

The Charter

AGAWAM CODE

Chapter C

CHARTER

[Adopted November 16, 1971]

ARTICLE 1
INCORPORATION; SHORT TITLE; POWERS

Section 1-1. Incorporation

The inhabitants of the Town of Agawam within the corporate limits as established by law shall continue to be a body corporate and politic with perpetual succession under the name "Town of Agawam."

Section 1-2. Short Title

This instrument shall be known and may be cited as the Agawam Home Rule Charter.

Section 1-3. Powers

Subject only to express limitations on the exercise of any power or function by a municipality in the constitution or laws of the Commonwealth, it is the intent and the purpose of the voters of Agawam to secure through the adoption of this charter all of the powers it is possible to secure for a municipal government under the constitution and laws of the Commonwealth.

Section 1-4. Construction

The powers of the Town of Agawam under this charter are to be construed liberally in its favor and the specific mention of particular powers is not intended to limit in any way the general powers of the Town of Agawam as stated in section 1-3.

ARTICLE 2
LEGISLATIVE BRANCH

Section 2-1. Composition; Eligibility; Election and Term [Amended 11-5-1985]

- (a) Composition -- The total number of councilors shall be eleven (11) and be composed as follows: Eleven (11) at large councilors to be elected from the voters townwide. Agawam is divided into seven precincts. The town council shall be the judge of the election and qualification of its members.
- (b) Eligibility -- Only voters who at all times during their term of office shall be and remain residents of the town shall be eligible to hold the office of councilman. A member of the town council shall, notwithstanding his removal from one precinct to another, continue to serve and to perform his official duties during his term of office.
- (c) Election and Term -- The terms of councilmen shall be two years beginning the first secular day of January after their election, and until their successors are qualified.

Section 2-2. President and Vice-President of the Town Council

After a majority of the councilmen elect have been sworn, the town council shall be called together by the oldest member elected to serve who shall preside. The town council shall then elect, from among its members, a president and a vice-president to serve at the pleasure of the town council. The president shall preside at meetings of the town council and perform such other functions as may be assigned by the charter, by ordinance or by vote of the town council. The vice-president shall act as president during the absence or disability of the president.

Section 2-3. Compensation; Expenses

The town council shall by ordinance determine an annual salary for councilmen, but no ordinance establishing or increasing such salary shall become effective until the date of commencement of the terms of councilmen elected at the election held at least six months following the adoption of such ordinances.

Section 2-4. General Powers and Duties

Except as otherwise prohibited by law or the Charter, all powers of the town shall be vested in the town council which shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the town by law.

Section 2-5. Prohibitions

No councilman shall while a member of the town council, hold any other office or position, the salary or compensation for which is payable out of the town treasury. No former councilman shall hold any compensated appointive town office or town employment until one year after the expiration of his service on the town council.

Section 2-6. Filling of Vacancies

- (a) If a vacancy shall occur, by failure to elect or otherwise, in the office of councilor during the first eighteen (18) months of the term for which councilors are elected, no special election shall be held. The City Clerk shall notify the Council forthwith of such vacancy. The Council shall, within fifteen (15) days of such notification, choose as councilor for the vacancy, whichever of the defeated candidates for the office of council at the regular municipal election at which councilors were last

elected, who is eligible and willing to serve, and who received the highest number of votes at such election. If the defeated candidate who received the highest number of votes is ineligible or unwilling to serve, the Council shall choose the defeated candidate with the next highest number of votes, as so on, until such vacancy is filled, provided such person remains eligible and willing to serve and provided such person received votes at least equal to thirty percent of the vote total received by the person receiving the largest number of votes for the office of councillor at said election. If there is a tie in the election the City Clerk shall conduct an automatic recount of the election. If the recount does not break the tie a toss of the coin shall determine the outcome. The Clerk will then list the order of the candidates. If no defeated candidate is eligible and willing to serve, the Council shall by majority vote of the full council select a registered voter of the Town of Agawam to fill such vacancy. **[Amended 2-14-2001¹]**

- (b) If such vacancy² shall occur after eighteen calendar months of the term for which councilmen are elected, no special election shall be held. In the case of a vacancy in the office of precinct councilman, the person elected at the next regular town election to the seat in which the vacancy exists shall immediately be sworn and shall, in addition to the term for which he was elected, serve for the balance of the then unexpired term. In the case of a vacancy in the office of councilman at large, the person elected at the next regular town election who receives the highest number of votes for councilman at large and who is not then an incumbent member of the town council shall immediately be sworn and shall, in addition to the term for which he was elected, serve for the balance of the then unexpired term. If no incumbent councilmen at large or no incumbent councilman from the precinct in which the vacancy exists is elected at such election for such office, the candidate who receives the highest number of votes shall be deemed to be elected to the seat in which the vacancy exists and shall serve as aforesaid.

Section 2-7. Exercise of Powers; Quorum; Rules of Procedure

- (a) Exercise of Powers -- Except as otherwise prohibited by law or the charter, the legislative powers of the town council may be exercised in a manner determined by it.
- (b) Quorum -- A majority of the full town council shall constitute a quorum. The affirmative vote of a majority of the full town council shall be necessary to adopt any appropriation order. Except as otherwise provided by law or the charter, any other motion or measure may be adopted by a majority vote of those present.
- (c) Rules of Procedure -- The town council shall from time to time establish rules for its proceedings.³ Regular meetings of the town council shall be held at a time and place fixed by ordinance but which shall be not less frequent than once monthly. Special meetings of the town council may be held on the call of the president of the town council, or on the call of any five or more members, by written notice delivered to the place of residence or business of each member at least twenty-four hours in advance of the time set. Except as otherwise authorized by General Laws all sessions of the town council shall be open to the public and press. Every matter coming before the town council for action shall be put to a vote, the result of which shall be duly recorded. A full, accurate, and up-to-date record of the proceedings of the town council shall be kept and shall be open to inspection by the public.

Section 2-8. Town Accountant; Clerk of the Council

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- 1. Editor's Note: This amendment was approved by voter referendum 11-6-2001.
 - 2. Editor's Note: So in original. Probably should read "vacancy."
 - 3. Editor's Note: See Ch. A184, Council Rules and Regulations.

- (a) Town Accountant -- As soon as practicable after the town council has been organized, the town council shall elect a town accountant to hold office for the term of two years and until his successor is qualified.

The town accountant shall keep and have charge of the accounts of the town. He shall regularly audit the books and accounts of all town agencies, and he shall have such powers and perform such other duties as the town council may prescribe in addition to such duties as may be prescribed by law.

- (b) Clerk of the Council -- As soon as practicable after the town council has been organized the town council shall elect a clerk of the council to hold office for the term of two years and until his successor is qualified. The clerk of the council shall give notice of all meetings of the town council to its members and to the public, keep a record of its proceedings and perform such duties as may be assigned by the charter, by ordinance or by other vote of the town council.
- (c) Board of Appeals -- In January of each year the town council shall elect a voter for a term of three (3) years to serve as a member of the board of appeals. The board of appeals shall consist of three members elected by the town council for staggered three year terms. The town council shall also elect two persons as alternate members of the board of appeals for terms of three years which expire in different years.

The board of appeals shall hear appeals from actions taken by other town boards and officials under the building code, zoning ordinances, subdivision control regulations and other rules and regulations adopted regulating the use of land and buildings.⁴

Section 2-9. Measures; Emergency Measures; Charter Objection

- (a) In General -- No measure shall be passed finally on the date on which it is introduced, except in cases of special emergency involving the health or safety of the people or their property. Except as otherwise provided by the charter, every adopted measure shall become effective at the expiration of thirty days after adoption or at any later date specified therein. Measures not subject to referendum shall become effective upon adoption. No ordinance shall be amended or repealed except by another ordinance adopted in accordance with the charter, or as provided in the initiative and referendum procedures.
- (b) Emergency Measures -- An emergency measure shall be introduced in the form and manner prescribed for measures generally except that it shall be plainly designated as an emergency measure and shall contain statements after the enacting clause declaring that an emergency exists and describing its scope and nature in clear and specific terms. A preamble which declares and defines the emergency shall be separately voted on and shall require the affirmative vote of two-thirds of the town council. An emergency measure may be passed with or without amendment or rejected at the meeting at which it is introduced. No measure making a grant, renewal or extension, whatever its kind or nature, of any franchise or special privilege shall be passed as an emergency measure, and except as provided in general laws chapter 166, sections 70 and 71 (relating to utility lines), no such grant, renewal or extension shall be made otherwise than by ordinance. After its adoption, an emergency measure shall be published as prescribed for other adopted measures. It shall become effective upon adoption or at such later time as it may specify.

4. Editor's Note: See Ch. 82, Building Construction; Ch. 180, Zoning; Ch. 159, Subdivision of Land.

- (c) Charter Objection -- On the first occasion that the question on adoption of measure is put to the town council, if a single member objects to the taking of the vote, the vote shall be postponed until the next meeting of the town council whether regular or special. If two or more other members shall join the member in his objection, such postponement shall be until the next regular meeting; but for an emergency measure at least four members in all must object. This procedure shall not be used more than once for any matter bearing a single docket number notwithstanding any amendment to the original matter.

Section 2-10. Delegation of Powers

The town council may delegate to one or more town agencies, the powers vested in the town council by the laws of the commonwealth to grant and issue licenses and permits, and may regulate the granting and issuing of license and permits by any such town agency, and may in its discretion, rescind any such delegation without prejudice to any prior action which has been taken.

Section 2-11. Inquiries and Investigations

The town council may require any town officer or member of a board or commission to appear before it, and give such information as it may require in relation to his office, its function, and performance. The town council shall have at least forty-eight hours written notice of the general scope of the inquiry which is to be made to any person it shall require to appear before it under this section.

The town council may make investigations into the affairs of the town and into the conduct of any town agency, and for this purpose may subpoena witnesses,⁵ administer oaths and require the production of evidence.

5. Editor's Note: So in original. Probably should read "witnesses."

ARTICLE 3
EXECUTIVE BRANCH
[Amended 11-8-1988]

Section 3-1. Mayor -- Qualifications; Term of Office; Compensation

- (a) Mayor, Qualifications -- The chief executive officer of the town shall be a mayor, elected by and from the qualified voters of the town. Any voter shall be eligible to hold the office of mayor. The mayor shall devote his full time to the office and shall not hold any other elective public office, nor shall he actively engage in any other business, occupation or profession during his service as mayor.
- (b) Term of Office -- The term of office of the mayor shall be two years beginning on the first Monday of January following his election and until his successor is qualified.
- (c) Compensation -- The town council shall by ordinance establish an annual salary for the mayor. No ordinance increasing the salary of the mayor shall be effective unless it shall have been adopted in the first eighteen months of the term for which councilors are elected and it provides that such salary is to be effective at the commencement of the next term of office of the mayor.

Section 3-2. Executive Powers Enforcement of Ordinances

The executive powers of the town shall be vested solely in the mayor, and may be exercised by him either personally or through the several town agencies under his general supervision and control. The mayor shall cause the charter, the laws, ordinances and orders for the government of the town to be enforced, and shall cause a record of all his official acts to be kept.

The mayor shall exercise a general supervision and direction over all town agencies, unless otherwise provided by law. Each town agency shall furnish to him, forthwith upon his request, any information, materials or otherwise as he may request and as the needs of his office and the interest of the town may require.

Section 3-3. Appointments by the Mayor

The mayor shall appoint all city officers, department heads and members of multiple-member bodies for whom no other method of appointment or selection is provided for by the charter, excepting only persons serving under the school committee, persons appointed by state officials and persons serving under the city council.

Section 3-4. Temporary Appointments to Town Offices

Whenever a vacancy, either temporary or permanent, occurs in a town office and the needs of the town require that such office be filled, the mayor may designate the head of another town agency or a town officer or town employee, or some other person to perform the duties of the office on a temporary basis until such time as the position can be filled as otherwise provided by law, by the charter or by ordinance. The mayor shall file a certificate in substantially the following form, with the town clerk, whenever he makes a designation under this section:

I designate (name of person) to perform the duties of the office of (designate Office in which vacancy exists) on a temporary basis until the office can be filled by (here set out the regular procedure for filling the vacancy, or when the regular officer shall return). I certify that said person is qualified to perform the duties which will be required and that I make this designation solely in the interests of the Town of

Agawam. (signed) Mayor

Section 3-5. Communications; Special Meetings

- (a) Communications to the Town Council -- Within six weeks following the start of each fiscal year the mayor shall submit to the town council, and make available for public distribution, a complete report on the financial and administrative activities of the town for the preceding fiscal year. He shall from time to time throughout the year, by written communications, keep the town council fully informed of the financial condition and administrative problems of the town and shall recommend to them such measures for their consideration as, in his judgment, the needs of the town require.
- (b) Special Meetings of the Town Council -- The mayor may at any time call a special meeting of the town council, for any purpose, by causing a notice of such meeting to be delivered in hand or to the place of business or residence of each member of the town council. Such notice shall, except in an emergency of which the mayor shall be the sole judge, be delivered at least forty-eight (48) hours in advance of the time set and shall specify the purpose or purposes for which the meeting is to be held.

Section 3-6. Approval of Mayor, Exception (Veto)

Every order, ordinance, resolution or vote adopted or passed by the town council, relative to the affairs of the town, except the election of officers, shall be presented to the mayor for his approval. If he approves he shall sign it; if he disapproves it, he shall return it, with his objections thereto in writing, to the town council, which shall enter his objections at large on its records, and again consider it, and the same shall be deemed approved and be in force if it is not returned by the mayor, as herein provided, within ten days after it was presented to him. If the town council, notwithstanding such disapproval, by the mayor, shall again pass the order, ordinance, resolution or vote by a two-thirds yeas and nays vote of all the members, it shall then be in force, but the vote thereon shall not be taken before ten days, nor after thirty days, from the date of its return to the town council.

Section 3-7. Temporary Absence of the Mayor

- (a) Acting Mayor -- Whenever, by reason of sickness, absence from the town of⁶ other cause, the mayor shall be unable to perform the duties of his office for a period of three successive working days or more, the president of the town council shall be the acting mayor. In the event of the absence or disability of the president of the town council the vice-president shall serve.
- (b) Powers of Acting Mayor -- The acting mayor shall have all of the powers of the mayor except that he shall not make any permanent appointment or removal to or from any office unless the disability of the mayor shall have continued for more than sixty days, nor shall he approve or disapprove of any measure passed by the town council unless the time within which the mayor must act would expire before the return of the mayor. During any period in which the town council president, or vice-president, is serving as acting mayor he shall not vote as a member of the town council.

Section 3-8. Vacancy In Office of Mayor

- (a) Special Election -- If a vacancy in the office of mayor occur in the first fifteen months of the term for which the mayor is elected whether by reason of death, resignation, removal from office, incapacity or otherwise the town council shall forthwith order a special election to be held within ninety days following the date the vacancy is created to fill such vacancy for the balance of the then expired term.

6. Editor's Note: So in original. Probably should read "or."

- (b) Council Election -- If a vacancy in the office of mayor occur in the last nine months of the term for which the mayor is elected whether by reason of death, resignation, removal from office, or otherwise, the president of the town council shall become the mayor. Upon the qualification of the president of the town council as the mayor under this section, a vacancy shall exist in his seat on the town council which shall be filled in the manner provided in Section 2-6.
- (c) Powers, Term of Office -- The mayor elected under section 2-9(a) or (b) shall have all the powers of the mayor. He shall serve for the balance of the term unexpired at the time of his election to the office.

ARTICLE 4
SCHOOL COMMITTEE

Section 4-1. Composition, Eligibility; Election; Term

- (a) Composition -- There shall be a school committee of seven (7) members which shall exercise control and management of the public schools of the town, except as provided in section 3-4(g). Six (6) committeemen shall be nominated and elected by and from the voters at large. One (1) shall be the Mayor, who shall serve as chairman. **[Amended 11-5-1991 by TO-91-21]**
- (b) Eligibility -- Only voters shall be eligible to hold the office of school committeeman.
- (c) Election and Term -- The terms of school committeemen shall be two years beginning the first secular day of January after their election and until their successors are qualified.

Section 4-2. Organization [Amended 11-5-1991 by TO-91-21]

After a majority of the school committeemen-elect have been sworn, the school committee shall be called together by the Mayor, and elect from among its members a vice chairman and a secretary. The vice chairman shall preside at all meetings of the committee in the event of the absence or disability of the chairman.

Section 4-3. General Powers and Duties

The school committee shall have all the powers and duties which school committees may have under the general laws and may have such additional powers and duties as the town council may by ordinance from time to time assign. The powers of the school committee shall include but not be limited to the power to: (1) appoint a superintendent; (2) appoint all other officers and employees connected with the schools (but excluding maintenance and health personnel), fix their compensation and define their duties, make rules concerning their tenure of office and discharge them; (3) furnish all school buildings with proper fixtures, furnishings and equipment; and, (4) make all reasonable rules and regulations, consistent with law, for the management of the public schools of the town and for conducting the business of the committee.

Section 4-4. Location and Erection of Schools; Approvals Required

No site for a school building shall be acquired by the town unless the approval of the site by the school committee is first obtained. No plans for the construction of or alterations in a school building shall be accepted, and no work shall be begun on the construction or alteration of a school building, unless with the approval of the school committee and the mayor. The mayor shall notify the school committee in writing prior to or at the time of each change in plans after work is begun. This section shall not require such approval for the making of ordinary repairs.

Section 4-5. Prohibitions [Amended 11-5-1991 by TO-91-21]

No school committeeman, except the Mayor, shall, while a member of the school committee, hold any other office or position the salary or compensation for which is payable out of the town treasury. No former school committeeman shall hold any compensated appointive town office or town employment until one (1) year after the expiration of his service on the school committee.

Section 4-6. Filling of Vacancies [Amended 11-7-2017⁷]

If a vacancy shall occur, by failure to elect or otherwise, in the office of school committeeperson during

the first 18 months of the term for which school committeepersons are elected, no special election shall be held. The city clerk shall immediately notify the school committee of such vacancy. The school committee shall, not more than 15 days after receiving that notification, choose as school committeeperson for the vacancy the defeated candidate for the office of school committeeperson at the regular municipal election at which school committeepersons were last elected, who is eligible and willing to serve, and who received the highest number of votes at such election. If the defeated candidate who received the highest number of votes is ineligible or unwilling to serve, the school committee shall choose the defeated candidate with the next highest number of votes until the vacancy is filled, provided that candidate remains eligible and willing to serve and provided that candidate received not less than 30 per cent of the vote received by the person receiving the largest number of votes for the office of school committee⁸ at the election. If there is a tie in the election, the city clerk shall conduct an automatic recount of the election pursuant to section 135 of chapter 54. If the recount does not break the tie, a toss of the coin shall determine the outcome. The city clerk shall then list the order of the candidates. If no defeated candidate is eligible and willing to serve, the school committee shall by majority vote of the full committee select a registered voter of the city known as the town of Agawam to fill such vacancy.

If a vacancy occurs after the 18 calendar months of the term for which the school committeepersons are elected, the preceding paragraph shall not apply. The person elected at the next regular town election following the creation of the vacancy who receives the highest number of votes for school committeeperson and who is not then an incumbent member of the school committee shall immediately be sworn in and shall, in addition to the term for which the person was elected, serve for the balance of the unexpired vacant term.

7. Editor's Note: This referendum accepted the provisions of Acts of 2016, Ch. 392, amending the Town Charter.

8. Editor's Note: So in original; apparently should be "committeeperson."

ARTICLE 5
FINANCIAL PROCEDURES

Section 5-1. Submission of Budget; Budget Message

Within the period prescribed by state statute, the mayor shall submit to the town council a proposed budget for the ensuing fiscal year which shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year, an accompanying budget message, and supporting documents.

The message of the mayor shall explain the budget for all town agencies both in fiscal terms and in terms of work programs. It shall outline the proposed financial policies of the town for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current fiscal year in financial policies, expenditures, and revenues, together with the reasons for such changes; summarize the town's debt position and include such other material as the mayor deems desirable or the town council may reasonably require.

Section 5-2. Action on the Budget

- (a) **Public Hearing** -- The town council shall publish in one or more newspapers of general circulation in the town the general summary of the proposed budget as submitted by the mayor and a notice stating: (1) the times and places where copies of the proposed budget are available for inspection by the public, and (2) the date, time, and place not less than two weeks after such publication, when a public hearing on said proposed budget will be held by the town council.
- (b) **Adoption of the Budget** -- The town council shall adopt the budget, with or without amendments, within forty-five days following the day the budget is received by it. In amending the budget, it may delete or decrease any programs or amounts except expenditures required by law or for debt service. Except on recommendation of the mayor, it shall not increase any amount in, or the total of, the proposed budget.

If the town council fails to take action with respect to any item in the budget within forty-five days after receipt of the budget, such amount shall, without any action by the town council, become a part of the appropriations for the year and be available for the purposes specified.

Section 5-3. Capital Improvement Program

- (a) **Submission** -- The mayor shall prepare and submit to the town council a five-year capital improvement program at least thirty days prior to the final date for submission of the operating budget.
- (b) **Contents** -- The capital improvement program shall include: (1) a clear summary of its contents; (2) a list of all capital improvements proposed to be undertaken during the next five fiscal years with supporting data; (3) cost estimates, method of financing and recommended time schedules; (4) the estimated annual cost of operating and maintaining the facilities included; and, (5) a listing of all sources and amounts of revenue. The above information shall be revised and extended each year.
- (c) **Public Hearing** -- The town council shall publish in one or more newspapers of general circulation in the town the general summary of the capital improvement program and a notice stating: (1) the times and places where copies of the capital improvement program are available for inspection by the public; and, (2) the date, time, and place not less than two weeks after such publication, when a public hearing on said program will be held by the town council.

- (d) Adoption -- After the public hearing, and on or before the twentieth day of the last month of the current fiscal year, the town council shall by resolution adopt the capital improvement program with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvement program as submitted must clearly identify the method of financing proposed to accomplish this increase.

ARTICLE 6
ADMINISTRATIVE DEPARTMENTS

Section 6-1. Reorganization Plans by Town Council

Except as otherwise prohibited by law or the charter, the town council may by ordinance reorganize, consolidate, or abolish any existing town agency in whole or in part; establish new town agencies; and, prescribe the functions of any town agencies. All town agencies under the direction and supervision of the mayor shall be headed and administered by officers appointed by him.

Section 6-2. Reorganization Plans by Mayor

- (a) The mayor may from time to time prepare and submit to the town council, reorganization plans which may, subject to applicable law and the charter, reorganize, consolidate or abolish any town agency in whole or in part, or establish new town agencies as he deems necessary or expedient. Such reorganization plans shall be accompanied by an explanatory message when submitted.
- (b) Every such reorganization plan shall upon receipt by the clerk of the council be referred to an appropriate committee of the town council which shall, not more than thirty days later, hold a public hearing on the matter and shall, within ten days following such hearing, report either that it approves or that it disapproves of the plan. A reorganization plan shall become effective ninety days after the date it is received by the town council unless the town council has prior to that date voted to disapprove the reorganization plan, or unless a later effective date is specified in the plan. A reorganization plan presented by the mayor to the town council under this section may not be amended by it, but shall either be approved or rejected as submitted and shall not be subject to the objection as provided in section 2-9(c).

Section 6-3. Publication of Reorganization Plan

An up-to-date record of any reorganization plan in force under this article shall be kept on file in the office of the town clerk and copies of all such plans shall be included as an appendix in any publication of the ordinances of the town.

ARTICLE 7
NOMINATIONS AND ELECTIONS

Section 7-1. Town Elections: General and Preliminary

The regular town election shall be held on the first Tuesday following the first Monday in November in each odd numbered year.

On the fourth Tuesday, preceding every regular town election, there shall be held a preliminary election for the purpose of nominating candidates.

Section 7-2. Preliminary Elections: Special Elections

- (a) **Signature Requirements** -- The number of signatures of voters required to place the name of a candidate on the official ballot to be used at a preliminary election, or any special election for an office shall be as follows: One hundred signatures of voters for an office which is elected at large and fifty signatures of voters of the precinct for the office of precinct councilman.
- (b) **Information to Voters** -- Every petition requesting the placement of the name of a candidate for nomination on the official ballot for use at a preliminary election, or any special election for an office may state in not more than eight words the elected or appointed public offices which the candidate for nomination holds or has held and the name of the political party in which he is enrolled. Against the name of any such candidate, there shall be printed on the official ballot for a preliminary election, or any special election for an office, the statement contained in the petition.
- (c) **Ballot Position** -- The order in which names of candidates appear on the ballot for each office shall be determined by a drawing by lot conducted by the town clerk in the presence of such candidates or their representatives.
- (d) **Determination of Candidates for Election** -- The two persons receiving at a preliminary election the highest number of votes for nomination for an office shall, be the sole candidates for that office whose names may be printed on the official ballot to be used at the regular election at which such office is to be filled, and no acceptance of a nomination at a preliminary election shall be necessary to its validity.

If two or more persons are to be elected to the same office at such regular or special election the several persons in number equal to twice the number so to be elected receiving at such preliminary election the highest number of votes for nomination for that office shall be the sole candidates for that office whose names may be printed on the official ballot.

If the preliminary election results in a tie vote among candidates for nomination receiving the lowest number of votes, which, but for said tie vote, would entitle a person receiving the same to have his name printed upon the official ballot for the election, all candidates participating in said tie vote shall have their names printed upon the official ballot, although in consequence there be printed thereon candidates to a number exceeding twice the number to be elected.

- (e) **Nomination of candidates; conditions making preliminary election unnecessary** -- If at the expiration of the time for filing statements of candidates to be voted for at any preliminary election not more than twice as many such statements have been filed with the town clerk for an office as are to be elected to such office the candidates whose statements have thus been filed shall be deemed to have been nominated to said office, and their names shall be voted on for such office at the succeeding regular election, and the town clerk shall not print said names upon the ballot to be used at said

preliminary election and no other nomination to said office shall be made. If in consequence it shall appear that no names are to be printed upon the official ballot to be used at any preliminary election in any precinct or precincts of the town, no preliminary election shall be held in any such precinct or precincts.

Section 7-3. Regular Election

- (a) Information to Voters -- Against the name of each candidate there shall be printed on the official ballot the statement provided for in section 7-2(b) and, if the candidate in a regular town election is an incumbent of the office to which he seeks election, against his name shall appear the phrase "Candidate for Reelection."
- (b) Ballot Position -- The order in which names of candidates appear on the ballot for each office in a regular town election shall be determined by a drawing by a lot conducted by the town clerk in the presence of such candidates or their representatives.

Section 7-4. Precincts

The territory of the town shall be divided into seven precincts so established as to consist of as nearly equal a number of inhabitants as it is possible to achieve based on in compact and contiguous territory; bounded insofar as possible by the center line of known streets or ways or by other well defined limits.

Section 7-5. Application of State Laws

Except as expressly provided in the charter and authorized by state law, all town elections shall be governed by the laws of the commonwealth relating to the right to vote, the registration of voters, the nomination of candidates, the conduct of preliminary, regular, and special elections, the submission of charter amendments and other propositions, the counting of votes and the declaration of results.

ARTICLE 8
FREE PETITION; INITIATIVE; REFERENDUM

Section 8-1. Free Petition

- (a) Individual Petitions, Action Discretionary -- The town council and the school committee shall receive all petitions which are addressed to them and signed by a voter and may, in their discretion, take such action in regard to such petitions as they deem necessary and appropriate.
- (b) Group Petitions; Action Required -- The town council or the school committee, as may be, shall hold a public hearing and act by taking a vote on the merits of every petition which is addressed to it and which is signed by at least fifty voters. The hearing shall be held by the town council or the school committee or, in either case, by a committee or subcommittee thereof, and the action by the town council or school committee shall be taken not later than three months after the petition is filed with the town clerk. Hearings on two or more petitions filed under this section may be held at the same time and place. The town clerk shall mail notice of the hearing to the ten petitioners whose names first appear on each petition at least forty-eight hours before the hearing. Notice by publication, of all such hearings shall also be made and shall be at public expense.

Section 8-2. Citizen Initiative Measures

- (a) Commencement of Proceedings -- Initiative procedures shall be started by the filing of an initiative petition with the town clerk. The petition shall be addressed to the town council or the school committee, shall contain a request for passage of a particular measure set forth in the petition and shall be signed by not less than ten percent of the total number of voters.

Signatures to initiative petitions need not be all on one paper. All such papers pertaining to any one measure shall be fastened together and shall be filed in the office of the town clerk as one instrument, with the endorsement thereon of the names and addresses of the person designated as filing the same. With each signature to the petition, shall be stated the place of residence of the signer, giving the street and number, if any.

Within five days after the filing of said petition the registrars of voters shall ascertain by what number of voters the petition is signed, and what percentage that number is of the total number of voters and shall attach thereto their certificate showing the result of such examination.

The town clerk shall forthwith transmit the said certificate with the said petition to the town council or to the school committee, according as the petition is addressed and at the same time shall send a copy of said certificate to the person designated on the petition as filing the same.

When such certificate has been so transmitted, said petition shall be deemed to be valid unless written objections are made thereto by a voter within forty-eight hours after such certification by filing such objections with the town council or the school committee, and a copy thereof with the registrars of voters.

- (b) Referral to Town Solicitor -- If the town clerk determines that a sufficient number of the signers are voters, he shall transmit a copy of the petition to the town solicitor.

Within fifteen days after his receipt of the petition the town solicitor shall advise the town clerk in writing whether the measure may be proposed by initiative procedures and whether it may lawfully be passed by the town council or the school committee. If the opinion of the solicitor is that the measure may not lawfully be passed in whole or in part he shall state his reason or reasons therefor in his reply. The town clerk shall forthwith furnish a copy of the town solicitor's opinion to the person designated on the petition as filing the same.

- (c) Initiative petition; requirements for passage and submission to electorate -- If any initiative petition is signed by voters equal in number to at least ten per cent of the total number of voters and in the opinion of the town solicitor such measure may lawfully be passed in whole or in part by the town council or the school committee, the town council or the school committee shall, within twenty days after the date of the certificate of the registrars to that effect:
1. Pass said measure without alteration, subject to the referendum vote provided by this charter, or
 2. The town council shall call a special election to be held on a date fixed by it not less than thirty nor more than forty-five days after the date of the certificate hereinbefore mentioned, and shall submit the proposed measure without alteration to a vote of the voters at that election; provided, that if any town election is otherwise to occur within one hundred and twenty days after the date of said certificate, the town council may, at its discretion, omit calling the special election and submit the proposed measure to the voters at such approaching election.

The ballots used when voting upon a proposed measure under this section, shall state the nature of the measure in terms sufficient to show the substance thereof.

Section 8-3. Citizen Referendum Procedures

- (a) Referendum petition; effect on final passage -- If within twenty days after the final passage of any measure, except a revenue loan order by the town council or by the school committee, a petition signed by voters equal in number to at least ten per cent of the total number of voters, and addressed to the town council or to the school committee, as the case may be, protesting against such measure or any part thereof taking effect, is filed with the town clerk, the same shall thereupon and thereby be suspended from taking effect; and the town council or the school committee, as the case may be, shall immediately reconsider such measure or part thereof; and if such measure or part thereof is not entirely rescinded, the town council shall submit the same, by the method herein provided, to a vote of the voters either at the next regular town election, or at a special election which may, in its discretion, be called for the purpose and such measure or part thereof shall forthwith become null and void unless a majority of the voters voting on the same at such election vote in favor thereof.

The petition described in this section shall be termed a referendum petition and section 8-2(a), shall apply to the procedure in respect thereto, except that the words "measure or part thereof protested against" shall for this purpose be understood or replace "measure" in said section whenever it may occur, and "referendum" shall be understood to replace the word "initiative" in said section.

Section 8-4. Submission of Proposed Measure to Voters

The town council may of its own motion and shall, upon request of the school committee if a measure originates with that committee and pertains to the affairs under its administration, submit to a vote of the voters for adoption or rejection at a general or special town election any proposed measure, or a proposition for the repeal or amendment of any measure, in the same manner and with the same force and effect as are

hereby provided for submission on petition.

Section 8-5. Measures with Conflicting Provisions

If two or more proposed measures passed at the same election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

ARTICLE 9
GENERAL PROVISIONS

Section 9-1. Certificate of Election and Appointment

Every person who is elected or appointed including those elected by the town council, or appointed by the mayor, to an office shall receive a certificate of such election or appointment from the town clerk which shall bear the date of its expiration. Except as otherwise provided by law, before performing any act under his election or appointment he shall take and subscribe to an oath to qualify him to enter upon his duties. A record of the taking of such oath shall be made by the town clerk. Any oath required by this section may be administered by any officer authorized by law to administer oaths. Records of transactions of all officers and boards shall be properly kept and shall, subject to such reasonable restrictions as the town council may prescribe, be open to the inspection of the public.

Section 9-2. Rules and Regulations

A copy of all rules and regulations adopted by any town agency shall be filed in the office of the town clerk and made available for review by any person who requests such information.

Section 9-3. Re-enactment and Publication of Ordinances

The town council shall, at five year intervals, cause to be prepared by a special committee of the town council appointed for that purpose, proposed revisions or recodifications of all ordinances of the town which shall be presented to the town council for reenactment. Such revisions or recodifications shall be prepared under the supervision of the town solicitor, or if the town council so direct, by special counsel retained for that purpose.

Section 9-4. Liability of Town Officers and Agencies

All town officers and members of town agencies shall be deemed to be public or municipal officers or officials. Subject to appropriation, the town may indemnify any such officer or member for expenses or damages incurred in the defense or settlement of a claim against him which arose while acting within the scope of his official duties or employment, but only to the extend⁹ and subject to the limitations imposed by the general laws.

Section 9-5. Prohibition

No member of the executive or legislative branch or of the school committee shall appear as counsel before any town officer or agency.

Section 9-6. Meetings of Qualified Voters

General meetings of the voters may be held from time to time, according to the right secured to the people by the constitution of the commonwealth; and all such meetings may, and upon the request in writing of one-hundred voters setting forth the purposes thereof, shall be duly called by the town council.

Section 9-7. Severability

If any provision of the charter is held invalid, the other provisions of the charter shall not be affected

9. Editor's Note: So in original. Probably should read "extent."

thereby. If the application of the charter or any of its provisions to any person or circumstance is held invalid, the application of the charter and its provisions to other persons and circumstances shall not be affected thereby.

Section 9-8. Specific Provisions Shall Prevail

To the extend¹⁰ that any specific provision of the charter shall conflict with any provisions expressed in the charter in general terms, the specific provisions shall prevail.

Section 9-9. References to General Laws

All references to the General Laws contained in the charter refer to the General Laws of the Commonwealth of Massachusetts and are intended to include any amendments or revisions to such chapters and sections or to the corresponding chapters and sections, of any rearrangement of the General Laws enacted subsequent to the adoption of the center.¹¹

Section 9-10. Computation of Time

In computing time under the charter, if seven days or less, "days" shall refer to secular days and shall not include Sundays or legal holidays. If more than seven days, every day shall be counted.

Section 9-11. Procedures

- (a) Meetings -- All multiple member bodies of the town whether elected or appointed or otherwise constituted, shall meet regularly at such times and places within the town as they may prescribe. Special meetings of any multiple member body shall be held on the call of the respective chairman or by one-third of the members thereof by written notice delivered to the residence or place of business of each member at least twenty-four (24) hours in advance of the time set. A copy of the said notice shall also be posted on the town bulletin board(s). Special meetings of any multiple member body shall also be called within one (1) week after the date of the filing with the town clerk of a petition signed by at least one hundred voters and which states the purpose or purposes for which the meeting is to be called. Except as otherwise authorized by general laws all meetings of all multiple member bodies shall be open and public, however, the multiple member body may recess for the purpose of discussing in a closed or executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, which would affect the public security, or which might have a direct fiscal effect on the town, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action on the matter is not taken until the multiple member body has come back into formal session.
- (b) Agendas -- At least twenty-four hours before any meeting of a multiple member body is to be held, an agenda containing all items which are scheduled to come before it at the meeting shall be posted on the town bulletin board(s). No action taken on a matter not included in the posted agenda shall be effective unless the body first adopts by special vote a resolution declaring that an emergency exists and that the particular matter must be acted upon at that meeting for the immediate preservation of the peace, health, safety or convenience of the town.
- (c) Rules and Journal -- Each multiple member body shall determine its own rules and order of business unless otherwise provided by the charter or by law and shall provide for keeping a journal of its

10. Editor's Note: So in original. Probably should read "extent."

11. Editor's Note: So in original. Probably should read "charter."

proceedings. These rules and journals shall be a public record kept available in a place convenient to the public at all times and certified copies shall be kept available in the Agawam Center Public Library.

- (d) Voting -- Except on procedural matters all votes of all multiple member bodies shall be taken by a call of the roll and the ayes and nays shall be recorded in the journal, provided, however that if the vote is unanimous only that fact need be recorded.
- (e) Quorum -- A majority of the members of a multiple member body shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the body. No other action shall be valid or binding unless ratified by the affirmative vote of the majority of the full body.

Section 9-12. Definitions

Unless another meaning is clearly apparrent from the manner in which the word is used, the following words as used in the charter shall have the following meanings:

- (a) Charter -- The word "charter" shall mean this charter and any amendments to it made through any of the methods provided under article LXXXIX of the amendments to the state constitution.
- (b) Town -- The word "town" shall mean the town of Agawam.
- (c) Town Agency -- The words "town agency" shall mean any board, commission, committee, department or office of the town government.
- (d) Full Council -- The words "full council" shall mean the entire authorized complement of the town council notwithstanding any vacancies which might exist.
- (e) Initiative Measure -- The words "initiative measures" shall mean a measure proposed by initiative procedures under the charter, including a specific item in a town budget or school committee budget but excluding (1) proceedings relating to the organization or operation of the town council or school committee, (2) an emergency measure passed in conformity with the charter, (3) the town budget as a whole or the school committee budget as a whole, (4) a revenue loan order, (5) any appropriation for the payment of the town's debts or obligations, (6) an appropriation of funds necessary to implement a written agreement executed under general laws, chapter 149, section 178I (relating to collective bargaining), (7) any proceeding or part thereof, relating to the election, employment, appointment, suspension, transfer, demotion, removal or discharge of any town officer or employee, (8) any proceeding repealing or rescinding a measure, or a part thereof, which is protested by referendum procedures.
- (f) Referendum Measure -- The words "referendum measure" shall mean a measure protested by referendum procedures under the charter, including a specific item in a town budget or school committee budget, but excluding (1) proceedings relating to the organization or operation of the town council or school committee, (2) an emergency measure passed in conformity with the charter, (3) the town budget as a whole or the school committee budget as a whole, (4) a revenue loan order, (5) any appropriation for the payment of the town's debts or obligations, (6) an appropriation of funds necessary to implement a written agreement executed under general laws chapter 149, section 178I (relating to collective bargaining), (7) any proceeding, or part thereof, relating to the election, employment, appointment, suspension, transfer, demotion, removal, or discharge of any town officer or employee, (8) any proceeding providing for the submission or referral of a matter to the voters at an election.

- (g) Majority Vote -- The words "majority vote" shall mean a majority of those present and voting; provided, that a quorum of the body is present.
- (h) Measure -- The word "measure" shall mean an ordinance passed or which could be passed by the town council or an order, resolution, vote or other proceeding passed or which could be passed by the town council or the school committee.
- (i) Voters -- The word "voters" shall mean registered voters of the town of Agawam.

Section 9-13. Removals and Suspensions

- (a) In General -- Any appointed officer or full-time salaried employee of the town, not subject to the provisions of the state civil service law, whether appointed for a fixed or an indefinite term, may be suspended or removed from office by the appointing authority for good cause. The term cause shall include, but not be limited, to the following; incapacity other than temporary illness, inefficiency, insubordination and conduct unbecoming the office.
- (b) Suspension -- Any appointed officer or full-time salaried employee of the town may be suspended from office by the appointing authority if such action is deemed by them to be necessary to protect the interests of the town. However, no suspension shall be for more than fifteen days.

Suspension may be conterminous with removal and shall not interfere with the rights of the officer or employee under the removal procedure given below.

- (c) Removal -- The appointing authority when removing any such officer or employee shall act in accordance with the following procedure:
 - 1. A written notice of the intent to remove and a statement of the cause or causes therefor shall be delivered by registered mail to the last known address of the person sought to be removed.
 - 2. Within five days of delivery of such notice the officer or employee may request a public hearing at which he may be represented by counsel, shall be entitled to present evidence, call witnesses and to question any witness appearing at the hearing.
 - 3. Between one and ten days after the public hearing is adjourned or if the officer or employee fails to request a public hearing, between six and fifteen days after delivery of notice of the intent to remove, the appointing authority shall take final action either by removing the officer or employee or by notifying him that the notice is rescinded.

Nothing in this section shall be construed as granting a right to such a hearing to a person who hold a position for a fixed term, when his term expires.

ARTICLE 10
TRANSITIONAL PROVISIONS

Section 10-1. Continuation

All by-laws, ordinances, resolutions, town meeting votes, and rules and regulations of the town which are in force at the time the charter is adopted, not inconsistent with the provisions of the charter, shall continue in force until amended or repealed.

Section 10-2. Continuation of Government

All town agencies shall continue to perform their duties until reappointed, re-elected, or until successors to their respective positions are duly appointed or elected or their duties have been transferred.

Section 10-3. Continuation of Administrative Personnel

Any person holding an office or position in the administrative service of the town, or any person serving in the employment of the town shall retain such office or position and shall continue to perform his duties until provisions shall have been made in accordance with the charter for the performance of the said duties by another person or agency; provided, however, that no person in the permanent full-time service of¹² employment of the town shall forfeit his pay grade or time in service. All such persons shall be retained in a capacity as similar to their former capacity as it is practical so to do.

Section 10-4. Transfer of Records and Property

All records, property, and equipment whatsoever of any town agency or part thereof, the powers and duties of which are assigned in whole or part to another town agency shall be transferred forthwith to the town agency to which such powers and duties are assigned.

Section 10-5. Effect on Obligations, Taxes and other Legal Acts

All official bonds, recognizances, obligations, contracts and other instruments entered into or executed by or to the town before its adoption of the charter, and all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the town, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by the charter; and no legal act done by or in favor of the town shall be rendered invalid by its adoption of the charter.

Section 10-6. Council Salary

The salary to be paid to each member of the town council elected at the first election held under the charter shall be \$500.00 per annum. This salary shall continue until changed by ordinance under the provisions of section 2-3 of the charter.

Section 10-7. Time of Taking Effect

This charter shall become fully effective on the second January 1st which occurs following its adoption by the voters, but it shall take partial effect in accordance with the following schedule:

12. Editor's Note: So in original. Probably should read "or."

- (a) As soon as practicable after the charter is adopted the board of selectmen, with the advice and assistance of the board of registrars of voters, shall prepare and shall cause to be published before April, 1, in the year following the year in which the charter is adopted, new boundaries for the six precincts of the town. The precincts shall be as nearly equal in number of inhabitants as it is possible to achieve based on compact and contiguous territory, bounded insofar as possible by the center line of known streets or ways or by other well defined limits.
- (b) A special election shall be held on the first Tuesday following the first Monday in June for the purpose of electing members of the town council and of the school committee. All of the provisions of the charter which relate to the conduct of regular town elections shall apply to this special election. Any incumbent official of the town may be a candidate for any office to be filled at this election.
- (c) The school committee elected at the said special election shall assume their office on the first secular day of July following their election and all of the provisions of the charter with respect to the school committee shall on that date become fully effective. The incumbent school committee in office when the special election takes place shall serve until their successors have been qualified.
- (d) The town council elected at the said special election shall meet to organize and shall assume their office on the first secular day of July following their election. The powers and duties of the town council, however, shall not become fully effective until the first secular day of January next following, and in the meantime, the town council shall prepare for the transition to the new form of town government as follows:
 - 1. They shall establish qualifications and procedures to follow in the selection of a mayor to serve under the charter. The appointment of a mayor shall be effective on the second Monday of September following their election.
 - 2. They shall cause to be prepared and shall adopt rules and regulations governing the conduct of council business. They shall cause to be prepared and shall adopt any necessary ordinances to be effective and to replace the existing bylaws of the town, for the orderly and convenient exercise of the administrative affairs of the town.
- (e) The mayor appointed in September following the election at which the charter is adopted shall assist the town council in the establishment of the new charter as they may request him to do.
- (f) The board of selectmen in office at the time of the special election shall continue to serve in that office until December 31 of that year. They shall be responsible for the general operation of the government and shall continue to perform all of the powers, duties and functions of their office as though this, the charter, had not been adopted; except that they shall coordinate all of their long-range plans with the members of the town council.
- (g) All legislative business necessary for the orderly conduct of the town during the transitional year shall continue to be conducted by the representative town meeting until the full powers of the town council become operative on the first secular day of January next following their election. On the said first secular day of January the terms of office of all members of the representative town meeting shall be terminated and the said representative town meeting shall thereafter cease to exist.

Section 10-8. Disposition of Special Acts

- (a) Partial Repeal of Certain Special Acts -- The following Special Acts, insofar as they confer power upon the town of Agawam which the town would not otherwise hold under the charter, General Laws or the Constitution, are retained; otherwise, they are hereby repealed, it being the explicit intention of

this paragraph that portions of any Special Acts retained which limit or restrict a power conferred or the manner in which it is to be exercised in accordance with the charter: chapter three hundred fifty-one; chapter ninety-three of the acts of nineteen hundred fifty-seven; chapter two hundred ninety-seven of the acts of nineteen hundred sixty.

- (b) Special Acts Repealed -- Chapter six hundred thirty-two of the acts of nineteen hundred fifty five is hereby repealed.

Part I: Administrative Legislation

Chapter 1**GENERAL PROVISIONS**

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 1 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

General provisions — See Charter, Article 9.

§ 1-1. Designation and citation of Code.

The ordinances, rules and regulations contained in this chapter and in the chapters following shall constitute and be designated as "The Code of the Town of Agawam," and may be so cited.¹³

§ 1-2. Definitions and rules of construction.

A. In the construction of this Code and of all other ordinances, rules or regulations hereafter enacted, the following interpretations shall be placed on the words and phrases hereinafter mentioned, unless such construction or interpretation shall be manifestly inconsistent with the evident intent of the Town Council or proper authority or the voters, or repugnant to the context or to the evident purport of any ordinance, rule or regulation.

