise directed by an officer or by a lawful traffic regulating sign (other than a "stop sign"), signal or device or except as provided in § 550-7.18B of these rules.

(2) In no case shall a driver enter or proceed through an intersection without due regard to the safety of other persons within the intersection, regardless of what indications may be given by traffic control signals.

B. Green indications shall have the following meanings:

(1) Drivers facing a CIRCULAR GREEN may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But drivers turning right or left shall yield the right-of-way to other vehicles, and to pedestrians lawfully within the intersection or an adjacent crosswalk, at the time such signal is exhibited.

(2) Drivers facing a GREEN ARROW, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such drivers shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

C. Steady yellow indications shall have the following meanings:

(1) Drivers facing a steady CIRCULAR YELLOW OR YELLOW ARROW signal are thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when drivers shall not enter the intersection.

D. Steady red indications shall have the following meanings:

(1) Drivers facing a steady CIRCULAR RED signal and NO TURN ON RED SIGN shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in Subsection D(2) below.

(2) When no sign is in place prohibiting a right turn, or a left turn from a one-way street to another one-way street, drivers facing a steady CIRCULAR RED signal may cautiously enter the intersection to make the right turn, or left turn from a one-way street to another one-way street, after stopping as provided in Subsection D(1) above. Such drivers shall yield the right-of-way

to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Drivers facing a steady RED ARROW indication may not enter the intersection to make the movement indicated by such arrow and, unless entering the intersection to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to make the movement indicated by such arrow is shown.

E. Red and yellow indication shall have the following meaning: While the red and yellow lenses are illuminated together, drivers shall not enter the intersection, and during such time the intersection shall be reserved for the exclusive use of pedestrians.

F. Flashing signal indications shall have the following meanings:

(1) Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, driver of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver(s) has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the provisions of MGL c. 89, § 8.

(2) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or pass such signal only with caution.

### § 550-7.10. U-turns prohibited.

No operator shall back or turn a vehicle so as to proceed in the direction opposite to that in which said vehicle is headed or traveling on the following streets.

### § 550-7.11. Stop signs and yield signs.

A. For stop signs. In accordance with the provisions of MGL c. 89, § 9, the following streets are designated as stop streets at the intersections and in the direction indicated: In accordance with the foregoing, the streets listed in Schedule No. IV of these rules and orders are hereby declared to constitute stop streets or flashing red signal intersections as the case may be, and said Schedule No. IV is hereby specifically incorporated in this section.[140]

B. For yield signs. In accordance with the provisions of MGL c. 89, § 9, the following streets are designated as yield streets at the intersections and in the directions indicated: In accordance with the foregoing, the streets listed in Schedule No. V of the rules and orders are hereby declared to constitute yield streets on flashing yellow signal intersections as the case may be and said Schedule V is hereby specifically incorporated in this section.[141]

### § 550-7.12. Keep to right of roadway division.

Upon such roadways as are divided by a parkway, grass plot, reservation, viaduct, subway or by any structure or area, drivers shall keep to the right of such a division except when otherwise directed by an

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**140. Editor's Note: Schedule IV is included as an attachment to this chapter.**

**141. Editor's Note: Schedule V is included as an attachment to this chapter.**

officer, signs, signals, or markings.

### § 550-7.13. Operation of under- or overpasses at intersection with islands.

At any junction or crossing of ways where the roadway grades have been separated and where the ways are connected by ramps and at any intersection of ways in which there are traffic islands, drivers of vehicles shall proceed only as indicated by official signs, signals or markings.

### § 550-7.14. Driving on road surfaces under construction or repair.

No operator shall enter upon a road surface of any street or highway or section thereof, when, by reason of construction, surface treatment, maintenance or the like, or because of some unprotected hazard, such road surface of the street or highway is not to be used or when so advised by an officer, watchman, member of a street or highway crew or employees of the Town, either audibly or by signals.

### § 550-7.15. Driving on sidewalks prohibited.

The driver of a vehicle shall not drive upon any sidewalk except at a permanent or temporary driveway.

### § 550-7.16. Driving through safety zones prohibited.

It shall be unlawful for the driver of a vehicle, except on signal from a police officer, to drive the same over or through a safety zone.

### § 550-7.17. Funerals to be properly identified.

A funeral composed entirely or partly of a procession of vehicles shall be identified as such by means of black pennants bearing a purple symbol attached to both the first and last vehicles or other suitable means.

### § 550-7.18. Right and duties of drivers in funerals or other processions.

A. It shall be the duty of each driver in a funeral or other procession to keep as near to the right edge of the roadway as is feasible and to follow the vehicle ahead as closely as practicable and safe.