- (1) Computation of time. In computing time under the Charter, if seven days or less, "days" shall refer to secular days and shall not include Sundays or legal holidays. If more than seven days, every day shall be counted.
- (2) Gender. Words importing the masculine gender may apply to the feminine or neither gender.
- (3) Joint authority. Words purporting to give joint authority to three or more officers or other persons shall give such authority to a majority of such officers or persons.
- (4) Plural; singular. Words importing the singular may apply to the plural number.
- (5) Preceding; following. The words "preceding" and "following" mean next before and next after, respectively.
- (6) Time. Words used in the past or present tense include the future as well as the past and present.

B. As used in this chapter and in the Code of the Town of Agawam, the following terms shall have the meanings indicated:

MONTH — A calendar month.

OWNER or OCCUPANT — Applied to a building or land, includes any sole owner or occupant and any joint tenant in common of the whole or any part of a building or lot of land.

PERSON — Includes a corporation, firm, partnership, association, organization or any other group acting as a unit as well as a natural person.

13. Editor's Note: The recodification of Town ordinances was approved 7-10-1989 by TO-84-194.

PUBLIC WAY — Includes any highway, Town way, road, bridge, street, avenue, boulevard, roadway, parkway, lane, sidewalk or square having been dedicated, accepted and open to public use.

TOWN — Means the Town of Agawam in the County of Hampden and Commonwealth of Massachusetts.

§ 1-3. Catchlines of sections.

The catchlines of the several sections of this Code printed in bold-faced type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

§ 1-4. Severability.

It is hereby declared to be the intention to the Town that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

§ 1-5. General penalty; prosecution of violations.

- A. Any person convicted of a violation of this Code or any other ordinance or any rule or order made hereunder, except as otherwise provided, shall be punished by a fine not exceeding \$20 for each offense.¹⁴
- B. Prosecutions for the breach of any of the provisions of this Code or other ordinances, rules or regulations shall be commenced within one year from such breach.

§ 1-6. Repeal or amendment.

Any or all the provisions of this Code or other ordinances may be repealed or amended or other ordinances may be adopted from time to time as provided in the Charter.

§ 1-7. Failure to pay municipal taxes or charges as grounds for denial, suspension, revocation of license or permit. [Added 12-2-2002 by TOR-2002-5]

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:

LICENSING AUTHORITY — The board, commission, department, officer, or other Town entity which issues a permit or license.

MUNICIPAL CHARGE — Any charge established, required, or imposed by any board, commission, department, officer, or other entity of the Town of Agawam for services of personnel or equipment, use of facilities, charges for utilities, goods/materials/equipment supplied or used, or other activities performed by the Town, its employees or agents.

OVERDUE OBLIGATION — Any local tax, assessment, betterment, fee, or municipal charge which remains unpaid for 12 months or more after its due date, unless said tax, etc. is the subject of a

14. Editor's Note: See MGL C. 40, § 21, authorizing Town to affix penalty not exceeding \$300 for each offense.

pending application for abatement or of a pending appeal before the Appellate Tax Board.

- B. Any licensing authority of the Town may deny, suspend, or revoke any license or permit issued by said licensing authority, including any transfers or renewals of said license or permit, with the exception of those licenses and permits set forth in Subsection G, *infra*, if the applicant or holder thereof has any outstanding overdue obligation.
- C. The Town Collector shall annually, in the month of September, for all municipal commitments which are under his control, issue a list of all persons, corporations, or business entities which have an overdue obligation to the Town. Any other official of the Town having control of records of municipal charges not committed to the Town Collector shall annually, in the month of June, issue a similar list of overdue obligations. Said lists shall be supplied to all licensing authorities within the Town.
- D. A licensing authority may deny, revoke, or suspend any license or permit held by any person, corporation, or business entity appearing on any list of overdue obligations. Prior to taking such action, the licensing authority shall give written notice, as required by the applicable provisions of law, to the party responsible for the overdue obligation and to the tax collector of the intended action and shall give said party a hearing on the proposed action, said hearing to be held not earlier than 14 days after said notice. The list of overdue obligations shall be *prima facie* evidence for denial, revocation, or suspension of the license or permit. Any findings made by the licensing authority in connection with a denial, revocation, or suspension shall not be relevant to or introduced in any proceeding at law except for an appeal from said denial, revocation, or suspension. The Town Collector may intervene in any hearing held hereunder.
- E. Any license or permit which is denied, revoked, or suspended under this section shall not be issued, reissued, renewed or reinstated until the licensing authority receives a certificate from the Town Collector stating that the applicant for or holder of said license or permit is in good standing with respect to any and all local taxes, fees, assessments, or other municipal charges payable to the Town as of the date of issuance of said certificate.
- F. The licensing authority shall give any applicant for or holder of a license or permit who has an overdue obligation the opportunity to enter into a payment agreement as provided by Massachusetts General Laws for satisfaction of said overdue obligation. Prior to entering into a prepayment agreement, the applicant shall also be given the opportunity to meet with the Town Collector to attempt to reach a resolution acceptable to both parties. Upon execution of any such agreement, the licensing authority shall issue a certificate, to be displayed with said license, indicating that said license or permit is conditioned upon satisfactory compliance with the payment agreement. Failure to comply with the payment agreement shall be grounds for the suspension or revocation of the license or permit following notice and hearing, as required by the applicable provisions of law.
- G. The following licenses and permits shall not be subject to the provisions of this section: (all references are to the Massachusetts General Laws) Chapter 48, Section 13 (open air burning); Chapter 85, Section 11A (bicycle permits); Chapter 101, Section 33 (sales for charitable purposes); Chapter 149, Section 69 (children's work permits); Chapter 140, Section 21E (clubs dispensing food or beverages); Chapter 140, Section 137 (dog licenses); Chapter 131, Section 12 (fishing/hunting/trapping licenses); Chapter 207, Section 28 (marriage licenses); Chapter 140, Section 181 (public exhibition/theatrical permits).

AGAWAM CODE

Chapter 3

ADMINISTRATION OF GOVERNMENT

[HISTORY: Adopted by the Town Council of the Town of Agawam as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Administrative departments — See Charter, Art. 6.

ARTICLE I

Elections; Precincts**[Adopted 12-21-1972 as §§ 2-2 and 2-3 of the Code of the Town of Agawam]****§ 3-1. Annual Town elections.**

The annual Town elections shall be held as provided in the Town Charter.¹⁵

§ 3-2. Precinct boundaries.¹⁶ [Amended 6-18-2001 by TOR-2001-28]

The boundaries of the precincts of the Town are as follows:

- A. Precinct One. All that portion of the Town included within the following lines: Beginning at the center of the intersection of Main Street and Suffield Street with Springfield Street, thence; running in a generally southwesterly direction along the center of Springfield Street to the point of its intersection with Annable Street, thence; running in a generally westerly direction along the center of Annable Street to the point of its intersection with Colemore Street, thence; running in a generally westerly direction along the center of Horsham Place to the point of its intersection with White Brook, thence; running in a generally northerly direction along White Brook to its junction with the Westfield River, thence; running in a generally easterly direction along the Westfield River to its junction with the Agawam Bridge, thence; running in a generally southerly direction to the point of beginning.
- B. Precinct Two. All that portion of the Town included within the following lines: Beginning at the center of the intersection of Springfield Street and Poplar Street, thence; running in a generally southwesterly direction along the center of Poplar Street to the point of its intersection with Springfield Street and Mill Street, thence; running in a generally westerly direction along the center of Springfield Street to the point of its intersection with Southwick Street, North Westfield Street, and South Westfield Street, thence; running in a generally northerly direction along the center of North Westfield Street to the point of its intersection with North Street and North Street Extension, thence; running in a generally westerly direction along the center of North Street Extension and continuing to a point on the boundary line between the Town of Agawam and the Town of Southwick and the City of Westfield, thence; running in a generally northerly direction along the boundary line between the Town of Agawam and the City of Westfield to the point of its junction with the Westfield river, thence; running in a generally easterly direction along the center of the Westfield River to the point of its junction with White Brook, thence; running in a generally southerly direction along the center of said White Brook to the point of its junction with Oak Street, thence; running in a generally easterly direction along the center of Oak Street to the point of beginning.
- C. Precinct Three. All that portion of the Town included within the following lines: Beginning at the intersection of Springfield Street, Main Street, and Suffield Street, thence; running in a generally southwesterly direction along the center of Springfield Street to the point of its intersection with Annable Street, thence; running in a generally westerly direction along the center of said Annable Street to the point of its intersection with Colemore Street, thence; running in a generally westerly direction along the center of Horsham Place to the point of its intersection with White Brook, thence; running in a generally southerly direction along the center of said White Brook to the point of its junction with Oak Street, thence; running in a generally easterly direction along the center of Oak Street, to the point of its intersection with Poplar Street, thence; running in a generally southerly

15. Editor's Note: See Art. 7, Nominations and Elections, of the Charter.

16. Editor's Note: For Charter provisions as to Town precincts, see Section 7-4.

direction along the center of Poplar Street to the point of its intersection with Garden Street, thence; running in a generally easterly direction along the center of Garden Street to the point of its intersection with Three Mile Brook, thence; running in a generally northerly and northeasterly direction along the center of Three Mile Brook to a point, thence; running in a generally northerly direction to a point on Mill Street, thence; running in a generally easterly direction along the center of Mill Street to the point of its intersection with Suffield Street, thence; running in a generally northerly direction along the center of Suffield Street to the point of beginning.

- D. Precinct Four. All that portion of the Town included within the following lines: Beginning at the intersection of Springfield Street, Main Street, and Suffield Street thence; running in a generally southerly direction along the center of Suffield Street to the point of its intersection with Mill street and Perry Lane, thence; running in a generally easterly direction along the center of Perry Lane to the point of its intersection with Elm Street, thence; running in a generally northeasterly direction along the center of Elm Street to the point of its intersection with Main Street, thence; running in a generally northerly direction along the center of Main Street to the point of its junction with the Henry E. Bodurtha Highway (Rt. 57), thence; running in a generally easterly direction along the center of said highway to a point, thence; running in a generally northerly direction along the center of James Avenue to the point of its intersection with Meadow Street, thence; running in a generally easterly direction along the center of Meadow Street to its point of intersection with Hunt Street, thence; running northerly along the center of Hunt Street and continuing to the junction with the Westfield River, thence; running in a generally easterly direction along the said Westfield River to the point of intersection with the Connecticut River, thence; running in a generally northerly direction along the center of the Connecticut River to the point of junction with the boundary line between the Town of Agawam and the Town of West Springfield, thence; running in a generally westerly direction along said boundary line to a point on the center of the Agawam Bridge, thence; in a generally southerly direction to the point of beginning.
- E. Precinct Five. All that portion of the Town included within the following lines: Beginning at the intersection of Main Street, Emerson Road, and Leonard Street, thence; running in a generally northerly direction along the center of Main Street to the point of its junction with the Henry E. Bodurtha Highway (Rt. 57), thence; running in a generally easterly direction along the center of said highway to a point, thence; running in a generally northerly direction along the center of James Avenue to the point of its intersection of Meadow Street, thence; running in a generally easterly direction along the center of Meadow Street to the point of its intersection with Hunt Street, thence; running northerly along the center of Hunt Street to the point of its junction with the Westfield River, thence; running in a generally easterly direction along the Westfield River to the point of its junction with the Connecticut River, thence; running in a generally southerly direction along the Connecticut River to the junction with an unnamed brook, thence; running in a generally northwesterly direction along the center of the unnamed brook to a point on Leonard Street, thence; running in a generally westerly direction along the center of Leonard Street to the point of beginning.
- F. Precinct Six. All that portion of the Town included within the following lines: Beginning at the intersection of Springfield Street and Southwick Street with North Westfield Street and South Westfield Street, thence; running along the center of Springfield Street in a generally easterly direction to the point of its intersection with Mill and Poplar Streets, thence; running in a generally southerly direction along the center of Poplar Street to the point of its intersection with Garden Street, thence; running in a generally easterly direction along the center of Garden Street to the point of its junction with Three Mile Brook, thence; running along the center of Three Mile Brook to a point, thence; running in a generally northerly direction to a junction with Mill Street, thence; running in a generally easterly direction along the center of Mill Street to the point of its intersection with Suffield

Street and Perry Lane, thence; running in a generally easterly and southerly direction along the center of Perry Lane to the point of its intersection with Silver Street, thence; running in a generally southwesterly direction along the center of Silver Street to the point of its intersection with Castle Hills Road, thence; running in a generally southerly direction along the center of Castle Hills Road to the point of its intersection with Centerwood Drive, thence; running in a generally easterly direction along the center of Centerwood Drive to the point of its intersection with Fernwood Drive, thence; running in a generally southerly direction along the center of Fernwood Drive to the point of its intersection with Conifer Drive, thence; running in a generally easterly direction along the center of Conifer Drive to the point of its intersection with Butternut Drive, thence; running in a generally southerly direction along the center of Butternut Drive to the point of its intersection with Adams Street, thence; running in a generally westerly direction along the center of Adams Street to the point of its intersection with Suffield Street, thence; running in a generally southerly direction along the center of Suffield Street to the boundary line of Hampden and Hartford Counties, thence; running in a generally westerly direction along the Hampden and Hartford county boundary to a point on Still Brook, thence; running in a generally northwesterly direction along the said Still Brook to a point on Pine Street, thence; running in a generally northeasterly direction along the center of Pine Street to a point, thence; running in a generally westerly and northwesterly direction to the junction with the Still Brook, thence; running in a generally northerly direction along the center of the said Still Brook to the junction with Nicole Terrace, thence; running in a generally westerly direction along the center of Nicole Terrace to the point of its intersection with Charter Oak Drive, thence; running in a generally northerly direction along the center of Charter Oak Drive to the point of its intersection with Southwick Street, thence; running in a generally easterly direction along the center of Southwick Street to the point of its intersection with Sunset Terrace, thence; running in a generally southerly direction along the center of Sunset Terrace to the point of its intersection with Overlook Drive, thence; running in a generally easterly direction along the center of Overlook Drive to the point of its intersection with Hamilton Circle, thence; running in a generally northerly direction along the center of Hamilton Circle to the point of its intersection with Hamar Drive, thence; running in a generally easterly direction along the center of Hamar Drive to the point of its intersection with South Westfield Street, thence; running in a generally northerly direction along the center of South Westfield Street to the point of beginning.

- G. Precinct Seven. All that portion of the Town included within the following lines: Beginning at the intersection of Southwick Street and Charter Oak Drive, thence; running in a generally easterly direction along the center of Southwick Street to the point of its intersection with Sunset Terrace, thence; running in a generally southerly direction along the center of Sunset Terrace to the point of its intersection with Overlook Drive, thence; running in a generally easterly direction along the center of Overlook Drive to the point of its intersection with Hamilton Circle, thence; running in a generally northerly direction along the center of Hamilton Circle to the point of its intersection with Hamar Drive, thence; running in a generally easterly direction along the center of Hamar Drive to the point of its intersection with South Westfield Street, thence; running in a generally northwesterly direction along the center of South Westfield Street to the point of intersection with Southwick Street and North Westfield Street, thence; running in a generally northerly direction along the center of North Westfield Street to the point of its intersection with North Street and North Street Extension, thence; running in a generally westerly direction along the center of North Street Extension and continuing to a point on the boundary line between the Town of Agawam, the Town of Southwick, and the City of Westfield thence; running in a generally southerly direction along the boundary line between the Town of Agawam and the Town of Southwick to the point of its intersection with the Hampden and Hartford county boundary and the Town of Southwick, thence; running in a generally easterly direction along the boundary line of Hampden and Hartford Counties to the junction of Still Brook, thence; running in a generally northwesterly direction along the center of the Still brook to a point on

Pine Street, thence; running in a generally northeasterly direction along the center of Pine Street to a point, thence; running in a generally westerly and northwesterly direction to the junction with Still Brook, thence; running in a generally northerly direction along the center of the said Still Brook to the junction with Nicole Terrace, thence; running in a generally westerly direction along the center of Nicole Terrace to the point of its intersection with Charter Oak Drive, thence; running in a generally northerly direction along the center of Charter Oak Drive to the point of beginning.

- H. Precinct Eight. All that portion of the Town included within the following line: Beginning at the center of the intersection of Elm Street, Elbert Road, and Main Street, thence; running in a generally southerly direction along the center of Main Street to the point of its intersection with Leonard Street, thence; running in a generally easterly direction along the center of Leonard Street to the junction with an unnamed brook, thence; running in a generally southeasterly direction along the center of the unnamed brook to the junction with the Connecticut River, thence; running in a generally southerly direction along the Connecticut River to its junction with the boundary line of Hampden and Hartford Counties, thence; running in a generally westerly direction along said boundary line to the point of its junction with Suffield Street, thence; running in a generally northerly direction along the center of Suffield Street to the point of its intersection with Adams Street, thence; running in a generally northeasterly direction along the center of Adams Street to the point of its intersection with Butternut Drive, thence; running in a generally northwesterly direction along the center of Butternut Drive to the point of its intersection with Conifer Drive, thence; running in a generally westerly direction along the center of Conifer Drive to the point of its intersection with Fernwood Drive, thence; running in a generally northwesterly direction along the center of Fernwood Drive to the point of its intersection with Centerwood Drive, thence; running in a generally westerly direction along the center of Centerwood Drive to the intersection with Castle Hills Road, thence; running in a generally northerly direction along the center of Castle Hills Road to the point of its intersection with Silver Street, thence; running in a generally easterly direction along the center of Silver Street to the point of its intersection with Perry Lane, thence; running in a generally northerly direction along the center of Perry Lane to the point of its intersection with Elm Street, thence; running in a generally easterly direction along the center of Elm Street to the point of beginning.

ARTICLE II

Official Population Census

[Adopted 12-21-1972 as § 2-4 of the Code of the Town of Agawam]

§ 3-3. Publication of figure by Town Clerk.

Upon receipt by the Town Clerk of any officially certified population figure for the Town as determined by the census of the United States or the commonwealth, such Town Clerk shall publish the certified population figure in any newspaper having a circulation within the Town, and no action shall be taken by any board, officer, committee or otherwise the authority of which action is the official population census, until the expiration of seven days after such publication.

ARTICLE III
Appointed Bodies

[Adopted 12-21-1972 as §§ 2-9, 2-10, 2-11 and 2-16 of the Code of the Town of Agawam]

§ 3-4. Council on Aging. [Amended 1-3-1995 by TOR-94-11; 9-18-2023 by Ord. No. TOR-2023-7]

- A. Pursuant to the provisions of MGL c. 40, § 8B, there is hereby established a Council on Aging consisting of seven members appointed by the Mayor, all of whom shall be residents of the Town of Agawam. They shall be appointed annually in the month of April: members appointed and serving prior to the adoption of TOR-2023-7 shall continue to serve for the duration of their term. Thereafter, all appointments shall be for a term of three years. The Council on Aging shall annually elect its Chairman and such other officers as it deems appropriate.
- B. The duties of the Council shall be to:
- (1) Identify the total needs of the community's elderly population.
 - (2) Educate the community and enlist support and participation of all citizens concerning those needs.
 - (3) Design, promote or implement services to fill those needs.
 - (4) Coordinate present existing services in the community.
 - (5) Promote and support any other programs which are designed to assist elderly programs in the community.
- C. The Council on Aging shall cooperate with the Commonwealth of Massachusetts Commission on Aging and shall be cognizant of all state and federal legislation concerning funding, information, exchange and program planning which exists for better community programming for the elderly.
- D. The Council on Aging shall give an annual report to the Mayor with a copy of that report directed to the Commonwealth of Massachusetts Commission on Aging.

§ 3-5. Development and Industrial Commission.

- A. There is hereby established a Development and Industrial Commission to be appointed by the Mayor consisting of seven members, two members to be appointed for a term of five years; two members to be appointed for a term of four years; one member to be appointed for a term of three years; one member to be appointed for a term of two years; one member to be appointed for a term of one year; and their successors shall be appointed for terms of five years each.
- B. The Development and Industrial Commission shall have the authority and duties set forth in MGL c. 40, § 8A.

§ 3-6. Industrial Development Financing Authority.

There shall be an Industrial Development Financing Authority for the Town of Agawam in accordance with Chapter 772 of the Acts of 1967, amending MGL c. 40D.

§ 3-7. Consumer Advisory Commission.

- A. There is hereby established a Consumer Advisory Commission. The Commission shall consist of five

members, one member to be the inspector of weights and measures, and four members to be appointed by the Mayor.

- B. The Commission shall conduct investigations and perform research into matters affecting consumer interest and education, advise and report to the general public as well as to the local government authorities and law enforcement agencies.
- C. The Commission shall make an annual report to the appointing authority and the Massachusetts Consumers' Council consistent with MGL c. 40, § 8F.

§ 3-8. Land Needs Liaison Committee. [Added 12-19-1988 by TOR-88-23]

- A. There is hereby established a Land Needs Liaison committee. The Committee shall consist of seven members to be appointed by the Mayor and confirmed by a majority of the Town Council, three members to be initially appointed for a term of one year, two members to be initially appointed for a term of two years and two members to be initially appointed for a term of three years. After the initial appointments, the term of all members shall be for two years. The Committee shall annually elect its Chairperson and such other officers as it deems appropriate. Present service or membership on any other Town board, commission, council or committee shall not disqualify a prospective member from service on the Land Needs Liaison Committee.
- B. Each member shall be responsible for keeping the Committee abreast of the land needs of the following Town departments, boards and commissions:
 - (1) Housing Authority.
 - (2) Council on Aging.
 - (3) Parks and Recreation Department.
 - (4) Conservation Commission, Planning Board and Agawam Economic Development and Industrial Commission.
 - (5) School Committee.
 - (6) Town of Agawam departmental facilities.
 - (7) Miscellaneous land needs.
- C. The Committee shall research and investigate the possible acquisition of suitable parcels located within the Town to meet the existing needs of the Town. This Committee shall identify the best uses for parcels available for purchases, and they shall keep an updated report of the land needs of the Town and shall make said reports and recommendations to the Mayor.

§ 3-8.1. Municipal Golf Commission. [Added 2-7-1994 by TOR-93-6]

- A. Establishment. There is hereby established in the Town of Agawam a Municipal Golf Commission to advise and assist in the maintenance, promotion, development and administration of the Agawam Municipal Golf Course. **[Amended 12-20-1999 by TOR-99-7]**
- B. Composition and term.
 - (1) The Municipal Golf Commission shall consist of five Agawam voters who shall be appointed by the Mayor and confirmed by the Town Council. The members of the Municipal Golf

Commission shall receive no compensation for their service on the Commission. Any member of the Commission may, after a public hearing if requested, be removed for cause by the Mayor.

- (2) At the time of the creation of said commission, there shall be appointed two members for one year, two members for two years and one member for three years. Thereafter all appointments shall be for a term of three years.

C. Duties and powers. The powers and duties of the Municipal Golf Commission shall be as follows:

- (1) Assist and advise in the preparation and development of the annual operating budget for the golf course.
- (2) Assist and advise in the preparation and development of the capital improvement plan for the golf course.
- (3) Prepare and periodically update a schedule of fees and charges for all goods and services offered at the golf course.
- (4) Assist and advise in the contracting for or letting of services, equipment and supplies for the golf course.
- (5) Prepare and cause to be published such rules and regulations as it deems necessary for the proper operation of the golf course, subject to the approval of the Mayor.
- (6) Prepare an annual report of its activities for the Mayor with copy to the Town Council.
- (7) Solicit and receive gifts of funds, services, supplies, equipment, lands, buildings and other properties in the name of the Town of Agawam. All gifts of real property are subject to the approval of the Mayor and the Town Council.

D. Liquor license. The Town of Agawam shall hold in its name the all-alcoholic liquor license for the Agawam Municipal Golf Course. Notwithstanding the provisions of § 72-2 of the Code of the Town of Agawam, the sale, possession and consumption of alcoholic beverages at the Agawam Country Club shall be permitted. **[Amended 12-20-1999 by TOR-99-7]**

E. Enterprise fund. Pursuant to MGL c. 44, § 53F1/2, there is hereby established established a separate account classified as an enterprise fund for the operation of the golf course. The passage of this section by the Town Council shall act as its acceptance of the provisions of MGL c. 44, § 53F1/2.

§ 3-8.2. Sister City Commission. [Added 3-20-2000 by TOR-2000-3]

The Agawam Town Council does hereby establish a commission, to be known as the Agawam Sister City Commission (hereinafter called the "Commission"), for the purpose of fostering the Town of Agawam's relationship with the City of Reggio Calabria, which will oversee, maintain, and strengthen economic, educational, cultural, and social ties between the citizens of our two cities.

- A. The Commission shall consist of 30 members appointed by the Mayor pursuant to the provisions of the Town Charter. Commission members shall serve unlimited terms of three years per term. Members of the original 1997 "ad hoc" commission¹⁷ who desire to continue serving shall automatically be reappointed to the permanent Commission upon enactment of this section.

17. Editor's Note: The introductory provisions of this ordinance described a previous ad hoc Sister City Commission organized for the purpose of researching and establishing a "sister city" relationship with a city in the Republic of Italy.

- B. The Chairman of the Commission shall be appointed by the Mayor. The Vice Chairperson and the Secretary shall be elected by a majority vote of the Commission members.
- C. All Commission members shall be residents of the Town of Agawam.
- D. Members of the Commission shall serve without compensation.
- E. Commission reports shall be filed in the office of the Mayor. Official documents and records, both from the Town of Agawam and from the City of Reggio Calabria, shall be filed in the office of the Town Clerk.

§ 3-8.3. Community Preservation Act Committee. [Added 1-6-2003 by TOR-2002-9]

A. Establishment and membership.

- (1) There is hereby established a Community Preservation Act Committee consisting of nine voting members pursuant to Massachusetts General Laws Chapter 44B. The composition of the Committee, the appointment authority, and the term of office for the Committee members shall be as follows:
 - (a) One member of the Agawam Conservation Commission as designated by the Commission for a term of three years.
 - (b) One member of the Agawam Historical Commission as designated by the Commission for a term of three years.
 - (c) One member of the Agawam Planning Board as designated by the Board for a term of three years.
 - (d) One member of the Agawam Parks and Recreation Department as designated by the Mayor for an initial term of one year and thereafter for a term of three years.
 - (e) One member of the Agawam Housing Authority as designated by the Agawam Housing Authority for an initial term of two years and thereafter for a term of three years.
 - (f) One member of the Agawam Open Space Committee as designated by the Open Space Committee for an initial term of one year and thereafter for a term of three years.
 - (g) Three members to be appointed by the Agawam Town Council, one member to be appointed for a term of one year and thereafter for a term of three years, and two members to be appointed for a term of two years and thereafter for a term of three years.
- (2) Should any of the commissions, boards, councils or committees who have appointment authority under this section be no longer in existence for whatever reason, the appointment authority for that commission, board, council, or committee shall become the responsibility of the Agawam Town Council.

B. Duties.

- (1) The Community Preservation Act Committee (hereinafter "CPAC") shall study the needs, possibilities and resources of the Town regarding community preservation. The CPAC shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Parks and Recreation Department and the Housing Authority, or persons acting in those capacities or performing like duties, in conducting such

studies. As part of its study, the CPAC shall hold one or more public informational hearings on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.

- (2) The CPAC shall make recommendations to the Town Council for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use, and housing that is acquired or created as provided in this section. With respect to community housing, the CPAC shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
 - (3) The CPAC may include in its recommendation to the Town Council a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.
- C. Requirement for a quorum and cost estimates. The CPAC shall not meet or conduct business without the presence of a quorum. A majority of the members of the CPAC shall constitute a quorum. The CPAC shall approve its actions by majority vote. Recommendations to the Town Council shall include their anticipated costs.
- D. Amendments. This section may be amended from time to time by a majority vote of the Town Council, provided that the amendments would not cause a conflict with Massachusetts General Laws Chapter 44B.
- E. When effective; initial appointments. This section shall take effect immediately upon approval and passage by the Town Council. Each appointing authority shall have 10 days after approval by the Town Council to make their initial appointments. Should any appointing authority fail to make their appointment within that allotted time, the Town Council shall make the appointment.

§ 3-8.4. Agawam Agricultural Commission. [Added 5-4-2009 by TOR-2009-2]

- A. The City Council votes as follows: to establish an Agricultural Commission to represent the Agawam agricultural community, including all types of farming, forestry, greenhouse, and wood products, businesses and accessory uses and activities customarily associated with those endeavors.
- B. The purpose of the Agricultural Commission will be to support commercial agriculture and other farming and forestry activities in the Town of Agawam. The Commission's duties shall include, but not be limited to, the following: serving as facilitators for encouraging the pursuits of agriculture and forestry in Agawam; promoting agricultural and forestry-based economic opportunities and business diversification in the Town; acting as mediators between parties involved in issues between operators of working lands and other residents; educating the public and owners and users of working lands; working for the preservation of agricultural and forest resource lands; advising the Mayor, City Council, Planning Board, Zoning Board of Appeals, Conservation Commission, Board of Health, Historical Commission, Board of Assessors, and any other appropriate Town boards and appointed committees on issues involving agriculture and forestry; and pursuing initiatives appropriate to creating a sustainable agricultural community.

- C. The Commission shall consist of five members appointed by the Mayor, of which at least four of the membership shall be substantially engaged in the pursuit of agriculture or forestry. All members of the Commission must either be residents of the Town or owners and farmers of agricultural property within the Town.
- D. The terms will be as follows: two members for a term of three years; two members for a term of two years and three thereafter; and one member for a term of one year and three years thereafter.
- E. There may be up to three alternates appointed to the Commission by the Mayor. Alternates may fill any vacancies at meetings of the Commission.
- F. The Mayor shall fill a vacancy based on the unexpired term of the vacancy in order to maintain the cycles of appointments, based upon the recommendations of the Commission.

§ 3-8.5. Agawam Energy Commission. [Added 9-8-2009 by TOR-2009-4]

- A. Establishment and purpose. The Agawam Energy Commission is created to develop strategies to reduce energy costs of Town-owned facilities through energy conservation, efficiency, and to engage in long-term energy planning.
- B. Membership. The Commission shall consist of the nine members. They shall include: **[Amended 2-19-2019 by Ord. No. TOR-2019-1]**
 - (1) The Mayor, or his/her designee.
 - (2) Two members of the Agawam City Council as designated by the Council President.
 - (3) Six citizen members appointed by the Mayor and confirmed by the Town Council. Citizen members shall be selected to represent a diverse range of community interests and professional or technical expertise with energy issues. Citizen Member appointments shall be for a term of three years, excluding the citizen members of the Commission at the time of enactment of this ordinance whose term shall expire as initially appointed. A vacancy occurring other than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment.
- C. Duties and responsibilities. The Agawam Energy Commission shall have the following duties and responsibilities:
 - (1) Propose and develop strategies to reduce energy costs of Town-owned facilities and vehicles and street and traffic lighting through energy conservation, efficiency and renewable energy measures. Strategies may include electric conservation, vehicle fuel conservation, natural gas and oil conservation, and may identify innovative cost-saving measures.
 - (2) Advise, assist, and cooperate with state, regional, and federal agencies in developing appropriate programs and policies relating to energy planning and regulation in the commonwealth, including assistance and advice in preparation of loan or grant applications with respect to energy programs for local agencies.
 - (3) Develop local energy data and information management capabilities to aid energy planning and decisionmaking.
 - (4) Recommend Town-wide programs, including participation in federal or statewide energy initiatives, such as the Green Communities Program, to promote and facilitate smart energy

strategies for Agawam's citizens on both public and private real property.

- (5) Work with appropriate Town departments to track energy usage and costs associated with key assets and operations of the Town.
- (6) Identify climate adaptation, mitigation issues and strategies to safeguard the long-term economic and cultural vitality of Agawam.
- (7) Follow emerging federal and state mandates, as well as initiatives and funding opportunities for energy conservation, renewable energy or climate adaptation and mitigation strategies. Recommend strategies to comply with applicable mandatory or voluntary standards.
- (8) Provide guidance, in the form of education or information, to the Mayor, Town Council, School Department, and key Town departments and personnel to support their decisionmaking on recommended strategies and clean energy opportunities.
- (9) Serve as a communications and information resource on clean energy issues and Town initiatives for the public through:
 - (a) Meetings and sponsored events;
 - (b) Maintenance of an active website;
 - (c) Regular communications to interested parties; and
 - (d) Public/private partnerships.
- (10) Keep accurate records of its meetings and actions and shall file an annual report with the Mayor and Town Council.

§ 3-8.6. Agawam Housing Committee. [Added 5-5-2014 by TOR-2014-2]

- A. Establishment and purpose. The Agawam Housing Committee is established to consider housing needs in Agawam, with particular attention to housing opportunities that are affordable to households of all income levels and abilities. It will make recommendations to the Mayor and City Council on steps the Town can take to support the creation of new housing options to address those needs and to maintain existing affordable housing stock. The Committee will support implementation of its recommendations as appropriate and measure progress toward their fulfillment. The Committee's work will seek regional solutions and support regional goals for housing market stability, housing affordability and fair access to housing.
- B. Membership. The Committee shall consist of seven members, four of which are appointed by the Mayor. The composition of the Committee, the appointment authority, and the term of office for the Committee members shall be as follows: **[Amended 5-16-2016 by TOR-2016-2]**
 - (1) One member of the Agawam City Council as designated by the Council President for a term of two years;
 - (2) One member of the Planning Board as designated by the Planning Board for a term of three years;
 - (3) One member from the Agawam Housing Authority as designated by the Housing Authority for a term of three years;

- (4) One member from the legal or financial industry as appointed by the Mayor for an initial term of one year and thereafter for a term of three years, subject to confirmation by the City Council;
 - (5) One member from the development or real estate industry as appointed by the Mayor for an initial term of one year and thereafter for a term of three years, subject to confirmation by the City Council;
 - (6) Two at-large members from the community as appointed by the Mayor for an initial term of two years and thereafter for a term of three years, subject to confirmation by the City Council.
- C. A vacancy occurring other than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment.
- D. Duties and responsibilities. The Agawam Housing Committee shall have the following duties and responsibilities:
- (1) Completion of periodic local housing needs studies;
 - (2) Development and implementation of housing action plans;
 - (3) Review of and making recommendations on housing proposals that include the creation of housing opportunities that are affordable to households of all income levels and abilities that are seeking local support or permitting;
 - (4) Active participating in review of M.G.L. Chapter 40B comprehensive permit proposals;
 - (5) Review and making recommendations on local zoning and land use regulations to further promote housing that is affordable and/or accessible;
 - (6) Serve as a community resource on affordable and/or accessible housing issues;
 - (7) Increase public awareness through forums, workshops and other community events;
 - (8) Identify available local, state and federal resources to support their recommendations; and
 - (9) Identify suitable parcels for affordable and/or accessible housing development.

ARTICLE IV

Town Officers

[Adopted 12-21-1972 as §§ 2-30 and 2-31 of the Code of the Town of Agawam]

§ 3-9. Regular Town Council meetings. [Added 6-7-1982 by TOR-82-2; amended 4-16-1991 by TOR-91-2; 3-21-1994 by TOR-94-4; 9-8-2009 by TOR-2009-5]

Regular meetings of the Town Council shall be held on the first and third Mondays of each month at 7:00 p.m., except that there shall be only one meeting a month during the months of July and August, in which event such meetings shall be on the first Monday.

§ 3-10. Conflicts of interest.

- A. No member of the Town Council, Mayor and no officer or employee of the Town shall directly or indirectly make a contract with the Town or receive any commission, discount, bonus, gift, contribution or reward from or share in the profits of any person making or performing such contract unless such member, officer or employee, immediately upon learning of the existence of such contract or that such contract is proposed, shall notify, in writing, the Town Council of the nature of his interest in such contract and shall abstain from doing any official act on behalf of the Town in reference thereto. In case of such interest on the part of the Town, the contract may be signed by any other officer whose duty it is to sign such contract on behalf of the Town, duly authorized thereto by the Town Council.
- B. A violation of any provision of this section shall render the contract in respect to which such violation occurs voidable at the option of the Town. Any person violating the provisions of this section shall be punished by a fine of not more than \$300.

§ 3-11. Elective officers.

The following shall be elective officers of the Town:

- A. Eleven members of the Town Council for terms of two years in accordance with Article 2 of the Charter of the Town.
- B. One Mayor for a term of two years in accordance with Article 3 of the Charter of the Town.
- C. Seven members of the School Committee for terms of two years in accordance with Article 4 of the Charter of the Town.

ARTICLE V

Legal Counsel

[Adopted 12-21-1972 as §§ 2-13 and 2-33 of the Code of the Town of Agawam]

§ 3-12. Power of Mayor to employ.

The Mayor is hereby empowered to employ legal counsel to bring suits or to defend suits against the Town or its officers as agents or trustees.

§ 3-13. Power of School Committee to employ.

The School Committee is hereby authorized to employ legal counsel for general purposes as provided for in MGL c. 71, § 37F.

ARTICLE VI

Board of Appeals**[Adopted 12-21-1972 as Art. V of Ch. 2 of the Code of the Town of Agawam]****§ 3-14. Establishment; membership; vacancies.**

There shall be in the Town a Board of Appeals, hereinafter called the Board, consisting of three members and two alternate members appointed by the Town Council. The first appointment of members shall be for terms of one, two and three years. Thereafter, the Town Council shall appoint each year one member to serve for three years. Appointments of the alternate members shall be made for a term of three years. Vacancies shall be filled in the same manner for unexpired terms.

§ 3-15. Conflicts of interest; removal.

A member shall not act in any case in which he may be an interested party. In case of a vacancy, inability to act or interest in a case on the part of a member, his place shall be taken by the alternate member, such alternate member being designated on an alternating basis, and while so acting, the alternate member shall have the authority and responsibility of the member whom he replaces. Any member or the alternate member may be removed for cause by the Town Council upon written charges and after an executive hearing and in accordance with MGL c. 40A, § 14.

§ 3-16. Compensation.

Members of the Board may receive such remuneration as shall be determined by the Town Council.

§ 3-17. Chairman; rules; meetings; records.

The Board shall annually elect a Chairman and Clerk from its own membership. It shall adopt rules consistent with law for the conduct of its business. Meetings shall be held at the call of the Chairman or as otherwise provided by the Board, and all hearings shall be open to the public. Records shall be kept by the Clerk and copies of all decisions setting forth the reasons therefor shall be filed with the Town Clerk in accordance with the provisions of the General Laws pertaining to appeals (MGL c. 40, § 14 to 20).

AGAWAM CODE

Chapter 5

AIR POLLUTION CONTROL DISTRICT

§ 5-1. Election to join regional district. [HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 8-2 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 5-2. Election to join regional district.

The town hereby elects to join the air pollution control district to be known as the Lower Pioneer Valley Air Pollution Control District, pursuant to the provisions of MGL C. 111, § 142B and 142C. Such district may include but is not limited to the contiguous cities and towns of Agawam, West Springfield, Holyoke, South Hadley, Easthampton, Northampton, Chicopee, Springfield and Westfield.

BUILDING DEPARTMENT

Chapter 7

BUILDING DEPARTMENT

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 4-2 and 4-3 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Building Maintenance Department — See Ch. 10.

Fees — See Ch. 103.

Building construction — See Ch. 82.

Zoning — See Ch. 180.

§ 7-1. Establishment. [Amended 3-5-1990 by TOR-90-11¹⁸]

There is hereby established a Building Department, consisting of an Inspector of Buildings to be appointed by the Mayor and such other members and personnel as the Mayor shall, from time to time, determine.

§ 7-2. Inspector of Buildings. [Amended 3-5-1990 by TOR-90-11]

The Inspector of Buildings shall be the chief officer of the Building Department and shall also be the Zoning Officer of the town.

§ 7-3. Enforcement of town ordinances. [Added 6-18-1979]

Unless it is specifically stated in town ordinances or the General Laws of the Commonwealth of Massachusetts who the enforcing agent will be as to any particular law or ordinance, it is deemed that the Inspector of Buildings will be the designated enforcing agent.

18. Editor's Note: This ordinance was adopted to change the title of "Building Inspector" to "Inspector of Buildings" so as to be in compliance with state statute. References to "Building Inspector" have been changed to "Inspector of Buildings" throughout the Code of the Town of Agawam.

AGAWAM CODE

Chapter 10

BUILDING MAINTENANCE DEPARTMENT

**[HISTORY: Adopted by the Town Council of the Town of Agawam 2-18-1987 as TOR-86-26.
Amendments noted where applicable.]**

GENERAL REFERENCES

Building Department — See Ch. 7.

Fire prevention — See Ch. 106.

Parks and Recreation Department — See Ch. 45.

§ 10-1. Establishment.

There is hereby established a Building Maintenance Department, consisting of a Director of Municipal Buildings/Recreation, who shall be appointed by the Mayor, and such other officers and members as the Mayor shall determine.

CABLE TELEVISION ADVISORY COMMISSION

Chapter 12

CABLE TELEVISION ADVISORY COMMISSION

**[HISTORY: Adopted by the Town Council of the Town of Agawam 9-17-2018 by TOR-2018-12.¹⁹
Amendments noted where applicable.]**

§ 12-1. Membership; vacancies.

- A. The Cable Advisory Commission shall consist of seven members. One member shall be an employee of the Information Technology/Data Processing Department, who shall serve as the Town of Agawam's Cable Liaison Officer, and six members shall be appointed by the Mayor. Member appointments shall be for a term of three years, excluding the members of the first Commission where five appointments shall be comprised of the Cable Television Advisory Commission members who shall continue to serve for the duration of their individual term and two appointments shall be made by the Mayor for terms of three years respectively.
- B. Vacancies on the Commission will be filled for the unexpired term of the Commissioner whose position was vacated.

§ 12-2. Powers and duties.

- A. The Commission shall evaluate the compliance by the cable company with the provisions of the town's Franchise License Agreement, Massachusetts General Laws and Congressional Cable Communications Policy Acts. They may conduct investigations into matters pertaining to the company's performance and shall make an annual report to the appointing authority no less than one year prior to the expiration of the contract between the cable company and the Town.
- B. The Commission shall oversee policies regarding the Town's video production studio and equipment, broadcast equipment in all locations, PEG access equipment, programming that airs on local access stations and Town-operated online websites.

19. Editor's Note: This ordinance repealed former Ch. 12, Cable Television Advisory Commission, adopted 3-19-1990 by TOR-90-19, as amended.

AGAWAM CODE

Chapter 14

CIVIL DEFENSE

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 5 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 14-1. Establishment of Department of Civil Defense; function.

There is hereby established a Department of Civil Defense, hereinafter called the Department. It shall be the function of the Department to have charge of civil defense as defined in Chapter 639, § 1, Acts of 1950, to perform civil defense functions as authorized or directed by such chapter or by any and all executive orders or general regulations promulgated thereunder and to exercise any authority delegated to it by the Governor under such chapter.

§ 14-2. Powers and duties of Director.

The Department of Civil Defense shall be under the direction of a Director of Civil Defense, hereinafter called the Director, who shall be appointed as prescribed by law. The Director shall have direct responsibility for the organization, administration and operation of the Department, subject to the direction and control of the appointing authority, and shall receive such salary as may be fixed from time to time by the appointing authority. The Director may, within the limits of the amount appropriated therefor, appoint such experts, clerks and other assistants as the work of the Department may require, may remove them, and may make such expenditures as may be necessary to execute effectively the purpose of Chapter 639, Acts of 1950. The Director shall also have authority to appoint district coordinators and may accept and may receive on behalf of the town services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of civil defense offered by the federal government or any agency or officer thereof or any person, firm or corporation subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. The Director shall cause appropriate records to be kept of all matters relating to such gifts, grants and loans.

§ 14-3. Civil Defense Advisory Council.

There is hereby established a Civil Defense Advisory Council, hereinafter called the Council. Such Council shall serve without pay and shall consist of the Director of Civil Defense and such other department heads and persons as the authority appointing the Director may deem necessary. Such members of the council as the appointing authority shall designate shall serve subject to the direction and control of the appointing authority and shall advise such appointing authority and the Director on matters pertaining to civil defense.

§ 14-4. Period of effectiveness.

This chapter shall remain in force during the effective period of Chapter 639, Acts of 1950, and any act in amendment or continuation thereof or substitution therefor.

FINANCES

Chapter 23

FINANCES

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 2-5 and 2-6 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Financial procedures — See Charter, Art. 5.

Funds — See Ch. 32.

§ 23-1. Contracts of indebtedness.

Each officer or board contracting indebtedness in favor of the town shall keep a permanent record of its action in so doing and as often as once a month shall issue its warrant to the Tax Collector accompanied by properly drawn bills directing the Tax Collector to collect such indebtedness by appropriate legal means.

§ 23-2. Deposit of fees; compensation of officers.

All town officers shall pay all fees received by them by virtue of the office into the town treasury, and the aggregate annual compensation of all town officers shall be limited to the amount of the annual appropriations therefor.

AGAWAM CODE

Chapter 27

FIRE DEPARTMENT

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 7-1 and 7-3 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Alarm systems — See Ch. 69.

Fire prevention — See Ch. 106.

§ 27-1. Establishment; Fire Chief; membership.

There is hereby established a Fire Department, consisting of a Fire Chief, who shall be appointed by the Mayor, and such other members and personnel as the Mayor shall determine.

§ 27-2. Duties.

The Fire Department shall be charged with safety of the town with regard to fires and associated hazards.²⁰

§ 27-3. Residency requirements.

Any member of the Fire Department who has at least five years of service in the Department may reside outside of the town, provided that he/she resides within the commonwealth and within 10 miles of the limits of the town.

20. Editor's Note: Former § 7-2, Exemptions from jury duty of firemen, was repealed as per MGL C.234A, § 3.

Chapter 32**FUNDS**

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as §§ 6-3, 6-4, 6-5, 6-6 and 6-8 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

School Committee — See Charter, Art. 4.

Finances — See Ch. 23.

§ 32-1. Stabilization Fund.

There is hereby established by the town a stabilization fund under the provisions of MGL C. 40, § 5B.

§ 32-2. Whiting Street Fund and Thomas Pyne Fund. [Amended 11-16-1992 by TOR-92-16]

- A. Whiting Street Fund. There is hereby established the Whiting Street Fund, which is provided for by the will of Whiting Street which is dated June 23, 1875, and which provides in pertinent part:
- (1) "To the inhabitants of the following named towns and city, to each town in its corporate capacity as a town, and to the city in its corporate capacity as a city, in trust, the income thereof to be annually appropriated for the relief and comfort of the worthy poor of said towns and city, who shall not be in the Almshouse, nor be town or city paupers.
 - (2) To the town of Agawam, the sum of \$4,000."
- B. Thomas Pyne Fund. There is hereby established the Thomas Pyne Fund, which is provided for by the will of Desire A. Pyne which is dated October 13, 1894, and which provides in pertinent part: "I give and bequeath to the inhabitants of the Town of Agawam \$2,000 as a perpetual fund to be known as the 'Thomas Pyne Fund' in memory of my late husband the income of which shall be applied for the relief of the worthy poor of said town."
- C. Board of Commissioners.
- (1) A Board of Commissioners is hereby established to administer said funds and shall consist of three Agawam voters who shall be appointed by the Mayor and confirmed by the Town Council. At the time of the creation of said Board, there shall be appointed one member for one year, one member for two years and one member for three years. Thereafter, the Mayor shall appoint one member annually for three years and said members shall be confirmed by the Town Council.
 - (2) The Treasurer shall be the custodian of all funds and securities of said trust funds, shall invest and reinvest them and expend therefrom moneys as directed by the Board of Commissioners.
 - (3) The Board of Commissioners shall, so far as consistent with the terms of the wills, manage and control the same, and distribute the income in accordance with the terms of the respective wills.
 - (4) The Board of Commissioners shall keep a record of its activities, and at the close of each calendar year shall make a report to the Mayor and the Town Council, showing the total amount of the funds, and their investments, receipts and disbursements on account of the same, setting

forth in detail the sources of the receipts and the purposes of the expenditures.

§ 32-3. Phelon Fund.

There is hereby established the Phelon Fund, provided for by the will of Mary A. Phelon as follows: "I give and bequeath the rest and residue of my estate after the payment of the foregoing legacies to the Treasurer of the Town of Agawam, whoever he may be at the time of my decease, in trust as a school fund, to be invested and managed by said Treasurer and his successors in office as Trustees. The income to be used annually under the supervision of the Agawam Town School Committee solely for the benefit of the schools in Feeding Hills Parish."

§ 32-4. (Reserved)²¹

§ 32-5. Faolin M. Pierce Fund.

There is hereby established the Faolin M. Pierce Fund, provided for by the will of Faolin M. Pierce as follows: "The Faolin M. Pierce Fund, a fund, the income only of which is to be used to assist graduates of the Agawam High School who formerly attended the elementary school on Springfield Street to obtain further education, in such manner as the School Committee, or in case there is no School Committee, the Board of Selectmen, shall deem most advisable and beneficial for the purpose."

21. Editor's Note: Former § 32-4, Thomas Pyne Fund, as amended, was repealed 11-16-1992 by TOR-92-16. See now § 32-2.

Chapter 33**DEPARTMENTAL REVOLVING FUNDS**

[HISTORY: Adopted by the Town Council of the Town of Agawam 6-19-2017 by TOR-2017-6. Amendments noted where applicable.]

GENERAL REFERENCES

Funds — See Ch. 32.

Overflow Trash Bag Revolving Fund — See Ch. A186.

§ 33-1. Purpose.

This chapter establishes and authorizes revolving funds for the use by Town departments, boards, committees, agencies and 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 M.G.L. c. 44, § 53E 1/2.

§ 33-2. 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 chapter 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 spent during a fiscal year shall not exceed the amount authorized by the City Council 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 City Council.

§ 33-3. Interest.

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

§ 33-4. Procedures and reports.

Except as provided in M.G.L. c. 44, § 53E 1/2 and this chapter, the laws, Charter provisions, ordinances, 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 chapter. The City Auditor shall prepare a quarterly report on the collections credited to each fund, the encumbrances and expenditures charged to each fund and the balance available for expenditure in the quarterly report the City Auditor provides to the department, board, committee, agency or officer on appropriations made for its use. Copies of such reports shall be provided to the City Council.

§ 33-5. Authorized revolving funds.

The table establishes:²²

- A. Each revolving fund authorized for use by a department, board, committee, agency or officer;
- B. The department or agency head, board, committee or officer authorized to spend from each fund;
- C. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which each fund may be used;
- D. The expenses of the program or activity for which each fund may be used;
- E. Any restrictions or conditions on expenditures from each fund;
- F. Any reporting or other requirements that apply to each fund;
- G. The fiscal years each fund shall operate under this chapter; and
- H. The enabling authority.

22. Editor's Note: See the table of revolving funds included as an attachment to this chapter.

HEALTH, BOARD OF

Chapter 35

HEALTH, BOARD OF

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 8-1 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 35-1. Establishment.

There is hereby established in the town a Board of Health in accordance with MGL C. 111, § 26, consisting of three members, who shall be appointed by the Mayor. There shall be a Health Agent, appointed by the Mayor, who is designated as the chief administrative officer of the department.

§ 35-2. Noncriminal disposition of violations. [Added 10-6-1999 by TOR-99-5]

Whoever violates any rule or regulation of the Board of Health may be penalized by a noncriminal disposition as provided in Massachusetts General Laws Chapter 40, § 21D, as amended from time to time.

AGAWAM CODE

Chapter 45

PARKS AND RECREATION DEPARTMENT

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 12 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 45-1. Establishment.

There is hereby established in the town a Parks and Recreation Department to be under the supervision of a Director. The Director shall be appointed by the Mayor.

§ 45-2. Hours of operation for parks. [Added 2-17-2004 by TOR-2004-2]

Parks, school grounds, playgrounds and Town facilities under the control and jurisdiction of the Town of Agawam will be open to the public daily between the hours of 7:30 a.m. and 9:00 p.m.

Chapter 49**HUMAN RESOURCES**

[²³HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as §§ 2-14 and 2-15 and Ch. 14 of the Code of the Town of Agawam; amended in its entirety 10-5-1998 by TOR-98-7. Subsequent amendments noted where applicable.]

§ 49-1. Budgetary limitations.

Nothing contained in this chapter shall operate or be construed to authorize or permit any department head, officer, official or employee of the town to incur any obligation or to make any expenditure in excess of any duly made appropriation or for which no appropriation has been made, nor shall this chapter operate or be construed to impose any liability upon the town for any obligation or debt incurred in excess of any duly made appropriation or in the absence of such appropriation.

§ 49-2. Human Resources Department; Human Resources Officer. [Amended 12-16-2024 by Ord. No. TOR-2024-11]

There is hereby established in the town a Human Resources Department which shall be headed by a Human Resources Officer appointed by the Mayor. The duties and responsibilities of the Human Resources Officer shall be set forth in the current job description for the position.

§ 49-3. Indemnification of employees.

The Town of Agawam shall indemnify public employees to the extent and subject to the limitations imposed by MGL, c. 258, § 9, as amended from time to time.

§ 49-4. Seeking of elective office.

No employee of the Town of Agawam or the Agawam Public Schools shall serve in any publicly elected municipal office in the Town of Agawam.

§ 49-5. Request for classification adjustment. [Amended 12-16-2024 by Ord. No. TOR-2024-11]

Any employee shall have the right to request a change in the classification of his/her position. The employee shall make his/her request initially through his/her department head, who shall submit a recommendation to the Human Resources Officer which is consistent with the classification plan. The matter shall then be submitted to the Mayor for such action as the Mayor may deem appropriate.

§ 49-6. Advancement within a compensation schedule.

For the purpose of determining when step rate increases shall be payable, an employee's service shall be considered to begin on his/her anniversary date, which shall be the first day of January, April, July or October, whichever is the earliest following the date his/her employment in the position began. Upon satisfactory completion of each year of service following his/her anniversary date, the employee's compensation may be increased to the next higher step in the applicable class grade until the maximum rate for his/her position has been reached, upon the recommendation of the department head and the approval of the Mayor.

23. Editor's Note: The title of this chapter was changed from "Personnel" to "Human Resources" 12-16-2024 by Ord. No. TOR-2024-11.

§ 49-7. Classification of nonbargaining unit employees. [Amended 6-21-1999 by TOR-99-3; 1-18-2000 by TOR-99-9; 9-20-2000 by TOR-2000-9; 9-20-2000 by TOR-2000-9; 9-17-2001 by TOR-2001-3; 9-7-2004 by TOR-2004-9; 1-18-2005 by TOR-2004-18; 11-20-2006 by TOR-2006-14; 3-19-2007 by TOR-2007-2; 6-18-2007 by TOR-2007-3; 10-1-2007 by TOR-2007-7; 5-20-2013 by TOR-2013-2;²⁴6-3-2013 by TOR-2013-4; 10-5-2015 by TOR-2015-8; 3-21-2016 by TOR-2016-1; 8-7-2017 by TOR-2017-8; 3-19-2018 by TOR-2018-1; 5-7-2018 by TOR-2018-3; 6-18-2018 by TOR-2018-8; 1-22-2019 by TOR-2018-17; 6-18-2019 by Ord. No. TOR-2019-2; 9-8-2020 by Ord. No. TOR-2020-4; 1-11-2021 by Ord. No. TOR-2020-8; 3-7-2022 by Ord. No. TOR-2022-3; 4-19-2022 by Ord. No. TOR-2022-6; 5-2-2022 by Ord. No. TOR-2022-7; 10-17-2022 by Ord. No. TOR-2022-10; 6-3-2024 by Ord. No. TOR-2024-4; 6-3-2024 by Ord. No. TOR-2024-5; 10-21-2024 by Ord. No. TOR-2024-10; 12-16-2024 by Ord. No. TOR-2024-11]

The following positions are not within any of the certified collective bargaining units in the Town of Agawam.

A. Full-time administrative positions (salary calculated per year):

(1) Positions enumerated:

Auditor*

Chief of Staff to the Mayor*

Mayor*

Human Resources Director*

Solicitor

IT Technician

(*Indicates department head classification.)

- (2) Full-time administrative positions shall have the same hours of work and shall receive the same vacation leave, holidays, sick leave, bereavement leave, incentive leave and longevity that are specified in the current collective bargaining agreement by and between the Town of Agawam and the Agawam Administrative Union. The Accountant/Auditor shall receive an annual salary in the amount of \$70,000 and shall receive a percentage increase in base pay in accordance with the collective bargaining agreement that the Town currently has and that will be negotiated with the Agawam Administrative Union; and the Chief of Staff to the Mayor shall be compensated at the Tier 3 salary schedule as specified in the current collective bargaining agreement by and between the Town of Agawam and the Agawam Administrative Union and the Human Resources Director shall be compensated at the Tier 2 salary schedule as specified in the current collective bargaining agreement by and between the Town of Agawam and the Agawam Administrative Union. The IT Technician shall be compensated at the C5 (Senior Clerk) salary schedule as specified in the current collective bargaining agreement by and between the Town of Agawam and the Agawam Clerical Employees Association. The Solicitor shall be compensated at the Tier 1A salary schedule as specified in the current collective bargaining agreement by and between the Town of Agawam and the Agawam Administrative Union. The Mayor shall receive an annual salary of \$110,000 (effective with the commencement of the term beginning January, 2022).

24. Editor's Note: This ordinance stated that it would take effect 7-1-2013.

B. Legislative positions (salary calculated per year):

- (1) Meeting coverage in the absence of the Administrative Assistant to the Council. In the discretion of the Council President, meeting coverage for absences of the Administrative Assistant to the Council may be filled by a member of the Council or by an existing clerical employee of the Town. If the absence is covered by an existing clerical employee of the Town, that employee shall be compensated in accordance with the current collective bargaining agreement by and between the Town of Agawam and the Clerical Union.
- (2) Councilor: \$10,000 per year (effective with commencement of term beginning January 2008).
- (3) Council President: \$12,000 per year (effective with commencement of term beginning January 2008).
- (4) School Committee: \$5,000 per year (effective with commencement of term beginning January 2008).

C. Part-time positions (salary calculated per year):

- (1) Appraiser: \$10,000 to \$12,500 per year.
- (2) Associate Solicitor: \$33,000 per year.
- (3) Board of Appeals Chairperson: \$1,000 per year.
- (4) Board of Appeals Clerk: \$800 per year.
- (5) Board of Appeals member: \$200 per year.
- (6) Registrar of Voters: \$750 per year.
- (7) (Reserved)
- (8) Board of Appeals Vice Chairperson: \$600 per year.
- (9) Board of Appeals Alternate: \$300 per year.
- (10) (Reserved)²⁵
- (11) One part-time Community Preservation Act Clerk: The CPA Clerk shall be compensated as an Administrative Assistant at the C2 salary schedule as specified in the current collective bargaining agreement by and between the Town of Agawam and the Agawam Clerical Employees Association Union.
- (12) Emergency Management Director: \$12,500 to \$20,000 per year.
- (13) Emergency Management Deputy Director/NIMS Coordinator: \$12,500 to \$20,000 per year.

D. Part-time positions (pay calculated per hour):

- (1) Positions enumerated.

25. Editor's Note: Former Subsection C(10), regarding City Council/School Committee camera and audio personnel, added 10-5-2006 by TOR 2006-8, as amended, was repealed 1-22-2019 by TOR-2018-17.

Administrative Assistant to the Council
 Assistant Swim Coach
 Assistant Teacher (nursery school)
 Ballot Counter
 Basketball Official
 Building Maintenance, seasonal custodian
 Call Firefighter
 Call Fire Lieutenant
 Call Senior Fire Lieutenant
 Camera and Audio Operator
 Camp Coordinator
 Camp Counselor
 Camp Director
 Camp Nurse
 Camp Specialist
 Census Worker
 Clubhouse Attendant
 Constable
 Council on Aging Van Driver
 Custodian, Council on Aging
 Deputy Precinct Clerk
 Deputy Precinct Warden
 Head Teacher/Director (nursery school)
 Laborer, Seasonal
 Law Department Clerk
 Lifeguard
 Maintenance Crew Leader, Seasonal
 Meals on Wheels Driver
 Nurse, Substitute
 Pool Director
 Precinct Clerk
 Precinct Warden
 Public Access Studio Manager
 Recreation Program Supervisor
 Swim Coach

Teacher (nursery school)

Voting Machine Set-Up Person

*The Administrative Assistant to the Council shall receive an annual salary of \$42,833 and shall receive the same cost of living increases afforded members of the Agawam Administrative Union as contained in the collective bargaining agreement by and between the Town of Agawam and the Agawam Administrative Union. The Administrative Assistant to the Council shall receive the same vacation leave, holidays, sick leave, bereavement leave, incentive leave and longevity as are specified in the current collective bargaining agreement by and between the Town of Agawam and the Agawam Administrative Union.

- (2) A listing of the current hourly pay scales for the Subsection D(1) part-time nonbargaining unit positions can be found on file in the Town Clerk's office.
- (3) The Agawam Town Council herein sets the current hourly pay scales for the part-time nonbargaining unit positions which are contained on Exhibit A. A copy of Exhibit A can be found on file in the Town Clerk's office.²⁶

§ 49-8. Retired employee health insurance. [Added 4-5-2004 by TOR-2004-1]

Eligible retirees and/or their surviving spouses who are not covered by health/dental insurance at the time of their retirement from employment with the Town of Agawam, shall be eligible to enroll or reinstate health/dental insurance coverage with the Town of Agawam group plans during any health/dental insurance open enrollment period or in the case of a qualifying life event, provided the retiree, and/or their surviving spouse, provides the Town of Agawam medical evidence of insurability.

26. Editor's Note: Exhibit A is also included as an attachment to this chapter.

AGAWAM CODE

Chapter 52

POLICE

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 15 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 52-1. Establishment of Police Department.

There is hereby established a Police Department, consisting of a Police Chief, who shall be appointed by the Mayor, and such other officers and members as the Mayor shall determine.

§ 52-2. Enforcement of ordinances and state laws.

The Police Department shall be charged with the enforcement of the ordinances of the town and the laws of the commonwealth.

§ 52-3. Aid to other municipalities.

The Police Department is hereby authorized to go to aid another city or town at the request of such city or town in the suppression of riots or other forms of violence therein.

§ 52-4. Seeking of elective office by members prohibited.

No member of the regular police force shall while in active employment as a member of such police force seek election to any elective office.

§ 52-5. Career incentive pay program.

There is hereby established a career incentive pay program for regular full-time members of the Police Department as provided for in MGL C. 41, § 108L.

§ 52-6. Salary increase of certain members.

A member of the Police Department assigned to photographic or fingerprint identification work shall, after completion of one year's service in such assignment, receive a salary increase of \$600 a year, as provided for in MGL C. 41, § 108I.

§ 52-7. Compensation of auxiliary police for court time.

The auxiliary police officers at the Town of Agawam shall receive compensation for time expended in court on behalf of the town, at the same rate received by members of the Agawam Police Department, based on Step 1 of the applicable grade and salary range assignment, as enumerated in the collective bargaining contract, which is in effect at the time said auxiliary police officers are required to be present in court, except that such compensation shall be on the basis of straight time hours and not on the basis of time and a half. Compensation shall be made respectively with respect to time so expended on and subsequent to January 1, 1979.

TRANSMISSION LINES

Chapter 57

TRANSMISSION LINES

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-27-1973. Amendments noted where applicable.]

§ 57-1. Establishment of committee; powers.

For the purpose of hearing and acting upon petitions for the construction, repair and maintenance of transmission lines in accordance with MGL C. 166, § 22, there is hereby established a three-member committee composed of members of the Town Council. The members of said committee shall be appointed annually by the Council President and shall have all the powers granted by the General Laws of the Commonwealth of Massachusetts to the Town Council under said Chapter 166.

§ 57-2. Report of committee actions.

The committee shall report all of its actions to the Town Council.

Chapter 61

VETERANS COUNCIL

[HISTORY: Adopted by the Town Council of the Town of Agawam 2-4-1991 by TR-91-2.

Amendments noted where applicable.]

§ 61-1. Membership; appointment. [Amended 9-21-1998 by TOR-98-6; 6-1-2009 by TOR-2009-3]

The Agawam Veterans Council shall consist of nine members. There shall be eight residents of Agawam who are honorably discharged veterans of the armed services who shall be appointed by the Mayor and confirmed by the Town Council. The ninth member of the Agawam Veterans Council shall be the duly appointed Director/Agent of the Western Hampden District of the Department of Veterans' Services.

§ 61-2. Purpose; powers and duties.

The purpose of the Agawam Veterans Council will be to work together in the best interests of and for the welfare of the veterans of the Town of Agawam; to organize and implement the Memorial Day activities in the Town of Agawam; to organize and implement the Veterans Day activities in the Town of Agawam; and to assist in other patriotic events and activities in Agawam during each year.

Part II: General Legislation

ALARM SYSTEMS

Chapter 69

ALARM SYSTEMS

[HISTORY: Adopted by the Town Council of the Town of Agawam as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Violations and penalties — See Ch. 1.

Fire prevention — See Ch. 106.

ARTICLE I
Fire Alarm Equipment
[Adopted 2-14-1977]

§ 69-1. Permit required; application.

No person, firm, corporation, company or any other entity shall install any fire alarm system or equipment in any building or other structure within the town without making application to the Building Department in accordance with the provisions of the State Building Code and obtaining a permit therefor. Such application shall be made in the name of the owner, occupant or by the person or company who proposes to make the installation of such fire alarm equipment.

§ 69-2. Approval of installation.

Upon affirmation that the installation will be made in accordance with the National Fire Protection Association No. 74, Standard for Household Fire Warning Equipment and National Fire Protection Association No. 101, Life Safety Code, the head of the Fire Department shall approve such installation.

§ 69-3. Certificate of completion.

The person or persons making the installation of a fire alarm system shall immediately, upon completion of the work, file a certificate of completion as specified in the State Building Code.

§ 69-3.1. Unintentional false alarms; penalties. [Added 4-6-2015 by TOR-2015-3]

- A. The following fines and charges shall be imposed upon the property owner for activation of any fire alarm system by error, mistake or malfunction, as the case may be, which results in a response by the Fire Department:
- (1) Up to four such false alarms may occur in any twelve-month period without the imposition of a penalty.
 - (2) The fifth such false alarm shall result in a fine of \$200, and every subsequent false alarm in excess of the above shall result in a fine of \$100 per false alarm. In addition, such person shall be responsible for, and shall bear the expense of, responding to any such false alarm. Said expense shall be determined by the Chief of the Fire Department and the Auditor of the Town and billed to the responsible party or parties; provided, however, that no such charges, exclusive of any penalty imposed, shall exceed \$500.
- B. After the third false alarm, a written warning shall be sent to the property owner by the Fire Department.
- C. After the fourth such false alarm, a written order shall be issued to the property owner requiring that the alarm system be inspected and the Fire Department notified of corrective action taken.
- D. All fines and expenses shall be paid to the Town of Agawam within 30 days of the date of the bill. Fines and bills unpaid for more than 90 days shall be subject to municipal charges liens as set forth and in accordance with M.G.L. c. 40, § 58.

ARTICLE II

Burglar Alarms**[Adopted 10-21-1991 by TOR-91-12]****§ 69-4. Purpose and intent.**

The purpose of this Article is to provide for the public safety and welfare by setting forth regulations governing burglary and robbery alarm systems, businesses and agents within the town, requiring permits therefor, and providing for punishment of violations of provisions of this Article, and to prevent the erroneous and mistaken use of said alarms. Alarms which are not installed and maintained properly has resulted in increased responses by the Agawam Police Department and is creating a hazard to the members of that Department and to the general public.

§ 69-5. Definitions.

For the purpose of this Article the following terms shall have the meanings indicated:

ALARM BUSINESS — To engage in the supplying, installing, maintaining or servicing of burglary or robbery alarm systems.

ALARM SYSTEM — The assembly of equipment, mechanical or electrical, or a device, which is designed or used for the detection of an unauthorized entry into a building, structure or facility or other activity which emits a sound or transmits a signal or message to the Agawam Police Department to which police officers are expected to respond, and where applicable includes fire alarm systems.

ALARM USER — That person whose name appears on the registration form as the user or, if there is no such registration, the owner of the premises to which the Agawam Police Department is expected to respond.

AUDIBLE ALARM — A device, designed for the detection of unauthorized entry on premises, which generates an audible sound on the premises when it is actuated.

DEPARTMENT — The Agawam Police Department.

FALSE ALARM — An alarm signal necessitating response by the Agawam Police Department where an emergency situation does not exist. Such term shall include alarms as follows:

- A. Error or mistake. Any action by any person, firm or corporation or other entity owning or operating any dwelling, building or place, or any action by any agent or employee of said person, firm or corporation or other entity which results in the activation of an alarm system when no emergency exists.
- B. Malfunction. Any unintentional activation of any alarm system caused by a flaw in the design, installation or maintenance of the system. This shall not include any activation caused by violent condition of nature or other extraordinary circumstances, not reasonably subject to control of the alarm user.
- C. Intentional misuse. Any intentional activation of an alarm system when no burglary, holdup or other emergency is in progress.

§ 69-6. Permit required.

No person shall install or operate an alarm system within the Town of Agawam until an application has been filed with the Police Department and a permit authorizing the installation and operation of said alarm

system has been issued. The application shall include the name, telephone number and address of the alarm user and at least two other persons who can be reached at any time, day or night, and who shall have access to the alarm system in order to reset the system or disconnect the same when necessary. Permits shall expire on January 1 of every odd-numbered year unless renewed. It shall be the responsibility of each permit holder to notify the Department in writing within 10 days of any change in registration information.

§ 69-7. Control and curtailment of signals emitted by alarms.

Within six months from the effective date of this Article, all alarm systems which use an audible horn, siren or bell shall be equipped with a device which will shut off such horn, siren or bell within 10 minutes after activation of the alarm system.

§ 69-8. Approval of plans; location of components; lock boxes.

- A. No alarm system shall be installed until the plans and specifications relating to said alarm system have been approved by the Chief of the Department or his designee. The Chief of the Department or his designee shall have the right, at all reasonable times, to inspect any alarm system within his jurisdiction.
- B. The location of the alarm components shall, when deemed necessary by the Chief of the Department or his designee, be provided on a floor plan to be kept at the site of the alarm system or in a location adjacent to the alarm system panel.
- C. Prior to issuance of a permit pursuant to these provisions, the permit applicant shall, when deemed necessary by the Chief of the Department or his designee install a lock box in an approved location at the site of the alarm system. Said lock box shall, when deemed necessary by the Chief of the Department or his designee, contain keys to the structure served by the alarm system.

§ 69-9. Response to alarm.

- A. When an alarm is activated, the Police Department shall respond to the alarm and notify the person or persons listed with the Police Department as having responsibility for securing said alarm system. Said person shall immediately go to the place where the alarm is sounding to meet the police officers, secure the building and reset the alarm.
- B. Should any person responsible for securing and resetting any alarm system, when notified of its activation, refuse to respond pursuant to this section, the officers on the scene shall check the property thoroughly and secure the location as much as possible. The Police Chief or the Chief's designee, at his or her sole discretion, may require no further response to that building, dwelling or place until such time as said alarm system has been properly reset.
- C. If any dwelling, building or place is required by law to maintain a burglar alarm system, as herein defined, and if said alarm system fails to function and cannot be returned to service within a reasonable time and if, in the opinion of the Chief of the Department, or his designee, the absence of properly functioning alarm system may pose a threat to life and property, the Chief of the Department or his designee may require the special duty assignment of one or more police officers to patrol the premises until the alarm system has been returned to service. The cost of any special duty assignment shall be the responsibility of the alarm system permit holder.

§ 69-10. Unintentional false alarms; penalties.

- A. The following fines and charges shall be imposed upon the alarm system permit holder for activation

of any alarm system by error, mistake or malfunction, as the case may be, which results in a response by the Police Department:

- (1) Up to four such false alarms may occur in any calendar year without the imposition of a penalty.
 - (2) The fifth such false alarm shall result in a fine of \$25, and every subsequent false alarm in excess of the above shall result in a fine of \$25 per false alarm. In addition, such person shall be responsible for and shall bear the expense of responding to any such false alarm. Said expense shall be determined by the Chief of the Department and the Auditor of the town and billed to the responsible party or parties; provided, however, that no such charges, exclusive of any penalty imposed, shall exceed \$300.
- B. After the third false alarm, a written warning shall be sent to the alarm system permit holder.
- C. After the fourth such false alarm, a written order shall be issued to the alarm system permit holder requiring that the alarm system be inspected and the Department notified of corrective action taken.
- D. All fines and expenses shall be paid to the Town of Agawam within 30 days of the date of the bill. Fines and bills unpaid for more than 90 days shall be subject to municipal charges liens as set forth and in accordance with MGL C. 40, § 58.

§ 69-11. Intentional false alarms; penalties.

- A. No person shall knowingly or intentionally activate any alarm system when no emergency exists.
- B. No person shall knowingly or intentionally test, repair, adjust, alter or perform maintenance on an alarm system or cause the same to be tested, repaired, adjusted, altered or maintained, if such action could result in a false alarm, without first notifying the Department of such test, repair, adjustment, alteration or maintenance and receiving approval for the same. The Department shall be notified immediately upon completion of such test, repair, adjustment, alteration or maintenance. The Chief of the Department may restrict or refuse to permit testing, repair, adjustment, alteration or maintenance of an alarm system if testing, repair, adjustment, alteration or maintenance could result in a false alarm when during a time when the manpower resources of the Department are limited.
- C. Any person who violates Subsection A or B of this section shall be fined \$100 and, where applicable, may additionally be subject to prosecution under the General Laws of the commonwealth for falsely reporting an incident. In addition, such person shall be responsible for and shall bear the expense of responding to any such false alarm. Said expense shall be determined by the Chief of the Department or his designee and the Auditor of the town and billed to the responsible party or parties; provided, however, that no such charge, exclusive of any penalty imposed, shall exceed \$300 per response.
- D. All fines and expenses shall be paid to the Town of Agawam within 30 days of the date of the bill. Fines and bills unpaid for more than 90 days shall be subject to a municipal charges liens as set forth and in accordance with MGL C. 40, § 58.

§ 69-12. Other offenses.

- A. Failure to obtain a permit for any alarm system shall result in a fine of \$100, and all other offenses shall be cumulative.
- B. Failure to submit to the Police Department proper names and addresses as required in § 69-6 shall result in a fine of \$25, and all other offenses shall be cumulative.

- C. All fines and expenses shall be paid to the Town of Agawam within 30 days of the date of the bill. Fines and bills unpaid for more than 90 days shall be subject to a municipal charges liens as set forth and in accordance with MGL C. 40, § 58.

§ 69-13. Use of exterior audible alarm.

No alarm system which produces an exterior audible signal, bell, siren or horn shall be installed unless its operation is automatically restricted to a maximum of 10 minutes' automatic reset for a residential facility and 10 minutes' automatic reset for a business facility. Any exterior audible alarm system in use as of the effective date of this Article must comply with this section within six months of such date.

§ 69-14. Hearings.

Any person receiving an order or notice of violation pursuant to this Article may contest said order or notice at a hearing before the Police Commissioner. All demands for a hearing must be made in writing and delivered in person or by mail no later than 10 days following receipt of the order or notice of violation. Any person requesting a hearing shall be given written notice of the date, time and place of the hearing. Such hearing shall be held no less than 15 days nor more than 30 days from the date of the mailing of the notice, provided that the Police Commissioner shall grant, upon good cause shown, any reasonable request by any interested party for a postponement or continuance. The presence of the issuing officer shall be required at the hearing if such person so requests. A person wishing to contest an order or notice of violation shall appear at the hearing and shall have the right to represent evidence and cross-examine witnesses. The Police Commission shall conduct the hearing in a manner that he or she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The Police Commission shall announce its decision within five days of the completion of the hearing.

§ 69-15. Exemptions.

The provisions of this Article are not applicable to audible alarms affixed to automobiles or affixed to municipal, state and federal buildings.

§ 69-16. Disclaimer of town's responsibility.

Notwithstanding the provisions of this Article, the town, its departments, officers, agents and employees shall be under no obligation whatsoever concerning the adequacy, operation or maintenance of any alarm device. No liability whatsoever is assumed for the failure of such alarm devices or monitoring facilities or for the failure to respond to alarms.

Chapter 72**LICENSE COMMISSION**

[²⁷HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 9-5 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Fees — See Ch. 103.

§ 72-1. License Commission established. [Amended 9-5-2023 by Ord. No. TOR-2023-6]

- A. Purpose. There is hereby established a License Commission whose duty it shall be to issue, oversee and enforce the various licenses issued by the Town of Agawam.
- B. Membership. The License Commission shall consist of three members who shall be appointed by the Mayor and confirmed by a majority vote of the City Council, in accordance with MGL c. 138. No person while a member of the License Commission shall have any connection, directly or indirectly, with the sale or distribution of alcoholic beverages in any form. Members shall have been residents of the Town of Agawam for at least two years immediately preceding their appointment, and shall remain residents of the Town of Agawam for the entirety of their term of office.
- C. Terms of office.
 - (1) The three members to be initially appointed shall serve the remaining balance of the calendar year in which the License Commission is established, effective immediately upon the passage of this section. Those three members shall serve in the same capacity as they did on the commission formerly known as the "Liquor License Commission." After the initial appointments, appointments shall begin on the first day in January after the passage of this section. The composition of the License Commission, and the terms of office for the appointments made on the aforesaid first day of January, shall be as follows:
 - (a) One member shall be Chairperson as designated by the Mayor for a term of three years;
 - (b) One member shall be Vice Chairperson as designated by the Mayor for a term of two years; and
 - (c) One member shall be Secretary as designated by the Mayor for a term of one year.
 - (2) Thereafter, each member's term shall be for three years and appointed by the Mayor in accordance with MGL c. 138. Notwithstanding the above terms of office, if a vacancy occurs, the Mayor shall appoint a new member who shall serve for the balance of the term of the member replaced, subject to confirmation by a majority vote of the City Council.
- D. Powers.
 - (1) The License Commission shall be responsible for the issuance, renewal, modification,

27. Editor's Note: The title of this chapter was changed from "Alcoholic Beverages" to "License Commission" 9-5-2023 by Ord. No. TOR-2023-6.

suspension and revocation of licenses issued under the authority set forth in Chapters 138 and 140 of the Massachusetts General Laws, and all other licenses and permits previously issued by the City Council and any and all licenses and permits established by ordinance, unless by ordinance the issuance of such licenses has been assigned to another municipal board, department, office or officer, and excluding all powers regarding the issuance, renewal, modification, suspension and revocation of Class 1, 2 and 3 licenses issued under the authority of Sections 59 and 59a of Chapter 140 of the Massachusetts General Laws and further described in Section 58 of Chapter 140 of the Massachusetts General Laws. The City Council shall be the licensing authority for Class 1, 2 and 3 licenses.

- (2) A license shall not be issued or be valid until it has been signed by a majority of the License Commission. The License Commission shall establish the fees for said licenses and permits, subject to the approval of the Mayor.
- E. Rules and regulations. The License Commission may adopt rules and regulations, subject to approval by the Mayor.
- F. Severability. If any portion of this section is declared to be illegal or unenforceable, it shall be deemed stricken and the remaining portions shall remain in full force and effect.

§ 72-2. Open containers prohibited. [Added 5-1-1978; amended 5-17-1989; 6-21-1982 by TOR-82-10; 9-5-2023 by Ord. No. TOR-2023-6]

It shall be unlawful for any person to possess, consume from and/or transport an open container of alcoholic beverages on any public street, public sidewalk or public way or on any grounds owned by the Town, state and county or any other municipalities within the limits of the Town, except that this section shall not apply to events or festivals duly licensed by the License Commission or officials of the Town of Agawam having care and custody of the premises so licensed, to the extent of such license approval. A person who is found to possess, consume from and/or transport an open container of alcoholic beverage on any public street, public sidewalk or public way, or on any grounds owned by the Town, within the limits of the Town may be arrested by a police officer and kept in custody in a convenient place, not more than 24 hours, Sunday excepted, until a complaint can be made against him for the offense, and he be taken upon a warrant issued upon such complaint. A fine may be imposed for not more than \$200 for this offense.

AGAWAM CODE

Chapter 75

AMUSEMENTS

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-7-1981; amended in its entirety 3-3-1997 by TOR-97-2. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Violations and penalties — See Ch. 1.

§ 75-1. License required for automatic amusement devices; maximum number of devices; inspections; seizure of unlicensed machines. [Amended 9-5-2023 by Ord. No. TOR-2023-6]

- A. In accordance with MGL c. 140, § 177A, as amended from time to time, any individual or business desiring to keep and operate an automatic amusement device for hire, gain or reward shall secure an annual license from the License Commission. The License Commission shall not grant a license for any automatic amusement device which presents a risk of misuse as a gaming device. Automatic amusement devices which present a risk of misuse as gaming devices are those devices which simulate actual gaming devices and games which involve matching of random number combinations.
- B. The maximum number of automatic amusement devices allowed on any single business premises shall be four, except in the case of duly licensed arcades and amusement parks. Any individual or business desiring more than four automatic amusement devices on a single business premises shall require a special permit from the Board of Appeals.
- C. All licenses for automatic amusement devices granted by the License Commission shall be subject to inspection by the Agawam Police Department to ensure conformance with submitted application information and local ordinance requirements.
- D. Any unlicensed automatic amusement device shall be subject to immediate seizure by the Agawam Police Department.

Chapter 78**BLIGHTED PROPERTIES**

[HISTORY: Adopted by the Town Council of the Town of Agawam 5-8-2020 by Ord. No. TOR-2020-2.²⁸ Amendments noted where applicable.]

§ 78-1. Purpose.

- A. It is hereby found and declared that there exist within the Town of Agawam numerous real properties which are in a blighted, vacant and/or foreclosing condition. Many of these properties are essentially abandoned. Some are in violation of multiple aspects of state and local building and sanitary codes. The owners of record are often times large financial institutions located out of state, making enforcement of the codes very difficult. These code violations may include, but are not limited to, unoccupied buildings susceptible to vandalism and/or open structures rendering them unsafe and dangerous, yards full of litter and trash, unsecured houses, unshoveled snow rendering sidewalks impassable, and overgrown grass and foliage.
- B. The existence of such blight contributes to the decline of city neighborhoods. It is further found that the existence of such blighted properties, if abandoned, encourages temporary occupancy, by transients, drug users and persons engaged in criminal activity, adversely affecting the economic well-being of the Town of Agawam and the health, safety and welfare of Agawam's residents and first responders, creates significant costs to Agawam by virtue of the need for constant monitoring and frequent boarding and securing.
- C. It is further found that many of the blighted properties can be rehabilitated, reconstructed, demolished and/or reused so as to provide decent, safe, sanitary housing or commercial facilities, and that such rehabilitation, reconstruction, demolition and/or reuse would eliminate, remedy and prevent the adverse conditions described above.
- D. It is the intent of this chapter to protect and preserve public safety, security and quiet enjoyment of occupants, abutters and neighborhoods by:
 - (1) Requiring all residential, commercial and industrial property owners, including lenders, trustees and service companies, to properly maintain blighted and/or foreclosing properties; and
 - (2) Regulating the maintenance of blighted and/or foreclosing residential, commercial and industrial properties to prevent blighted and unsecured properties.

§ 78-2. Definitions.

When used in this chapter, unless a contrary intention clearly appears, the following terms shall have the following meanings:

BLIGHTED PREMISES — Any building, structure, parcel of land, or any part of a building or structure that is a separate unit, whether commercial or residential, whether occupied or unoccupied, whether in foreclosure or not, in which at least one of the following conditions exists:

- A. The premises is not being adequately maintained and secured as documented by the Enforcement Officer (as the term is defined herein) based upon, without limitation, the following factors: missing or boarded windows or doors; collapsing or missing walls, roof or floor; siding that is seriously

28. Editor's Note: This ordinance also repealed former Ch. 78, Blighted Properties, adopted 6-15-2015 by TOR-2015-6.

damaged or missing; fire damage; a foundation that is structurally faulty; accumulation of interior furniture outside; garbage, trash, junk; hazardous materials; unmaintained pools or other sources of stagnant water; inoperable cars, boats, motorcycles or other inoperable machinery; or other refuse (unless otherwise licensed to do so).

- B. It has been cited for violations as documented by the Building Commissioner, the Inspector of Buildings, the Director of Public Health, the Sanitarian, the Chief of Police, the Fire Chief and/or their designated agents, and said violations have not been corrected.
- C. It is attracting illegal activity as documented by the Police Department and/or an appropriate agent or department of the Town of Agawam.
- D. It is a fire hazard as documented by the Fire Department.
- E. Because of fire, wind or other natural disaster, or because of physical deterioration, it is no longer habitable as a dwelling or useful for the purpose for which the completed structure was originally intended;
- F. It is a vacant building as defined hereunder; or
- G. It is determined by the, Building Commissioner, the Inspector of Buildings, the Director of Public Health, or the Sanitarian that the building, structure or parcel of land is in a condition which poses a serious threat to safety, health, morals, and general welfare of the Town of Agawam.

BUILDING — An independent structure having a roof supported by columns or walls, resting on its own foundations and designed for shelter, housing or enclosure of persons, animals or property of any kind.

BUILDING INSPECTOR — The Inspector of Buildings.

CITY — The Town of Agawam.

ENFORCEMENT OFFICER — The Inspector of Buildings, Director of Public Health, the Sanitarian, Police Chief, Fire Chief and/or their designated agents.

FORECLOSING — The process by which a property placed as a security for a real estate loan is prepared for sale to satisfy the debt if the borrower defaults.

INITIATION OF THE FORECLOSURE PROCESS — Taking any of the following actions:

- A. Taking possession of a residential property pursuant to M.G.L. c. 244, § 1;
- B. Publishing the first notice of a residential property pursuant to M.G.L. c. 244, § 14; or
- C. Commencing a foreclosure action on a residential property in either the Land Court or Hampden Superior Court.

LOCAL AGENT — An agent located within 20 driving miles' distance of the property in question.

MORTGAGEE — The creditor, including but not limited to service companies, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests, or obligations under the mortgage agreement.

OWNER — Any individual, business entity, voluntary association or nonprofit organization, which alone or jointly or severally with others:

- A. Has legal title to any building, structure, and property.
- B. Has care, charge, or control of any such building, structure or property in any capacity, including

but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title.

- C. Is a lessee under a written agreement; or
- D. Is a mortgagee in possession of any such property; or
- E. Is an agent, trustee, or other person appointed by the courts and vested with possession or control of such building, structure or property.
- F. Is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process.

PROPERTY — Any real residential, commercial, or industrial property or portion thereof, located in the Town of Agawam, including buildings or structures situated on the property. For purposes of this chapter, "property" does not include property owned or subject to the control of the Town of Agawam or any of its governmental bodies.

RECEIVER — A court-appointed individual who serves as a general contractor and whose duties and powers shall be specified by the court in accordance with the provisions of M.G.L. c. 111, § 127I.

SECURING — Measures that are taken to prevent unauthorized persons access to the property, including but not limited to erecting fencing around the property, boarding up doors and windows and the like.

VACANT BUILDING — Any commercial or industrial building in which no person or entity actually conducts a lawfully licensed business in said building; or any residential building in which no person lawfully resides in any part of the building; or a mixed-use building in which neither licensed business nor a lawful resident exists. Further, any building in which many of the total exterior windows and doors are broken, boarded or open without a functioning lock shall be deemed "vacant."

§ 78-3. Creation or maintenance of blighted premises prohibited.

- A. No owner of real property located within the Town of Agawam shall allow, create or maintain or cause to be created or maintained any blighted premises.
- B. Administration.
 - (1) Investigation. The enforcement officer may undertake an investigation of any alleged violation of this section upon his or her own initiative or shall, upon receipt of a complaint from any individual, civic organization or other governmental agency, undertake an investigation of the alleged violation.
 - (2) Orders to take corrective action. Upon a finding of a violation of the provisions of this section, the enforcement officer shall serve notice of the violation and an order to correct such violation upon the owner of the property by certified mail or by in-hand service by a person authorized to do such. The order shall require the owner to take one or more of the following actions to bring the property into compliance with the requirements of this section within 30 days of receipt of such order:
 - (a) To file a completed application with the Inspectional Services Department and any required plans for a permit for repair or rehabilitation of the building or structure and a schedule indicating a completion date for such work or its various phases. All work performed pursuant to this subsection shall be completed within 90 days of the date the order is received unless the enforcing officer permits a greater amount of time. However,

the enforcement officer shall not allow more than 180 days from the date the order was received.

- (b) To file a completed application with the Inspectional Services Department and any required plans for a permit for demolition of the building or structure and a schedule indicating a completion date for such work in its various phases. All work performed pursuant to this subsection shall be completed within 90 days of the date the order is received unless the enforcing officer permits a greater amount of time. However, the enforcement officer shall not allow more than 180 days from the date the order was received.
 - (c) To take any action that the enforcement officer deems necessary to correct the violations of this section in order to assist the Town of Agawam in protecting the public health, safety and welfare.
 - (d) Recovery of costs. Whenever a property owner fails, neglects or refuses to make repairs or take other corrective actions specified in the order, the city official may undertake such repairs or actions, when in his or her judgment a failure to make the necessary repairs or corrective actions will endanger the public health, safety and welfare. The city may seek a court-appointed receiver to manage the property and bring said property into compliance with all applicable statutes, regulations and codes.
- (3) Notice of the intention of the city to make such repairs or other corrective actions shall be served on the owner by certified mail or by service in hand by a person duly authorized to do such. When the repairs are made or other corrective actions are taken by the Town of Agawam, the cost of such repairs shall constitute a debt in favor of the city against the owner of the repaired building or structure. In the event that the owner fails, neglects or refuses to pay the city the amount of the debt within 30 days of the receipt of the notice of the debt, the city may place a lien on the property for such debt and/or may initiate a civil action against the owner in a court of competent jurisdiction to recover the debt.

§ 78-4. Registration of blighted premises required.

A. Registration.

- (1) Within 30 days of a premises being deemed blighted as defined within this chapter, each owner of such blighted premises and/or vacant building shall register said premises/building with the Town of Agawam's Legal Department. All registrations must state the owner's name, mailing address, telephone number and email address if the individual has an email address. The mailing address shall not be a post office box.
- (2) If none of the owner(s) are at an address within the Commonwealth of Massachusetts, the registration shall also include the name, address, phone number and email address of a person who resides in the Commonwealth of Massachusetts, who shall be designated as the responsible local agent for purposes of securing and maintaining the property, for the purposes of notification in the event of an emergency affecting the public health, safety and welfare, and for service of any and all notices issued pursuant to this chapter.
- (3) The failure to timely register a vacant building shall be a violation of this chapter.

B. Registration fees.

- (1) All property registrations pursuant to this chapter are valid for one calendar year from the date when the registration is received by the Agawam Legal Department. An annual registration fee of \$500 must accompany the registration form. Subsequent registrations and fees are due at least 30 days prior to the date of expiration of the previous registration. Subsequent registrations must certify whether the property remains vacant and/or remains in foreclosure, as the case may be.
- (2) Properties that are owner occupied, being actively marketed by a local real estate agent or broker or are temporarily vacant for one year or less due to vacation or pending probate transfer are exempt from the registration fee, provided the property is secured and maintained in compliance with the requirements of this chapter.
- (3) Any owner who has registered a property under this chapter must report any change in information contained in the registration within 30 days of the change.
- (4) Once the property is no longer vacant or is sold, the owner shall provide the Agawam Legal Department with written notice of legal occupancy or change in ownership, as the case may be.
- (5) Failure to timely register and pay the registration fee for any vacant or blighted building or building going through the foreclosure process shall be a violation of this chapter, and a fee shall be imposed as a municipal charges lien on the property in accordance with M.G.L. c. 40, § 58 as voted by the Agawam City Council.
- (6) Any blighted premises registered with the Town of Agawam prior to enactment of this chapter is required to register again upon passage of this chapter and comply with all the registration terms contained herein.

C. Maintenance requirements.

- (1) Properties subject to this section shall comply with 780 CMR 116.2, Standards for making buildings safe or secure, and shall be maintained in accordance with all applicable sanitary codes, building codes and local regulations.
- (2) The local owner or local agent must inspect and maintain the property on a monthly basis for the duration of the vacancy. Lawns and other plantings must be maintained during the growing season and walks must be kept clear of snow and ice during winter weather. Excessive overgrowth of vegetation will be considered a violation of this ordinance when in the professional judgement of the inspector there is harborage of pests and nuisance wildlife, fire loading or blocking of egress.
- (3) The property must contain a posting with the name and twenty-four-hour contact phone number of the local owner or local agent responsible for the maintenance. This sign must be posted at the front of the property and must be legible and clearly visible from the public way and/or street.
- (4) Any plumbing or fixtures in the building shall be drained and winterized to prevent freezing and the associated damage. This process must include the protection of the water meter.
- (5) Excluding emergency repairs, it is prohibited to use tarps for roof and building repairs. Additionally, the use of tarps for vehicle covers, or temporary canopies, enclosures, and/or awnings is prohibited in any outdoor area visible from any public right-of-way.