B. At an intersection where a traffic control signal is operating, the driver of the first vehicle in a funeral or other procession shall be the only one required to stop for a red and/or yellow indication.

C. At an intersection where a lawful stop sign exists, the driver of the first vehicle in a funeral or other procession shall be the only one required to stop before proceeding through the intersection.

### § 550-7.19. Unlawful riding.

It shall be unlawful for any person to ride on any portion of a vehicle not designated or intended for the use of passengers when the vehicle is in motion. This provision shall not apply to any employee engaged in the necessary discharge of a duty or within truck bodies in space intended for merchandise.

### § 550-7.20. Operation of heavy commercial vehicles.

A. The use and operation of heavy commercial vehicles having a carrying capacity of more than 2 1/2 tons are hereby restricted on the following named streets or parts thereof, and in the manner outlined and during the period of time set forth.

B. Exemptions. Subsection A of this section shall not apply to heavy commercial vehicles going to or coming from places upon said streets for the purpose of making deliveries of goods, materials, or merchandise to or similar collections from abutting land or buildings or adjoining streets or ways to which access cannot otherwise be gained; or to vehicles used in connection with the construction, maintenance and repair of said streets or public utilities therein; or to federal, state, municipal or public service corporation owned vehicles.

ARTICLE VIII
**Accident Reports**

### § 550-8.1. Drivers must report accidents.

Every person operating a motor vehicle which is in any manner involved in an accident in which any person is killed or injured or, in which there is damage in excess of $1,000 to any one vehicle or other property, shall report such accident within five days to the Registrar and to the Police Department in accordance with the provisions of MGL c. 90, § 26.

ARTICLE IX
**Penalties and Repeals**

### § 550-9.1. Violations and penalties.

A. Any person violating any provisions of any rule, regulation or order regulating the parking of motor vehicles made by any body authorized to make the same shall be dealt with as provided in MGL c. 90, § 20A 1/2 or any Acts in amendment thereof, or in addition thereto, and any person violating any of the rules and regulations applicable to state highways made by the Department of Public Works, Commonwealth of Massachusetts, under authority of MGL c. 85, § 2, and Acts in amendment thereof, and in addition thereto, shall be subject to the penalty provided in said rules and regulations.

B. Any person convicted of a violation of any other rule, regulation or order made hereunder, except as otherwise provided, shall be punished by a fine not exceeding $20 for each offense.

### § 550-9.2. Repeal.

These rules are adopted with the intent that each of them shall have force and effect separately and independently of every other except insofar as by express reference or necessary implication any rule or any part of a rule is made dependent upon another rule or part thereof. All official signs, lights, markings, signal systems or devices erected or installed under prior rules or regulations and necessary to the enforcement of these regulations shall be deemed to have been lawfully erected or installed hereunder, provided the same were erected or installed with the permission and approval of the Department of Public Works of the Commonwealth of Massachusetts and insofar as the same are necessary as aforesaid for the enforcement of these regulations they shall be deemed continuing hereunder; but in all other respects all prior rules, orders and regulations made by the Board of Selectmen of the Town of Ashburnham for the regulation of vehicles are hereby expressly repealed. This repeal, however, shall not affect any punishment or penalty imposed or any complaint or prosecution pending at the time of the passage hereof for any offense committed under said prior rules, order or regulations hereby repealed, nor shall said repeal be effective unless and until these rules and regulations have been approved and published as required by law.

### § 550-9.3. Effect of regulations.

If any section, subsection, sentence, clause or phrase of these rules and orders is for any reason unconstitutional, such decisions shall not affect the validity of the remaining portion of these rules and orders. The Board of Selectmen hereby declares that it would have passed these regulations and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one of more sections, subsection, sentence, clauses or phrases be declared unconstitutional,

### § 550-9.4. Owner prima facie responsible for violations.

If any vehicle is found upon any street or highway in violation of any provisions of these rules and regulations and the identity of the driver cannot be determined, the owner or the person in whose name such a vehicle is registered shall be held prima facie responsible for such violations.