D. Once the property is no longer vacant or is sold, the owner must provide proof of sale or written notice of occupancy to the the Agawam Legal Department.

§ 78-5. Violations and penalties; enforcement; imposition of fines.

- A. This chapter shall be enforced by the Building Inspector, the Director of Public Health, the Sanitarian, the Police Chief, the Fire Chief and/or their designated agents.
- B. Penalties.
 - (1) Each separate offense of this section shall be punishable of a fine of:
 - (a) First offense: \$50.
 - (b) Second offense: \$75.
 - (c) Third offense and each subsequent offense: \$150.
 - (2) Each violation of any provision of this chapter shall be considered a separate offense, and each day that any violation continues shall constitute a separate offense.
- C. Upon failure to comply with any order issued under this chapter, the city may, in addition to other penalties and actions, bring civil or legal action against the owner to require compliance with the order, including but not limited to seeking a court-approved receiver for the property in violation.
- D. The imposition of any fine shall not be construed to prevent the enforcement of other laws upon the premises or prevent the initiation of other enforcement measures or penalties. Failure to pay any fine arising from the enforcement of this chapter shall constitute a debt in favor of the city. The city may place a lien on the property for such debt and/or initiate a civil action against the owner in a court of competent jurisdiction to recover the debt.
- E. The provisions of this chapter are effective immediately upon passage, and all provisions shall be enforced immediately, but no monetary fine shall be imposed pursuant hereto until 90 days after passage.

BUILDING CONSTRUCTION

Chapter 82

BUILDING CONSTRUCTION

[HISTORY: Adopted by the Town Council of the Town of Agawam as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building Department — See Ch. 7.

Fire prevention — See Ch. 106.

Numbering of buildings — See Ch. 85.

Zoning — See Ch. 180.

Fees — See Ch. 103.

ARTICLE I

Building Code; Demolition Delay**[Adopted 12-21-1972 as § 4-1 of the Code of the Town of Agawam]****§ 82-1. Adoption of State Building Code.**

- A. The Building Code of the State of Massachusetts as provided for in MGL C. 143, § 93 et seq. is hereby adopted as the Building Code of the town and shall apply to the construction, erection and repair of all buildings and structures within the town. The effective date of this code is January 1, 1975.
- B. Copies of such code shall be on file in the Building Department. (See MGL C. 143, § 93-100, as to provisions establishing the State Building Code; MGL C. 143, § 92, as to codes in effect prior to January 1, 1975.)

§ 82-2. Waiver of inspection certificate fees, building, electrical and plumbing permit fees. [Added 1-7-1981; amended 5-5-1986 by TOR-86-11; 10-2-2000 by TOR-2000-7]

- A. Building, electrical and plumbing permit fees and inspection certificate fees by the Inspection Services Department or Building Department shall be waived in their entirety for buildings or structures or parts thereof owned by the town.
- B. Inspection certificate fees by the Inspection Services Department or Building Department shall be waived in their entirety for buildings or structures or parts thereof used solely for religious purposes.
- C. Nothing herein shall be construed as a waiver of the requirement to obtain an inspection certificate or to obtain a building, electrical, or plumbing permit.

§ 82-3. Demolition delay of historically significant buildings. [Added 5-17-1999 by TOR-99-1]

- A. Intent and purpose. The purpose of this section is to preserve and protect historically significant buildings within the Town of Agawam and to encourage owners of such buildings to seek out persons who are willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them. To achieve this purpose, the Agawam Historical Commission is empowered to advise the Inspector of Buildings with respect to the issuance of permits for demolition of historically significant buildings. The issuance of demolition permits for historically significant buildings is regulated as provided in this section.
- B. Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

BUILDING — Any combination of materials forming a shelter for persons, animals, or property.

COMMISSION — The Agawam 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.

HISTORICALLY SIGNIFICANT BUILDING — Any building or portion thereof which after a public hearing of the Agawam Historical Commission:

- (1) Is deemed to be associated with one or more historic persons or events, or with the architectural,

cultural, economic, political or social history of the Town of Agawam; or

- (2) Is historically or architecturally important (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 or structures; or
- (3) Is located within any federal, state or local historic district; or
- (4) Is located within 150 feet of a federal, state or local historic district boundary.

SIGNIFICANT BUILDING — Any building or portion thereof which:

- (1) Is included in the Agawam Inventory of Historic Structures prepared by the Commission, as amended from time to time, including those buildings listed for which complete surveys may be pending; or
- (2) Is listed on, or is within an area listed on, the National Register of Historic Places, or is the subject of a pending application for listing on said National Register.

C. Procedure.

- (1) Upon receipt of an application for a demolition permit for a significant building, the Inspector of Buildings shall forward a copy thereof to the office of Planning and Community Development. No demolition permit shall be issued at that time.
- (2) Within five days, the office of Planning and Community Development shall make an initial determination of the building. If the building is listed in the Agawam Inventory of Historic Structures or listed on the National Register of Historic Places, the initial determination shall be positive. If the building is not listed in the Inventory or on the National Register of Historic Places, the initial determination shall be negative. If the building receives a positive determination, the Office of Planning and Community Development shall notify the Commission in writing of the determination. If the building receives a negative determination, the office of Planning and Community Development shall notify the Inspector of Buildings in writing.
- (3) If the initial determination is negative, the Inspector of Buildings may issue the demolition permit. If the initial determination is positive, within 30 days of receipt of the determination from the office of Planning and Community Development, the Commission shall hold a public hearing. The Historical Commission shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least 14 days before said 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 in the records of the Assessor's office, and to such other persons as the Commission shall deem entitled to notice.
- (4) 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 Inspector of Buildings within 10 days. Upon receipt of such notification, or after the expiration of 15 days from the date of the conduct of the hearing if the Inspector of Buildings has not received notification from the Commission, the Inspector of Buildings may, subject to the requirements of the state building code and any other applicable laws, ordinances, rules and regulations, issue the demolition permit.

- (5) 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 historically significant building. The Commission shall notify the Massachusetts Historic Commission, the office of Planning and Community Development, and other interested parties requesting assistance in preservation funding and adaptive reuses.
- (6) Upon a determination by the Commission that the significant building which is the subject of the application for a demolition permit is a historically significant building, the Commission shall so advise the applicant and the Inspector of Buildings, and no demolition permit may be issued until at least six months alter the date of such determination by the Commission.
- (7) The Commission and other appropriate town departments shall make all efforts to assist the applicant in the preservation, rehabilitation, and/or restoration of the historically significant building(s). Such efforts may include seeking buyers for the property, seeking grants for preservation, rehabilitation and/or restoration, or obtaining other professional assistance.
- (8) Notwithstanding the preceding subsection, the Inspector of Buildings may issue a demolition permit for a historically significant building at any time after receipt of written advice from the Commission to the effect that either:
 - (a) 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
 - (b) The Commission is satisfied that, for at least six months since the determination that the building is a historically significant building, the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the building, and that such efforts have been unsuccessful.

D. Enforcement and remedies.

- (1) The Inspector of Buildings is authorized to institute any and all proceedings in law or equity as he or she deems necessary and appropriate to obtain compliance with the requirements of this section, or to prevent violation thereof.
- (2) No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this section for a period of two years after the date of the completion of such demolition, such date of completion to be determined by the Inspector of Buildings. As used herein "premises" includes the parcel of land upon which the demolished significant building was located.

E. Severability. If any subsection and/or portion of this section is for any reason declared invalid or unconstitutional by any court, every other subsection and/or portion shall continue in full force and effect.

ARTICLE II
Stretch Energy Code

[On 12-5-2016 by TR-2016-64, the Town adopted 780 CMR 115, Appendix A (the Stretch Energy Code) of the Massachusetts Board of Building Regulations and Standards (BBRS), including future editions, amendments or modifications thereto, effective 1-2-2017.]

BUILDINGS, NUMBERING OF

Chapter 85

BUILDINGS, NUMBERING OF

**[HISTORY: Adopted by the Town Council of the Town of Agawam 6-1-1987 as TOR-87-11.
Amendments noted where applicable.]**

GENERAL REFERENCES

Building Department — See Ch. 7.

Subdivision of land — See Ch. 159.

Fire Department — See Ch. 27.

§ 85-1. Numerical identification required.

Numerical identification of each dwelling, business or industry in the Town of Agawam is to be provided by the owner and is to be placed in a clearly visible location on the structure located on the nearest exposure to the street. In the event that such structure is located 200 feet or more from the roadway, or in the event that such structure is not visible from the roadway, a numbered signpost shall be erected in a conspicuous location on or near the street entryway to the structure.

§ 85-2. Specifications.

Identifying numbers must be a minimum of three inches in height and be of a contrasting color so as to be visible from the roadway day or night.

§ 85-3. Deadline for compliance; enforcement.

All structures are to be so numbered within 90 days of the effective date of this chapter. Enforcement of this chapter will be the responsibility of the Fire Department for existing structures and the Building Department for newly constructed structures prior to issuance of a certificate of occupancy permit.

§ 85-4. Violations and penalties.

Noncompliance with this chapter within the prescribed time and following written notice will result in a fine of \$15 and an additional \$15 for each thirty-day period thereafter.

AGAWAM CODE

Chapter 89

COAL, COKE AND FUEL-OIL DEALERS

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 9-1 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 89-1. Issuance of licenses. [Amended 9-5-2023 by Ord. No. TOR-2023-6]

Licenses may be granted by the License Commission to any responsible person to engage in the business of selling coal or coke or fuel oil as principal or agent and at wholesale or retail, either by maintaining a place of business or by peddling the same from house to house within the town.

§ 89-2. Fee.

The fee for such license shall be \$1.

Chapter 91**CRIMINAL RECORD BACKGROUND CHECKS**

[HISTORY: Adopted by the Town Council of the Town of Agawam 4-21-2015 by TOR-2015-4.²⁹

Amendments noted where applicable.]

§ 91-1. Purpose and authorization.

- A. In order to protect the health, safety, and welfare of the inhabitants of the Town of Agawam, and as authorized by M.G.L. c. 6, § 172B1/2, this chapter shall require:
 - (1) Applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in § 91-2 below to submit to fingerprinting by the Agawam Police Department;
 - (2) The Police Department to conduct criminal record background checks based on such fingerprints; and
 - (3) The Town to consider the results of such background checks in determining whether or not to grant a license.
- B. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS) and the Federal Bureau of Investigation (FBI), as may be applicable, to conduct on behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this chapter. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this chapter.
- C. The Police Chief shall periodically check with the Executive Office of Public Safety and Security (EOPSS) to determine if there have been any updates or changes in the procedure for obtaining criminal history information, to verify that the Town of Agawam remains in compliance with those procedural requirements.

§ 91-2. Submission of applicants to fingerprinting.

- A. Any applicant for a license to engage in any of the following occupational activities within the Town shall submit a full set of fingerprints taken by the Agawam Police Department within 10 days of the date of the application for a license, for the purpose of conducting a state and national criminal record background check to determine suitability of the applicant for the license:
 - (1) Manager of alcoholic beverage license.
 - (2) Peddling and soliciting.
 - (3) Owner or operator of taxi service.
 - (4) Dealer of secondhand articles.
 - (5) Ice cream truck vendor.
- B. At the time of fingerprinting, the Police Department shall notify the individual fingerprinted that the

29. Editor's Note: This ordinance was adopted as Ch. 178 but was renumbered to maintain the alphabetical organization of the Code.

fingerprints will be used to check the individual's FBI criminal history records.

§ 91-3. Processing of background checks; communication of results.

- A. The Police Department shall transmit fingerprints it has obtained pursuant to § 91-2 of this chapter to the Identification Section of the Massachusetts State Police, the DCJIS and/or the FBI as may be necessary for the purpose of conducting fingerprint-based state and national criminal record checks of license applicants specified in § 91-2.
- B. An applicant may request and receive a copy of his or her criminal history records from the Police Department. Should an applicant wish to correct or amend the information contained in it, he or she will be directed to the DCJIS for state records and the FBI for national records.
- C. The Police Department shall communicate the results of the fingerprint-based criminal record background checks to the applicable licensing authority within the Town. The Police Department shall indicate whether the applicant has been convicted of, or is awaiting final adjudication for, a crime that bears upon the applicant's suitability, or any felony or misdemeanor involving the use of force or the threatened use of force, controlled substances or a sex-related offense.

§ 91-4. Reliance on results.

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal history record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in § 91-2. A Town licensing authority may deny any application for a license on the basis of the results of the fingerprint-based criminal record background check, if it determines that the results of the check render the subject unsuitable for the proposed occupational activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on the applicant's suitability in making this determination. The licensing authority shall not deny a license based on information in a criminal record unless the applicant has been afforded a reasonable time to correct or complete the record or has declined to do so.

§ 91-5. Compliance with law, regulation and Town policy.

Implementation of this chapter and the conducting of fingerprint-based criminal record background checks by the Town shall be in accordance with all applicable laws, regulations, and Town policies, which shall include record retention and confidentiality requirements. The Town shall not disseminate the results of fingerprint-based criminal record background checks except as may be provided by law, regulation, and Town policy. The Town shall not disseminate criminal record information to unauthorized persons or entities.

§ 91-6. Fees.

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be \$75. A portion of the fee, as specified in M.G.L. c. 6, § 172B1/2, shall be deposited into the Firearms Fingerprint Identity Verification Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

Chapter 96**DOGS AND OTHER ANIMALS**

[HISTORY: Adopted by the Town Council of the Town of Agawam 11-21-2016 by TOR-2016-5.³⁰ Amendments noted where applicable.]

GENERAL REFERENCES

Animals crossing sidewalks — See Ch. 155, Art. I, § 155-14.

§ 96-1. Authority.

The Town may create ordinances relating to animals pursuant to MGL c. 140, § 173.

§ 96-2. Definitions.

As used in this chapter, the following interpretations shall be placed on the words and phrases hereinafter mentioned:

ADEQUATE SHELTER — A structure that is large enough for the animal to stand naturally, turn around and lay down inside of the structure, which must have three sides with a roof to prevent the animal from being exposed to the elements of weather. During cold weather, a moveable flap shall be placed over the entrance to a dog shelter to preserve the dog's body heat.

AT LARGE — Any dog, farm animal, livestock or fowl which is off the owner's or keeper's property and not under the control of the owner or keeper.

ATTACK — Aggressive physical contact initiated by an animal.

COMPANION ANIMAL — Any dog or cat, or animal kept for the purposes of being a "pet." "Companion animal" shall not include a farm animal, livestock or fowl.

DANGEROUS DOG — A dog that either: without justification, attacks a person or domestic animal causing physical injury or death; or behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to one or more persons, domestic or owned animals.

FARM ANIMAL — Any poultry, ungulate, species of cattle, sheep, swine, goats, llamas, equine, or other fur-bearing animals which are raised for commercial or subsistence purposes.

KEEPER — Any person, business, corporation, entity or society, other than the owner, harboring or having in such person's possession any dog, cat, farm animal, livestock or fowl.

KENNEL, COMMERCIAL — Any premises maintained for any of (or combination of) the following:

A. The overnight boarding or training of any number of dogs.

B. Any pet store that sells dogs or cats.

KENNEL, RESIDENTIAL — Any premises where an owner or keeper maintains as companion animals or pets, or for breeding, four or more but not more than nine dogs six months of age or older.

30. Editor's Note: This ordinance also repealed former Ch. 96, Dogs and Other Animals, adopted 6-4-2011 by TOR-2011-2.

LIVESTOCK or FOWL — Any fowl or other animal, including farm animals, kept or propagated by the owner for food or as a means of livelihood and deer, elk, cottontail rabbit, northern hare, pheasant, quail, partridge and other birds or quadrupeds determined by the Department of Fisheries and Wildlife and Environmental Law Enforcement to be wild and kept by, or under permit from, said department in proper houses or suitable enclosed yards. Such term shall not include dogs, cats and other pets.

OWNER — Any person possessing, harboring, keeping, having an interest in, or having control or custody of an animal. If a person under the age of 18 owns the animal, that person's custodial parent(s) or legal guardian(s) shall be responsible for complying with all requirements of this chapter.

SEVERE INJURY — Any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or corrective or cosmetic surgery.

§ 96-3. Licensing of dogs.

- A. Any person who, at the commencement of a license period (April 1 through March 31), is or who, during any license period, becomes the owner or keeper of a dog six months old or older, shall cause the dog to be licensed within 30 days. The Animal Control Officer shall issue dog licenses and tags on a form prescribed and furnished by the Town.
- B. The license record shall include the name, address and phone number of the owner or keeper of the dog, and the name, license number, breed, color, age, sex and the rabies expiration date of each dog and indicate whether the dog has been spayed or neutered. The license tag shall include the license number, the name of the Town and the year of issue.
- C. The owner or keeper shall cause each dog to wear around its neck or body a collar or harness to which he shall securely attach the license tags. In the event that any tag is lost, defaced, or destroyed, a substitute tag shall be obtained by the owner or keeper from the Animal Control Officer at the cost of \$5. Such monies shall be transmitted to the Town Treasurer in the same manner as license fees. The Animal Control Officer shall not issue a license for any dog unless the owner or keeper provides the Animal Control Officer with a veterinarian's certificate verifying that the dog is currently vaccinated against rabies.
- D. The Animal Control Officer shall not grant such licenses for any unvaccinated dog unless the owner thereof provides either a veterinarian's certificate that such dog has been certified exempt from rabies vaccination or a notarized letter from a veterinarian that a certificate was issued.

§ 96-4. Licensing fees.

- A. The following is a list of licensing fees for dogs to be licensed in the Town:
 - (1) Male dog: \$25.
 - (2) Female dog: \$25.
 - (3) Spayed female dog: \$10.
 - (4) Neutered male dog: \$10.
- B. Exceptions.
 - (1) If the owner or keeper of any dog has a written statement from a veterinarian indicating that because of age, infirmity or other physical condition spaying or neutering is deemed inadvisable and presents said written statement to the Animal Control Officer, the licensing fee shall be \$10.

- (2) No fee shall be charged for a license for a dog specifically trained to lead or serve a blind, deaf, or handicapped person upon presentation to the Animal Control Officer of a certificate of such training.
- C. Overdue and out-of-Town licenses. No license may be issued for any dog unless all prior overdue licenses (i.e., licenses from prior years which were required but not obtained) have been paid for.
 - (1) Any owner or keeper of a dog who moves into the Town and has a valid dog license for his/her dog from another town or town in the commonwealth shall, within 30 days, obtain a dog license for a fee of \$5 upon producing evidence of the previous license.
 - (2) The Animal Control Officer shall collect a late fee of \$10 for every dog license issued after the thirty-day period, as defined in § 96-3.
- D. Any person, who violates the provisions of § 96-3 or 96-4 shall receive a written warning, issued by the Animal Control Officer or police officer, for the first offense, and for each subsequent offense shall be liable for payment of a fine of \$50, which shall be paid to the Town Treasurer.

§ 96-5. Vaccination against rabies.

- A. The owner or keeper of a dog, cat or ferret in the Town six months of age or older shall cause such dog, cat or ferret to be vaccinated against rabies by a licensed veterinarian using a licensed vaccine according to the manufacturer's directions and shall cause such dog, cat or ferret to be vaccinated at intervals recommended by the manufacturer. Unvaccinated dogs and cats acquired or moved into the commonwealth shall be vaccinated within 30 days after acquisition or arrival into the Town or upon reaching the age of six months, whichever last occurs. Such owner or keeper shall procure a veterinarian's certificate that such animal has been so vaccinated, setting forth the day of such vaccination and the duration of immunity, or a notarized letter from a veterinarian that a certificate was issued.
- B. The veterinarian shall issue a tag with each certificate of vaccination. The tag shall be secured by the owner or keeper of such dog or cat to a collar or harness made of suitable material to be worn by the dog or cat; provided, however, the owner of a cat or ferret may choose not to affix a tag to his cat or ferret, but shall have the tag and certificate available for inspection upon demand by animal control officers, police officers or other such authorized officials of the Town.
- C. Vaccinated animals, dog, cat or ferret, shall be revaccinated periodically in accordance with the rules and regulations adopted by and promulgated by the Massachusetts Department of Public Health.
- D. Any person who violates the provisions of § 96-5 shall receive a written warning, issued by the Animal Control Officer or police officer, for the first offense, and for each subsequent offense shall be liable for payment of a fine of \$50, which shall be paid to the Town Treasurer.

§ 96-6. Limit on number of companion animals.

- A. No person shall keep more than three dogs over the age of six months at any residence without complying with the requirements of the Town of Agawam Zoning Ordinance,³¹ and obtaining a kennel license.
- B. Additional restrictions on the number of companion animals may be imposed by the Animal Control

31. Editor's Note: See Ch. 180, Zoning.

Officer if, after an investigation of a dwelling or property, it is revealed the living conditions are not healthy and these conditions are the result of an overcrowding of animals in said dwelling or property.

- C. Any person who violates the provisions of this section shall receive a written warning, issued by the Animal Control Officer or police officer, for the first offense, and for each additional subsequent offense shall be liable for payment of a fine of \$50 for each day in violation of this section, which shall be paid to the Town Treasurer. A reasonable amount of time will be allowed for the proper placement of animals into alternate care before fines are imposed. The Animal Control Officer may assist persons in need with placement of animals if necessary.

§ 96-7. Kennel licenses.

- A. Any person or business maintained for a residential kennel or commercial kennel as defined in this chapter shall obtain the appropriate kennel license from the Building Inspector. The Building Inspector shall not issue any kennel license for any use not in compliance with the Zoning Ordinance.³² The Building Inspector shall not issue a residential kennel license unless the owner or keeper provides the Town Clerk with a veterinarian's certificate verifying that each dog six months of age or older is currently vaccinated against rabies.
- B. Issuance of a residential or commercial kennel license, and continued use of said license, shall be contingent upon inspection and approval by the Animal Control Officer to ensure that basic standards of cleanliness and proper care and confinement of said dogs exist on the premises.
- C. Such license shall be in a form prescribed by the Building Inspector. Such license shall be in lieu of any other license for any dog while kept at such kennel during any portion of the period for which the kennel license is issued. The holder of a license for a kennel shall cause each dog kept therein to wear a collar or harness of leather or other suitable material to which shall be securely attached a tag upon which shall appear the number of such kennel license, the year of issue and the inscription "AGAWAM."
- D. The fee for each license for a kennel shall be \$200 for a residential kennel license and \$400 for a commercial kennel license.
- E. The name and address of the owner of each dog kept in any kennel, if other than the person maintaining the kennel, and a veterinarian's certificate verifying that each dog six months of age or older is currently vaccinated against rabies, shall be kept on file thereat and available for inspection by the Animal Control Officer or any authorized person.
- F. The Building Inspector shall, upon application, issue without charge a kennel license to any domestic charitable corporation, incorporated exclusively for the purpose of protecting animals from cruelty, neglect, or abuse, and the relief of suffering among animals. A veterinary hospital shall not be considered a kennel unless it contains an area for the selling, breeding, or boarding of dogs for other than medical purposes, in which case it shall apply for a kennel license.
- G. The license period for a kennel license shall be from January 1 to December 31.
- H. Any person who violates the provisions of this section shall receive a written warning, issued by the Animal Control Officer or police officer, for the first offense, and for each subsequent offense shall be liable for payment of a fine of \$50 for each day in violation of this section, which shall be paid to the Town Treasurer.

32. Editor's Note: See Ch. 180, Zoning.

§ 96-8. Kennel inspection and regulation.

- A. The Animal Control Officer, Board of Health, Zoning Enforcement Officer and/or any agent authorized by the Town may, at any time during normal business hours, inspect or cause to be inspected any kennel or property holding a kennel license, residential or commercial.
- B. If, in his judgment, the Animal Control Officer, Board of Health, Zoning Enforcement Officer or any agent authorized by the Town, after inspection, determines the kennel is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, the Mayor (or his/her designee) may, by order, revoke or suspend, and in case of suspension, may reinstate such license issued under this chapter.
- C. Upon written complaint from the Animal Control Officer or a resident of the Town of Agawam, filed with the Chief of Police, setting forth that they are aggrieved, annoyed to an unreasonable extent, by one or more dogs at a kennel because of the excessive barking or vicious disposition of said dogs or other conditions connected with such kennel constituting a public nuisance, the Chief of Police (or his designee), within seven days after the filing of such petition, shall give notice to all parties in interest of a public hearing, conducted by the Chief of Police or his/her designee, to be held within 14 days after the date of such notice.
- D. Within seven days after such public hearing, said Chief of Police (or his designee) shall make an order either revoking or suspending such kennel license or otherwise regulating said kennel, or dismissing said petition.
- E. The holder of such license aggrieved by any decision rendered by the Chief of Police (or his designee) may appeal such decision in accordance with MGL c. 140, § 137C.
- F. Any person maintaining a kennel after the license has been so revoked, or while such license is so suspended, may be punished by a fine of \$50 for each day in violation of said revocation or suspension, which shall be paid to the Town Treasurer.

§ 96-9. Barking dogs.

- A. No person owning or keeping or otherwise responsible for a dog shall allow or permit said dog to annoy another person's reasonable right to peace or privacy by making loud and continuous noise, where such noise is plainly audible at a distance of 150 feet from the building, premises, vehicle or conveyance housing said dog, and such noise is continuous in excess of 10 minutes. The fact that such noise is plainly audible at such distance and continuous in excess of 10 minutes shall be prima facie evidence of a violation, as long as the barking is not the result of willful instigation from a third party.
- B. Any person who violates this provision shall receive a written warning, issued by the Animal Control Officer or police officer, for the first offense, and shall be liable for payment of the following fines: \$50 for the second offense, \$75 for the third offense, and \$100 for the fourth offense and each subsequent offense. Said fine shall be paid to the Town Treasurer.

§ 96-10. Payments to veterinarians for emergency treatment of dogs or cats injured on ways.

A veterinarian registered under MGL c. 112, § 55 or 56A who renders emergency care or treatment to, or who euthanizes, a dog or cat that is injured on any way shall receive payment from the owner of such dog or cat, if known, or, if not known, from the city or town in which the injury occurred in an amount not to exceed \$250 for such care, treatment or euthanization; provided, however, such emergency care, treatment

or euthanization shall be rendered for the purpose of maintaining life, stabilizing the animal or alleviating suffering until the owner or keeper of the dog or cat is identified or for 24 hours, whichever is sooner. A veterinarian who renders such emergency care or treatment to a dog or cat or euthanizes a dog or cat shall notify the municipal animal control officer and the animal control officer shall assume control of the dog or cat or the remains of the dog or cat.

§ 96-11. Dogs at large prohibited; leashing required.

- A. Any person owning, keeping or being responsible for a dog shall not allow nor permit said dog to run at large on any of the streets or public places in the Town or upon any private property, unless the owner or lawful occupant of such property grants permission therefor.
- B. No dog shall be allowed or permitted in any public place or street within the Town unless it is effectively restrained and controlled by a chain or other form of leash, not to exceed a length of six feet, that is sufficient to hold the dog, or unless it is within and confined to a motor vehicle.
- C. In any prosecution hereunder, the presence of such dog at large upon premises other than the premises of the owner or keeper of such dog shall be prima facie evidence that such knowledge and permission was not granted.
- D. The owner or keeper of a dog who has violated any of the provisions of this section shall be punished by a written warning, issued by the Animal Control Officer or police officer, for the first offense, a fine of \$75 for the second offense, a fine of \$100 for the third offense and \$200 for the fourth and each subsequent offense, to be paid to the Town Treasurer.

§ 96-11.1. Other animals at large.

- A. Any person owning, keeping or being responsible for any farm animal, livestock or fowl shall not permit said animal to go at large or depasture on any of the streets or public places in Town or upon any private property, unless the owner or lawful occupant of such property grants permission therefor.
- B. The owner or keeper of a farm animal, livestock or fowl who has violated any of the provisions of this section shall be punished by a written warning, issued by the Animal Control Officer or police officer, for the first offense, a fine of \$75 for the second offense, a fine of \$100 for the third offense and \$200 for the fourth and each subsequent offense, to be paid to the Town Treasurer.

§ 96-12. Enforcement; impounding of dogs at large.

It shall be the duty of the Animal Control Officer or police officer to apprehend any dog found running at large and to impound such dog in the animal shelter or other boarding facility.

- A. The Animal Control Officer or impounding officer shall keep a register and make a complete record of each impounding.
- B. The record shall contain the following information: breed, color, and sex of each dog; whether or not the dog is licensed, the license number, if any; the name and address of the owner, if known; the date and place of apprehension; and the location where the dog is being kept.
- C. The owner of an impounded dog, when known, shall be notified verbally or in writing of such impoundment or, if the owner is unknown, written notice shall be posted with the animal control office and public access television channel.
- D. Notice shall contain a description of the dog, date and place of apprehension and where the dog is

being kept.

- E. The owner or keeper or responsible person may reclaim the dog so impounded upon payment of the license fee, if unpaid, and proof of rabies vaccination in the form of a rabies vaccination certificate from a certified veterinarian, and the payment of impoundment and boarding fees and the costs relevant to such impoundment.

§ 96-13. Fee for reclaiming impounded dog; failure to claim.

- A. An owner or keeper of a dog reclaiming an impounded dog shall pay to the Animal Control Officer for deposit with the Town Treasurer an administrative fee of \$125. In the event that the owner or keeper of the dog being reclaimed provides proof of rabies vaccination sufficient for the Animal Control Officer to determine that the rabies vaccination for the animal being reclaimed is current, the Animal Control Officer shall reduce the reclamation fee to \$50. The reclamation fee is an administrative fee in addition to any fine due of the owner or keeper of the animal for violation of the animal control ordinances of the Town.
- B. Any dog whose owner or keeper fails to claim said dog within seven days from the day of impounding shall be subject to the provisions set forth in MGL c. 140, § 151A.

§ 96-14. Removal of dog or cat waste from property.

- A. No person owning or having the care, custody, or control of any dog or cat shall permit said dog or cat to soil or defile or commit any nuisance upon any sidewalk, street, thoroughfare, wetland, in or upon public property or in or upon the property of persons other than the owner or persons having the care, custody, or control of such dog or cat, unless said person picks up any such waste and disposes of it in a sanitary manner.
- B. Any person found in violation of § 96-14 by the Animal Control Officer or police officer shall be liable for payment of a fine of \$25 for each offense, which shall be paid to the Town Treasurer.

§ 96-15. Inhumane treatment.

- A. Any person owning, keeping, in control of or otherwise responsible for a companion animal, farm animal, livestock or fowl, who, in the opinion of the Animal Control Officer or police officer, is treating the aforementioned animals in an inhumane manner [such treatment may include, but not be limited to: prolonged chaining or tethering of animals (see below); extended outdoor confinement, lack of access to food, water or shelter; exposure to hazardous conditions, habitually at large], shall be subject to a written warning and/or a fine, issued by the Animal Control Officer or police officer, of \$150 for the first offense and \$300 for each subsequent offense, paid to the Town Treasurer.
- B. If any of the aforementioned persons violate this section more than three times, the Animal Control Officer or police officer may, after a hearing conducted by the Chief of Police or his/her designee, with not less than 10 days' notice to the owner or keeper, confiscate the subject animals or order the person to permanently surrender the animal or animals for placement. If placement is not obtainable, the animal or animals may be ordered euthanized.
- C. Where, in the opinion of the Animal Control Officer or police officer, said aforementioned treatment of said animals places the animals at imminent risk, the Animal Control Officer or police officer may immediately remove and impound the animal for its own protection.

§ 96-15.1. Tethering and outdoor confinement of dogs.

A person owning or keeping a dog may confine such dog outside, subject to the restrictions in MGL c. 140, § 174E and in compliance with the following:

- A. No person owning or keeping a dog shall chain or tether a dog to a stationary object, including, but not limited to, a structure, dog house, pole or tree, for longer than five consecutive hours during a twenty-four-hour period.
- B. No dog shall be penned, kenneled, or kept in any other outdoor enclosure for more than 12 consecutive hours in a twenty-four-hour period.
- C. No dog shall be kept outside in any manner between 11:00 p.m. and 6:00 a.m. This section shall not prevent an owner/keeper from walking a dog on leash at any time.
- D. No dog shall be kept outside in cases of extreme weather, when a heat/cold advisory is in effect or during any time in which an extreme weather advisory has been issued by the Town or state, including but not limited to floods, hurricanes, tornadoes and tropical storms, unless the tethering is for not more than 15 minutes.

§ 96-16. Dangerous and potentially dangerous animals.

- A. Procedure for determining a potentially dangerous or dangerous dog or cat. Based upon receipt of a written complaint by a citizen requesting a determination that a dog is potentially dangerous or dangerous, or on the initiative of an Animal Control Officer or police officer based on information received, the Chief of Police, or the Chief of Police's designee may make an investigation and determination that a dog is potentially dangerous or dangerous. The investigation and determination shall be in accordance with the provisions of this chapter and shall be consistent with the procedures delineated in MGL c. 140, § 157.
- B. Determination of potential danger or danger.
 - (1) When a dog is determined to be potentially dangerous or dangerous, the Chief of Police, or the Chief of Police's designee, may order any or all of the following:
 - (a) Spaying or neutering;
 - (b) Microchip identification, tattooing or other means of permanent identification;
 - (c) Behavior training and behavioral assessment;
 - (d) Any other order concerning the keeping, restraint, removal from the Town, humane euthanasia, or disposal of such dog as may be deemed necessary, in accordance with MGL c. 140, § 157.
 - (2) Such orders may include:
 - (a) Requirements at home for dogs that have been determined to be potentially dangerous or dangerous. While on the owner's or keeper's property, a dog that has been determined to be potentially dangerous or dangerous may be ordered securely confined indoors or in a security-enclosed and locked pen or structure of a type meeting standards established by the Animal Control Officer, suitable to prevent the entry of young children and designed to prevent the dog from escaping. Such pen or structure must have a minimum dimension of 12 feet by 12 feet by six feet high, with a solid floor to prevent the dog from digging

out and a top to prevent the dog from climbing out. If the pen has no solid floor secured to the sides, the sides must be embedded into the ground no less than two feet to prevent the dog from digging out. The enclosure must provide the dog with adequate shelter from the elements of nature. The owner shall conspicuously display a sign with a symbol warning children who cannot read of the presence of a dangerous dog.

- (b) Requirements outside of the home for dogs that have been determined to be potentially dangerous or dangerous.

[1] While off the owner's or keeper's premises, a dog that has been determined to be potentially dangerous or dangerous must be restrained by a lead approved by the Animal Control Officer not exceeding six feet in length and must be under the direct physical control of a responsible, able-bodied adult. No dog designated as a potentially dangerous or dangerous dog shall be permitted at public festivals, carnivals, parades or similar events. The dog may be required while in public to wear a muzzle designed to prevent the dog from biting. The muzzle must prevent injury to the dog and must not interfere with the dog's vision or respiration.

[2] The owner or keeper of a dog that has been determined to be potentially dangerous or dangerous must immediately notify the Animal Control Officer if the dog:

[a] Is loose or unconfined;

[b] Bites a person or attacks another animal;

[c] Is sold, given away or dies;

[d] Has been moved to another address, and the location of the new address.

- (c) Exemptions.

[1] No dog shall be deemed dangerous based solely upon growling or barking or upon the breed of dog. If such dog was reacting to another animal or to a person and such dog's reaction was not grossly disproportionate to any of the following circumstances: such dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault; the person who was attacked or threatened by the dog was committing a crime upon the person or property of the owner or keeper of such dog; the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking such dog; at the time of such attack or threat the person or animal that was attacked or threatened by such dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure, including, but not limited to, a gated, fenced-in area if the gate was closed, whether locked or unlocked; provided, however, that if a person is under the age of seven, it shall be a rebuttable presumption that such person was not committing a crime, provoking the dog or trespassing.

[2] The provisions of this section shall not apply to dogs owned by law enforcement agencies or law enforcement officers in the performance of police work.

- C. Penalties. Any person owning or harboring such dog that has been deemed potentially dangerous or dangerous who fails to comply with an order of the Chief of Police, or his/her agents, in accordance

with this section, shall be punishable by a fine of \$150 for the first offense and \$300 for a subsequent offense, paid to the Town Treasurer.

- (1) If said animal is found on property not owned or controlled by its owner or keeper, or is found to be not restrained in a secure area, or is found to be in violation of any order issued by the Chief of Police, said dog may be subject to further restriction, including an order of removal from the Town or humane euthanasia, in accordance with the laws of the commonwealth.
 - (2) Each day there exists a violation of any of the provisions of this section shall constitute and be punishable as a separate offense.
- D. A dog that has been determined to be potentially dangerous or dangerous shall not be considered legally licensed, pursuant to MGL c. 140, §§ 137 and 147, unless the owner or keeper is in full compliance with this chapter.
- E. All dangerous dogs confined outdoors in a secure pen shall adhere to the provisions named under § 96-15.1, Tethering and outdoor confinement of dogs.

§ 96-17. Motor vehicles striking, injuring or killing dogs or cats.

The operator of a motor vehicle that strikes and injures or kills a dog or cat on the byways of the Town shall forthwith report such an accident to the owner or keeper of said dog or cat or to a police officer or Animal Control Officer. A violation of this section shall be punished by a fine of \$75, to be paid to the Town Treasurer.

§ 96-18. Enforcement.

These provisions may be enforced through and pursuant to the noncriminal disposition procedure set forth in these ordinances.

§ 96-19. Severability.

These rules and regulations are adopted with the intent that each of them shall have force and effect separately and independently of each other, except insofar as by express reference or necessary implication any rule or part of any rule is made dependent upon another rule or part thereof.

FEES

Chapter 103

FEES

[HISTORY: Adopted by the Town Council of the Town of Agawam as last amended 4-3-2017 by TOR-2017-4. Subsequent amendments noted where applicable.]

ARTICLE I
Services and Licenses

§ 103-1. Board of Appeals.

Board of Appeals fees shall be as follows:

Type	Fee
Filing fee:	
Variance and specifications permit	\$250
Special use permit exception	\$250

§ 103-1.1. City Council. [Added 4-2-2018 by TOR-2018-2]

Agawam City Council fees shall be:

Type	Fee
Filing fee:	
Special permit	\$250

§ 103-2. Assessor.

Assessor fees shall be as follows:

Type	Fee
Map (8" x 14")	\$3
Record cards	\$1
Current assessment letter	\$3
Real estate excise inquiry	\$5
Bank excise tax inquiry	\$3
Registry legal reference inquiry	\$3
Abutter's List	\$10

§ 103-3. Building Department.

- A. Building Department fees shall be as follows. Whenever there is any uncertainty as to the classification, fee or fine of a building permit, the Building Official shall determine the classification, fee or fine within which it falls.
- B. Electrical permits should be applied for prior to the start of work being done, but not later than five days after work commences. If this state requirement is not followed, a fee of \$50, in addition to the regular fees listed below, will be charged.
- C. All building, plumbing and gas permits must be applied for prior to the start of any work being done

or a fee of \$50, in addition to the regular fees listed below, will be charged. [Amended 4-4-2022 by Ord. No. TOR-2022-4]

Type	Fee
Building - Residential	
Single-family (include garage, exclude basement if nonhabitable rooms)	\$0.45 per sq. ft.
Two-family (include garage, exclude basement if nonhabitable rooms)	\$0.45 per sq. ft.
Multifamily, condo, motel or hotel (include basement)	\$0.45 per sq. ft.; \$500 min.
Additions or alterations	\$0.30 per sq. ft.; \$100 min.
Accessory buildings	\$0.30 per sq. ft.; \$50 min.
Fence	\$45
Roofing (shingling and stripping only/no structural changes)	\$45
Roofing (with structural repairs)	\$100
Siding	\$45
Replacement windows/doors (single- and two-family only)	\$45
Replacement windows/doors (all others)	\$7.50 per window/door; \$45 min.
Insulation	\$45
Solid fuel appliance	\$45
Chimney	\$45
Construction trailer or temporary housing (fire-damaged residence)	\$75
Demolition (include basement)	\$75 per floor
Demolition (accessory structures, pools)	\$30
Swimming pools and spas - above ground (separate installations)	\$75
Swimming pools - in ground	\$100
Decks	\$0.30 per sq. ft.; \$50 min.
Sheet metal	\$50
Solar collectors (electrical permit also required)	\$75
Solar - independent accessory structures	\$20 per structure
Building - Business, Institutional and Industrial	
Building (include basement)	\$0.45 per sq. ft.; \$400 min.
Additions or alterations	\$0.40 per sq. ft.; \$200 min.
Accessory buildings	\$0.40 per sq. ft.; \$100 min.
Signs (attached or freestanding)	\$60

Type	Fee
Tents (for retail purposes)	\$50
Demolition (including basement)	\$150 per floor
Fence	\$50
Re-occupancy only (no changes, no work being done)	\$45
Roofing (no structural changes - covering only)	\$0.05 per sq. ft.; \$100 min.
Roofing (with structural changes)	\$0.10 per sq. ft.; \$200 min.
Replacement windows	\$7.50 per window; \$45 min.
Commercial kitchen exhaust hood	\$75
Sheet metal	\$100
Cell tower	\$2 per ft.
Cell tower - cabinet	\$250
Cell tower - antenna (new or replacement)	\$100 each
Solar energy system	\$0.20 per sq. ft. of panel coverage
Fire Prevention - Residential and Commercial	
Fire suppression systems (less than 5,000 square feet)	\$75
Fire suppression systems (more than 5,000 square feet)	\$0.05 per sq. ft.
Fire warning systems (less than 5,000 square feet)	\$75
Fire warning systems (more than 5,000 square feet)	\$0.02 per sq. ft.
Commercial kitchen hood fire suppression	\$75
Electrical - Residential	
Single-family	\$150
Two-family	\$200
Multifamily, condo, motel or hotel (per unit)	\$80
Additions or alterations	\$80
Service change or alteration (per family unit)	\$45
Solar collectors	\$100
Generator	\$50
Construction trailer or temporary housing	\$45
Security systems, data, low voltage (under 3,000 square feet/over 3,000 square feet)	\$45/\$65
Security systems, data, low voltage (wireless systems)	\$40
Electrical - Business, Institutional and Industrial	
Signs (attached or freestanding, each)	\$60
Service change (per unit)	\$0.40 per amp; \$60 min.

Type	Fee
Temporary structures	\$60
Replacement - HVAC units	\$40 each
Solar energy systems	\$100 per inspection
Low voltage, security and data systems (under 3,000 square feet/ over 3,000 square feet)	\$60/\$100
Blanket maintenance fee (subject to the conditions below)	\$500
Any business operation which maintains an electrical maintenance force shall pay a blanket fee of \$500 annually for work done on premises subject to the following:	
1.	The permit application and fees are due the first day of January each year.
2.	Any work done by outside contractors is subject to appropriate action of this schedule.
3.	A log of work completed shall be kept by the supervisor of electrical maintenance, and arrangements shall be made for the wiring inspection semi- annually.
Plumbing - Residential	
Single-family	\$100 + \$5 per fixture
Multifamily, condo, motel or hotel (per unit)	\$75 (Unit) + \$5 per fixture
Additions or alterations	\$50 + \$5 per fixture
Water heater (tank or tankless, separate installation or replacement)	\$45 (may also require a gas permit)
Plumbing - Business, Institutional and Industrial	
New construction	\$150 + \$10 per fixture
Additions or alterations	\$75 + \$10 per fixture
Gas - Residential	
Supply test	\$45
Gas piping only	\$45
Gas water heater (replacement gas piping only)	\$30
Gas piping plus heater or appliance	\$45 + \$20 per appliance
**Maximum charge no matter how many appliances	\$85
Gas - Business, Institutional and Industrial	

Type	Fee
Supply test	\$60
Gas piping only	\$60
Gas piping plus heater or appliance	\$60 + \$25 per appliance
Reinspection required for failed inspection:	\$50 per inspection

NOTE: A fine of 2X the permit fee will be required for proceeding with any work before any permit is granted or if any work is intentionally omitted on the application for permit. Separate permits are required as necessary for building, plumbing and gas. The above applies to electrical permit fees, if the permit is not taken out first or within five days of starting electrical work.

Any work not specifically covered by this fee schedule: those permit fees for building, electrical, plumbing and gas shall be established by the Inspector of Buildings.

Filing fees shall be waived for agencies of the Town of Agawam. Filing fees shall also be waived for any handicap ramp built to a residential unit, which is used strictly for residential purposes.

§ 103-4. Town Clerk.

Town Clerk fees shall be as follows:

Type	Fee
Amusement license:	
Per year per machine per location	\$50
Over 20 machines, per machine per year per location	\$100
Weekly amusement, per year	\$50
Class I dealers' license, per year	\$200
Class II dealers' license, per year	\$200
Class III dealers' license, per year	\$200
Class IV license, per year	\$200
Class V license, per year	\$200
Junk dealers' license, per year	\$200
Taxi license, per year	\$200
Billiards/bowling license, per year	\$200
Zoning bylaws book	\$50
Town Code book	\$66
Update service of Town Code	\$25
Street listing book	\$20
Farmer survey	\$2
Rules and Regulations of Planning Board (subdivision control)	\$25

Type	Fee
Agawam Farmlands (A Plan for Preservation)	\$2
Auctioneer's 1-day permit	\$20
Auctioneer's (auction house) annual permit	\$150
Raffle permits	\$20
Gasoline storage (own use):	
Not more than:	
1,000 gallons	\$50
Renewal	\$50
3,000 gallons	\$50
Renewal	\$50
5,000 gallons	\$50
Renewal	\$50
10,000 gallons	\$100
Renewal	\$50
More than:	
10,000 gallons	\$200
Renewal	\$100
Gasoline storage (resale):	
Not more than:	
1,000 gallons	\$50
Renewal	\$50
5,000 gallons	\$100
Renewal	\$50
10,000 gallons	\$100
Renewal	\$50
Limit	
30,000 gallons	\$200
Renewal	\$100
Amendment to birth records to legitimate	\$25
Correcting errors in records:	
Birth	\$20
Marriage	\$20
Death	\$20
Furnishing certified copy of:	

Type	Fee
Birth	\$10
Marriage	\$10
Death	\$10
Furnishing abstract copy of record of:	
Birth	\$10
Marriage	\$10
Death	\$10
Marriage intention notice certificate	\$20
Business certificate other than real name	\$20
Change in business certificate other than real name:	
Change of residence	\$10
Discontinuance, retirement or withdrawal	\$10
Change of location of business	\$10
Certified copy of business certificate other than real name	\$10
Voter's identification card	\$5
Uniform Commercial Code:	
Financing statements	\$10
Termination statements	\$5
Amendment, continuance, statements, assignments	\$10
Copy of any of above	\$3
Certificate of Registration:	
Optometry recording	\$25
Certified copy of optometry registration recording	\$25
Physician or osteopath recording	\$25
Podiatry recording	\$25
Examining records or papers relating to:	
Birth	\$10
Death	\$10
Marriage	\$10
Delayed record of birth	\$15
Copy fee, per page	Per MGL c. 66, § 10
Postage and handling	Annual cost
Pole location fees:	
Per petition	\$50

Type	Fee
Each additional street listed on petition	\$10

§ 103-5. Conservation Commission.

Conservation Commission fees shall be as follows:

Type	Fee
Notice of intent:	
Category 1 per activity	\$55
Category 2 per activity	\$250
Category 3 per activity	\$525
Category 4 per activity	\$725
Category 5 per activity,	\$2 per linear foot, not less than \$50 nor more than \$1,000
Determination of applicability	\$50

§ 103-6. Data processing.

Data processing fees shall be as follows:

Type	Fee
Voters labels (approximately 13,000 labels)	\$448.50
Voter computer tape	\$431
Mailing label, per label	\$0.05
Mailing list, per name on list	\$0.05
Street list (17 and over) computer tape	\$650
Compact disk voters list	\$25

§ 103-7. Fire Department.

Fire Department fees shall be as follows:

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
NFPA 1 Chapter 10 - General Requirements			
Open burning - disposal of yard waste	310 CMR 7.07; NFPA 1 Section 10.11.4	\$10 annually	

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Ceremonial bonfires	MGL c. 111, § 142H and I; NFPA 1 Sections 10.11.4.1 and 10.11.4.2	\$10	
Use of candles, open flames, and portable cooking in assembly areas, dining areas of restaurants, and drinking establishments	NFPA 1 Section 10.11.1	\$10 annually	
Burning of Christmas trees	MGL c. 111, § 142G; NFPA 1 Sections 1.12.8, 10.11.4 and 10.14	\$20 plus fire standby detail as required	
Use of torch or other flame or heat-producing device	NFPA 1 Section 10.11.9.1	\$30 per week	
Use of canine guards	NFPA 1 Section 10.22.1	\$30 annually	
Fumigation and insecticidal fogging	NFPA 1 Section 10.11.1	\$30 per day	
NFPA 1 Chapter 11 - Oil Burners and Fuel Oil			
Installation or alteration of any fuel oil burning equipment	NFPA 1 Section 11.5.1.8; MGL c. 148, §§ 10A, 23 and 24	\$30	
Installation or removal of fuel storage tank, aboveground	NFPA 1 Sections 11.5.1.10.5(6) and 11.5.10.5.1	\$30 per tank	
Installation or removal of fuel storage tank, underground, 0 - 1,500 gallons	NFPA 1 Sections 11.5.1.10.5(6) and 11.5.10.5.1	\$30 per tank	\$25
Installation or removal of fuel storage tank, underground, >1,500 gallons	NFPA 1 Sections 11.5.1.10.5(6) and 11.5.10.5.1	\$50 per tank	\$75
NFPA 1 Chapter 13 - Fire Protection Systems and Related Equipment			
Residential sale or transfer of property, inspection of smoke/CO devices, 1 to 6 dwelling units	NFPA 1 Chapter 13; MGL c. 148, §§ 26F and 26F1/2	\$50 per dwelling unit, \$150 maximum	Fee for reinspection due to noncompliance: permit fee x 0.5

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Residential sale or transfer of property, inspection of smoke/CO devices, >6 dwelling units	NFPA 1 Chapter 13; MGL c. 148, §§ 26F and 26F1/2	\$50 per dwelling unit, \$500 maximum	Fee for reinspection due to noncompliance: permit fee x 0.5
Installations of CO protection technical options	NFPA 1 Sections 13.7.1.4.9 and 13.13.2.13	\$30	\$25
Fire protection systems and related equipment	NFPA 1 Chapters 42 and 69	\$30	\$25
Replacement or disconnection of any fire protection system	NFPA 1 Chapters 13 and 50	\$30	\$25
NFPA 1 Chapter 16 - Safeguarding Construction, Alteration and Demolition Operations			
Torch-applied roofing coverings	NFPA 1 Sections 10.11.9.1 and 16.6.1	\$25 per day	
Placement of tar kettle on roof	NFPA 1 Sections 10.11.9.1 and 16.7.1.2	\$25 per day	
Use of salamanders	NFPA 1 Section 16.1.1.1	\$10 per day	
NFPA 1 Chapter 19 - Combustible Waste, Refuse and Rubbish Containers			
Rubbish containers (Dumpster) >6 cubic yards	NFPA 1 Section 19.1.1	\$30 per container	
NFPA 1 Chapter 20 - Occupancy Fire Safety			
Unvented propane or natural-gas-fired space heaters	NFPA 1 Sections 20.2.4.5, 20.3.2.1, 20.8.2.6.1, 20.9.2.2.1, 20.10.2.1 and 20.11.2.1	\$30 per device	
NFPA 1 Chapter 23 - Cleanrooms			
Use, storage, or handling of hazardous materials	NFPA 1 Section 23.3 and Chapters 60 through 75	\$30 annually	
NFPA 1 Chapter 24 - Dry Cleaning			
Use, storage, or handling of hazardous materials	NFPA 1 Section 24.2 and Chapters 60 through 75	\$30 annually	
NFPA 1 Chapter 31 - Forest Products			

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Storage of mulch > 300 cubic yards	NFPA 1 Section 31.2	\$30 annually	
NFPA 1 Chapter 32 - Motion Picture and Television Production Studio Soundstages and Approved Production Facilities			
For activities listed: 1. Use of pyrotechnic special effects [Section 65.3]	NFPA 1 Sections 32.4.2 and 32.5.2	\$20 per day plus fire standby detail as required	
2. Use of open flame [Section 65.4]		\$20 per day plus fire standby detail as required	
3. Welding and cutting [Chapter 41]		\$30 per week	
4. Storage and use of flammable or combustible liquids or gasses [Chapters 63 and 66]		\$50 annually	
5. Use of aircraft		\$20 per day plus fire standby detail as required	
6. Presence of motor vehicles within a building		\$50 annually	
7. Productions with live audience		\$50 annually	\$50 annually
8. Storage of liquefied petroleum gases [Section 69.1]		\$50 annually	
9. Use of fog and haze		\$50 annually	
NFPA 1 Chapter 41 - Welding, Cutting and Other Hot Work			
Cutting and welding operations	NFPA 1 Sections 41.1.5, 41.3.2.2, and 41.3.4	\$30 per week	
NFPA 1 Chapter 42 - Refueling (Gaseous Fuel Containers and Systems)			
Installation or connection of	NFPA 1 Section 42.2.2.1	\$50	\$25
NFPA 1 Chapter 42 - Refueling (Cargo Tanks, Portable Tanks or Transfer Tanks)			

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Permitting and inspection of tanks	NFPA 1 Sections 42.2.2.1 and 1.12.8.25.3.4.1	\$50 every 2 years	\$25 every 2 years
Exemption certificate	NFPA 1 Sections 42.2.2.1 and 1.12.8.25.3.5.2	\$30 annually	
Unattended cargo, portable or transfer tank	NFPA 1 Sections 42.2.2.1 and 1.12.8.25.2.1	\$10 annually	
NFPA 1 Chapter 43 - Spraying, Dipping, and Coating Using Flammable or Combustible Materials			
Storage, use or handling of hazardous materials	NFPA 1 Chapters 60 through 75	\$30 annually	
NFPA 1 Chapter 45 - Combustible Fibers			
For storing, handling of combustible fibers > 100 cubic feet	NFPA 1 Section 45.1.3	\$30 annually	
NFPA 1 Chapter 50 - Commercial Cooking Equipment			
Installation or modification of fire extinguishing equipment	NFPA 1 Section 50.4.2	\$50	\$30
NFPA 1 Chapter 51 - Industrial Ovens and Furnaces			
Installation and operation of an oven or furnace	NFPA 1 Section 51.1.2.1	\$30 annually	\$30 for inspection of installation or modification
NFPA 1 Chapter 60 - Hazardous Materials			
Process or processing of any hazardous material in Category 2, 3, 4 and/ or 5	NFPA 1 Section 60.8	\$50 annually	\$50 annually

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Crop ripening or color processing	NFPA 1 Section 60.8.4. Where that process involves storage, handling and use of a flammable compressed gas (see Section 63.1.2). Where that process involves storage handling and use of combustible or flammable liquid (see Section 66.1.5)	\$30 annually	
NFPA 1 Chapter 61 - Aerosol Products			
Storage > 500 pounds	NFPA 1 Section 61.1.2	\$30 annually	
NFPA 1 Chapter 63 - Compressed Gases and Cryogenic Fluids			
Storage of compressed gases inside or outside of building	NFPA 1 Section 63.1.2	\$30 annually	
NFPA 1 Chapter 65 - Explosives, Fireworks, Model Rocketry and Flame Effects			
Conduct blasting operations	NFPA 1 Sections 65.9.2.1 and 65.9.2.2; MGL c. 148, §§ 12 and 13	\$50 plus fire standby detail as required	
Storage and manufacturing of fireworks and explosives	NFPA 1 Section 65.9.2.1; MGL c. 148 §§ 12 and 13	\$50 annually	\$50 annually
Vehicle carrying explosive materials left unattended and parked in an authorized area	NFPA 1 Section 65.9.2.1; MGL c. 148, §§ 12 and 13	\$50	\$50
Storage in any magazine, building or structure	NFPA 1 Section 65.9.2.1	\$50 annually	\$50 annually
Supervision of the use of explosives, fireworks and cannon mortar	NFPA 1 Section 65.2.3	\$50 plus fire standby detail as required	

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Storage of solid-propellant model rocket motors, reloading kits, or motor components > 50 pounds' net weight at a residence	NFPA 1 Section 65.6.1	\$30	
Storage of high-power model rocket motors, motor reloading kits, and pyrotechnic modules	NFPA 1 Section 65.8.2	\$30 annually	\$30 annually for commercial properties
Use of flame effects	NFPA 1 Sections 65.4.2 and 65.4.1.1	\$30 annually	\$30 annually
NFPA 1 Chapter 66 - Flammable and Combustible Liquids			
To keep, store, manufacture, or handle flammables or combustible liquids < 500 gallons	NFPA 1 Section 66.1.5	\$30 annually	
To keep, store, manufacture, or handle flammables or combustible liquids 501 - 2,500 gallons	NFPA 1 Chapter 66	\$75 annually	
To keep, store, manufacture, or handle flammables or combustible liquids > 2,500 gallons	NFPA 1 Chapter 66	\$150 annually	
Installation, maintenance and storage of waste oil	NFPA 1 Chapter 66	\$30	
Storage of alcohol-based hand rubs and preparations > 10 gallons	NFPA 1 Chapter 66	\$30 annually	
Removal of underground piping	NFPA 1 Chapter 66	\$20	\$30

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Removal of underground tanks < 1,500 gallons and piping	NFPA 1 Chapter 66	\$30 per tank	\$30
Removal of underground tanks 1,501 - 2,500 gallons and piping	NFPA 1 Chapter 66	\$30 per tank	\$75
Removal of underground tanks 2,501 - 5,000 gallons and piping	NFPA 1 Chapter 66	\$50 per tank	\$75
Removal of underground tanks > 5,000 gallons and piping	NFPA 1 Chapter 66	\$50 per tank	\$125
NFPA 1 Chapter 67 - Flammable Solids			
Storage of flammable solids > 100 pounds	NFPA 1 Section 67.1.2	\$30 annually	
NFPA 1 Chapter 69 - Liquid Petroleum Gases and Liquefied Natural Gas			
Installation or modification	NFPA 1 Sections 69.1.2 and 69.1.3.1	\$25	\$25
Keeping, removal, storage or use of LP gas > 42 pounds' aggregate capacity	NFPA 1 Sections 69.1.2 and 69.1.3.1	\$25	\$30 annual inspection for retail and commercial transfer operations only
NFPA 1 Chapter 1 - 1.12.8.5.1 - Quantities, Permits and/or License Thresholds			
Keeping of small arms ammunition (private use), rim fire or center fire, > 10,000 rounds	NFPA 1 Section 1.12.8.50.2 and Table 1.12.8.50	\$30	
Keeping of small arms shotgun ammunition (private use) > 5,000 rounds	NFPA 1 Section 1.12.8.50.2 and Table 1.12.8.50	\$30	
Keeping of small arms ammunition primers (private or commercial use) > 1,000 caps	NFPA 1 Section 1.12.8.50.2 and Table 1.12.8.50	\$30	

Permits Required			
Work/Activity	CMR/MGL/NFPA Section	Permit Fee	Inspection Fee
Keeping of smokeless propellants (private and commercial) > 16 pounds [Note: prohibited for persons under 18 years of age. No more than 2 pounds shall be stored in a multiple-family dwelling or a building of public access.]	NFPA 1 Section 1.12.8.50.2 and Table 1.12.8.50	\$30	
Keeping of black powder (private and commercial) > 2 pounds [Note: prohibited for persons under 18 years of age.]	NFPA 1 Section 1.12.8.50.2 and Table 1.12.8.50	\$30	
Explosive material classified as Division 1.1 - 1.6	NFPA 1 Section 1.12.8.50.2 and Table 1.12.8.50	\$50	
Keeping of LP gas > 2,000 gallons in aggregate	NFPA 1 Section 1.12.8.50.2 and Table 1.12.8.50	\$50	
Other Miscellaneous Permits			
Other miscellaneous permits not otherwise noted	As applicable	\$30	

Plan Review, Inspection Services and Fees Not Otherwise Noted	
Activity	Fee
Quarterly inspections as required by code (i.e., nursing facilities, hotels, motels, theaters, elderly housing, group homes, inns)	\$50 per quarterly inspection
Annual inspections as required by code (i.e., liquor licenses, certificates of inspection)	\$50 per annual inspection
Commercial fire alarm system plan review - NFPA 1 Section 1.14	\$0.05/square foot, \$100 minimum
Residential fire alarm system plan review - NFPA 1 Section 1.14	\$30

Plan Review, Inspection Services and Fees Not Otherwise Noted	
Activity	Fee
Sprinkler/suppression system plan review - NFPA 1 Section 1.14	\$0.05/square foot, \$100 minimum

Emergency Response Activities	
Activity	Fee
Hazardous materials incident - MGL c. 21E	
First hour	\$400
Each additional hour or part thereof:	
Per aerial device	\$250
Per engine company	\$200
Per ambulance	\$200
Per chemical truck	\$200
Per brush truck	\$150
Per tanker	\$150
Per command vehicle	\$100
Per rescue truck	\$100
HAZMAT Unit per hour or part thereof	\$600
Replace in kind all materials used for mitigation and control of incident	

§ 103-7.1. Fire Department fee abatement.

If an individual is unable to pay fees listed in Chapter 103, § 103-7, the Fire Chief or his or her designee shall have the authority to assess the nature of financial hardship and abate all or a portion of the fees.

§ 103-8. Health Department. [Amended 6-4-2018 by TOR-2018-7]

Health Department fees shall be as follows:

Type	Fee
Percolation test, repair	\$75
Percolation test, new construction	\$125
Cabins; motels; trailers	\$75
Septic installers	\$75
Haulers of septic effluent, garbage, rubbish	\$75
Piggeries	\$75

Type	Fee
Semipublic pools	\$75
Food service, 80 seats or less	\$75
Food service, 81 seats or more	\$125
Massage	Taken over by state
Funeral director	\$50
Burial permits	\$20
Temporary food service, 1-day license	\$25
Retail food service, less than 2,500 square feet	\$75
Retail food service, more than 2,500 square feet	\$125
Mobile vendor	\$50
Recreational camps	\$50
Tanning facilities	\$50
Riverside Park (1 license per entire park)	\$300
Disposal works construction	\$100
Tobacco sales	\$200

§ 103-9. Library.

Library fees shall be as follows:

Type	Fee
Copier fee, per copy	\$0.10
Lost card fee, per lost card	\$1
Lost or damaged materials, list price	Replacement cost
Overdue fines, all items (exceptions noted below)	
Videos/DVDs (per item)	\$1
Museum passes	\$5
All other materials (per day)	\$0.10
Maximum fines:	
Videos/DVDs (per item)	\$5
Museum passes	\$50
All other items (per item)	\$3
Non-Massachusetts resident	
Borrower's card for 2 years	\$30

Type	Fee
Computer floppy disks (per disk)	\$1
Computer printouts	
Black and white	
First 10 pages per day	No charge
More than 10 pages (per page)	\$0.10
Color printout (per page)	\$0.15

§ 103-10. (Reserved)³³

§ 103-11. Parks and recreation. [Amended 12-2-2019 by Ord. No. TOR-2019-13; 2-21-2023 by Ord. No. TOR-2023-2]

Parks and recreation fees shall be as follows:

Type	Fee
Perry Lane Day Camp, per two-week session (Summer 2023, 2024 and 2025)	\$260
Perry Lane Preschool Camp, per two-week session (Summer 2023, 2024 and 2025)	\$165
Perry Lane Teen Camp, per two-week session (Summer 2023, 2024 and 2025)	\$260
Perry Lane Park daily pool charge, per person	\$1
Recreational swim, daily pool charge, per person	\$1
Picnic charges, groups using Perry Lane pavilion, per user group	\$75

§ 103-12. Perry Lane Nursery School.

Perry Lane Nursery School fees shall be as follows:

Type	Fee
Perry Lane Nursery (effective with 2015-2016 school year)	
Two-day program, per month	\$130
Three-day program, per month	\$165
Four-day program, per month	\$115

33. Editor's Note: Former § 103-10, Liquor Licensing Commission, was repealed 9-5-2023 by Ord. No. TOR-2023-6.

§ 103-13. Planning Board.

Planning Board fees shall be as follows:

Type	Fee
Preliminary subdivision, plan submission (plus \$5. per acre)	\$25
Definitive subdivision plan submission (plus \$60. per acre)	\$150
Approval-not-required plans	\$35

§ 103-14. Police Department.

Police Department fees shall be as follows:

Type	Fee
Pistol permit	\$100
F.I.D. card	\$100
F.I.D. mace permit	\$25
Dealer/gunsmith, for three years	\$100
Sale of ammunition, for three years	\$100
Accident report, per report	\$5
Incident report, per page	\$1
Turkey shoot, per date	\$2
Log entries, per page	\$1
911 tape, per call	\$10

§ 103-15. Department of Public Works. [Amended 4-5-2021 by Ord. No. TOR-2021-1]

Department of Public Works fees shall be as follows:

Type	Fee
Road opening/driveway permit	\$5
Pavement cuts, utilities	\$20
Small-scale town maps	\$0.75
Large-scale town maps	\$1.50
Zoning Map	\$1.50
Blueprint reproduction, per sheet or any part thereof	\$5
Clearance of building sewer storage:	

Regular working hours (7:30 a.m. to 6:30 p.m.)	\$150
After working hours/weekends/holidays	\$405
Sewer entrance fee, per business/dwelling unit	\$807
Water meters:	
5/8" meter	\$410
3/4" meter	\$425
1" meter	\$480
1 1/2" turbo meter	\$1,255
2" turbo meter	\$1,460
1 1/2 compound turbo meter	\$1,665
2" compound turbo meter	\$1,900
Water connection:	
3/4" Type K copper tubing (minimum)	\$2,385
1" Type K copper tubing (minimum)	\$2,455
1 1/2 Type K copper tubing (minimum)	\$3,150
2" Type K copper tubing (minimum)	\$3,290
Over 2" (minimum)	\$7,645
Discontinuation of water service (minimum)	\$895
Meter valve replacement - 3/4" or 1" service	\$125
Tee and valve for irrigation system — 3/4" or 1" service	\$185
Water main drilling and tapping — 3/4" or 1" service	\$330
Final water/sewer reading and calculation (per property)	\$25
Turn off or on water at curb (overtime requests will be billed at actual OT rates)	\$45
Removal or reinstallation of water meters	\$87.50
Cross-connection fees:	
Application review/permitting of backflow prevention devices	\$67.50
Testing of backflow prevention device	\$40
Electric vehicle charging station	\$0.60 per kWh

§ 103-16. Weights and measures.

Weights and measures fees shall be as follows:

Type	Fee
Balances and scales:	
Over 10,000 pounds	\$200
5,000 to 10,000 pounds	\$50
1,000 to 5,000 pounds	\$45
100 to 1,000 pounds	\$40
More than 10 pounds but less than 100 pounds	\$25
10 pounds or less	\$25
Seasonal scales (farm stands)	\$20
Weights, each:	
Avoirdupois	\$3
Metric	\$3
Apothecary	\$3
Troy	\$3
Capacity measures, vehicle tanks:	
Each indicator	\$5
Each 100 gallons or fraction thereof	\$2
Capacity Measures, liquid:	
1 gallon or less	\$1
More than 1 gallon	\$2
Liquid measuring meters:	
Inlet 1/2 inch or less, oil, grease	\$5
Inlet more than 1/2 inch to 1 inch gasoline	\$30
Inlet more than 1 inch:	
Vehicle tank pump	\$50
Unsealed out-of-town meters	\$50
Vehicle tank gravity	\$25
Bulk storage	\$50
Company supplies prover	\$35
Pumps, each stop on pump	\$2
Other devices:	

Type	Fee
Taxi meters	\$30
Odometer, hub odometer	\$10
Leather measuring (semiannual)	\$5
Fabric measuring	\$5
Wire, rope, cordage	\$5
Linear measures:	
Yardsticks	\$1
Tapes	\$1
Miscellaneous:	
Dry measures	\$1

§ 103-16.1. Agawam Municipal Golf Course.

Fees for the Agawam Municipal Golf Course shall be as follows:

Type	Fee
Weekdays:	
18 Holes	\$26
9 Holes	\$20
18 Holes (Sr)	\$22
9 Holes (Sr)	\$18
18 w/Cart	\$36
*After 12:00	\$32
Weekend:	
18 Holes	\$29
9 Holes	\$22
18 Holes (Sr)	\$26
9 Holes (Sr)	\$20
18 W/Cart	\$40
*After \$12:00	\$36
"Back Nine Special" (Before 8:00 a.m.)	\$24
Cart fees:	
9 Holes	\$7.50 per person
18 Holes	\$15 per person
Rider Fee	\$12

Rain Check Policy

- If 3 holes or less are completed, a full rain check will be issued.
- If 4 holes or through 11 holes are completed, a nine-hole rain check will be issued.
- If you reach the 12th tee, your round is deemed complete and no rain check will be issued.
- All players must have their own set of clubs.
- We are a spikeless facility and no metal spikes are allowed.
- All players must have proper attire; no tattered pants.
- Collared shirt and apparel must be worn at all times.
- There are absolutely no coolers allowed on the course unless there is a medical condition, which cooler must be authorized by the golf shop staff prior to play.

ARTICLE II
Ambulance Fees

§ 103-17. Establishment of fee.

In accordance with MGL c. 40, § 5(21A), the Town hereby establishes a fee for transporting persons by the Agawam Town ambulances. Said fee shall be in accordance with those fees set by insurance standards or Medicare. The fees shall be used to defray the cost of maintenance and operation of such ambulances, including maturing debt and interest; and to pay for fire fighter/EMT salaries and benefits in accordance with MGL c. 44, § 53E 1/2.

§ 103-18. Inability to pay.

If a Town resident is uninsured or unable to pay said fee, an abatement of said fee shall be determined by the Fire Chief and/or a designee to be appointed by the Mayor.

AGAWAM CODE

Chapter 106

FIRE PREVENTION

**[Adopted by the Town Council of the Town of Agawam as indicated in article histories.
Amendments notted where applicable.]**

GENERAL REFERENCES

Fire Department — See Ch. 27.

Building construction — See Ch. 82.

Fire alarm equipment — See Ch. 69, Art. I.

Local Option Statutes — See Ch. A185.

ARTICLE I
Smoke and Heat Detectors

[On June 18, 1979, the Town accepted the applicability of MGL c. 148, § 26C, which requires the installation of automatic smoke and heat detectors.]

ARTICLE II
Automatic Sprinklers

[On April 17, 1990, the Town accepted the applicability of MGL c. 148, § 26G and 26I, which require the installation of automatic sprinklers in certain new buildings.]

ARTICLE III

Noncriminal Disposition of Violations
[Adopted 6-6-2005 by TOR-2005-5]

§ 106-1. Alternative proceedings for Fire Code violations and remedy of fire hazard conditions.

Any violation of this chapter, Chapter 106, and any violation of the Code of Massachusetts Regulations 527 CMR 1.06, and/or any violation or failure to comply with MGL c. 148, § 5, may, in the discretion of the Fire Chief or his designee, be enforced by the noncriminal complaint method for which provision is made, and/or as set forth in MGL c. 40, § 21D, as amended from time to time, that is, noncriminal disposition. Fines issued pursuant to § 106-1 shall be as follows: \$50 for each consecutive 48 hours during which such failure or refusal to comply continues.

GARBAGE, RUBBISH AND REFUSE

Chapter 109

GARBAGE, RUBBISH AND REFUSE

[HISTORY: Adopted by the Town Council of the Town of Agawam as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Junk and secondhand dealers — See Ch. 114.

Streets and sidewalks — See Ch. 155.

ARTICLE I
Recycling
[Adopted 1-11-1988 by TOR-87-12]

§ 109-1. Program established.

There is hereby established a program for the mandatory separation of certain recyclable material from garbage or rubbish by the residents of the Town of Agawam and the collection of the recyclables at the residents' curbside. The collection of separated recyclables shall be made periodically under the supervision of the Superintendent of Public Works.

§ 109-2. Categorization of recyclables.

Recyclables are the discarded materials described below which may be reclaimed and are considered salable by the Town of Agawam. For the purpose of this article, they are defined in the following categories:

- A. Aluminum: Cans made from aluminum, aluminum foil, aluminum wrappers and containers or trays used in the packaging, preparation, or cooking of prepared dinners, pies, cakes or other foods.
- B. Glass: All unbroken jars and bottles or similar products made from silica or sand, soda ash and limestone, the product being transparent or translucent and being used for packaging or bottling of various matter, and all other material commonly known as glass, excluding:
 - (1) Blue and flat glass and glass commonly known as "window glass."
 - (2) Dishes and crockery.
- C. Ferrous metal cans: All containers composed in whole of iron or steel and so-called "tin" cans used for the packaging or storing of various food and nonfood items, except containers which contained paint or petroleum-based solvents and any pressurized aerosol cans.
- D. Clean and unsoiled newspaper, including newsprint, all newspaper advertisements, supplements, comics and enclosures. Newspapers shall be considered clean and uncontaminated if they have not been exposed to substances or conditions rendering them unusable for recycling. Persons may wrap solid waste in used newspapers and discard the same with regular solid waste even if such wrapping does not render the newspapers unusable for recycling.
- E. Corrugated paper: Corrugated boxes, cardboard, cardboard cartons, pasteboard and similar corrugated and kraft paper materials.
- F. Household batteries known or suspected to contain mercury or other recyclable materials as may be later determined by the Superintendent of Public Works. **[Added 10-15-1990 by TOR-90-43]**

§ 109-3. Separation and placement for removal; penalty.

- A. The resident shall use the recycling receptacle provided to each household for the purpose of collecting the recyclables and placing them for disposal.
 - (1) Recycling receptacles shall be placed on and removed from the curbside or tree belt in a manner similar to and at the same time as the regular garbage or rubbish.
 - (2) All the metal and glass recyclables, as defined in § 109-2A, § 109-2B and § 109-2C, shall be

placed together in the designated recycling receptacle separate from rubbish or garbage. These recyclables need not be washed, flattened or processed in any way, and labels, lids, corks and neck rings need not be removed.

- (3) Recyclable household batteries as defined in § 109-2F shall be placed together in a container to be made available by the town and placed atop of or affixed to the designated recycling receptacle. **[Added 10-15-1990 by TOR-90-43]**
 - (4) Recyclable newspapers and corrugated paper shall be placed on top of or next to the recycling receptacle in a manner to prevent the scattering of the paper.
 - (a) Newspapers shall either be packed in standard grocery or paper shopping bags, placed in corrugated boxes or securely tied in flat bundles, none of which shall weigh more than 50 pounds.
 - (b) If not used for packing paper recyclables, corrugated boxes and cardboard cartons shall be collapsed and tied in bundles weighing not more than 50 pounds and placed on top of or next to the recycling receptacle.
 - (5) Recyclables shall not be placed in plastic garbage bags for collection, removal or disposal. Recyclables shall not be placed in the same refuse container as or otherwise mixed with other forms of solid waste for collection, removal or disposal.
 - (6) Rubbish, refuse or other nonrecyclables shall not be placed in the recycling container for collection, removal or disposal.
- B. A resident who violates the provisions of this section shall first be notified of the violation by registered mail, and such notice shall advise of the requirements of the recycling ordinance and the fine for subsequent violations which shall be \$25 for the first offense after receipt of the above notice and not more than \$50 for succeeding violations.

§ 109-4. Ownership of recyclables; penalty.

- A. From the time of placement at the curbside tree belt of any recyclables for collection by the Town of Agawam or its agencies, pursuant to the program established hereby and the rules and regulations issued hereunder, such materials shall become and be the property of the Town of Agawam. It shall be a violation of this article for any person other than authorized employees of the Town of Agawam acting in the course of their employment or contractors or agents under the terms of their contract to collect or pick up or cause to be collected or picked up any recyclable materials. Any and each such collection or pickup in violation hereof from one or more locations shall constitute a separate and distinct offense punishable as hereinafter provided.
- B. The recyclables collected by the Town of Agawam shall be transported to and disposed of at the designated Materials Recovery Facility.
- C. Any violation of this section or any part thereof shall be punishable by a fine not to exceed \$300, and the violator shall make restitution to the town for the value of any recyclables illegally removed.

§ 109-5. Repealer.

All ordinances or parts of ordinances, resolutions, regulations or other documents inconsistent with the provisions of this article are hereby repealed to the extent of such inconsistency.

§ 109-6. Severability.

This Article and the various parts, sentences, sections and clauses thereof are hereby declared to be severable. If any part, sentence, section or clause is adjudged invalid, it is hereby provided that the remainder of this article shall not be affected thereby.

§ 109-7. When effective.

This Article shall take effect no later than one week after the Materials Recovery Facility commences commercial operation. Notice of the commencement date shall be published once in a daily newspaper having circulation in the Town of Agawam.

ARTICLE II

Dumping**[Adopted 10-2-1989 by TOR-89-26]****§ 109-8. Prohibitions.**

No person, business, corporation, enterprise or other legal entity shall place, throw, deposit, discharge or shall cause to be placed, thrown, deposited or discharged any trash, bottles, cans, refuse, rubbish, garbage, debris, scrap, waste or any other waste material of any kind, including but not limited to household trash, lawn clippings and leaves, demolition material, motor vehicle parts and tires, hazardous waste or materials, used appliances, construction materials and debris, on any public highway, public way, city or town way, private way, street or upon any property, public or private.

§ 109-9. Service of notice of violation.

The Department of Health shall have the authority and power to issue a written notice ordering removal of any offensive matter in violation of this article. Said notice shall order removal within 14 days of receipt and shall be served:

- A. Personally by a duly authorized member of the Police Department and/or the Department of Health;
- B. By leaving a copy at the last and usual place of abode or business;
- C. By sending a copy by registered or certified mail, return receipt requested, at the last known address;
or
- D. If the address is unknown and service in hand is not possible, by posting a copy in a conspicuous place on or about the property.

§ 109-10. Requirement after expiration of notice period.

No person, business, corporation, enterprise or other legal entity shall allow or permit such trash, bottles, cans, refuse, rubbish, garbage, debris, scrap, waste or any other waste material of any kind, including but not limited to household trash, lawn clippings and leaves, demolition material, motor vehicle parts and tires, hazardous waste or materials, used appliances, construction materials and debris, to remain upon any public highway, public way, city or town way, private way, street or upon any property, public or private, for any period of time after expiration of the fourteen-day notice period.

§ 109-11. Violations and penalties.

Whoever violates any provision of this article shall be fined not more than \$500 nor less than \$200. Each item of waste placed, thrown, deposited or discharged shall constitute a separate violation of this article. Each day said violation is permitted to continue after expiration of the fourteen-day notice period shall constitute a separate violation of this article. Whoever violates any provision of this article shall pay to the Town of Agawam all costs and expenses, including reasonable attorney's fees, incurred by the town in the enforcement of and prosecution of this article. The Town of Agawam shall also be entitled to restitution for any and all costs incurred in the collection, removal and disposal of said waste.

§ 109-12. Alternative proceedings for violations. [Added 6-6-2005 by TOR-2005-6]

Any violation of this chapter, Chapter 109, and any violation of the Code of Massachusetts Regulations (CMR) 410.600 and/or 410.602, may, in the discretion of the Board of Health, Health Agent, or his

designee, or any police officer as directed by the Police Chief or his designee, be enforced by the noncriminal complaint method for which provision is made, and/or as set forth in MGL c. 40, § 21D, as amended from time to time, that is, noncriminal disposition. Fines issued pursuant to § 109-12 shall be as follows:

- A. First offense: \$25.
- B. Second offense: \$50.
- C. Third offense and each subsequent offense: \$100.

Chapter 111**GASOLINE SERVICE STATIONS**

[HISTORY: Adopted by the Town Council of the Town of Agawam 5-5-2003 by TOR-2003-2.³⁴ Amendments noted where applicable.]

GENERAL REFERENCES

Coal, coke and fuel-oil dealers — See Ch. 89.

Fire prevention — See Ch. 106.

§ 111-1. Purpose.

For the public purpose to promote and protect the health, safety, and welfare of the residents of the Town of Agawam, to prevent and control fires, and to control traffic, it is deemed to be in the best interests of the Town of Agawam to regulate the number of gasoline service stations and retail refueling sites within the Town of Agawam.

§ 111-2. Gasoline service station.

A gasoline service station shall include any business selling or offering for sale any motor fuel, such as gasoline or diesel fuel, to the public, whether or not the public is permitted or expected to operate the pump to put the fuel into a motor vehicle's fuel tank or a container, and shall include gasoline filling stations and gasoline self-service stations. For the purposes of this chapter, "gasoline service station" shall also include any site used or operated as a retail refueling site, including the fuels of gasoline, propane, electricity and hydrogen.

§ 111-3. Licensing; limitation.

No business or person shall operate a gasoline service station without a license issued under the provisions of Massachusetts General Laws Chapter 148 § 13, or a permit issued in accordance with the Code of Massachusetts Regulations 527 CMR 14.03. for the purpose of licensing gasoline service stations under the provisions of Massachusetts General Laws Chapter 148 § 13, and permitting gasoline service stations in accordance with the Code of Massachusetts Regulations 527 CMR 14.03, there shall be no more than 20 licenses and/or permits issued at any one time.

§ 111-4. Exercise of license.

Any license or permit issued under the provisions of this chapter and Massachusetts General Laws Chapter 148 § 13 or 527 CMR 14.03 shall become invalid and shall be null and void if the activity authorized by said license or permit is not commenced within six months from the date of the issuance of said license or permit.

§ 111-5. Capacity of license.

All licenses issued under the provisions of this chapter and Massachusetts General Laws Chapter 148 § 13

34. Editor's Note: This chapter was originally adopted as Ch. 90, but was renumbered to better fit the alphabetical organization of the codification.

§ 111-5

GASOLINE SERVICE STATIONS

or 527 CMR 14.03 shall state the capacity of fuel for which said license or permit is issued. No less than 80% of the capacity stated on said license or permit must be in use and operation at all times during the term of the license.

§ 111-6. Previously issued licenses.

Any license or permit issued under the provisions of Massachusetts General Laws Chapter 148 § 13 or 527 CMR 14.03 prior to the enactment of this chapter shall and must commence the activity allowed by such license or permit within six months from the date this chapter is enacted. If the activity allowed by such license or permit is not commenced within said six months, any such license or permit shall become invalid and be null and void.

AGAWAM CODE

Chapter 114

JUNK AND SECONDHAND DEALERS

[HISTORY: Adopted by the Town Council of the Town of Agawam as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fees — See Ch. 103.

Zoning — See Ch. 180.

ARTICLE I

Pawnbrokers, Junk Dealers and Secondhand Dealers**[Adopted 9-2-2014 by TOR-2014-3³⁵]****§ 114-1. Pawnbroker's license; fee. [Amended 9-5-2023 by Ord. No. TOR-2023-6]**

- A. Definition. A pawnbroker is an individual or business that offers secured loans to individuals with items of personal property used as collateral.
- (1) If an item is pawned for a loan, within a certain contractual period of time, the pawnbroker may redeem it for the amount of the loan plus some agreed-upon amount of interest. The amount of time, and rate of interest, is governed by law or by the pawnbroker's policies. If the loan is not paid (or extended, if applicable) within the time period, the pawned item will be offered for sale by the pawnbroker. The pawnbroker does not report the defaulted loan on the customer's credit report, since the pawn broker has physical possession of the item and may recoup the loan value through an outright sale of the item.
- (2) The term "secondhand junk dealer" shall not apply to a pawnbroker.
- B. Application referral. Upon receiving an application for a license to engage in business as a pawnbroker, the application shall be referred by the License Commission to the Chief of Police for investigation into the applicant's criminal record, which investigation shall include obtaining fingerprints, photograph and CORI check from the applicant.
- C. Interview. The Chief of Police may, in his discretion, require a personal interview of the applicant and may request further relevant information.
- D. Disqualification. No license shall be issued by the License Commission unless the Chief of Police has first issued his recommendation for its issuance. The License Commission may refuse to approve the issuance of such license on any of the following grounds:
- (1) That the applicant, based on his or her criminal record, would be an improper person in that particular business; or
- (2) That the applicant has had a previous license to engage in such business revoked or suspended by the Town of Agawam or some other jurisdiction; or
- (3) That the conduct of the business at the location in question would not be in the interest of the public health, safety or welfare.
- E. Notification. The Chief of Police shall notify the License Commission and the applicant of his recommendation of said license, in writing, within 30 days of the date of application.
- F. Fee. The fee for such a license shall be \$200.
- G. The License Commission shall be the issuing authority for all pawnbroker dealer's licenses.

§ 114-2. Junk and secondhand dealer's license. [Amended 9-5-2023 by Ord. No. TOR-2023-6]

No person, firm, or corporation shall engage in the business of operating a shop for the purchase, sale or

35. Editor's Note: This ordinance also repealed former Art. I, Junk, Old Metal and Secondhand Articles, adopted 12-21-1972 as § 9-2 of the Code of the Town of Agawam.

barter of secondhand articles without obtaining a license therefor and complying with the terms of this section. The License Commission may license suitable persons to be collectors of, dealers in or keepers of shops for the purchase, sale or barter of junk, old metal or secondhand articles, pursuant to the provisions of Chapter 140 of the General Laws.

§ 114-3. Records of purchases. [Amended 9-5-2023 by Ord. No. TOR-2023-6]

- A. Every keeper of a shop for the purchase, sale or barter of junk, old metal or secondhand articles and every pawnbroker within the limits of this Town shall keep an electronic record in which shall be written, at the time of every purchase or upon the receipt of any article, a description thereof, which shall include, but shall not be limited to, all distinguishing marks, etchings, engravings, model names, model numbers and serial numbers, and the full name (first and last), date of birth, license or state/government ID number and residence of the person from whom, and the day and hour when, such purchase or receipt was made, and such electronic record shall at all times be open to the inspection of officers of the Police Department and of any person authorized to make such inspection.
- B. The license holder shall photograph any and all jewelry items pawned, sold, pledged, or otherwise deposited with the license holder. The required photo shall be clear and of such quality that the item(s) shall be clearly identified. The photographs shall be stored in a digitized format, and the image must be retrievable and a clear copy provided to police upon request. The above-described photos shall be maintained by the license holder for a minimum of three years.
- C. Every license holder shall allow a representative of the New England State Police Information Network ("NESPIN") to enter his shop and install, on the shopkeeper's computing device, the software necessary to allow the shopkeeper to electronically transmit a record of his/her transactions. Before the first hour of every business day, post meridian, every shopkeeper shall transmit a record of his/her transactions from the prior day. The record transmitted must include the information included in § 114-3A and B of this article.
- D. The license holder shall accurately describe all items pawned, sold, or pledged with the license holder. This description shall include, but shall not be limited to, all distinguishing marks, etchings, engravings, model names, model numbers and serial numbers. Any jewelry with an affiliation to any institution or organization shall include the name of said institution or organization, year, and inscribed initials if any. Any and all descriptions of items of jewelry shall include the material, size (if applicable), weight, length, shape, and color. Descriptions of coins, stamps, collectible cards, autographed items, figurines, or other collectible of any description shall include any identifying features, such as the name of the items, date, denomination, color, size, brand name, vintage or image represented. All items pledged, sold, or pawned with the license holder must remain intact (i.e., precious stones in jewelry or data on electronic devices) until such time that they may legally change ownership.
- E. The license holder shall photograph the customer making the transaction with the license holder, along with a photograph of the required customer license or state/government issued ID. The required photographs shall be clear and of such quality that the customer and required license or state/government issued ID is clearly identifiable. This information shall be maintained according to § 114-7C.
- F. Exception for dealers in secondhand books, clothing and furniture. Persons who do not buy or sell secondhand articles except books, clothing or furniture shall be exempt from the provisions of § 114-3D.

- G. The License Commission shall be the issuing authority for all secondhand junk dealer's licenses, excluding licenses under § 114-4.6, of which the City Council shall be the licensing authority.

§ 114-4. Signs on shops.

Every keeper of a junk shop or pawnshop shall put in a suitable and conspicuous place on his shop a sign having his name and occupation legibly inscribed thereon in large letters.

§ 114-4.1. Examination of junk shops.

All junk shops, and all articles of merchandise therein, may at all times be examined by officers of the Police Department or by any person by it authorized to make such examination.

§ 114-4.2. Transactions with minors.

No keeper of a junk shop, secondhand dealer, or pawnshop and no junk collector shall, directly or indirectly, either purchase or receive, by way of barter or exchange, any junk, old metal or secondhand articles of a minor, as defined by the General Laws, knowingly or having reason to believe him to be such.

§ 114-4.3. Time period for holding articles prior to resale.

- A. Required holding period. No article purchased or received by the keeper of a pawn shop or a secondhand dealer shall be sold until at least 60 days from the date of its purchase or receipt have elapsed. The article shall be kept in an unaltered condition for the required time period. For the purposes of this section, "unaltered condition" means that the item or article shall be kept in the same condition it was in at the time it was brought into the shop by the seller.
- B. Exception for dealers in secondhand books, clothing and furniture. Persons who do not buy or sell secondhand articles except books, clothing or furniture shall be exempt from the provisions of § 114-4.3A.

§ 114-4.4. Hours of operation.

Pawn shops and secondhand dealers shall be closed except between the hours of 7:00 a.m. and 9:00 p.m. of each weekday, and no keeper thereof and no junk collector shall purchase any junk, old metal or secondhand articles except during such hours. Any shop wishing to open on Saturday must receive written permission from the Police Chief or his designee. All pawn shops and secondhand dealers must maintain regular business hours.

§ 114-4.5. Storage of rags and wastepaper by junk dealers.

Rags and wastepaper kept or collected by junk dealers or junk collectors shall not be kept or stored within the limits of any district, except in substantial brick or stone buildings.

§ 114-4.6. Used vehicle junk dealers.

A Class 3 license shall be required for used vehicle junk dealers.

§ 114-4.7. Purchase of certain items prohibited; violations and penalties.

- A. No keeper of a pawnshop and no keeper of a shop for the purchase, sale or barter of junk, old metal or secondhand articles shall purchase or take in pawn any item if it appears that such item has had

any serial numbers or identifying marks removed or apparently removed.

- B. For the purpose of this section, "identifying mark" includes but is not limited to engravings, initials, or similar inscriptions on rings, watches or other jewelry or similar inscriptions on other items.
- C. Violation of this section shall be grounds for revocation of a license granted under § 114-1 or 114-2.
- D. Violations of any section of this article (§§ 114-1 through 114-4.7) may result in a fine of not less than \$300, suspension of license, or revocation of license.

ARTICLE II
Secondhand Motor Vehicles
[Adopted 1-16-1987 by TOR-86-17]

§ 114-5. Conditions precedent to issuance of Class 1 and Class 2 licenses. [Amended 1-21-1999 by TOR-98-5; 8-2-2004 by TOR-2004-3; 9-5-2023 by Ord. No. TOR-2023-6; 4-16-2024 by Ord. No. TOR-2024-2]

- A. Any applicant filing a new application for a Class 1 or Class 2 license or filing a renewal application which seeks to amend the maximum number of motor vehicles under Subsection B hereof or in any other way substantially changes the plot plan currently on file in the Office of Inspection Services shall file an application for a special permit with the Board of Appeals for approval pursuant to § 180-11. As part of the special permit application, the applicant must submit a site plan which meets all the requirements of § 180-13C(3) which shows the specific areas to be utilized for the car lot, motor vehicle display areas and all permanent buildings. The site plan shall also include required buffer areas, signs, lighting, driveways, the total square footage of the proposed licensed premises, indicate all abutters to the property and contain such other information as may be necessary to determine the merits of the special permit application. After receiving the special permit from the Board of Appeals, the application for the Class 1 or Class 2 license shall be submitted to the Agawam City Council as licensing authority for review under this article. Any applicant filing a renewal application for a Class 1 or Class 2 license which does not seek to amend the maximum number of motor vehicles under Subsection B hereof or in any other way substantially changes the plot plan currently on file in the Office of Inspection Services need not obtain a special permit. All Class 1 or Class 2 licenses granted under this section shall expire on December 31 of each year following the date of issue unless sooner suspended or revoked by the licensing authority. Applications for current license holders, seeking to reapply, shall submit for consideration an application approved by the licensing authority no later than September 1 of each year. Class 1 or Class 2 licenses granted in accordance with this article of the Code of the Town of Agawam and M.G.L. c. 140 §§ 58 and 59, shall not be transferable.
- B. The maximum number of motor vehicles available to each licensee shall be calculated by dividing the net available square footage of the proposed licensed premises by 200. The number of motor vehicles available to each licensee as listed on his/her license shall determine the maximum number of unregistered motor vehicles allowed on the premises. The net available square footage of the proposed licensed premises shall be determined by subtracting the following items from the total square footage of the proposed licensed premises as shown on the site plan:
- (1) The total square footage of any and all buildings located on the proposed licensed premises;
 - (2) The total square footage of required buffer zone areas;
 - (3) The total square footage of driveways;
 - (4) The total square footage of delineated wetland areas and required stormwater detention areas located on the proposed licensed premises; and
 - (5) The total square footage of required customer parking spaces.
- C. Every licensee shall provide a suitable place to conduct his/her business which shall include sufficient office space and a facility to provide repair services for not less than one motor vehicle. Every licensee shall provide a minimum of one customer parking space of at least 200 square feet in area

for every 15 motor vehicles allowed by his/her license.