## Derivation Table

# Chapter DT

# DERIVATION TABLE

**In order to assist Code users in the transition to the new Code's organization, the Derivation Table indicates where chapters and articles of the prior bylaw compilation have been included in the 2022 Code, or the reason for exclusion.**

**§ DT-1. Derivation Table of prior bylaws to 2022 Code.**

| Chapter from Prior Bylaws | Location in 2022 Code |
|---|---|
| Ch. I, General Provisions | Ch. 1, Art. I |
| Ch. II, Town Meetings | Ch. 75, Art. I |
| Ch. III, Government of Town Meetings | Ch. 75, Art. II |
| Ch. IV, Appointive Town Committees and Boards | Ch. 12, Art. I |
| Ch. V, Capital Budgeting | Ch. 28, Art. I |
| Ch. VI, Advisory Committee | Ch. 12, Art. II |
| Ch. VII, Contracts by Town Officers | |
| Secs. 1 - 6 | Ch. 17 |
| Sec. 7 | Ch. 53, Art. I |
| Ch. VIII, Records and Reports | Ch. 66 |
| Ch. IX, Legal Affairs | Ch. 5 |
| Ch. X, Junk and Second Hand Dealers and Collectors | Ch. 155 |
| Ch. XI, Use of Public Ways and Places | Amended 3-11-1972 ATM; 5-19-1975 ATM; 4-12-1978 ATM; 5-14-1987 ATM; 4-11-1990 ATM by Art. 40; 5-10-2006 ATM by Art. 34; 11-17-2010 ATM by Art. 1 |
| Sec. 1 - 3 | Ch. 196, Art. I |
| Sec. 4 - 5 | Ch. 196, Art. II |
| Sec. 6 - 7 | Ch. 196, Art. III |
| Sec. 8 | Ch. 196, Art. IV |
| Sec. 9 | Ch. 196, Art. V |
| Sec. 10 | Repealed 11-17-2010 STM |
| Sec. 11 | Ch. 143 |
| Sec. 12 | Ch. 196, Art. VI |
| Sec. 13 | Ch. 196, Art. VII |
| Sec. 14 - 15 | Ch. 196, Art. IV |

| Chapter from Prior Bylaws | Location in 2022 Code |
|---|---|
| Sec. 16 | Ch. 196, Art. VIII |
| Sec. 17 | Ch. 210 |
| Sec. 18 | Ch. 111 |
| Sec. 19 | Ch. 105 |
| Sec. 20 | Ch. 191 |
| Ch. XII, New Construction | |
| Sec. 1 - 3 | Ch. 117, Art. I |
| Sec. 4 | Ch. 53, Art. II |
| Sec. 5 | Ch. 117, Art. II |
| Ch. XIII, Protection of Wells | Ch. 225 |
| Ch. XIV, Paid Vacations for Town Employees | Repealed 11-17-2010 STM |
| Ch. XV, Council on Aging | Ch. 12, Art. III |
| Ch. XVI, Municipal Dog Control Law | Ch. 129 |
| Ch. XVII, Revocation or Suspension of Local Licenses | Ch. 162, Art. I |
| Ch. XVIII, Demolition Delay | Ch. 124 |
| Ch. XIX, Recycling | Ch. 185 |
| Ch. XX, Rules and Regulations for Municipal Sewer Collection Disposal System | See Ch. 500 |
| Ch. XXI, Rapid Entry Systems for the Fire Department | Ch. 117, Art. III |
| Ch. XXII, Water Use Restriction | Ch. 220 |
| Ch. XXIII, Unregistered Motor Vehicle or Trailer Regulations | Ch. 214 |
| Ch. XXIV, Enforcement | |
| Sec. 1, Enforcement by Non-Criminal Disposition | Ch. 1, Art. II |
| Ch. XXV, Street Address Numbering | Ch. 117, Art. IV |
| Ch. XXVI, Wetlands Protection | Ch. 230 |
| Ch. XXVII, Personnel | Ch. 60 |
| Ch. XXVIII, Low Impact Development (LID) Bylaw | Ch. 167 |
| Ch. XXIX, Affordable Housing Trust Fund | Ch. 28, Art. II |
| Ch. XXX, Right to Farm Bylaw | Ch. 138 |

| Chapter from Prior Bylaws | Location in 2022 Code |
|---|---|
| Ch. XXXI, Departmental Revolving Fund | Ch. 28, Art. III |
| Ch. XXXII, Payment Agreements for Overdue Taxes | Ch. 202, Art. I |

## Disposition List

# Chapter DL

# DISPOSITION LIST

**The following is a chronological listing of legislation of the Town of Ashburnham adopted since the 2022 publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] The last legislation reviewed for the publication of the Code was adopted at the May 3, 2022, Annual Town Meeting.**

**§ DL-1. Disposition of legislation.**

| Enactment | Adoption Date | Subject | Disposition | Supp. No. |
|---|---|---|---|---|
| ATM, Art. 27 | 5-2-2023 | Zoning Amendment | Ch. 250 | 3 |
| ATM, Art. 28 | 5-2-2023 | Personnel Bylaw Repealer | Ch. 60, reference only | 3 |
| STM, Art. 10 | 12-5-2023 | Zoning Amendment | Ch. 250 | 3 |