- D. No motor vehicle offered for sale shall be parked within required buffer areas, which shall extend a minimum of five feet around the street line or sidewalk of the proposed licensed premises. Bumper guards shall be placed along any street line used as a display area, and appropriate screening shall be placed along abutting property lines. The licensing authority may require additional buffer areas, bumper guards and screening as it deems necessary.
- E. All repairs must be performed indoors, and there shall be no outdoor storage of automobile parts or other related materials.
- F. After a license is issued under this article, the licensee must obtain dealer license plates from the Registry of Motor Vehicles and shall not use repair plates for the vehicles offered for sale. The licensee must obtain the dealer license plates within 90 days of the issuance of the license and must retain these plates as a condition of holding his/her license. All license plate numbers must be recorded in the office of the Town Clerk upon receipt from the Registry of Motor Vehicles.
- G. No person shall be licensed to buy and sell secondhand motor vehicles unless he/she have filed with his/her application a statement certifying that the buying or selling of secondhand motor vehicles is his/her principal business.
- H. No temporary office or repair space will be allowed, such as small buildings or trailers on wheels or blocks.
- I. Failure of a licensee to conform to any provision of Chapter 180 (Zoning) shall be deemed cause to suspend, revoke or not renew his/her license.
- J. All signs shall conform to the Sign Ordinance (Article XIII of Chapter 180).
- K. The hours of operation shall be restricted to between the hours of 8:00 a.m. and 9:00 p.m. on Monday through Saturday and 12:00 noon to 5:00 p.m. on Sunday.
- L. The licensing authority may place conditions and/or safety precautions on any license.
- M. The licensing authority may approve an application for a Class 1 and Class 2 dealers license with the stipulation that all the above requirements must be met prior to the issuance of that license.
- N. All applicants must comply with and meet the requirements of MGL c. 140 §§ 58 and 59.

§ 114-6. Suspension or revocation of license. [Amended 1-21-1999 by TOR-98-5]

The licensing authority is empowered to suspend, revoke or take any other action provided by this article or the General Laws of the Commonwealth of Massachusetts against any license issued under § 114-5 after hearing, if it finds that there has been a violation of law, ordinance or any duly imposed condition.

§ 114-7. Violations and penalties. [Amended 1-21-1999 by TOR-98-5]

- A. If the licensing authority finds after hearing that there has been a violation of law, ordinance or any duly imposed license condition, it may revoke, suspend or fine any licensee. Fines shall be established as follows:
 - (1) First offense for each day of violation: \$50; and
 - (2) Second or subsequent offense, for each day of each violation: \$100.

- B. Nothing herein shall prevent the licensing authority from imposing any of the above penalties in any combination.

§ 114-8. Fees. [Amended 4-16-2024 by Ord. No. TOR-2024-2³⁶]

The annual application fee for Class 1 and Class 2 licenses is \$100. The annual application fee for applications received after November 1 in a calendar year shall be \$200.

§ 114-9. Investigation of violations. [Amended 1-21-1999 by TOR-98-5]

The investigation of violations under this article shall be delegated to the Police Chief or his/her designees and the Inspector of Buildings or his/her designees, who may enter licensed premises at reasonable times to inspect and investigate in order to ensure compliance with § 114-5 and any duly imposed license conditions. Each licensed premises shall be inspected a minimum of two times per year.

§ 114-10. Class 3 licenses. [Amended 4-16-2024 by Ord. No. TOR-2024-2]

The provisions of §§ 114-6, 114-7, 114-8 and 114-9, inclusive, shall apply to all Class 3 licenses.

36. Editor's Note: This ordinance also repealed former § 114-8, Number of licenses restricted, as amended 4-18-1989 by TOR-89-3, 5-18-1998 by TOR-98-3, and 7-6-2004 by TOR-2004-4, and redesignated former §§ 114-9 through 114-11 as §§ 114-8 through 114-10, respectively.

LITTERING

Chapter 116

LITTERING

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 11-1 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 155.

§ 116-1. Trash in public places prohibited.

No person shall throw or cause to be thrown any handbill, circulars, pamphlets or any other papers or any trash or discard material whatsoever in any street or other public places within the town.

AGAWAM CODE

Chapter 117

LOITERING

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 11-3 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Congregating on streets and sidewalks — See Ch. 155, Art. I.

§ 117-1. Loitering prohibited.

Three or more persons shall not stand or loiter upon any street or in the entrance of any public building after having been ordered to move therefrom by a constable or police officer.

Chapter 121**NOISE**

[HISTORY: Adopted by the Town Council of the Town of Agawam 5-7-1990 as TOR-90-28. Amendments noted where applicable.]

GENERAL REFERENCES

Peddling and soliciting — See Ch. 128.

Vehicles and traffic — See Ch. 169.

§ 121-1. Prohibited noises enumerated.

Pursuant to MGL C. 40, § 21, Clause 22, the creation of or failure to abate or control any unreasonably loud, disturbing and/or unnecessary noise is prohibited. Without limiting the generality of the foregoing, the following acts are hereby declared to be unreasonably loud, disturbing and/or unnecessary noise in violation of this section:

A. Motor vehicles:

- (1) The sounding of any horn, whistle or signal device on any motorized vehicle, including but not limited to an automobile, bus, truck, motorcycle or motorscooter, while in motion or not in motion, except as a danger signal if another vehicle is approaching in an erratic or out of control manner.
- (2) The operation of any motorized vehicle, including but not limited to an automobile, bus, truck, motorcycle or motorscooter, in such a manner or in such a condition as to cause unreasonably loud, disturbing and/or unnecessary noise.

B. Radios, stereos, phonographs, musical instruments and/or other audio/video equipment: the playing of any radio, stereo, phonograph, musical instrument and/or other audio/video equipment in such a manner or at such volume as to annoy or disturb the quiet, comfort or repose of other person(s).

C. Churches and schools: the creation of any unreasonably loud, disturbing and/or unnecessary noise on any area adjacent to any church, school or other educational or religious institution while the same is in session.

D. Peddlers and hawkers: the shouting and/or crying of peddlers, hawkers and/or other street vendors which annoys or disturbs the quiet, comfort or repose of other person(s).

E. Use of drums and/or loudspeakers for sale or display: the use of any drum, loudspeaker, musical instrument or other voice amplification device for the purpose of attracting attention by creation of noise for sale or display of merchandise. Amusement parks, civic and religious organizations shall be exempt from the provisions of this subsection.

§ 121-2. Enforcement.

The Police Department shall have the authority to enforce the provisions of this chapter.

§ 121-3. Violations and penalties.

Whoever violates this chapter shall be fined not more than \$300 nor less than \$100 for the first offense. Second and subsequent offenses shall result in a mandatory fine of \$300. Whoever violates any provision of this chapter shall pay restitution to the Town of Agawam in an amount equal to all costs and expenses, including reasonable attorney's fees, incurred by the town in the prosecution of this chapter.

PARADES

Chapter 124

PARADES

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 9-3 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 124-1. Assembly permit required.

Before any persons shall parade or assemble within the town, such persons shall obtain from the Chief of Police a parade and assembly permit which shall be issued and signed. Such permit shall be issued only to responsible persons or organizations.

§ 124-2. Withholding of permit.

The Chief of Police shall withhold the issuance of any such permit if he feels that the parade or assembly contemplated may lead to a breach of the peace or endanger the safety of the public.

AGAWAM CODE

Chapter 128

PEDDLING AND SOLICITING

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 13 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Fees — See Ch. 103.

Streets and sidewalks — See Ch. 155.

§ 128-1. Peddlers license; penalty.

- A. No person not already duly licensed under the laws of the commonwealth shall go from place to place in the town selling or bartering, carrying or exposing for sale or barter any fish, fruits or vegetables in or from any cart, wagon or other vehicle or in any other manner without a license therefor from the Chief of Police; provided that this section shall not apply to any person who sells only fruit or vegetables raised or produced by himself or his family, or fish which is lawfully obtained by his own labor or the labor of his family.
- B. No person shall, except in accordance with a written permit from the Chief of Police and except as provided in MGL C. 101, § 17, in any street or from any point immediately adjacent to a sidewalk, sell or offer for sale any goods or articles to any person on any sidewalk of the town.
- C. No person shall place or keep any table, stall, booth, cart or other structure in any public way or other public place in the town or upon any sidewalk for the sale of food, fruit, merchandise or other thing without permission first being obtained from the Chief of Police.
- D. Whoever violates any provision of this section shall be liable to a penalty not exceeding \$50 for each and every violation thereof.³⁷

37. Editor's Note: Former § 128-2, Registration of solicitors; penalty, which immediately followed, was repealed 9-16-2024 by Ord. No. TOR-2024-7. See now Ch. 129, Solicitors and Canvassers.

Chapter 129**SOLICITORS AND CANVASSERS**

[HISTORY: Adopted by the City Council of the Town of Agawam 9-16-2024 by Ord. No. TOR-2024-7. Amendments noted where applicable.]

§ 129-1. Purpose.

This chapter establishes license requirements and specific operation requirements for persons intending to engage in door-to-door canvassing or solicitation in the City of Agawam in order to:

- A. Protect citizens from disruption of the peaceful enjoyment of their residences and from the perpetration of fraud or other crimes; and
- B. Allow for reasonable access to residents in their homes by persons or organizations who wish to communicate either commercial or noncommercial messages.

§ 129-2. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter:

BONA FIDE RELIGIOUS, CHARITABLE, EDUCATIONAL OR POLITICAL ORGANIZATION — Any organization that is qualified under state or federal law as a tax-exempt, nonprofit organization, any religious, charitable, educational or political organization or group, or any organization or group that espouses or advocates a position or belief on any subject of public interest or on behalf of any candidate for public office.

CANVAS or CANVASSING — Includes any one or more of the following door-to-door activities conducted for commercial purposes:

- A. Person-to-person distribution of literature, periodicals, or other printed materials, but shall not include placing or dropping off printed materials on the premises, except as otherwise exempted by this chapter;
- B. Seeking to enlist membership in any organization, except as otherwise exempted by this chapter; or
- C. Seeking to present, in person, organizational information, except as otherwise exempted by this chapter.

LICENSE — The photo identification card issued to a licensee under this chapter.

PERSON — Any individual, business entity, firm, partnership, corporation, company, association, limited-liability company, society, organization or league and includes any trustee, receiver, assignee, agent or other similar representative thereof, except as otherwise exempted by this chapter.

RESIDENCE — Includes every individual dwelling unit occupied for residential purposes by one or more persons.

SOLICIT or SOLICITATION — Includes any one or more of the following activities:

- A. Seeking to sell or obtain orders for the purchase of goods, wares, merchandise or services of any kind, character or description whatever;
- B. Selling or seeking to obtain prospective customers for application to purchase insurance of any kind;

- C. Seeking to obtain subscriptions to books, magazines, periodicals, newspapers, or any other type of publication;
- D. Seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any association, organization, corporation or project, except as otherwise exempted by this chapter; or
- E. Seeking to obtain information on the background, occupation, economic status, political affiliation, attitudes, viewpoints, or the like of the occupants of a residence for the purpose of selling or using such data, wholly or in part, for commercial purposes.

§ 129-3. License required.

No person, firm or corporation shall canvass, solicit, distribute circulars or other matters, or call from house to house in the City of Agawam to sell, promote the sale of or attempt to sell goods by sample, or to take or attempt to take orders for the future delivery of goods, merchandise, wares or any other property, personal or real, of any nature whatsoever, or take or attempt to take orders for services to be furnished or performed presently or in the future, or collect or attempt to collect contributions for any purpose, without first having obtained a written license from the Agawam Police Chief ("Police Chief") or their designee under the provisions of this chapter, except as otherwise provided in § 129-4 below.

§ 129-4. Exemptions.

- A. Any person, firm or corporation soliciting or canvassing on behalf of a bona fide religious, charitable, educational or political organization shall be exempt from the requirements of this chapter, except for the prohibited activities set forth in § 129-9.
- B. Any person, firm or corporation delivering goods or performing services which have been previously ordered by the person owning, leasing or occupying the residence where such delivery is made or service performed shall be exempt from the requirements of this chapter.
- C. Any minor employed by a newspaper as a carrier, or who has been previously registered with the Police Chief by an employing newspaper, shall be exempt from the requirements of this chapter.
- D. Officers or employees of the City, county, state and/or federal government, when on official business, shall be exempt from the requirements of this chapter.
- E. The provisions of this chapter shall not apply to any of the following groups:
 - (1) Girl Scouts of America, Agawam affiliates;
 - (2) Boy Scouts of America, Agawam affiliates;
 - (3) Any youth activity/sports association affiliated with the City of Agawam or the Agawam Public Schools;
 - (4) Individuals seeking to engage in exclusively noncommercial communication; and
 - (5) Any other organization designated for exemption by the Mayor.
- F. Any candidate for public office or person campaigning on behalf of such candidate, where such candidate is seeking election to an office to be voted upon by the registered voters in Agawam, or any person campaigning on behalf of or in opposition to any federal, state or local ballot question, petition, referendum, or home rule charter or ordinance amendment to be voted upon by the registered

voters in Agawam, shall be exempt from the requirements of this chapter.

§ 129-5. Nonexempt license applications.

- A. Any person seeking a license to engage in any activity set forth in this chapter, except those persons and activities exempt under § 128-4, shall file an application with the Police Chief or their designee on a form used by them no less than 15 days prior to the requested start date for such canvassing or soliciting.
- B. The application form shall include the following information:
 - (1) Name of applicant.
 - (2) Address of applicant (local and permanent home address).
 - (3) Applicant's date of birth.
 - (4) Applicant's height, weight, eye and hair color.
 - (5) Applicant's social security number.
 - (6) The length of time for which the right to do business is desired.
 - (7) A brief description of the nature of the business and/or the goods to be sold.
 - (8) The name and home office address of the applicant's employer or the person or entity on whose behalf the applicant is soliciting or canvassing. If self-employed, it shall so state.
 - (9) If the applicant is operating a motor vehicle in connection with the soliciting or canvassing, the year, make, color, model, registration number, registered state, vehicle owner, and address.
 - (10) Whether the applicant has been convicted of a crime or offense or violation of any municipal bylaw, ordinance or regulation relating to canvassing or soliciting and, if so, when, where and the nature of the offense.
 - (11) The names of other municipalities in the Commonwealth of Massachusetts where the applicant has been issued or granted a permit, license or similar authorization to solicit or canvass in the past two years.
- C. The applicant shall permit the Agawam Police Department to photograph said applicant for identification purposes. A copy of said photograph shall be kept on file in the Agawam Police Department.
- D. Within five days of receiving the applicant's completed application under this section, the Police Chief shall conduct a criminal record background check on the applicant. Within seven days of receiving the results of such criminal record background check, the Police Chief or their designee shall issue or deny a license. In computing the time periods under this section, Saturdays, Sundays and holidays shall be excluded. If the Police Chief does not render a decision within the applicable time periods under this section, the license shall be deemed constructively granted.
- E. Subject to the time requirements set forth in this section above, the Police Chief or their designee shall grant a license, except in the following circumstances:
 - (1) An applicant fails to fully comply with the requisites established for issuance of a license, including submission of a completed application form and payment of the applicable filing fees.

- (2) Falsification of information required to be provided in the application process.
- (3) A conviction in any state or federal court of the United States or any court of a territory of the United States for any of the following crimes or offenses, by whatever name called, within 10 years prior to the date of license application: burglary (armed or unarmed); stalking; breaking and entering; larceny; kidnaping; robbery (armed or unarmed); home invasion; buying, receiving or concealing stolen property; assault; fraud; murder, manslaughter; sexual assault, rape or other sex-related offenses; unlawfully carrying weapons; or the attempt of any such crime or offense.
- (4) Violations of the provisions of this chapter or any state law or regulation or municipal bylaw, ordinance or regulation regulating canvassing or soliciting, by whatever name called.

F. Suspension or revocation of license.

- (1) The Police Chief or their designee may suspend or immediately revoke a license in the following circumstances:
 - (a) The occurrence of any ground for denial as set forth in this chapter;
 - (b) Failure to comply with the other provisions of this chapter; or
 - (c) Any failure of a licensee to prominently display their license upon their person when soliciting or canvassing.
- (2) The Police Chief or their designee shall notify the licensee and shall provide the licensee an opportunity to be heard prior to suspending or revoking the license. Pending any such revocation hearing, the Police Chief or their designee may suspend the license.

G. Each applicant for a license shall pay a nonrefundable fee of \$25. The license shall expire as set forth on each license but in no case shall the term of the license exceed one year from the date of its issue. A licensee requesting renewal of a license must provide such information and pay the same nonrefundable fee as is required to obtain an initial license prior to the expiration of the current license.

§ 129-6. Separate license.

In the case of a firm or corporation, each person representing or soliciting or canvassing on behalf of such firm or corporation shall be required to apply for and maintain a separate license.

§ 129-7. License to be nontransferable; display.

The license shall be nontransferable and shall entitle the licensee for the period indicated therein and for the purposes specified therein to solicit or canvas in the City of Agawam unless otherwise exempted under this chapter, provided that the licensee shall have the license in his/her possession at all times while soliciting or canvassing and shall further conspicuously display the license.

§ 129-8. Posted premises.

No person shall engage in soliciting or canvassing upon any premises without a prior invitation from the occupant thereof if there is posted or displayed on such premises by means of a notice prominently displayed upon which is printed the words "No Solicitors" or "No Canvassers" or words of similar import. For the purposes of this section, the premises shall be deemed posted or displayed against soliciting or

canvassing if there is exhibited, on or near the main entrance to the premises or on or near the main door to any residence located thereon, a sign at least three inches by six inches in size which bears the above or similar words which is clearly visible to all entrants onto the premises.

§ 129-9. Prohibited activities.

- A. There shall be no soliciting or canvassing upon the premises, other than upon prior invitation of the occupant of any such premises, prior to 8:30 a.m. or after 7:30 p.m. local time of any day, and it is hereby declared unlawful and shall constitute a nuisance for any person, whether licensed under this chapter or not, to go upon any premises and ring the doorbell upon or near any door or create any sound in any other manner calculated to attract attention of the occupant of such residence for the purpose of soliciting or canvassing as herein defined prior to 8:30 a.m. or after 7:30 p.m. of any day or at any time on a federal holiday.
- B. No person engaged in soliciting or canvassing shall, at the time of initial contact with a prospective customer or donor, fail to identify himself or herself and the purpose of the soliciting or canvassing.
- C. No person engaged in soliciting or canvassing shall misrepresent the purpose of his or her soliciting or canvassing or use any false, deceptive or misleading representation to induce a sale or contribution, or use any plan, scheme or ruse which misrepresents the true status or mission of the person making the soliciting or canvassing.

§ 129-10. Certain representations prohibited.

No person, firm or organization having received a license to canvas or solicit within the City of Agawam shall use or exploit the fact of the license so as to lead the public to believe that such license in any manner constitutes an endorsement or approval by the City of Agawam or any of its officials.

§ 129-11. Authority of Police Chief.

The Police Chief or their designee shall have the power and authority to grant, deny, suspend or revoke licenses as provided for and in accordance with the terms of this chapter.

§ 129-12. Appeal.

Any person whose license application has been denied or whose license has been suspended or revoked shall have the right of appeal to the Mayor, subject to the same standards for denial or revocation set forth in this chapter. Any such appeal must be commenced within 14 days of the date of the decision by the Police Chief or their designee.

§ 129-13. Violations and penalties.

Any person, firm or corporation charged with violating any of the provisions of this chapter shall, upon conviction thereof, be liable for a fine not exceeding \$300 for each violation. Each day on which a violation exists shall constitute a separate violation.

§ 129-14. Severability.

Invalidity of any provision of this chapter shall not affect the validity of this chapter as a whole.

AGAWAM CODE

Chapter 131

PICNIC GROVES

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 9-4 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Peddling and soliciting — See Ch. 128.

§ 131-1. Issuance of license. [Amended 9-5-2023 by Ord. No. TOR-2023-6]

The License Commission may grant a license to any person to establish, keep open and maintain a grove to be used for picnics or other lawful gatherings and amusements for hire, gain or reward, upon such conditions and regulations as it deems proper subject to the provisions of MGL C. 140, § 202 to 205.

§ 131-2. Violations and penalties.

Any person without such license who establishes, lets, keeps open or maintains, himself or by another, a grove to be used for picnics or other amusements for hire, gain or reward shall be punished by a fine of not more than \$100.

§ 131-3. Hawking and peddling; penalty.

Any person not having a residence or regular place of business within 1/2 mile of a grove licensed in accordance with the provisions of this chapter who, during the time of holding a picnic or other lawful gathering in such licensed grove and within 1/2 mile thereof, hawks or peddles goods, wares or merchandise, establishes or maintains a tent, booth, vehicle or building for vending provisions or refreshments without the consent of the licensee of such grove, engages in gaming or horse racing or exhibits or offers to exhibit any show or play shall for each offense forfeit not more than \$50.

PROPERTY, TOWN AND PRIVATE

Chapter 134

PROPERTY, TOWN AND PRIVATE

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as § 28-1 and 11-7 of the Code of the Town of Agawam. Amendments noted where applicable.]

§ 134-1. Destruction of town property prohibited.

It shall be unlawful to destroy or injure any of the town's property. The Town Council is hereby authorized to offer a reward for information leading to the conviction of any person violating this section.

§ 134-2. Trespassing.

- A. Whoever, without right, enters or remains in or upon the dwelling house, buildings, boats or improved or enclosed land, wharf or pier of another after having been forbidden so to do by the person who has lawful control of said premises, either directly or by notice posted thereon, or in violation of a court order pursuant to MGL C. 208, § 34(b), MGL C. 209A, § 4, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or both. Proof that a court has given notice of such a court order to the alleged offender, shall be prima facie evidence that the notice requirement of this section has been met. A person who is found committing such trespass may be arrested by a sheriff, deputy sheriff, constable or police officer and kept in custody in a convenient place, not more than 24 hours, Sunday excepted, until a complaint can be made against him for the offense and he can be taken upon a warrant issued upon such complaint.
- B. This section shall not apply to tenants or occupants of residential premises who, having rightfully entered said premises at the commencement of the tenancy or occupancy, remain therein after such tenancy or occupancy has been or is alleged to have been terminated. The owner or landlord of said premises may recover possession thereof only through appropriate civil proceedings.

AGAWAM CODE

Chapter 140

SCHOOLS AND SCHOOL ZONES

[HISTORY: Adopted by the Town Council of the Town of Agawam 11-9-1994 as TOR-94-8. Amendments noted where applicable.]

GENERAL REFERENCES

Loitering — See Ch. 117.

§ 140-1. Unauthorized persons in schools or school zones; loiterers and trespassers.

- A. No person not being a student or employee of a school and not having a legitimate, specific reason for being there and not having written or oral permission from the school principal or his/her designee shall remain in or about any school grounds or any public property or way immediately adjacent thereto during school hours.
- B. No person not being a student or employee of a school shall congregate or stand in or in front or in back or to the side of any school playground or, without written or oral permission from the school principal or his/her designee, shall use any school playground or facilities thereon during school hours.
- C. Persons shall not congregate or stand on any public way or public property or in front or in back or to the side of any kindergarten or primary, elementary or secondary school with the purpose of annoying or molesting the students or employees thereof, or hinder, obstruct, prevent or disrupt the normal functions carried on therein, or prevent students or employees from entering or leaving the school.
- D. No person not being a student or employee of a school, while on school property or on public property adjacent to a school, shall distribute to students or throw, deposit or discard any handbills, literature, brochures or other papers or articles of any kind, unless such person has received written or oral permission from the school principal or his/her designee.
- E. No person shall post or affix handbills, posters, political signs or articles of any kind promoting business or organizations to any building, tree, fence or other structure on school grounds without written or oral permission from the school principal or his/her designee.

§ 140-2. Violations and penalties.

Any person found in violation of this chapter shall be punished by a fine not exceeding \$300.

SMOKING AND TOBACCO PRODUCTS

Chapter 149

SMOKING AND TOBACCO PRODUCTS

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-2020 by Ord. No. TOR-2020-7.³⁸ Amendments noted where applicable.]

38. Editor's Note: This ordinance also repealed former Ch. 149, Smoking and Tobacco Products, adopted 7-9-2018 by TOR-2018-6.

ARTICLE I

Prohibiting Smoking in Workplaces and Public Places**§ 149-1. Authority.**

This chapter is promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that "nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or health regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or political subdivision of the commonwealth."

§ 149-2. Definitions.

- A. As used in this article, the following words shall have the following meanings, unless the context requires otherwise.

COMPENSATION — Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-CIGARETTE/ELECTRONIC NICOTINE DELIVERY SYSTEM (ENDS) — Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah or under any other product name.

EMPLOYEE — An individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a de minimus amount of time.

EMPLOYER — An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one or more employees at one or more workplaces, at any one time, including the Town of Agawam.

ENCLOSED — A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an office, function room or hallway.

MUNICIPAL BUILDING — Any building or facility owned, operated, leased or occupied by the municipality.

OUTDOOR SPACE — An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

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 to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Agawam Board of Health. Retail Tobacco Stores in which the entry of persons under the age of 21 is prohibited at all times are allowed to offer for sale, electronic nicotine delivery systems which contain over 35 milligrams per milliliter of nicotine.

SMOKING (or SMOKE) — The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or nontobacco product designed to be

combusted and inhaled, including the use of electronic nicotine delivery systems.

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 Massachusetts General Law Ch. 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." Smoking bars in which the entry of persons under the age of 21 is prohibited at all times are allowed to offer for sale, flavored products and electronic nicotine delivery systems which contain over 35 milligrams per milliliter of nicotine.

WORKPLACE — An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for an employer; other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

- B. Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, § 22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, § 22 or 105 CMR 661, the definition contained in this ordinance shall control.

§ 149-3. Smoking prohibited.

- A. It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace as well as those workplaces listed in Subsection C below.
- B. Smoking is hereby prohibited in Agawam in accordance with M.G.L. Ch. 270, § 22 (commonly known as the "Smoke-Free Workplace Law").
- C. Pursuant to M.G.L. Ch. 270, § 22(j) smoking is also hereby prohibited in:
- (1) Smoking bars whose operators have newly applied after October 1, 2018;
 - (2) Nursing homes;
 - (3) Hotels, motels, B&B rooms, including short-term rentals;
 - (4) In all outdoor areas where food and/or beverages are served to the public by employees of restaurants, bars and taverns;
 - (5) Public transportation, bus/taxi waiting areas.
 - (6) On all town-owned playgrounds, parks, beaches, ballfields or any other recreational facility future or existing with structures, improved paths, parking areas or other maintained improvements. Also included are all municipal buildings, future or existing, and their grounds, including but not limited to, the Town Hall, Senior Center, Town Hall Annex, Fire and Police Stations, Library, and Building Maintenance Facility. A municipal golf course shall be exempt from this section.
 - (7) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, § 22 and § 149-3C of this article.

§ 149-4. Enforcement.

- A. An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished

by a fine of:

- (1) \$100 for the first violation;
- (2) \$200 for a second violation occurring within two years of the date of the first offense; and
- (3) \$300 for a third or subsequent violation occurring within two years of the second violation.

- B. Each calendar day on which a violation occurs shall be considered a separate offense.
- C. This article shall be enforced by the Board of Health and its designees.
- D. Violations of § 149-4B shall be disposed of by a civil penalty using the noncriminal method of disposition procedures contained in MGL c. 40 § 21D without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to MGL c. 111 § 188.
- E. Violations of § 149-4A and C may be disposed of by a civil penalty using the noncriminal method of disposition procedures contained in MGL c. 40 § 21D.
- F. If an owner, manager or other person in control of a building, vehicle or vessel violates this ordinance repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- G. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

§ 149-5. Severability.

If any paragraph or provision of this article is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

§ 149-6. Conflict with other laws or regulations.

Notwithstanding the provisions of § 147-3 of this article, nothing in this article shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

§ 149-7. (Reserved)

ARTICLE II
Sale or Gifts of Tobacco Products

§ 149-8. Definitions.

For the purpose of this article, the following words shall have the following meanings:

BLUNT WRAP — Any tobacco product manufactured or packaged as a wrap or as a hollow tube made 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, 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, including mint and menthol; 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 issue 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.

E-CIGARETTE/ELECTRONIC NICOTINE DELIVERY SYSTEM (ENDS) — Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah or under any other product name.

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, drug stores, 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 open 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 this article, 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.

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 to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Agawam Board of Health. Retail tobacco stores in which the entry of persons under the age of 21 is prohibited at all times are allowed to offer for sale, electronic nicotine delivery systems which contain over 35 milligrams per milliliter of nicotine.

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 side-stream 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." Smoking bars in which the entry of persons under the age of 21 is prohibited at all times are allowed to offer for sale, flavored products and electronic nicotine delivery systems which contain over 35 milligrams per milliliter of nicotine.

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.

TOBACCO PRODUCT FLAVOR ENHANCER — Any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product.

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.

§ 149-9. Tobacco sales to persons under the minimum legal sales age prohibited.

- A. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Agawam 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 Agawam 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 22.06(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 Agawam 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.

§ 149-10. Tobacco product sales permit.

- A. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Agawam without first obtaining a tobacco product sales permit issued annually by the Agawam Board of Health. Only owners of establishments with a permanent, non-mobile location in Agawam are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Agawam.
- B. As part of the tobacco product sales permit application process, the applicant will be provided with the Agawam ordinance. Each applicant is required to sign a statement declaring that the applicant has read said ordinance 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 regarding the sale of tobacco and this article.
- C. Each applicant who sells tobacco products, including nicotine vaping products, is required to provide proof of a current tobacco retailer license and/or license to act as an electronic nicotine delivery system retailer, issued by the Massachusetts Department of Revenue, when required by state law, before a tobacco product sales permit can be issued.
- D. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by the Agawam 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 ordinance.
- 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 (§ D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with § 149-22D.

I. Maximum number of tobacco product sales permits.

- (1) At any given time, there shall be no more than 30 tobacco product sales permits issued in Agawam. 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.
- (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) 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.

§ 149-11. Cigar sales regulated.

- A. No person shall sell or distribute or cause to be sold or distributed a single cigar.
- 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:
 - (1) The sale or distribution of any single cigar having a retail price of \$2.50 or more.
 - (2) 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 Agawam.
- D. The Agawam 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 article.

§ 149-12. Sale of flavored tobacco products prohibited.

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, or tobacco product flavor enhancer, except in smoking bars with the intent of onsite consumption.

§ 149-13. Prohibition of the sale of blunt wraps.

No person or entity shall sell or distribute blunt wraps in Agawam.

§ 149-14. 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.
- D. Subsections B and C shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

§ 149-15. 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. A retailer of liquid nicotine containers must comply with the provisions of 310 CMR 30.000, and must provide the Agawam 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 retailers 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."

§ 149-16. 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.

§ 149-17. Vending machines.

All vending machines containing tobacco products, as defined herein are prohibited.

§ 149-18. Nonresidential roll-your-own machines.

All nonresidential roll-your-own machines are prohibited.

§ 149-19. Prohibition of the sale of tobacco products by health care institutions.

No health care institution located in Agawam 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 drug store, shall sell or cause to be sold tobacco products, as defined herein.

§ 149-20. Prohibition of the sale of tobacco products by educational institutions.

No educational institution located in Agawam 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.

§ 149-21. Incorporation of Attorney General Regulation 940 CMR 21.

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts").

§ 149-22. Violations.

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 article and Massachusetts General Laws.

- A. For violations of § 149-9A, Tobacco sales to persons under the minimum legal sales age prohibited; § 149-12, Sale of flavored tobacco products prohibited and MGL c. 270 § 6; certain sections of § 149-9B, Signage; § 149-14A and B, Free distribution and coupons; § 149-15A, Out-of-package sales; § 149-16, Self-service displays, the violator shall receive by Health Order:
- (1) In the case of the first violation, a fine of \$1,000.
 - (2) In the case of the second violation within 36 months of the date of the current violation a fine of \$2,000 and the tobacco product sales permit shall be suspended for 14 consecutive business days.
 - (3) In the case of three or more violations within a thirty-six-month period, a fine of \$5,000 and the tobacco product sales permit shall be suspended for 60 consecutive business days.
 - (4) In the case of four violations or repeated, egregious violations of this article within a thirty-six-month period, the Board of Health shall hold a hearing in accordance with Subsection E of this section and shall permanently revoke a tobacco product sales permit.
- B. For violation of all other sections, the violator shall receive by Health Order:
- (1) In the case of a first violation, a fine of \$300.
 - (2) In the case of a second violation within 36 months of the date of the current violation, a fine of \$300 and the tobacco product sales permit shall be suspended for 14 consecutive business days.
 - (3) In the case of three or more violations within a thirty-six-month period, a fine of \$300 and the tobacco product sales permit shall be suspended for 60 consecutive business days.
 - (4) In the case of four violations or repeated, egregious violations of this article within a thirty-six-month period, the Board of Health shall hold a hearing in accordance with Subsection E of this section and shall permanently revoke a tobacco product sales permit.
 - (5) All fines must be paid within 30 days of owner's written receipt of the notice of violation or the date of the hearing decision by the Agawam Board of Health, whichever occurs later. Failure to pay the fine within the 30 days shall result in a suspension of the tobacco product sales permit.
- C. Refusal to cooperate with inspections pursuant to this article shall result in the suspension of the tobacco product sales permit for 30 consecutive business days.
- D. 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.

- E. The Agawam 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 Agawam Board of Health shall suspend or revoke the tobacco product sales permit if the Board of Health finds that a violation of this article occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or noncriminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. 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 article.

§ 149-23. Noncriminal disposition.

Whoever violates any remaining provision of this article may be penalized by the noncriminal method of disposition as provided in MGL c. 40 § 21D or by filing a criminal complaint at the appropriate venue.

§ 149-24. Separate violations.

Each day any violation exists shall be deemed to be a separate offense.

§ 149-25. Enforcement.

- A. Enforcement of this article shall be by the Agawam Board of Health or its designated agent(s).
- B. Any resident who desires to register a complaint pursuant to the ordinance may do so by contacting the Agawam Board of Health or its designated agent(s) and the Board shall investigate.

§ 149-26. Severability.

If any provision of this article is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

§ 149-27. Effective date.

This article shall be effective as of January 1, 2021.

AGAWAM CODE

Chapter 155

STREETS AND SIDEWALKS

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 16 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Dogs and other animals — See Ch. 96.

Parades — See Ch. 124.

Loitering — See Ch. 117.

ARTICLE I
General Provisions

§ 155-1. Department of Public Works established.

A Department of Public Works is hereby established for the town, to be under the control of a Superintendent of the Department. The Superintendent shall be appointed by the Mayor. This Department shall include the Water, Highway, Sewer and Engineering Departments.

§ 155-2. Temporary repairs on private streets. [Amended 9-18-1989 by TOR-89-15]

- A. Pursuant to MGL C. 40, § 6N, the Agawam Department of Public Works is authorized to make temporary repairs to private ways and unaccepted streets that have been open to public use for a minimum of six years.
- B. Such repairs shall include the filling of holes in the subsurface of such ways and repairs to the surface materials thereof. Materials for such repairs, where practical, should be the same as or similar to those used for the existing surfaces of such ways, but may include surfacing the ways with bituminous materials, including but not limited to bituminous concrete.
- C. Drainage, as determined by the Department of Public Works to be necessary as a result of the repairs, may also be done. Said repairs need not be requested by a petition of the abutters, but may be initiated by the Department of Public Works upon the determination that the repairs are required by public necessity.
- D. There shall be no betterment assessments for these repairs, nor shall a cash deposit from any abutters be required.
- E. The Town of Agawam shall not be liable on account of any damage whatsoever caused by such repairs, and MGL C. 84, § 25, shall not apply. The Town of Agawam shall not be liable to any abutter for any claim arising out of said repairs.

§ 155-3. Establishment and maintenance of sidewalks.

The Town Council may, if in its judgment the public convenience so requires, establish and grade sidewalks in the streets and may assess the abutters on such sidewalks 1/2 the cost thereof, the residue to be paid by the town. No such sidewalk shall be dug up or obstructed without the consent of the Town Council or the Mayor. The Town Council may, if in its judgment the public convenience so requires, grade and construct sidewalks and complete partially constructed sidewalks in any street with or without edgestones, may cover the same with brick, flat stones, concrete, gravel or other appropriate material and may assess not more than 1/2 of the costs proportionally upon the abutters on such sidewalks; but no abutter shall be assessed an amount exceeding 1% of the valuation of his abutting estate as fixed by the last preceding annual assessment for taxes. There shall be a deduction from the assessment for sidewalks so constructed with edgestones and covered any amount previously assessed upon the abutting land and paid for the cost of the construction in any other manner of such sidewalk. Such deduction shall be made proportionately from the assessment upon abutters who are owners of the land in respect of which such former assessments were paid. Such sidewalks when so constructed and covered shall be maintained at the expense of such town. In estimating the damage sustained by the construction of such sidewalks, the benefit, if any, to the property of the party by reason thereof shall be allowed in setoff.

§ 155-4. Excavations.

- A. No person, officers or boards having authority to repair or construct highways or a person acting under the authority of any of them shall dig up, open or excavate in any street without first obtaining permission, in writing, so to do from the Department of Public Works and, if the Mayor so requires, executing and delivering to the town an agreement under seal to indemnify the town and save it harmless from all loss, cost or damage caused to it thereby and to replace the material and substances so dug up or removed to the satisfaction of the Department of Public Works. Such permission shall state the place where and the manner in which such opening or excavation may be made. Whoever does so open, dig up or excavate in any street shall properly guard such opening or excavation and the substance or material removed therefrom and shall keep the same properly lighted from sunset until sunrise.
- B. No person shall dig up, cut up or despoil any portion of any street, except that any owner whose land abuts upon any street may grade or otherwise beautify such street immediately in front of his own parcel in such manner as will not interfere with public travel in the spaces in such street reserved or generally used for such travel.

§ 155-5. Congregating to obstruct free passage prohibited.

Three or more persons shall not stand together or near each other in any street, sidewalk or on any footwalk in the town so as to obstruct the free passage for foot passengers, and any persons so standing shall move on immediately after a request to do so by the Chief of Police or any police officer.

§ 155-6. Obstructing streets prohibited.

- A. No person shall allow a horse or vehicle under his control to stand or be driven in any street in such a manner as to unreasonably obstruct travel in the same.
- B. No person shall allow any vehicle under his control while not in use to stand in any street, nor shall he use any portion of any street for storing the same.
- C. No person shall place any chattels whatsoever in or upon any portion of any street so as to block or obstruct the same.
- D. No person shall hitch or tie or allow his horse or other animal to be hitched or tied to any tree in any street.

§ 155-7. Obstructions near intersections prohibited.

No person shall grow, cause to grow, construct, cause to be constructed or maintain any shrubs, trees, plants, fences or other things to any height at or near any intersection of ways within the town which shall obstruct the view of operators of vehicles passing along the traveled way.

§ 155-8. Depositing certain materials prohibited.

- A. No person shall throw or place or cause to be thrown or placed any ashes, cinders, garbage, refuse or decaying or other foreign matter in any street.
- B. No person shall throw or place or cause to be thrown or placed in any street or upon any sidewalk any glass, broken crockery, scrap iron, nails, whole or broken bottles or any other article that would be liable to injure the feet of horses or pedestrians or injure or damage the tires of bicycles or any other vehicle which as wheels with tires composed in whole or in part of rubber.

§ 155-9. Water flow from private property onto streets.

- A. No person shall allow water, drainage or any fluid or other refuse matter from any sink, sink drain, sewer or cesspool situated on land which he owns or occupies to flow or run into or over any street.
- B. No person shall allow water from any eaves spout, eaves trough leader pipe, spout, trench, ditch or other natural or artificial channel which he owns or which is under his control to discharge onto or upon any street if the same shall tend to injure such street or make travel therein less secure or easy.

§ 155-10. Snow and ice removal; penalty.

- A. The tenant or occupant and, in case there is no tenant or occupant, the owner or persons having the care of any estate abutting upon any street, lane, court or square within the town where there is a sidewalk which now is established or set apart as such shall remove, within 24 hours after the ceasing to fall, any snow thereon.
- B. When any snow shall be collected or deposited upon any sidewalk mentioned in the preceding subsection, either by falling from some adjacent building or by drifting upon such sidewalk, the tenant or occupant or the owner or persons having the charge of the estate abutting upon such sidewalk shall within 24 hours after its being collected or deposited cause the same to be removed.
- C. Whenever any sidewalk mentioned in Subsection A shall be encumbered with ice, it shall be the duty of the tenant or occupant and, in case there is no tenant or occupant, the owner or persons having the charge of the estate abutting upon such sidewalk to cause such sidewalk to be made safe and convenient for transit by removing the ice therefrom or by covering the same with sand or some other suitable substitute within 24 hours after such sidewalk shall become so encumbered.
- D. No persons plowing, pushing or shoveling snow or ice from private parking lots, driveways or sidewalks in or upon any street or public way shall leave any ridge of ice or snow or other debris upon such public way as to cause hazardous or dangerous conditions.
- E. Any person violating any provision of this section shall be punished by a fine of not less than \$25. Each twenty-four-hour period that said violation is permitted to continue after receipt of the initial written notice shall constitute a separate violation and shall be punished by a fine of not less than \$25 per twenty-four-hour period. No additional written notice need be given for continuing violations. The Agawam Police Department, the Agawam Department of Public Works and the Agawam Department of Inspection Services shall be empowered to enforce the provisions of this section, and they may utilize the noncriminal disposition procedure provided in MGL c. 40, § 21D, as amended from time to time. **[Amended 2-3-1997 by TOR-96-9]**

§ 155-11. Plowing of sidewalks by Department of Public Works.

The Department of Public Works shall have the authority to plow snow from sidewalks where children are required to walk to school on main arteries, including both paved and dirt sidewalks.

§ 155-12. Ball playing.

No person shall throw a ball, stone or other missile in, upon or across any street, except that the Town Council may set apart various parts of the streets in which persons may play ball under such conditions and restrictions as it may determine.

§ 155-13. Discharge of firearms across streets prohibited.

No person shall discharge any missile from any air gun or air rifle, slingshot or other like instrument within, upon, over or across any street.

§ 155-14. Animals crossing sidewalks.

No person shall lead, ride or drive any horse, mule, cow or meat cattle upon or over any sidewalk except to cross the same.

§ 155-15. Damaging sidewalks and tree belt prohibited; penalty. [Amended 5-4-1992 by TOR-92-9; 3-6-1996 by TOR-95-10]

- A. No person shall damage any sidewalk owned by the town. Damage to any sidewalk includes dislodging a portion of the pavement, and/or cracking and suppressing a portion of the pavement. Any person violating the provision of this section shall be punished for each offense with a fine commensurate with a total replacement cost of the damaged section of the sidewalk.
- B. Sidewalks and tree belts.
 - (1) This subsection shall not apply to property which is zoned agricultural and which is actively being utilized for agricultural and/or horticultural use.
 - (2) The tenant or occupant of any real estate in the town which abuts on any public or private way in the town and, in case there is no tenant or occupant, the owner of such real estate, shall keep that portion of the public or private way commonly known as the "sidewalk" and the "tree belt" mowed and free and clear of all litter, debris, noxious weeds, brush, any other kind of rubbish and automobiles and shall maintain the same in a clean and sanitary manner and also have uninterrupted clear vision at all intersections.

§ 155-16. Violations and penalties.

Whoever violates any of the provisions of this Article shall be punished by a fine of not more than \$100 and not less than \$20.

§ 155-16.1. Alternative proceedings for violations. [Added 6-6-2005 by TOR-2005-3]

- A. Any violation of this chapter, Chapter 155, may, in the discretion the Inspector of Buildings, or his designee, or any police officer as directed by the Police Chief or his designee, be enforced by the noncriminal complaint method for which provision is made, and/or as set forth in MGL c. 40, § 21D, as amended from time to time, that is, noncriminal disposition. Fines issued pursuant to § 155-16.1 shall be as follows:
 - (1) First offense: \$25.
 - (2) Second offense: \$50.
 - (3) Third offense and each subsequent offense: \$100.
- B. Each day on which a violation exists shall constitute and be deemed a separate offense.

ARTICLE II
Betterments

§ 155-17. Assessment of costs.

The Town Council is authorized to lay out ways therein and may, at any time within two years after the passage of an order laying out, relocating, altering, widening, grading or discontinuing a way and after the work has been completed or the way has been discontinued, if such order declares that such action has been taken under the provisions of law authorizing the assessments of betterments, and if in its opinion any land receives a benefit or advantage therefrom beyond the general advantage to all land in the town, determine the value of such benefit or advantage to such land and assess upon the same a proportional share of the cost of such laying out, relocation, alteration, widening, grading or discontinuance; but no assessment shall exceed 1/2 of the amount of such adjudged benefit or advantage.

§ 155-18. Notification to abutters.

The Town Clerk shall notify all abutters who shall be affected by a vote of the Town Council which will affect them under the town's Betterment Act. This notice shall be mailed no less than 30 days before the Council meeting at which the vote thereon shall be taken. In case of special meetings, two weeks shall be sufficient.

§ 155-19. Reassessment.

- A. If such assessment is invalid and has not been paid or has been recovered back, it may be reassessed by the Town Council to the amount for which the original assessment ought to have been made, and it shall be a lien upon the land and shall be collected in the same manner as reassessed taxes.
- B. The cost so assessed shall include all damages for land and buildings taken. The damages for land taken shall be fixed at the value thereof before such laying out, relocation, alteration, widening, grading or discontinuance and shall also include the value of all buildings on the land a part of which is taken, deducting therefrom the value of materials removed and of all buildings or parts of buildings remaining thereon. Such cost shall be paid in the manner and upon the conditions required in like proceedings.

§ 155-20. Surrender of land.

An owner of land abutting on any such way liable to such assessment may give notice, in writing, to the Town Council before the estimate of damages is made that he elects to surrender his land, and if the Town Council adjudges that the public convenience and necessity require the taking of such abutting estate for the improvements named, it may take the whole thereof and shall thereupon estimate its value, excluding the benefit or advantage accruing from such improvements. Such owner shall convey the estate to the town and may recover therefrom in any action of contract the value so estimated. The town may sell any portion of such land which is not needed for such improvements.

§ 155-21. Apportionment of assessment.

If any owner any time before demand gives notice to the Town Council to apportion the assessment into three equal parts and certify its apportionment to the assessors, who shall add one of such parts, with interest from the date of the apportionment, to the annual tax of such land for each of three years next ensuing. All such assessments which remain unpaid after they become due shall bear interest until the payment thereof.

§ 155-22. Appeal.

- A. A person who is aggrieved by the doings of the Town Council may within one year file a petition in the Superior Court for the county in which the land is situated and after notice to the land shall have a trial by a jury therein, and upon request of either party the jury shall take a view.
- B. If the jury does not reduce the assessment, the respondent shall recover costs, which shall be a lien upon the land and shall be collected in the same manner as the assessment; but if the jury reduces the assessment, the petitioner shall recover costs.

§ 155-23. Assessments made upon leased lands.

If any assessment is made upon land the whole or part of which is leased, the owner shall pay the assessment and may collect of the lessee an additional rent for the portion so leased equal to 10% per annum on that portion of the amount paid which the leased portion bears to the whole estate after deducting from the whole amount any money received for damages to such land in excess of what he has necessarily expended thereon by reason of such damages.

ARTICLE III

Street Acceptance**[Added 12-18-1978; amended 6-2-1986 by TOR-86-13; 1-19-1999 by TOR-98-8]****§ 155-24. Procedure adopted.**

In accordance with MGL C. 82, the Town of Agawam hereby adopts the following procedure for the acceptance of streets within the town as public ways, whereupon the responsibilities for those streets so accepted by the Town Council shall thereafter rest with the town as set forth in the Massachusetts General Laws and town ordinances.

§ 155-25. Establishment of Street Acceptance Committee as agent for Council.

There is hereby established a Street Acceptance Committee, which shall be the agent of the Town Council, as defined by the Massachusetts General Laws, for purposes of holding public hearings, making recommendations to the Town Council and otherwise processing petitions for street acceptance. The Committee shall be comprised of three Councillors appointed by the Council President, and the Superintendent of the Department of Public Works. The terms of the Councillors shall be coterminous with their Town Council terms.

§ 155-26. Initiating acceptance of way.

Owners of land in the town may petition the Town Council for the acceptance of a street as a public way by filing with the Town Clerk a petition bearing the signatures of at least 75% of the owners of lots abutting the way as indicated by the records of the Office of the Assessor. The Superintendent of Public Works may, with the approval of the Mayor, petition the Town Council for the acceptance of a street as a public way without the requirement of a petition bearing the signatures of any abutting owners. The Planning Board may petition the Town Council for the acceptance of a street within an approved subdivision as a public way without the requirement of a petition bearing the signatures of any abutting owners.

§ 155-27. Adoption of regulations and forms.

The Street Acceptance Committee may adopt, with the approval of the Town Council, regulations and forms for the street acceptance process. Such regulations shall be available to the public in the Office of the Town Clerk.

ARTICLE IV

Trench Permits**[Added 12-1-2008 by TOR-2008-5]****§ 155-28. Authority to issue trench permits.**

Pursuant to Massachusetts General Laws Chapter 82A and 520 CMR 14.00, as amended from time to time, the Superintendent of Public Works or his designee is designated as the permitting authority for the issuance of trench permits in the Town of Agawam. In the issuance of trench permits, the Superintendent of Public Works or his designee shall follow the requirements of Massachusetts General Laws Chapter 82A and 520 CMR 14.00, as amended from time to time.

§ 155-29. Trench permit fee.

The fee for a trench permit in the Town of Agawam shall be \$25. The Town of Agawam shall be exempt from the payment of trench permit fees under this article.

AGAWAM CODE

Chapter 159

SUBDIVISION OF LAND

[HISTORY: Adopted by the Planning Board of the Town of Agawam; amended through 8-17-1989. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 82.

Water and sewers — See Ch. 175.

Fees — See Ch. 103.

Zoning — See Ch. 180.

Streets and sidewalks — See Ch. 155.

ARTICLE I

Authority and Interpretation**§ 159-1. Adoption of rules.**

Under the authority vested in the Planning Board of the Town of Agawam by MGL c. 41, § 81-Q, the Board hereby adopts these rules and regulations governing the subdivision of land in the Town of Agawam. Such rules and regulations shall be effective on and after the first day of June 1954. This authority shall be interpreted according to the directive of MGL c. 30, § 61 and 62.

§ 159-2. Amendment of statute. (Approved 7-18-1972)

- A. Section 2 of Chapter 30 of the Massachusetts General Laws is hereby amended by inserting after § 60 the following two sections:

"Section 61. All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact.

"As used in this section and Section 62, damage to the environment' shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth and shall include but not be limited to air pollution; water pollution; improper sewage disposal; pesticide pollution; excessive noise; improper operation of dumping grounds; impairment and eutrophication of rivers, streams, floodplains, lakes, ponds or other surface or subsurface water resources; and destruction of seashores, dunes, marine resources, wetlands, open spaces, natural areas, parks or historic districts or sites. Damage to the environment shall not be construed to include any insignificant damage to or impairment of such resources.

"Section 62. No agency, department, board, commission or authority of the commonwealth or any authority of any political subdivision thereof shall commence any work, project or activity which may cause damage to the environment until 60 days after it has published a final environmental impact report in accordance with the provision of this section or until 60 days after a public hearing on said report, provided that research, planning, design and other preliminary work necessary to describe and evaluate such project for the purposes of this section may be undertaken.

"An environmental impact report shall contain detailed statements describing the nature and extent of the proposed work and its environmental impact; all measures being utilized to minimize environmental damage; any adverse short-term and long-term environmental consequences which cannot be avoided should this work be performed; and alternatives to the proposed action and their environmental consequences. The preparation of said report shall be commenced during the initial planning and design phase of any work, project or activity subject to this section, and the report shall be so prepared and disseminated as to inform the originating agency, reviewing agencies, the appropriate regional planning commission, the Attorney General and the public of the environmental consequences of state actions and the alternatives thereto prior to any commitment of state funds and prior to the commencement of the work, project or activity. All reviewing agencies and any state agency, department, board, commission, division or authority which has jurisdiction by law or special expertise with respect to any environmental impact involved shall affix their written comments to the final impact report. In order to ensure an interdisciplinary review, the Secretary of Environmental Affairs shall, in conjunction with any agency involved, jointly approve the selection of any consultant engaged to prepare the draft or final impact report.

"The secretaries of the executive officer shall each promulgate rules and regulations approved by the Secretary of Environmental Affairs to carry out the purposes of this section which shall be applicable to all agencies, departments, boards, commissions, authorities or instrumentalities within each of such executive offices and which shall conform to the requirements of the National Environmental Policy Act, Public Law 81-190, and amendments thereto. Any draft report, final report and all written comments required by said regulations shall be public documents. Said reports shall be submitted to the Secretary of Environmental Affairs, who shall issue a written statement indicating whether or not in his judgment said reports adequately and properly comply with the provisions of this section.

"For the purposes of carrying out the provisions of this section, funds made available for the purpose of design of or planning or performing said work, project or activity shall be available and may be expended for the research, preparation and publication of the reports required by this section and expenses incidental thereto, and said funds may be transferred or otherwise may be made available to other state departments and resource agencies designated by the Secretary of Environmental Affairs for the purpose of meeting the expenses incurred in evaluating the draft or final impact report.

"Section 3. Section 61 of Chapter 30 of the Massachusetts General Laws, inserted by Section 2 of this Act, shall take effect on December 31, 1972, and Section 62 of said Chapter 30, inserted by said Section 2, shall take effect on July 1, 1973."

B. Attention is directed also to the National Environmental Policy Act of 1969, Public Law 91-190.

ARTICLE II
General Provisions

§ 159-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT or SUBDIVIDER — The owner of record of the tract of land to be subdivided, or his agent duly authorized in writing.

BOARD — The Planning Board of the Town of Agawam.

LOT — An area of land in one ownership, with definite boundaries, used or available for use as the site of a principal building and its accessory buildings. A "lot" within a subdivision shall mean such an area whose boundaries are recorded and which area has no interior division.

SUBDIVISION — The division of a tract of land into two or more lots in such manner as to require provisions for one or more new ways not in existence when the Subdivision Control Law³⁹ became effective in the Town of Agawam to furnish access for vehicular traffic to one or more such lots, and shall include resubdivision and, when appropriate to the context, shall relate to the process of subdivision of the land or territory subdivided.

§ 159-4. Plan believed not to require approval.

- 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 that his plan does not require approval under the Subdivision Control Law⁴⁰ may submit his plan, two originals and two copies, minimum, and application Form A⁴¹ to the Planning Board, accompanied by the necessary evidence to show that the plan does not require approval. Said person shall file, by delivery or registered mail, a notice with the Town Clerk stating the date of submission for such determination and accompanied by a copy of said application. A filing fee of \$50 plus \$20 per lot shall accompany the application. **[Amended 4-5-1990; 9-18-2008]**
- B. Said plan shall be at a scale no smaller than one inch equals 40 feet and shall be 24 inches by 36 inches or 18 inches by 24 inches in size and shall show all existing structures and their relationship to the proposed property lines. The plan shall be of such sheet size and layout so as to conform to the regulations of the Registry of Deeds. A block space, 3.5 inches wide by four inches high, shall be available adjacent to the right on the bottom margin for the endorsement of the Planning Board.
- C. If the Board determines that the plan does not require approval, it shall without a public hearing and within 21 days of the submission endorse on the plan the words "Planning Board Approval Under Subdivision Control Law Not Required." Said plan shall be returned to the applicant, and the Board shall notify the Town Clerk of its actions.
- D. 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 so inform the applicant and return the plan. The Board shall also notify the Town Clerk of its determination.
- E. Any plan so endorsed shall be recorded with the Registry of Deeds within six months. Proof of

39. Editor's Note: See MGL c. 41, §§ 81K through 81GG, inclusive.

40. Editor's Note: See MGL c. 41, § 81K et seq.

41. Editor's Note: Form A is on file in the Planning Department offices.

recording shall be submitted to the Planning Board. Failure to record the plan within six months and provide proof of recording will negate the action of the Board. In addition, no building permit will be issued until a certified copy of the registered plan is received by the Agawam Department of Public Works. [Amended 3-19-1992; 6-18-1992]

§ 159-5. Submission of plans required; consent of Board required.

- A. No person shall make a subdivision within the Town, or proceed with the improvement or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein, unless and until a preliminary and definitive plan involved therefrom of such subdivision has been submitted to and approved by the Planning Board as hereinafter provided.
- B. Not more than one building designed or available for use for dwelling purposes 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 Planning Board. The consent of the Board shall be conditional upon conformance with the applicable zoning ordinances⁴² and the provision of adequate ways and utilities furnishing access to each site of such building the same as otherwise required for lots in a subdivision.

42. Editor's Note: See Ch. 180, Zoning.

ARTICLE III
Plan Submission and Approval Procedure

§ 159-6. Preliminary plan.

A. General.

- (1) An application for approval of a preliminary plan of a subdivision shall be submitted to the Planning Board by the applicant, who is defined in § 159-3. The submission of such a preliminary plan will enable the subdivider, the Board, other municipal agencies and owners of property abutting the subdivision to discuss and clarify the problems of such subdivision before a definitive plan is prepared.
- (2) A definitive plan will not be reviewed unless a preliminary plan has been submitted and subsequently approved. Rules and regulations in effect at the time of the definitive submission shall apply unless the definitive plan is submitted within seven months of the date of preliminary submission, in which case the rules and regulations in effect on the earlier date shall still apply.

B. Method of submission.

- (1) An application for approval of a preliminary plan shall be submitted within 14 days prior to the first regular meeting of the Board for that month. The application shall be placed on the agenda for review on the first regular meeting of the month. If the application is deemed incomplete, the Board, by vote, may reject the plan, and no further action shall be taken by the Board until the applicant resubmits an amended application. The decision shall be filed with the Town Clerk; the applicant shall be notified by certified mail.
- (2) Notice shall be given to the Town Clerk when the preliminary application is filed with the Planning Board. A filing fee of \$250 plus \$25 per lot or any part thereof shall accompany the application. Payment shall be made by check payable to the Town of Agawam. Should the application be determined to be incomplete, the fee shall be returned and all privileges shall be voided. **[Amended 9-18-2008]**

C. Contents of application.

- (1) Preliminary submissions shall include the following:
 - (a) A completed Form B.⁴³
 - (b) A statement of interest in the land by the applicant.⁴⁴
 - (c) A location map of the site and surroundings sufficient to locate the site from existing intersections, pump stations, etc. The scale shall be one inch equals 1,200 feet.
 - (d) An environmental study. The environmental study need not be compiled by a professional agency. The applicant may make the observation and determinations himself, with such assistance from engineers, nursery men, etc. as is necessary for accuracy in the technical areas. Photographs to support the observations should be included. The short form contained in Chapter 30, § 62, of the Massachusetts Environmental Act may be used for guidance. The study shall be presented in report form with drawings or maps as needed for

43. Editor's Note: Form B is on file in the Planning Department offices.

44. Editor's Note: The statement of interest is on file in the Planning Department offices.

clarification. The study shall contain:

- [1] The relationship of the proposed development to the Master Plan, Zoning Map, policies and controls for the affected area.
- [2] Existing topography, water table, drainage features, natural geologic elements, stands or groves of trees, shrub rows or other wildlife habitats, scenic qualities, easements and rights above, on or under the land and the current nature of man's use of the area; a topographic sheet with existing and finished contours at two-foot intervals; spot elevations as needed. Contour lines shall extend at a minimum 30 feet beyond the property lines.
- [3] The effect of the proposed development, both positive and negative, upon the environment, including consideration of those elements in Subsection C(1)(d)[2] above; visual, including but not limited to aesthetic considerations and signs and architectural elevations; traffic, pedestrian and vehicular, within and in the surrounding areas servicing the proposal; solid waste containment and disposal; air and water quality; also radiation and hazardous substances control; historic architectural and archaeological preservation; and outdoor recreation, if involved in existing or proposed development. Does the proposal involve a filing under the Massachusetts Wetlands Protection Act, MGL c. 131, § 40?

(e) A preliminary plan, which shall include:

- [1] A lot survey with existing easements, abutters and zone lines; existing streets abutting the proposal (type of street, see § 159-8B).
- [2] A topographic plan showing:
 - [a] Existing contours at two-foot intervals extending at least 30 feet beyond the property lines.
 - [b] Environmental elements, including such things as the following: all areas regulated by the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, shall be verified by the Agawam Conservation Commission through a determination of applicability; existing stone walls, fences, existing buildings, trees with a diameter greater than eight inches measured five feet above the ground, shrub rows, rock ridges and outcroppings, water bodies and any other noteworthy feature of the land.
 - [c] Proposed street and lot lines sketched in; spot grades on the center lines of streets (high spots, low point, intersection); indication of the types of streets. (See Article IV, Design Standards.)
- [3] Indication of sewerage, water and surface water systems.

(f) An attested copy of the deed of the property.

- (2) Plans shall be presented in one original plus four copies, minimum. Other documents shall be presented in two copies. One set will be returned to the applicant as endorsed.

D. Action of the Board. The Board shall confer with any boards or commissions which have an interest in the proposal. Within 45 days after submission of a preliminary plan, the Board shall approve,

approve with amendments or disapprove the plan. The applicant shall be notified by certified mail. The Town Clerk also shall be notified. In the case of disapproval, the Board shall state in detail its reasons therefor. Section 81S of Chapter 40 of the Massachusetts General Laws shall apply. The Planning Board shall also notify abutters to the proposal of the submission and shall have the submission available for their review at the Town Hall.

§ 159-7. Definitive plan.

A. Timing.

- (1) No person shall submit a definitive plan of a subdivision to the Planning Board for approval unless a preliminary plan has been approved by the Board. The definitive plan shall not vary substantially from the approved preliminary plan.
- (2) The definitive plan shall conform to the applicable Zoning Ordinance.

B. Method of submission.

- (1) An application for approval of a definitive plan shall be submitted within 14 days prior to the second regular meeting of the Board for the month.
- (2) The application shall be placed on the agenda for submission review on the second regular meeting of the month. If the application is deemed incomplete, the applicant will be notified by certified mail that the plans will not be further reviewed and that after the required public hearing the Board, by vote, may reject the plans due to improper submission.
- (3) If, prior to the public hearing, the applicant completes the application, the amended submission shall be accompanied by a request for an appropriate extension of time.
- (4) The applicant shall file by delivery or registered mail a notice with the Town Clerk stating the date of application for such approval and accompanied by a copy of the complete application (Form C).⁴⁵
- (5) A filing fee of \$500 plus \$75 per lot or any part thereof shall accompany the application. Payment shall be by check payable to the Town of Agawam. **[Amended 9-18-2008]**
- (6) Land which is to be secured by conservation easement or deeded to the Town as public open space and is so indicated on the plan shall not be subject to the acreage filing fee.

C. Contents of application. Submission of a definitive plan application shall include the following:

- (1) A statement of interest in the land by the applicant.⁴⁶
- (2) An attested copy of the deed of the property.
- (3) An updated environmental study (reference to previous study and to include any changes which have occurred in the time interval).
- (4) Final plans and specifications as required:
 - (a) A title sheet showing the index to drawings and a location map at a scale of one inch equals

45. Editor's Note: Form C is on file in the Planning Department offices.

46. Editor's Note: The statement of interest is on file in the Planning Department offices.

1,200 feet.

- (b) A lot survey with road layout and lot lines suitable for filing with the Registry of Deeds. See Subsection G(2). Roadway layout, roadway center line, and property lines shall be tied into the Agawam Coordinate System. Coordinate traverse point locations can be obtained from the Engineering Division. After the definitive plan is approved, the applicant shall provide the Engineering Division with a computer disk containing the following: Coordinates of roadway layout and center line data, property line data, and all plan and profile drawings. The computer disk shall be supplied in an AutoCAD or DXF format, unless otherwise specified by the City Engineer. **[Amended 12-5-1996]**
 - (c) A topographic sheet with existing and finished contours at two-foot intervals; spot elevations as needed. Contour lines shall extend at a minimum 30 feet beyond the property lines. Center lines of roads with stations and elevations shall be shown. Where septic tanks and leach fields are being used, areas of leach fields shall be shown by spot elevations. The general location of proposed buildings shall also appear on this plan, and the finished grade of land at the four corners.
 - (d) Road layouts and profiles, including those of all utilities. (See Article IV.) Curb cuts and driveways within the street line shall be shown.
 - (e) Detail sheets as needed.
- (5) A statement of the time-development sequence.
 - (6) A plan showing the sequence of development. All bonding must conform to these divisions.
 - (7) A Town-development relationship study, for information purposes only:
 - (a) The impact on utilities and services which will be required to service the development.
 - (b) The tentative sale price of houses, type of housing and square footage of finished living space per unit.
 - (8) A report of test borings and soil samples, water table tests and soil absorption tests (percolation tests):
 - (a) Borings and soil samples. Borings and soil tests shall be made by a reputable soil testing firm approved by the Town Engineer. Borings shall be made in general every 250 feet along the center line of each roadway or closer if required by the Town Engineer and in easements at the discretion of the Town Engineer. The borings shall extend to a depth of one foot below the deepest utility. The borings should be shown on the profiles of the construction plans and should indicate the type of soil and the depths at which they are encountered, the standard penetration resistance (N) of each type of soil and the elevation of the water table. In addition, soil samples shall be taken at the street borings of the material which will form the subgrade of the proposed roadways. A sieve analysis shall be made of these samples with the percent passing the one-half-inch, No. 4, No. 10, No. 40 and No. 200 sieves being reported. Also, the liquid limit, plasticity index and group index of the samples shall be determined and reported. The developer may provide test pit logs from backhoe-dug test pits at the above-described locations. These test pits will be provided at the developer's option and will not necessarily relieve him of the requirements for penetration tests and samples noted above.

(b) Soil absorbency tests and water table observation tests.

[1] All percolation tests (soil absorbency tests) shall be made at the final location and elevation of the proposed leaching field and wherever else determined by the Town Engineer. All tests will only be performed during the period of April 1 to June 15, provided that all frost is out of the ground. Soil with a percolation rate of over 15 minutes per inch shall not be suitable for septic tanks and leach fields. Soil with a percolation rate of over one minute per inch shall be unsuitable for subsurface leaching fields and street drains. A groundwater observation hole a minimum of seven feet in depth must be measured from the elevation of the property after finished grading. All tests must be made in the presence of the Town Engineer or his agent. Where the test is to be made in filled ground for sanitary sewerage disposal purposes, the fill must be in place at least six months prior to the date on which the test is made. Tests made under this section may be utilized by the Board of Health, provided that any additional requirements of that Board have been complied with.

[2] Plans shall be presented in two sets of original or reproducible drawings and a minimum of five sets of copies. All other documents shall be presented in three copies. One set of original plans and one copy of other documents will be returned to the applicant as endorsed. **[Amended 9-18-2008]**

D. Preparation of definitive plan. The definitive plan shall be prepared by an engineer and/or surveyor and shall be clearly and legibly drawn in black India ink upon Mylar. The plan shall be at a scale of one inch equals 40 feet or such other scale as the Board may accept to show true bearings, curve data and accurate dimensions. Sheet sizes shall not exceed twenty-four by thirty-six (24 x 36) inches. The definitive plan shall contain the following information:

- (1) The subdivision name, boundaries, North point, date and scale.
- (2) The name and address of the record owner, subdivider and engineer or surveyor who shall indicate by stamp registration in the Commonwealth of Massachusetts.
- (3) The names of all abutters as they appear on the most recent tax list.
- (4) The existing and proposed lines of streets, ways, lots, easements and public or common areas within the subdivision. (The proposed names of proposed streets shall be shown in pencil until they have been approved by the Board.) Contents of titles, covenants and easements shall be reproduced in full either on the plan or appended thereto.
- (5) Sufficient data to determine the location, direction and length of every street and way line, lot line and boundary line and to establish these lines on the ground.
- (6) The locations of all permanent monuments properly identified as to whether existing or proposed.
- (7) The locations, names and present widths of streets bounding, approaching or within reasonable proximity of the subdivision.
- (8) Suitable space to record the action of the Board and the signatures of the members of the Board (or officially authorized person). The block shall be three and five-tenths by seven (3.5 x 7) inches, minimum.
- (9) Existing and proposed topography at two-foot contour intervals as required by the Board.

- (10) Profiles on the center lines of proposed streets at a horizontal scale of one inch equals 40 feet and vertical scale of one inch equals four feet, or such other scales acceptable to the Board. All elevations shall refer to the Town datum. A minimum of one bench mark shall be provided based upon Town (United States Geological Survey, National Geodetic Vertical Datum) datum.
 - (11) The proposed layout of storm drainage, public water supply and public sewage disposal systems. If wells and/or septic tanks and leach fields are intended to be utilized, these shall be shown by general indication of location with spot elevations on the finished grading sheet. The Board of Health reserves the right to make final determination concerning location and specifications of private water and sewage systems.
- E. Review by Board of Health as to suitability of the land.
- (1) The Planning Board shall, within 10 days after submission of a plan, consult with the Board of Health. If the Board of Health is in doubt as to whether any of the land in the subdivision can be used as building sites without injury to the public health, it shall so notify the Planning Board, in writing, within 30 days. Any approval of the plan by the Planning Board shall then only be given on the condition that the lots or land as to which such doubt exists shall not be built upon without prior consent of the Board of Health, and shall endorse on the plan such condition, specifying the lots or land to which said condition applies.
 - (2) The data obtained in § 159-7C(7) shall be submitted by the Planning Board to the Board of Health for its review.
 - (3) Any lot so located that it cannot be served by a connection to the municipal sewer system shall be provided with a septic tank and drain field satisfactory to the Board of Health.
- F. Public hearings. Before approval of a 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 least 14 days prior thereto by advertising in an official publication of, or in a newspaper of general circulation in, the Town of Agawam. A copy of said notice shall be mailed to the applicant and to all owners of land abutting the subdivision and within 500 feet of it, as appearing in the most recent tax list. A petition for a change of zone when necessary shall be entered and heard concurrently with the subdivision approval hearing if the Council has referred a zone change request back to the Board. The Planning Board may notify the Pioneer Valley Planning Commission (PVPC) and abutting communities if the proposal would have regional significance.
- G. Action of the Board; approval or disapproval.
- (1) Board action.
 - (a) The Planning Board shall confer with any boards or commissions which have an interest in the proposal. The action of the Board in respect to such plan shall be by vote. The certificate of such action shall be filed with the Town Clerk and sent by registered mail to the applicant.
 - (b) After the public hearing as required above, the Board shall approve or, if the plan does not comply with the Subdivision Control Law or the rules and regulations of the Planning Board or the recommendation of the Board of Health or its agent, shall approve with modification or disapprove such plan. In the event of disapproval, the Planning Board shall state in detail wherein the plan does not conform to the rules and regulations of the Board or to the recommendation of the Board of Health or its agent, and the Board shall revoke

its disapproval and approve the plan which, amended, conforms to such rules and regulations or recommendations. Final approval, if granted, shall be on the condition that the plan meets approval under the Wetlands Act, MGL c. 131, § 40.

- (c) Final approval, if granted, shall be endorsed on the original drawing of the definitive plan by the signatures of a majority of the Board, but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the action of the Board with the Town Clerk, and said Clerk has notified the Board that no appeal has been filed. After the definitive plan has been approved and endorsed, the applicant shall furnish the Board with three extra endorsed lot layout sheets and the book and page of the Registry of Deeds (and/or Land Court) where such plan is recorded.

(2) Rescission of approval.

- (a) A covenant filed with the Registry of Deeds and described in Subsection H below shall contain the following statement: "The construction of all ways and the installation of all municipal services shall be completed in accordance with the applicable rules and regulations of the Board within _____ months from date of endorsement. Failure to so comply shall automatically rescind approval of this plan."
- (b) Time shall be determined from the time-development sequence.
- (c) Any bond allowed under Subsection H below shall be drawn to accomplish the intent and purpose of this section. Promptly, the applicant shall furnish the Planning Board with the book and page of the Registry of Deeds (and/or Land Court) wherein the covenant is recorded.

H. Performance guaranty. Before endorsement of approval on the definitive plan, the Board shall require the guaranty of installation of all work required by this regulation which shall be performed by the applicant or his agent by a covenant running with the land which shall be filed with the Registry of Deeds, or by posting of bond or depositing moneys with the Town Treasurer.

(1) Covenant. [See Subsection G(2) above.]

- (a) Such covenant shall state that no lot in the subdivision shall be conveyed other than by mortgage deed and no building shall be erected thereon until the improvements specified in the regulations are constructed and installed so as to serve the lots adequately. Such condition shall be endorsed upon the plan or contained in a separate vote or agreement which shall be referred to on the plan and recorded in the Registry of Deeds. When the applicant has completed the required improvements specified in the regulations, including the documents for street acceptance (Subsection J), for any lots in a subdivision, he may request a release of the covenant for said lots. If the improvements have been completed to the satisfaction of the Board, the Board will then execute and deliver to the applicant such release, which shall be in the form for recording in the Registry of Deeds. The Planning Board may require a deposit of security (cash only) and agreement to guarantee the performance of the work until the lots are improved. Thereafter the conditions relating to such lots so released shall terminate.
- (b) The applicant shall furnish the Board with one copy of the recorded covenant.

(2) Bond.

- (a) The applicant may elect to post a performance bond for part or all of the work to be

accomplished according to the plan showing sequence of development. The performance bond and/or deposit money shall be an amount determined by the Board to be sufficient to cover the cost of all improvements specified in these regulations for the division of work and as described in a related bond agreement. All surety bonds shall be submitted to the Counsel from the Planning Board for approval as to form prior to submission to the Town Treasurer for approval as to sufficiency and custody. Bonds shall be written for the time required as specified in the time-sequence of development statement and related bond agreement.

(b) Pump station; utility services; binding of corporations.

[1] If a pump station is included in the definitive plan, this work shall be secured separately and completed as to operational capacity, standby power and warning system before a covenant relating to any lots shall be released.

[2] The utility services, gravel base and base coat of blacktop shall be accomplished under covenant, cash security or a security bond (such bond in an amount twice the amount of cash security needed). The remainder of the work shall be secured by cash security or by a security bond (such bond in an amount twice the amount of cash security needed). The amount of security specified shall include reasonable attorney's fees and related engineering costs.

[3] Corporate owners shall produce proper authority for the signer of the performance agreement to bind the corporation, and the corporation major stockholder shall bind himself personally to the terms of the performance agreement.

(3) Extension of time. If the time schedule is altered, notice must be given to the Planning Board which, at its discretion, may extend the time of completion, provided that any securities then held by the Town must be reviewed and increased as necessary to cover any increased cost of improvements. As part of the increased costs, the cost increment due to inflation of construction costs shall be added to the bond or cash security posted by the applicant. The Engineering News Record Construction Cost or similar index most accurately reflecting Agawam's liability, as determined by the City Engineer, will be used to arrive at the increased construction cost. **[Amended 12-5-1996]**

(4) Upon request, partial release of securities shall be made upon acceptance by the Board of the work completed.

(5) Building lot bond. A performance bond will be required of contractors or other parties constructing residences upon vacant lots where curbs, sidewalks, treebelts and other municipal facilities have been placed at the lot frontage. The requirements for this bond shall conform to the applicable provisions of Subsection H(2) of these regulations. The bond amount shall be based upon the potential damage of Town facilities plus administrative costs. It shall be the responsibility of the developer to ensure that all permitted but uncompleted residences existing in the subdivision at the time of subdivision bond release have proper building lot bonds.

(6) Inspection fee. **[Added 3-21-1991]**

(a) There shall be a fee instituted to pay for the costs of inspection. The fee shall be based upon the linear footage of roadway, water lines, sewer lines and drainage lines. The footage shall be as measured on the approved definitive plans. Any substantial increase in constructed footages over the plan footage shall result in a prorated increase in fee.

Roadways shall be measured along the center line, from its beginning intersection with an existing street layout line or other beginning point to the final intersection with another street or existing layout line, so as to encompass all proposed rights-of-way. Culs-de-sac shall be measured on the basis of a center line extending straight through the center of the cul-de-sac to the far edge of the layout. Water line connections and building sewers in the right-of-way will not be included in the measurement for fee determination, except where their length exceeds 40 feet.

- (b) The unit rate of inspection fee levied shall be \$1.28 per linear foot measured on each of the four categories cited above. The total inspection fee shall be equal to the unit rate times the total footage of each line category of inspection (roadway, water, sewer and drain lines) as measured by the City Engineer. The fees described above must be paid prior to the commencement of construction, but these fees need only be paid beforehand for the particular phase of work to be undertaken, e.g., roadway, sewer, water or drain. When warranted by inflation or other factors, the unit inspection fee will be increased as proposed by the Agawam Department of Public Works and approved by the Planning Board. **[Amended 9-19-2013]**
- I. Notification of completion. Upon completion of the subdivision, the applicant shall notify the Planning Board that the subdivision is ready for final inspection with respect to the removal of the bond.
- J. Documents for acceptance of street by Council.
 - (1) Upon completion of the subdivision, the applicant shall provide the Town with an as-built plan suitable for presenting to the Town Council for acceptance of the street. Remaining securities held by the Town will not be released until an as-built plan has been certified by the Board as completed for submission to the Council.
 - (2) The applicant shall provide the Town with a standard hold-harmless agreement regarding any claims created by virtue of any actions taken by the developer and a statement from the applicant that he gives up the right to any claims he may hold within the development.

ARTICLE IV
Design Standards

§ 159-8. Streets.

A. Location and alignment.

- (1) All streets in the subdivision shall be designed so that, in the opinion of the Board, they will provide safe vehicular travel and discourage nonterminal traffic and excessive speed. Due consideration shall also be given by the subdivider to the attractiveness of the street layout in order to obtain the maximum livability and amenity of the subdivision.
- (2) The proposed streets shall conform to the master or study plan when adopted in whole or in part by the Board.
- (3) Provision satisfactory to the Board shall be made for the proper projection of streets, or for access to adjoining property which is not yet subdivided.
- (4) Reserve strips prohibiting access to streets or adjoining property shall not be permitted.
- (5) 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°.
- (6) The minimum distance between adjacent parallel streets is 300 feet at intersections. This provision shall include streets on both sides of the street intersected. There shall be no offsets at intersections with four or more legs. **[Amended 3-21-1991]**
- (7) No new streets shall be designed so as to create zoning violations. **[Added 4-5-1990]**

B. Type of streets.

- (1) Any proposed street shall be indicated on the plans as being one of the following classes:
 - (a) Place: These streets shall be not over 500 feet in length, unless otherwise allowed by the Board, with no allowance for future extension. A maximum average daily traffic (ADT) of 100 vehicles per day will be allowed for a street to be classified as a place.
 - (b) Lane: The major purpose of these streets shall be to provide access to lots. They would be streets not subject to nonterminal traffic. The ADT for this type of street would be between 100 and 400 vehicles per day.
 - (c) Subcollector: The ADT for this type of street would be between 400 and 1,000 vehicles per day. For the most part this type of street will serve several places or lanes.
 - (d) Collector: The ADT for this type of street would be between 1,000 and 3,000 vehicles per day.
 - (e) Arterial: The ADT for this type of street would be over 3,000 vehicles per day.
- (2) The ADT of a street shall be determined by applying a factor of 10 vehicles per day per lot served either directly or indirectly by the street plus an allowance for through traffic where applicable. The classification of each street in a subdivision and an estimate of its ADT should be included in or with the plans. The Planning Board reserves the right to make the final decision regarding the classification of a street and its estimated ADT. Consideration must be given to

future traffic from undeveloped land which would be served by the proposed street system.

- C. Design requirements. See Table 4.1.⁴⁷
- D. Intersections. The intersection of places and lanes with other streets shall have a property line radius of 15 feet and a curbline radius of 25 feet. The intersections of all other streets shall have a property line radius of 25 feet and a curb radius of 35 feet. The Planning Board reserves the right to increase these radii wherever it may deem necessary for public safety. Maximum grade allowed within 100 feet of an intersection, measured from the outer gutter line, is 2.5%. **[Amended 3-21-1991]**
- E. Dead-end streets. **[Amended 3-15-2001]**
- (1) "Dead-end streets" for the purpose of these regulations is a street meeting the design criteria for either a place, lane, subcollector, collector, or arterial which has only one means of access/egress.
 - (2) Dead-end streets shall not be longer than 500 feet measured from the nearest intersecting through street unless, in the opinion of the Board, a greater length is necessitated by topography or other local conditions.
 - (3) In order for a street not to be considered a dead-end street, there shall be at least two means of egress on to through streets. The two means of access/egress shall be separated by the distance of at least 300 feet.
 - (4) Dead-end streets shall be provided at the closed end with a turnaround having an outside roadway diameter of at least 100 feet and a property line diameter of at least 120 feet.
 - (5) Minimum gutter grades on culs-de-sac will be 1.00%.

§ 159-9. Typical cross section.

A typical cross section can be found in Figure 4.2.⁴⁸

§ 159-10. Easements.

- A. Easements for proposed or future utilities across lots or centered on rear or side lot lines shall be provided and shall be at least 20 feet wide with provisions made for access thereto.
- B. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, a stormwater easement or drainage right-of-way 30 feet in width shall be provided. In addition to providing for construction, maintenance and access, said easements shall contain flowage rights. In the event that a stream is of a seasonal nature or the exact course cannot be determined, then total flowage rights across the land in question shall be provided.
- C. When, in the opinion of the Planning Board, pedestrianways or bicycle paths should be provided to connect with adjacent land, an easement (or deed) shall be granted to the Town for such purpose. To the greatest extent possible, pedestrianway easements shall coincide with those of underground utilities.

§ 159-11. Sewerage.

47. Editor's Note: Table 4.1 is included at the end of this chapter.

48. Editor's Note: Figure 4.2 is included at the end of this chapter.

- A. Wherever possible, sanitary sewers shall be installed to serve a proposed subdivision. The sewers shall be designed so that the velocity of the flow will be at least two feet per second during periods of peak flow. The sizing of sanitary sewers shall be as specified in the Sanitary Sewer Study for the Town of Agawam, 1972, by Tighe & Bond and/or as approved by the Town Engineer. The total design of the system shall also meet with the approval of the Town Engineer.
- B. In areas where sanitary sewers are not presently available but where provisions are made for their future construction in the Sanitary Sewer Study and the Town's capital budget program, then a capped sanitary system, including laterals, shall be installed.
- C. Sewage pumping stations or lift stations, where necessary and allowed, shall meet with the approval of the Town Engineer. In general these stations will only be allowed where called for in the Sanitary Sewer Study. In some cases stations other than those shown in the study will be allowed if it can be demonstrated that the station will be able to be eliminated by trunk sewer construction in the foreseeable future. The costs of operating and maintaining a station shall not be assumed by the Town until one year from the date of completion of the last house in the last section of the subdivision.
- D. The sewer lateral to each lot shall be shown on the plans. During the time the applicant is responsible for the station he shall enter into an agreement with the Town of Agawam relative to its maintenance and operation.

§ 159-12. Drainage.

- A. A system of drains shall be installed to collect stormwater from the proposed streets and lots and to transmit the water to a point where it may be discharged in a natural watercourse or stream. The drains shall be designed to have a minimum velocity at design flow of three feet per second and a maximum velocity of 10 feet per second. The sizing of storm drains and culverts shall be as specified in the Report on Storm Drainage for the Town of Agawam by Tighe & Bond, 1972, and/or as approved by the Town Engineer.
- B. In general, surface water from the lots shall not be deposited directly into the ways. The area within the setback line may be graded to drain toward the street line. All other surface water from individual lots shall be handled insofar as possible within the lots themselves. Developers shall provide for lot surface drainage by a system separate from drainage of the street, by the use of swales, culverts, retention ponds, yard drains and piping, riprapped outlets at the water body, etc., in a manner which shall protect the natural water table unless the lowering of the water table is necessary for the health of the occupants. Strict attention shall be paid to the relationship of leaching fields to surrounding grading. Surface water systems shall not connect into the road drainage system except by permission of the Board, in which case such condition shall be noted on the approved plan. The total design of the system shall also meet with the approval of the Town Engineer.
- C. Where, in the opinion of the Town Engineer and/or Planning Board, the discharge of stormwater from a subdivision will alter the character of a watercourse to overflow its banks (confines), then the applicant will be required to submit drainage and flowage easements along said watercourse to a point where it is determined by the Town Engineer and/or Planning Board that the effect of the stormwater drainage discharge will have a negligible effect on the watercourse. The easements and flowage rights shall be of such width to cover the extent of the suspected flooding. These easements and flowage rights will be required both within and outside of the boundaries of the proposed subdivision. The total design of the system shall also meet with the approval of the Town Engineer.
- D. All subdivisions shall be constructed in conformance with the Town Storm Drainage Ordinance.⁴⁹

Detention ponds will be utilized as required, and each detention pond will be fenced except as otherwise required by the Department of Public Works. Construction standards shall comply with Department of Public Works Standards. No dry wells or leaching fields for the underground disposal of stormwater will be allowed. No stormwater holding ponds without positive surface outlets shall be allowed.

E. Lot grading plan procedures. The Town of Agawam requires the following procedure to be followed for lot grading plans for all subdivisions approved after January 1, 2004. **[Added 3-4-2004; amended 1-19-2006]**

- (1) Review scope. This review/approval process will address drainage and runoff concerns for the lot in question, adjacent lots, and the subdivision as a whole only. The elevation of the foundation is reviewed for comparison to adjacent grades, and generally for comparison to adjacent homes. This review does not address the constructability of the foundation.
- (2) Procedure overview.
 - (a) Step 1: Lot grading plan approval. The owner's engineer/surveyor submits information for review and approval to Agawam DPW Engineering. It is hoped that the owner is part of this process in order to expedite Step 2.
 - (b) Step 2: Builder/owner sign-off. The owner and builder send a letter to DPW indicating that the approved lot grading plan will be complied with during construction. The owner/builder sign-off, including all information shown in the sample letter, must be forwarded to DPW within one week after Step 1 is complete. The white form will be forwarded from DPW to the Building Department for the building permit after this step is complete.
 - (c) Step 3: Construction field check. The builder/owner will contact DPW Engineering to schedule a field check on the top of foundation wall to ensure compliance with the approved lot grading plan. The fee for this inspection is \$70. The builder/owner must allow a forty-eight-hour window for DPW to perform the field check. DPW is available Monday through Friday 8:30 a.m. to 4:30 p.m. except holidays. The builder will be contacted by Agawam DPW with the results of the field check. Failure by the builder to comply with the approved lot grading plan will result in DPW notifying the Planning Board. The Planning Board will then request the Building Department to issue a stop-work order for the lot until a resolution can be agreed upon.
 - (d) Step 4: Upon completion of construction and prior to a certificate of occupancy being issued by the Inspector of Buildings, the builder/owner will submit an as-built plan to the Inspection Services Department. The as-built plan shall be prepared by a registered land surveyor. Failure to submit the as-built plan shall result in a hold on the issuing of the certificate of occupancy. If the as-built plan shows deviation from the lot grading plan, the builder/owner will be required to receive approval for the new plan from the Planning Board prior to the issuance of a certificate of occupancy.

§ 159-13. Water.

- A. Water mains and appurtenances such as hydrants, valves, blowoffs and air release valves shall be installed to serve all lots on each street in the subdivision. The sizing of water mains shall be as specified in the Water Distribution Study when completed and/or as required by the Town Engineer.

In general the minimum size water main that will be allowed is an eight-inch-diameter line.

- B. Hydrants shall be installed to provide fire protection to the subdivision. The maximum distance allowed between hydrants is 500 feet. Wherever possible, hydrants should be located at lot lines.
- C. All intersections of water mains shall be fully valved. Also, main line valves shall be installed every 1,000 feet along a water main.
- D. The water service connection to each lot shall be indicated on the plans. The total design of the system shall also meet with the approval of the Town Engineer.

§ 159-14. Other utilities.

Underground electric and telephone lines and gas mains, including service connections, shall be shown on the plans. The location of streetlighting standards shall be indicated on the plans and the lighting shall be of a type adopted for use in the Town of Agawam. The location and design of streetlighting systems shall meet the requirements of the Department of Public Works. Letters from respective utility companies shall be submitted to the Board indicating their approval of the utility design.

§ 159-15. Open spaces.

Before approval of a plan, the Board may also in proper cases require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air. The park or parks shall not be unreasonable in area in relation to the land being subdivided and to the prospective uses of such land. The Board may, by appropriate endorsement on the plan, require that no building be erected upon such park or parks without its approval.

§ 159-16. Protection of natural features.

Strict regard shall be shown for all natural features, such as large trees, watercourses, scenic points, historic spots and similar community assets which, if preserved, will add attractiveness and value to the subdivision.

§ 159-17. Pedestrianways and bicycle paths.

Provisions for pedestrian and bicycle access shall be made in all subdivisions connecting public open space or commercial areas. When roads do not connect with the adjacent subdivisions or open land, such nonvehicular access shall be provided. The pedestrian/bike path shall be eight feet in paved width with a minimum easement or deeded width of 16 feet. All ways shall be clearly marked and landscaped to protect adjoining lot owners. Such ways shall be secured by easement or deeded to the Town.

ARTICLE V

Construction Standards and Required Improvements**§ 159-18. Department of Public Works Construction Standards; preconstruction conference. [Amended 12-5-1996]**

- A. The Town of Agawam Department of Public Works Construction Standards, as amended from time to time, shall apply to all subdivisions and are hereby incorporated herein by reference. The Town of Agawam Department of Public Works Construction Standards are on file and may be viewed at the offices of the Agawam City Clerk, Department of Public Works and Planning Department.
- B. Prior to ordering materials or starting any construction, the subdivider together with his contractor and engineer (if applicable) shall arrange for a meeting with the Engineering Division and the City Planner. At this meeting, the rules for conducting construction operations in the subdivision and on city streets will be outlined and discussed. Notices to be given, methods and materials to be employed, how utility connections are to be made, fees required and other operational matters will be discussed.

§ 159-19. Street and roadway.

- A. The entire area of each street or way shall be cleared of all stumps, brush, roots, boulders, like material and all trees not intended for preservation.
- B. All loam, clay, peat or other yielding material shall be removed beneath all street layouts to a depth specified by the Town Engineer and shall be replaced with a granular material acceptable to the Town Engineer.
- C. Whenever it is necessary to install fill to bring a roadway to subgrade, said fill shall be of a granular material satisfactory to the Town Engineer. All fill shall be placed in eight-inch layers compacted to not less than 95% of the maximum dry density, as specified in Section 150.62 of the Commonwealth of Massachusetts Department of Highways Standard Specifications for Highways and Bridges (MHD Specifications), as amended. **[Amended 12-5-1996]**
- D. Wherever the borings indicate a groundwater within four feet of the proposed roadway surface or wherever the soil particle size indicates the possibility of a capillary rise of water in the subgrade soil, subdrains shall be installed under both shoulders of the roadway. The design and depth of the subdrain shall meet with the approval of the Town Engineer.
- E. Wherever rock, in the opinion of the Town Engineer, is encountered, it shall be excavated to a depth of four feet below the subgrade of the roadway for the full width of the street layout. The excavated rock shall be replaced with a granular material satisfactory to the Town Engineer.
- F. Roadways shall be brought to the subgrade elevation prior to the installation of the water mains, storm drains, sanitary sewer or other utilities. Additional requirements for design of pavement for certain subgrade soils may be necessary.
- G. The subgrade of the roadway shall be compacted to a density and by a method approved by the Town Engineer prior to the placing of the subbase or base of the roadway.
- H. Gravel subbase. **[Amended 3-21-1991; 12-5-1996]**
 - (1) The material used for the gravel subbase shall be gravel approved by the City Engineer, which meets the Commonwealth of Massachusetts Department of Highways Standard Specifications for Highways and Bridges (MHD Specifications), as amended, Material Specification M 1.03.0

- Type b (three-inch maximum size) and conforms to construction methods stipulated in Section 401.60, except that all courses shall be laid in depths not exceeding four inches compacted depth.
- (2) The maximum size aggregate for subbase courses shall not exceed four inches. The cost of any soil tests needed to determine the suitability of a material for use as a subbase shall be borne by the developer.
 - (3) The gravel shall be spread and compacted in layers not exceeding six inches in depth compacted measurement. The gravel shall be compacted to the density specified in § 401 of the MHD Specifications.
- I. Gravel base. The material used for gravel base shall be dense-graded crushed stone approved by the City Engineer, which meets MHD Specification M 201.7 for material and is placed in conformance with Section 402 for construction. All courses of gravel base shall be laid in depths not exceeding four inches compacted depth. **[Amended 3-21-1991; 12-5-1996]**
- J. Pavement. The material used for the roadway finish course shall be Class I bituminous concrete Type I-1 applied in two courses. The material and work shall conform to § 460 of the MHD Specifications and shall meet with the approval of the Town Engineer. The installation of all subsurface utilities within the roadway shall be completed before placement of the first (binder) course. Where there is concern over possible settlement, the City Engineer may require one winter season to elapse between utility installation and top course pavement installation. In no event shall the interval between placement of binder course and top course of pavement exceed two years. The construction of bituminous concrete pavement shall terminate on November 15 and shall not be resumed prior to April 1 unless specifically allowed, in writing, by the Town Engineer. No paving shall be done when the air temperature in the shade is 40° F. or less nor where the material on which the pavement is to be placed contains frost. A tack coat of bitumen at the rate of 0.05 to 0.10 gallon per square yard shall be applied to the base course of pavement, all as determined by the City Engineer. Material and placement shall be as approved. The tack coat shall be only applied to the extent that it can be covered with the surface course within one day. **[Amended 12-5-1996]**
- K. Roadway pavement design. Using soil information obtained as required in § 159-7C(8), a pavement design shall be prepared utilizing California bearing ratio values or equivalent values obtained for the subgrade. This will normally be required in clay, loam, peat or silt subgrade materials or as otherwise required by the Town Engineer. The design shall consider and employ, as needed, increased thickness of the gravel subbase, use of geotextile fabric and/or plastic grids, use of subdrains and other measures necessary. (See also Subsections C and E.) This design shall be included in the definitive plans submitted for review by the Planning Board. See Table 5.1⁵⁰ for minimum thickness of the gravel base, subbase and pavement.
- L. Bituminous concrete curbs shall be installed on both sides of each roadway, except at intersections, using bituminous concrete Type I-1 and an approved curb forming machine. All curbs shall have a minimum reveal of six inches and shall be installed on a bituminous base. At driveways, all curbs shall be installed so as to return to the sidewalk. At intersections, Type VB granite curbing shall be installed along the arc of the curves. The granite curbing shall have a six-inch reveal and a width at the top of six inches. The curbing shall be set by a method approved by the City Engineer. **[Amended 4-5-1990; 12-5-1996]**

50. Editor's Note: Table 5.1 is included at the end of this chapter.

§ 159-20. Sanitary sewers.

- A. Sanitary sewer mains and laterals shall be polyvinyl chloride pipe conforming to ASTM D 3034-SDR 35. The minimum size for sewer mains shall be eight inches while the minimum size of sewer laterals shall be four inches.
- B. All sanitary sewers, sewer force mains and sewer laterals shall be installed in first-class bedding and in accordance with the Department of Public Works Specifications. Sewers shall be installed to the line and grade indicated on the plans.
- C. Only precast concrete manholes of a design approved by the Town Engineer shall be installed on a sanitary sewer main. For the most part sanitary sewer manholes shall be installed no further than 300 feet apart and the sewer shall be laid in a straight line between manholes.
- D. Before any sanitary sewer will be accepted by the Board, it must pass an infiltration or exfiltration test, at the discretion of the Town Engineer, made in accordance with the Department of Public Works Specifications. Said test will be made at the developer's expense and shall be made under the direction of the Town Engineer.
- E. No groundwater or surface water shall be discharged into the sanitary sewer. No storm drain, foundation or cellar drain or roof leader may be connected to a sanitary sewer or sewer lateral.
- F. Where rock is encountered, it shall be removed to a depth of one foot below the flowline of the sewer and the pipe laid in a properly compacted granular material approved by the Town Engineer.
- G. Only granular material approved by the Town Engineer shall be used as backfill in any trench excavation.

§ 159-21. Drainage.

- A. Storm drains shall be reinforced concrete pipe conforming to ASTM C-76, Class 3 minimum, polyvinyl chloride pipe conforming to ASTM D3034, SDR35 or polyvinyl chloride ASTM F-794. Bedding for various types of storm drains shall be as approved by the Engineer.
- B. All storm drains, including catch basin leaders and culverts, shall be installed in first-class bedding. All work and materials shall be in accordance with the Department of Public Works Specifications.
- C. Precast concrete or concrete block manholes of a design approved by the Town Engineer shall be used on storm drains. In general the distance between manholes shall not be greater than 300 feet.
- D. Catch basins in general shall be installed at intervals of not more than 300 feet on both sides of a roadway and at intersections as necessary. The basins shall be of the Connecticut Basin type and shall conform to the Department of Public Works Construction Standards or shall be approved by the Town Engineer. **[Amended 12-5-1996]**
- E. Where rock is encountered, it shall be removed to a depth of one foot below the flowline of the drain and the pipe laid in a properly compacted granular material approved by the Town Engineer.
- F. Only granular material approved by the Town Engineer shall be used as backfill in any trench excavation.
- G. When warranted by local water table conditions, the Planning Board may require that foundation subdrains be installed by the developer.

§ 159-22. Water.

- A. All water mains shall be installed using ductile iron pipe conforming to ANSI A21.51, Class 52, with full thickness cement lining conforming to ANSI A21.4.
- B. The hydrants furnished shall meet the Town hydrant standards and shall be of a type currently being used by the Town.
- C. Grate valves shall be of the New York pattern, Metropolitan-type openings to the left, counterclockwise.
- D. All materials and work shall be in accordance with the specifications of the Department of Public Works. All water mains shall be installed in first-class bedding.
- E. Before any water main will be accepted by the Board, it must pass a pressure and leakage test made in accordance with the Department of Public Works Specifications. Said test will be made at the developer's expense and shall be made under the direction of the Town Engineer. Water mains shall be disinfected and tested for total coliform at the developer's expense. Where the coliform test does not meet state standards, reflushing, disinfecting and retesting will be required at the developer's expense.
- F. All water services to the lots shall be installed using Type K copper tubing at least 3/4 inch in diameter. The service connections shall have a corporation with shutoff at the main and a curb stop at the street line.
- G. Where rock is encountered, it shall be removed to a depth of one foot below the flowline of the water mains and connections and the pipe laid in a properly compacted granular material approved by the Town Engineer.
- H. Only granular material approved by the Town Engineer shall be used as backfill in any trench excavation.

§ 159-23. Sidewalks, tree belts and pedestrian and bicycle paths.

- A. There shall be cement concrete sidewalks constructed on both sides of each street in the subdivision. The width of the sidewalks shall be as specified under the Design Standards for the various classes of streets. The construction must conform to the Town of Agawam Department of Public Works Specifications for Construction of Cement Concrete Sidewalks, April 1989. All materials and construction methods shall be as specified in the Department of Public Works Specifications. **[Amended 4-5-1990]**
- B. There shall be tree belts constructed on both sides of each street in the subdivision. The width of the sidewalk shall be as specified under the Design Standards for the various classes of streets. Loam shall be placed to a minimum depth of six inches. Lime, fertilizer and grass seed shall be applied as required in the specifications of the Department of Public Works. The tree belts shall be reworked and reseeded until a stand of grass satisfactory to the Town Engineer has been established.
- C. Pedestrianways and bicycle paths as shown on the plans shall be eight feet wide and constructed according to this section.

§ 159-24. Utilities.

- A. Streetlights shall be installed by the power company at the developer's expense, and the developer

shall be responsible for the cost of lighting until the street is accepted by the Town. The streetlights and standards shall be of the type adopted by the Town as a standard installation. The lighting shall be installed on a street prior to occupancy of any house on that street.

- B. All underground utilities, such as gas mains and electric and telephone lines, including service connections, shall be installed prior to the construction of the roadway surface, base or subbase. All methods used to install these utilities shall be subject to the approval of the Town Engineer. Only granular material approved by the Town Engineer shall be used as backfill in any utility trench.

§ 159-25. Inspections. [Amended 3-21-1991]

The developer shall notify the Department of Public Works in writing at least 48 hours in advance of the time when he plans to begin or resume any work on the improvements required in a subdivision. The Department of Public Works shall assign an inspector to inspect the work. The Town of Agawam shall charge the developer at the rate set by the Department of Public Works as specified in § 159-6H(6) for inspection work in the subdivision. No work shall be accepted by the Board which has not been inspected on a daily basis during its progress. Failure of the developer to notify the Department of Public Works or failure to have the work inspected on a daily basis as it progresses shall be cause for the Town to require the developer to excavate and reconstruct or do other things that may be required to ensure that the work has been done in a satisfactory manner. The presence of an inspector shall in no way relieve the developer from full responsibility for the required work.

§ 159-26. Shade trees.

- A. Before release of the covenant, the developer shall deposit with the Town of Agawam an amount of money sufficient to cover the replacement of two shade trees per lot according to the specifications of the Planning Board.
- B. The developer shall be responsible for providing, planting and maintaining through one full year two living healthy trees or their substitutes per lot. Such trees shall be 2.5 inches minimum in diameter, balled and burlapped and planted in season and subject to direction of the Tree Warden. Types of trees shall be selected from a list available from the Planning Board which shall include native and hardy species readily available locally.
- C. On each lot two shade trees shall be planted within 20 feet of the street line and located so as not to conflict with underground utilities and sight distances. On places at the discretion of the Tree Warden, shade trees may be planted on the tree belt within the street right-of-way.

§ 159-27. Clearing and grading.

To prevent wind and water erosion, the following measures must be employed on all sites:

- A. Regions of the site must be developed in separate increments so that the disturbed area is kept to a minimum. At no time is the entire area to be disturbed.
- B. Natural vegetation shall be retained and protected whenever possible.
- C. All disturbed area shall be stabilized with a temporary vegetative cover if to be left exposed for greater than one month, with the exception of roadways which are to be treated with appropriate measures at the end of each workday.
- D. All stockpiled soils shall be stabilized with temporary vegetative cover.

§ 159-28. Loam or topsoil.

No loam or topsoil shall be removed from the property until the subdivision is complete, and then only with the permission of the Board of Appeals as specified in § 180-8G of Chapter 180, Zoning.

§ 159-29. Permits.

Upon receipt of permits from the Inspector of Buildings to construct dwellings, etc., each lot line must be clearly marked and lot identified by lot and street number before any inspections are made. Compliance with the Conservation Commission's regulations must be posted, if applicable.

§ 159-30. Excavations.

All excavations for pipe, etc., across streets and to dwellings shall be properly protected and lighted at proper times, according to recommendations of the Department of Public Works and the Chief of Police. These excavations shall be properly backfilled and well-compacted as soon after installation of pipe, etc., as is possible.

§ 159-31. Protection of natural features.

- A. In any area outside the road right-of-way and building site (house plus 15 feet outside walls and leach field area), no tree over eight inches in diameter measured five feet above the ground shall be removed without the consent of the Tree Warden or his agent. Due regard shall be made for life expectancy and health of the vegetation and the final proposed grading. The developer shall notify the Tree Warden at least one week prior to any clearing of the site. No evergreen tree or shrub shall be removed without consent of the Tree Warden or his agent. Limits of work may be delineated on the definitive plan, in which case no work shall be performed, including clearing, outside those limits, but work within may proceed without further consent.
- B. All natural features to be preserved shall be suitably protected during construction.⁵¹

§ 159-32. Cleaning up.

Before final inspection, the total area shall be cleared of debris, both natural and construction materials generated by the construction.

§ 159-33. Monuments.

All proposed monuments shown on the definitive plan shall be installed and their installation shall be certified by the developer's engineer or surveyor. Monuments shall be of stone or cast concrete, four inches square and three feet long, set flush with the finished grade. Three-fourths-inch to one-inch steel pipes or gun barrels three feet long may be used at lot corners. Where street monuments and lot corners occupy the same point, stone or concrete monuments shall be used.

§ 159-34. Street acceptance.

Upon completion of any subdivision or any street therein and prior to the final release of a bond or covenant, the developer shall submit to the Board a final plan of each street layout, including lot frontage, bounds and pins which have been set and ties to intersecting street layouts. This plan shall be used as a

51. Editor's Note: Former Subsection C, as amended 9-18-1997, which immediately followed and provided for a buffer strip, was repealed 10-28-2004.

street acceptance plan and shall be drawn in accordance with standards set by the Town Engineer. The plan shall be prepared by a registered professional land surveyor and shall be suitable for recording in the Hampden County Registry of Deeds. Accompanying this plan, the developer shall supply the Board with a document releasing the Town from any damages which he may incur by the acceptance of the street by the Town.

ARTICLE VI
Administration

§ 159-35. Waiver of regulations.

Strict compliance with the requirements of these rules and regulations may be waived when, in the judgment of the Board, such action is in the public interest and not inconsistent with the Subdivision Control Law.⁵²

§ 159-36. Matters not covered by regulations.

For matters not covered by these rules and regulations, reference is made to MGL c. 41, § 81-K to 81-GG, inclusive, and the Federal Environmental Protection Act and the Massachusetts Protection Act.

52. Editor's Note: See MGL c. 41, §§ 81K through 81GG, inclusive.

ARTICLE VII
Floodplains

§ 159-37. Rules and regulations.

The Planning Board herewith stipulates rules and regulations for the subdivision and/or development of land which lies within the floodplain as described in the Town Ordinance.⁵³

§ 159-38. Authority; priority of regulations.

Authority for these regulations is derived from the commitment of the Town of Agawam to the Federal Insurance Administrator under the Federal Flood Insurance Act. These rules and regulations shall take priority over any conflicting regulations of the Planning Board.

- A. The finished grade of land at all sides of any major building shall be set at a minimum grade above flood level as determined by the Planning Board from historic flood data.
- B. The total area may not be removed from the floodplain or graded in such a way as to cause additional hazard to the remainder of the floodplain areas. No more than one-third (1/3) of the total area may be regraded or filled.
- C. More than one exit from the total area shall be provided for emergency evacuations by clearing and suitable grading and related work, and no obstructions to vehicular passage shall be allowed within the exit route. This exit may not require paving or other surfacing. The developer shall so note any deeds concerning obstructions to passage.
- D. Utilities. Town sewer systems shall be constructed to the specifications of the Department of Public Works and Board of Health to ensure safety from flooding. All water lines, gas and electric lines shall be constructed with suitable area master shutoff valves. All aboveground utility control boxes shall be constructed to avoid flood damage and to elevations as determined by the Planning Board. Electric and telephone lines shall be underground and all access to underground utilities shall be constructed to the specifications of the Department of Public Works. Any drainage pipes opening into the floodway (river or stream) shall be constructed to the specifications of the Department of Public Works to prevent flooding of the system.
- E. All plans reviewed by this Board which lie in the floodplain shall be stamped or legally noted so that landowners and future occupants shall be aware of their responsibilities. The notation shall be endorsed on Form A, Subdivision Control Not Required, as well as Form B, Subdivision Control, preliminary and definitive plans.⁵⁴

53. Editor's Note: See Art. XII of Ch. 180, Zoning.

54. Editor's Note: Forms A and B are on file in the Planning Department offices.

ARTICLE VIII
Hiring Outside Consultants
[Added 1-17-2019]

§ 159-39. Rules for hiring outside consultants.

- A. As provided by MGL c. 44, § 53G, the Planning Board may impose reasonable fees for the employment of outside consultants, engaged by the Planning Board, for specific expert services deemed necessary by the Planning Board to come to a final decision on an application submitted to the Planning Board pursuant to the requirements of the Agawam Zoning Bylaws, the Agawam Subdivision Regulations, and any other Town bylaw/ordinance, regulation, or rule as they may be amended or enacted from time to time.
- B. Funds received by the Planning Board pursuant to these rules shall be deposited with the Agawam Treasurer, who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Planning Board without further appropriation as provided in MGL c. 44, § 53G. 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. Specific consultant services may include but are not limited to the engineering of roads and ways, private and public, driveways, grades, grading, and sanitary systems, to hydrogeologic and drainage analysis, to impact analyses of various kinds, and to environmental and land use law. The consultant shall be chosen by, and report only to, the Planning Board.
- D. The Planning Board 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 payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.
- E. The fee must be received in its entirety prior to the initiation of consulting services. The Planning Board may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Planning Board within 10 business days of the request for payment shall be cause for the Planning Board to determine that the application is administratively incomplete (except in the case of an appeal). The Planning Board shall state such in a letter to the applicant copied to City Solicitor. No additional review or action shall be taken on the application until the applicant has paid the requested fee. For applications to be considered under the local bylaw/ordinance regulations only, failure by the applicant to pay the consultant fee specified by the Planning Board within 10 business days of the request for payment shall be cause for the Planning Board to deny the application.
- F. The applicant may appeal the selection of the outside consultant to the City Council, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the City Council and a copy received by the Planning Board within 10 days of the date consultant fees were requested by the Planning Board. The required time limits for action upon the application shall be extended by the duration of the administrative appeal. In the event that no decision is made by the City Council within one month

following the filing of the appeal, the selection made by the Planning Board shall stand. The appeal to the City Council shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in these rules for MGL c. 44, § 53G.

Chapter 161**TAG SALES**

[HISTORY: Adopted by the Town Council of the Town of Agawam 6-1-1992 as TOR-92-7.

Amendments noted where applicable.]

§ 161-1. Definitions.

For the purposes of this chapter, the following words and their derivations shall have the following meanings:

DAYLIGHT HOURS — From 1/2 hour before sunrise to 1/2 hour after sunset.

PERSONAL PROPERTY — That property which is owned, utilized and maintained by members of a household and acquired in the normal course of occupying or maintaining a household and shall not include items purchased for resale or obtained on consignment.

TAG SALES — All general sales open to the public conducted on a residential premises for the purposes of disposing of personal property and shall include but not be limited to all sales known as "tag," "garage," "lawn," "yard," "attic," "porch," "room," "back yard," "patio," "flea market" or "rummage." This definition shall not apply when five items or fewer are held out for sale and all advertisements specifically name the items to be sold.

§ 161-2. Sales of certain property prohibited.

No person shall sell or offer for sale, at any tag sale, any property other than personal property as defined in § 161-1.

§ 161-3. Permit required.

No person shall conduct a tag sale until a permit for the same has been issued by the Chief of Police or persons authorized by him. The Chief of Police shall cause a permit log to be kept listing the permit number, the address where the tag sale is to be conducted, the dates and times of the tag sale and the name and telephone number of the permittee. The activity conducted in accordance with a lawfully issued permit hereunder shall not be deemed a violation of the Town of Agawam zoning ordinances.

§ 161-4. Limitations.

No person shall conduct a tag sale on more than six separate days in any calendar year and no premises shall be the site of a tag sale for more than six separate days in any calendar year. Tag sales shall be conducted during daylight hours only, as defined in § 161-1.

§ 161-5. Display of property.

Personal property offered for sale at any tag sale shall be displayed only on private property. No personal property offered for sale at any tag sale shall be displayed in any public right-of-way.

§ 161-6. Signs.

Notwithstanding the provisions of § 180-85, signs promoting tag sales shall not be erected more than two days prior to any tag sale and shall be removed not more than 24 hours after the close of any tag sale. No sign promoting any tag sale shall exceed four square feet on each side.

§ 161-7. Right of entry; enforcement.

The Chief of Police, the Chief of the Fire Department or the Inspector of Buildings, or persons authorized by them, shall have the right to enter onto private property showing evidence of a tag sale for the purpose of enforcing this chapter and may close any tag sale for a violation of this chapter.

§ 161-8. Parking.

Where a tag sale is being conducted, the Chief of Police or persons authorized by him may enforce temporary parking restrictions necessary to the safe and orderly flow of traffic and the passage of emergency vehicles, and to allow the passage of emergency vehicles, parking shall be allowed only on one side of the road.

AGAWAM CODE

Chapter 163

TAXICABS

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 18 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Vehicles and traffic — See Ch. 169.

§ 163-1. Term defined.

Every motor vehicle used or to be used for the conveyance of persons for hire shall be deemed to be a taxicab within the meaning of this chapter, except a motor vehicle operated in a manner and for the purposes stated in MGL C. 159A and a motor vehicle used for private livery purposes.

§ 163-2. License required.

No person shall engage in the business of operating a taxicab in the town without first obtaining from the Town Council the license or licenses required by this chapter.

§ 163-3. Authority of Town Council.

The Town Council may license the operation of a taxicab and may license a person to drive such a taxicab, and it may revoke such licenses at its discretion.

§ 163-4. Taxicab stands.

No taxicab shall be allowed to stand or to wait for passengers on any public way in the town, except on such portions thereof as may be designated therefor by a license granted by the Town Council, which may revoke such a license for a taxicab stand or change the location thereof at any time. No person shall allow any vehicle to remain standing in any taxicab stand except a taxicab licensed therefor.

§ 163-5. Term of license; transferability; fee.

Any license required by this chapter shall expire on the 30th day of April following the date of issuance and shall not be transferred without the consent of the Town Council. The fee for all such licenses shall be \$20.

§ 163-6. Rates; rules and regulations.

No owner or driver of a taxicab shall charge any passenger any higher rate for any service than authorized from time to time by rules, orders and regulations of the Town Council. All owners and drivers of taxicabs licensed under the provisions of this chapter shall be subject to such further rules, orders and regulations as may from time to time be promulgated by the Town Council.

VEHICLES AND TRAFFIC

Chapter 169

VEHICLES AND TRAFFIC

[HISTORY: Adopted by the Town Council of the Town of Agawam 10-15-1990 by TOR-90-42. Amendments noted where applicable.]

GENERAL REFERENCES

Unregistered vehicles — See Ch. 172.

ARTICLE I
General Provisions

§ 169-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

BUS STOP — An area in the way set aside for the boarding or alighting from and parking of buses.

CROSSWALK — That portion of a way ordinarily included within the prolongation or connection of curblines and property lines at intersections or at any portion of a way clearly indicated for pedestrian use by lines on the road surface or by other markings or signs.

INTERSECTING WAY — Any way which joins another at an angle, whether or not it crosses the other.

LANE — A longitudinal division of a way into a strip of sufficient width to accommodate the passage of a single line of vehicles.

MOTOR VEHICLE — All vehicles constructed and designed for propulsion by power other than muscular power.

OFFICIAL STREET MARKING — Any painted line, legend, marking or marker painted or placed upon any way by public authority which purports to direct or regulate traffic.

OPERATOR — Any person who operates a motor vehicle.

OWNER — A person, other than a lien holder, having title to a motor vehicle.

PARKING — The standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading, in obedience to an officer or traffic signs or signals, while making emergency repairs or while making arrangements for removal of a disabled vehicle.

POLICE OFFICER or OFFICER — Any officer authorized to make arrests, provided that he is in uniform or he displays his badge of office.

TRAFFIC CONTROL SIGN — All signs, markings and devices placed by public authority for the purpose of guiding, directing, warning or regulating traffic.

TRAFFIC CONTROL SIGNAL — Any device using colored lights placed by public authority, whether manually, electrically, electronically, or mechanically operated, by which traffic may be directed.

TRAILER — Any vehicle or object on wheels having no motive power of its own, but which is drawn by, or used in combination with, a motor vehicle.

WAY — Any public highway, private way laid out under authority of statute or way dedicated to public use.

§ 169-2. Authority of Town Council.

The Town Council shall have the authority pursuant to MGL C. 40, § 22; C. 40, § 22A; and C. 90, § 20A1/2 to make ordinances, orders, rules and regulations for the regulation of motor vehicles used within the Town of Agawam, with penalties for the violation thereof not to exceed those specified in the Massachusetts General Laws.

§ 169-3. Authority of police officers.

- A. Except as otherwise provided herein, it shall be the duty of police officers designated by the Chief of Police to enforce the provisions of this chapter. Such police officers are hereby authorized to direct

all traffic either in person or by means of visible or audible signals in conformance with the provisions of this chapter, provided that, in the event of a fire or other emergency, officers of the Fire Department or other authorized public employees may direct traffic as conditions may require, notwithstanding the provisions of this chapter.

- B. Closing streets. The Chief of Police is hereby authorized to close temporarily any way in an impending or existing emergency or for any lawful assemblage, demonstration or procession, provided that there is reasonable justification for the closing of the way.
- C. Annual accident report. The Chief of Police shall make an annual written report of motor vehicle accidents to the Mayor on or before March 1 of the succeeding calendar year.

§ 169-4. Designation of bus stops.

The Town Council shall designate, by majority vote, the location of all bus stops.

§ 169-5. Coasting and sliding.

No person shall coast, course or slide with any sleigh, sled, or other vehicle on or across any way or on the sidewalks of any way.

§ 169-6. Hitchhiking.

No person while standing, walking or running within the limits of a way shall solicit verbally, by sign or by signal transportation for himself or for other persons in any motor vehicle except motor vehicles operated for carriage of passengers for hire.

§ 169-7. Soliciting from motor vehicles.

No person shall, for the purpose of soliciting any alms, contribution or subscription or of selling any merchandise or ticket of admission to any game, show, exhibition, fair, ball, entertainment or public gathering, signal a moving motor vehicle on a way, cause the stopping of a motor vehicle on a way or accost any occupant of a motor vehicle stopped on a way at the direction of a traffic sign, traffic signal or police officer.

§ 169-8. Exemptions.

The provisions of this chapter shall not apply to persons actually engaged in work upon a way closed to travel or under construction or repair, to public officials engaged in the performance of public duties or to drivers of emergency vehicles while operating in an emergency when the nature of the work requires a departure from any part of this chapter.

§ 169-9. Responsibility of vehicle owner for violations.

If a motor vehicle is found upon any way in violation of any provision of this chapter and the identity of the operator cannot be determined, the owner of such motor vehicle shall be held prima facie responsible for such violation.

§ 169-10. Violations and penalties.

Unless otherwise specified herein, the penalty for any violation of this chapter shall be a fine of not less than \$50 nor more than \$200.

ARTICLE II
Signs, Signals and Markings

§ 169-11. Placement and maintenance; no-parking zones.

- A. The Superintendent of the Department of Public Works is hereby authorized to place and maintain or cause to be placed and maintained all official traffic signs, signals and markings. All official traffic signs, signals and markings shall conform to the standards as prescribed by the State Department of Public Works.
- B. Regulations relating to no-parking zones shall be effective only during such times as a sufficient number of official no-parking signs are erected and maintained designating the no-parking zone, provided that such signs are visible to approaching operators.

§ 169-12. Unofficial signs; removal.

No person shall place, maintain or display or cause to be placed, maintained or displayed any unofficial sign, signal or marking which purports to be, resembles or is an imitation of an official traffic sign, signal or marking which attempts to direct the movement of traffic or which hides from view any official sign, signal or marking. The Chief of Police is hereby empowered to remove without notice any unofficial sign, signal and marking which violates this section.

ARTICLE III
Operation of Motor Vehicles

§ 169-13. Use of lanes.

- A. When any way has been divided into lanes, an operator of a motor vehicle shall drive so as to be entirely within a single lane and shall not move from the lane until he has first ascertained if such movement can be made with safety.
- B. Upon all ways, the operator of a motor vehicle shall drive in the lane nearest the right side of the way when such lane is available for travel, except when overtaking another motor vehicle or when preparing for a left turn.

§ 169-14. Overtaking and passing.

- A. The operator of a motor vehicle shall not overtake and pass a motor vehicle proceeding in the same direction unless there is sufficient clear space ahead on the left side of the way to permit the overtaking to be completed without impeding the safe operation of any motor vehicle ahead.
- B. The operator of a motor vehicle who is about to be overtaken and passed by another motor vehicle approaching from the rear shall give way to the right in favor of the overtaking motor vehicle and shall not increase the speed of the motor vehicle until completely overtaken by the passing motor vehicle.

§ 169-15. Obstructing traffic.

- A. No person shall operate a motor vehicle in such a manner as to obstruct unnecessarily the normal movement of traffic upon any way. Officers are hereby authorized to require any operator who fails to comply with this section to move to the side of the way and wait until such traffic as has been delayed to pass.
- B. No operator 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 side of the way to accommodate the motor vehicle without obstructing the passage of other motor vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

§ 169-16. Following too closely.

No operator of a motor vehicle shall follow another motor vehicle more closely than is reasonable and prudent, having due regard to the speed of the motor vehicle and the traffic upon and condition of the way.

§ 169-17. Operation on ways under construction or repair.

No operator shall enter upon any way when, by reason of construction, surface condition, maintenance or because of some unprotected hazard, such way is closed to travel and one or more signs, signals or markings have been erected to indicate that the way is closed to travel or when so advised by an officer or other public official.

§ 169-18. Operation on sidewalks.

No operator of a motor vehicle shall drive upon any sidewalk except at a permanent or temporary driveway.

§ 169-19. Funerals and other processions.

- A. It shall be the duty of every operator in a funeral or other procession to keep as near to the right edge of the way as possible, and to follow the motor vehicle ahead as closely as is practicable and safe.
- B. At an intersection where a traffic control signal is operating, the operator of the first motor vehicle in a funeral or other procession shall be the only one required to stop for a red signal.
- C. At an intersection where a stop sign exists, the driver of the first motor vehicle in a funeral or other procession shall be the only operator required to stop before proceeding through the intersection.

§ 169-20. Speed limit; School Zones. [Amended 12-18-2023 by Ord. No. TOR-2023-9]

- A. It shall be unlawful for any motor vehicle to travel over 25 miles per hour over any of the ways of the Town unless such ways are lawfully posted for a different speed.
- B. School zones. In accordance with the Massachusetts Amendments to the 2009 Manual on Uniform Traffic Control Devices approved by the MassDOT in November of 2022, the following lengths of roadway will be designated as School Zones:

Name of Street	Location
Cooper Street	From Line Street to 200 feet east of the center line of Cooper Street (35 MPH Speed Regulation 946 will remain when School Zone sign is not flashing)
Mill Street	Cooper Street from Mill Street to 450 feet from Mill Street (25 MPH Speed Regulation 946 will remain when School Zone sign is not flashing)

§ 169-21. Obedience to stop signs and signals.

Every operator of a motor vehicle approaching an intersection of ways where there is an official traffic sign bearing the word "stop" or a flashing red traffic signal shall, before proceeding through the intersection, bring the motor vehicle to a complete stop at such point as may be clearly marked by a sign or line, or if no point is marked, then at a place between the stop sign and the nearer line of the intersection. This section shall not apply when traffic is being directed by a police officer.

§ 169-22. Operation of certain vehicles after sunset.

Any vehicle operated on the ways of the Town of Agawam which is not a motor vehicle as defined by MGL C. 90, § 1, during the period from 1/2 hour after sunset to 1/2 hour before sunrise shall display two flashing red lights in the reverse direction. Each red light shall be a minimum of at least six inches in diameter and mounted three feet from the ground.

§ 169-23. Securing of loads.

No person shall operate or move a motor vehicle, trailer or other equipment within the Town of Agawam unless such motor vehicle, trailer or other equipment is constructed and loaded so as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom and unless such motor vehicle, trailer or other equipment's load is fully and adequately secured.

ARTICLE IV
Parking

§ 169-24. General prohibitions; fines.

A. No person shall:

- (1) Park a motor vehicle within a designated no-parking zone.
- (2) Park a motor vehicle so as to obstruct snow or ice removal.
- (3) Park a motor vehicle so as to obstruct a sidewalk.
- (4) Park a motor vehicle so as to obstruct a driveway.
- (5) Park a motor vehicle so as to obstruct a crosswalk.
- (6) Park a motor vehicle over one foot from the curb or edge of the way.
- (7) Park a motor vehicle within an intersection.
- (8) Park a motor vehicle within 30 feet of an intersecting way. **[Amended 9-3-2002 by TOR-2002-2]**
- (9) Park a motor vehicle with the left wheels to the curb.
- (10) Park a motor vehicle within a designated bus stop area.
- (11) Park a motor vehicle within five feet of a bus stop sign.
- (12) Park a motor vehicle so as to leave less than a ten-foot-wide unobstructed lane.
- (13) Park a motor vehicle which is unregistered on a way.
- (14) Park a motor vehicle with the engine operating and leave it unattended.
- (15) Park a motor vehicle on a way within a designated no-passing zone.
- (16) Park a motor vehicle within a restricted area during a winter parking ban.
- (17) Park a motor vehicle within a restricted area during an emergency parking ban.
- (18) Park a motor vehicle within any grassed, lawn or landscaped area on the grounds of any municipal or school building, park or playground.
- (19) Park a motor vehicle on a way while displaying advertising.
- (20) Park an unattended trailer on a way.
- (21) Park a motor vehicle within a fire lane.
- (22) Park a motor vehicle within 10 feet from a hydrant.
- (23) Park a motor vehicle so as to obstruct a handicap ramp.
- (24) Park a motor vehicle in a designated handicap parking area.

B. The following shall be the established schedule of fines for the above-referenced parking offenses:

- (1) Pursuant to MGL C. 90, § 20A 1/2, the penalty for offenses in Subsection A(1) through (21) inclusive shall be a fine in the amount of \$15 if paid within 21 days; the fine shall increase to \$20 if paid thereafter but before the parking clerk reports to the Registrar of Motor Vehicles; and the fine shall increase to \$35 if paid thereafter.
- (2) Pursuant to MGL C. 90, § 20A 1/2, the penalty for offense in Subsection A(22) shall be a fine in the amount of \$50 if paid within 21 days; the fine shall increase to \$60 if paid thereafter but before the parking clerk reports to the Registrar of Motor Vehicles; and the fine shall increase to \$100 if paid thereafter.
- (3) Pursuant to MGL c. 40, § 22A, the penalty for violations of § 169-24A(23) and/or § 169-24A(24) of the Code of the Town of Agawam shall be a fine in the amount of \$300, and all funds received from fines assessed for violations of § 169-24A(23) and/or § 169-24A(24) of the Code of the Town of Agawam shall be allocated to the local Commission on Disabilities in accordance with MGL c. 40 § 22G; and any vehicle parked or standing in violation of § 169-24A(23) and/or § 169-24A(24) of the Code of the Town of Agawam, or on any part of any way under the control of the City of Agawam in such a manner as to obstruct any curb ramp designed for use by handicapped persons as means of egress to a street or public way, or to occupy or obstruct any parking space reserved for a vehicle used by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate, or displays the special parking identification plate authorized by section two of chapter ninety, or bears the official identification of a handicapped person issued by any other state, or any Canadian province, may be removed as provided in accordance with MGL c. 40 § 22D. **[Amended 7-6-2004 by TOR-2004-8]**

§ 169-25. Removal of vehicles parked in violation; fine.

- A. The Chief of Police or his designee may remove or cause to be removed any motor vehicle parked in violation of this chapter. Such power to remove shall not extend to a motor vehicle owned by the Commonwealth of Massachusetts or any political subdivision thereof, owned by the United States Government or any instrumentality thereof or registered to a member of a foreign diplomatic corps or foreign consular officer who is not a citizen of the United States, which bears a distinctive number plate or other conspicuous marking.
- B. Any person whose motor vehicle is removed shall be subject to an additional fine in the amount of \$25 and is fully responsible for all charges and expenses incurred for removal and storage of such motor vehicle.

§ 169-26. Winter parking ban; fine.

- A. The Superintendent of the Department of Public Works or his designee may declare a limited parking ban on the ways within the Town during the period beginning November 15 through April 15 for the purposes of snow and ice removal. The Superintendent or his designee shall announce all such limited parking bans to the press prior to their declaration.
- B. The Superintendent of Public Works or his designee may remove or cause to be removed any motor vehicle parked in violation of the winter parking ban. Such power to remove shall not extend to a motor vehicle owned by the Commonwealth of Massachusetts or any political subdivision thereof, owned by the United States Government or any instrumentality thereof or registered to a member of

a foreign diplomatic corps or foreign consular officer who is not a citizen of the United States, which bears a distinctive number plate or other conspicuous marking.

- C. Any person whose motor vehicle is removed shall be subject to an additional fine in the amount of \$25 and is fully responsible for all charges and expenses incurred for removal and storage of such motor vehicle.

§ 169-27. Emergency parking ban; fine.

- A. The Chief of Police or his designee may declare an emergency limited parking ban on the ways within the Town during the period of any emergency. The Chief or his designee shall announce all such limited parking bans to the press if their duration shall exceed 24 hours.
- B. The Chief of Police or his designee may remove or cause to be removed any motor vehicle parked in violation of the emergency parking ban. Such power to remove shall not extend to a motor vehicle owned by the Commonwealth of Massachusetts or any political subdivision thereof, owned by the United States Government or any instrumentality thereof or registered to a member of a foreign diplomatic corps or foreign consular officer who is not a citizen of the United States, which bears a distinctive number plate or other conspicuous marking.
- C. Any person whose motor vehicle is removed shall be subject to an additional fine in the amount of \$25 and is fully responsible for all charges and expenses incurred for removal and storage of such motor vehicle.

§ 169-28. Handicapped parking spaces; fine.

- A. Pursuant to MGL C. 40, § 21, Clause (23), any person or body that has lawful control of a public or private way or improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities or cultural centers, residential dwellings or for any other place where the public has a right of access as invitees or licensees shall reserve parking spaces in said off-street parking areas for motor vehicles of disabled veterans and handicapped persons if the number of parking spaces in any such area is 15 or more. The parking spaces reserved for motor vehicles of disabled veterans and handicapped persons shall be clearly marked by pavement markings and signs or other designation approved by the Superintendent of the Department of Public Works or his designee. The parking spaces for disabled veterans and handicapped persons shall be of such a size as determined by the Superintendent of the Department of Public Works or his designee, but in no event less than 12 feet in width. The parking spaces for disabled veterans and handicapped persons shall be as near as possible to a building entrance or walkway and adjacent to curb ramps or other unobstructed methods permitting sidewalk access to disabled veterans and handicapped persons.
- B. The number of parking spaces reserved for disabled veterans and handicapped persons shall be determined in accordance with the following formula:
- (1) If the total number of parking spaces is more than 15 but less than 25, then there shall be at least one designated parking space for disabled veterans and handicapped persons.
 - (2) If the total number of parking spaces is more than 25 but less than 40, then there shall be 5% of the spaces but not fewer than two designated parking spaces for disabled veterans and handicapped persons.
 - (3) If the total number of parking spaces is more than 40 but less than 100, then there shall be 4%

of the spaces but not fewer than three designated parking spaces for disabled veterans and handicapped persons.

- (4) If the total number of parking spaces is more than 100 but less than 200, then there shall be 3% of the spaces but not fewer than four designated parking spaces for disabled veterans and handicapped persons.
 - (5) If the total number of parking spaces is more than 200 but less than 500, then there shall be 2% of the spaces but not fewer than six designated parking spaces for disabled veterans and handicapped persons.
 - (6) If the total number of parking spaces is more than 500, then there shall be 1 1/2% of the spaces but not fewer than 10 designated parking spaces for disabled veterans and handicapped persons.
- C. Any person who has lawful control who does not reserve and properly mark parking spaces for disabled veterans and handicapped persons as required by this section shall be punished by a fine of \$50. Each day said violation continues shall constitute a separate violation hereof.

Chapter 172**VEHICLES, UNREGISTERED**

[HISTORY: Adopted by the Town Council of the Town of Agawam 10-16-1989 by TOR-89-27. Amendments noted where applicable.]

GENERAL REFERENCES

Vehicles and traffic — See Ch. 169.

§ 172-1. Number on private property restricted.

No person, business, corporation, enterprise or other legal entity shall allow or permit the presence of more than one unregistered vehicle on the property he, she or it owns, rents, leases, occupies or which is otherwise under his, her or its control in violation of the provisions of Chapter 180, Zoning, of the Code of the Town of Agawam.

§ 172-2. Service of notice of violation.

The Building Department and/or the Police Department shall have the authority and power to issue a written notice ordering removal of unregistered vehicles in violation of Chapter 180, Zoning, of the Code. Said notice shall order removal within 14 days of receipt and shall be served:

- A. Personally by a duly authorized member of the Police Department and/or the Building Department;
- B. By leaving a copy at the last and usual place of abode or business;
- C. By sending a copy by registered or certified mail, return receipt requested, at the last known address; or
- D. If the address is unknown, and service in hand is not possible, by posting a copy in a conspicuous place on or about the property.

§ 172-3. Compliance with fourteen-day notice period.

No person, business, corporation, enterprise or other legal entity shall allow or permit said unregistered vehicles to remain upon the property he, she or it owns, rents, leases, occupies or which is otherwise under his, her or its control for any period of time after expiration of the fourteen-day notice period.

§ 172-4. Violations and penalties.

Whoever violates this chapter shall be fined not more than \$300 but not less than \$100 per vehicle for the first offense. Second and subsequent offenses shall result in a mandatory fine of \$500 per vehicle. The Building Department and/or the Police Department shall be permitted to remove unregistered vehicles in violation of Chapter 180, Zoning, of the Code of the Town of Agawam, provided that they have served written notice in accordance with the terms outlined above and 30 days has elapsed from the time written notice was received by the alleged violator. The Town of Agawam shall be entitled to restitution for any and all costs incurred in the removal, towing, storage and disposal of said unregistered vehicles. The Town of Agawam shall store all vehicles removed for a minimum of fourteen days prior to arranging for disposal.

of said vehicles. Whoever violates any provision of this section shall pay to the Town of Agawam all costs and expenses, including reasonable attorney's fees, incurred by the town in the enforcement and prosecution of this section. Each day said violation is permitted to continue after expiration of the fourteen-day notice period shall constitute a separate violation of this section. This section shall not apply to duly licensed Class I, II and III dealers.

§ 172-5. Alternative proceedings for violations. [Added 6-6-2005 by TOR-2005-1]

- A. Any violation of this chapter, Chapter 172, may, in the discretion of the Inspector of Buildings, or his designee, or any police officer as directed by the Police Chief or his designee, be enforced by the noncriminal complaint method for which provision is made, and/or as set forth in MGL c. 40, § 21D, as amended from time to time, that is, noncriminal disposition. Fines issued pursuant to § 172-5 shall be as follows:
 - (1) First offense: \$25.
 - (2) Second offense: \$50.
 - (3) Third offense and each subsequent offense: \$100.
- B. Each day on which a violation exists shall constitute and be deemed a separate offense.

AGAWAM CODE

Chapter 175

WATER AND SEWERS

[HISTORY: Adopted by the Town Council of the Town of Agawam 7-1-1974. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 155.

Zoning — See Ch. 180.

Subdivision of land — See Ch. 159.

ARTICLE I
General Provisions

§ 175-1. Definitions and word usage.

- A. Word usage. "Shall" is mandatory; "may" is permissive.
- B. Definitions. Unless the context specifically indicates otherwise, the meanings of terms used in this chapter shall be as follows:

ABUTTER — One who holds title to real property within the limits of an improvement area, and his successors in title.**[Added 8-12-1981]**

APPLICANT — Any abutter, his agent, representative or assign requesting approval to discharge wastewater into Town sewer facilities or to connect to the Town drainage system.**[Added 8-12-1981]**

AUTHORIZED ENFORCEMENT AGENCY — The Department of Public Works, its employees, or agents designated to enforce this chapter on the behalf of the Superintendent.**[Added 5-15-2006 by TOR-2006-2]**

AVERAGE DAILY FLOW — The total volume of sewage in gallons measured at a metering station or other point during a continuous period of 365 days divided by 365.**[Added 1-21-1986 by TOR-85-4]**

BEST MANAGEMENT PRACTICES (BMP) — Structural or nonstructural practices which temporarily store or treat urban stormwater runoff to reduce flooding, remove pollutants, or reduce pollutants at their source.**[Added 5-15-2006 by TOR-2006-2]**

BOD (denoting "biochemical oxygen demand") — The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C., expressed in milligrams per liter.

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 10 feet outside the inner face of the building wall.

BUILDING SEWER — The extension from the building drain to the public sewer or other place of disposal.

BUSINESS UNIT — An individual commercial user or dry industry, but excluding any wet industry as defined herein, such that each individual business in a shopping center or industrial complex shall constitute one business unit.**[Added 8-12-1981; amended 7-10-1989 by TOR-89-9]**

CATEGORICAL PRETREATMENT STANDARDS — Pollutant discharge limitations for specific industrial user categories promulgated under federal law by the United States Environmental Protection Agency.**[Added 1-21-1986]**

CITY — The City of Springfield, its Director of Public Works or other designated representative.**[Added 1-21-1986 by TOR-85-4]**

CLEAN WATER ACT — The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.**[Added 5-15-2006 by TOR-2006-2]**

COMBINED SEWER — A sewer receiving both surface runoff and sewage.

COMMERCIAL USER — A classification of user which includes all retail and wholesale establishments, institutions and offices, including but not limited to office buildings, restaurants,

retail and wholesale outlets, service agencies, agents, brokers, professional offices, etc., both for profit and nonprofit. **[Added 8-12-1981]**

DEP or DEPARTMENT OF ENVIRONMENTAL PROTECTION — A department of the Commonwealth of Massachusetts which regulates environmental concerns, including but not limited to the Wetland Protection Act and as co-permittee-of certain NPDES permits with the EPA. **[Added 5-15-2006 by TOR-2006-2]**

DEPARTMENT OF PUBLIC WORKS — The administrative body for public works in the Town of Agawam.

DETENTION POND or RETENTION POND — A natural or man-made drainage holding area and appurtenances, including outlet or control structure, dam, emergency spillway, etc. **[Added 7-9-1984]**

DISCHARGE — The following are the definitions of terms used in this section: **[Added 5-15-2006 by TOR-2006-2]**

- (1) DIRECT STORMWATER DISCHARGE — The discharge of treated or untreated stormwater directly to the MS4, which may or may not subsequently discharge to the waters of the Commonwealth of Massachusetts, including rivers, streams, brooks, or wetlands.
- (2) ILLICIT STORMWATER DISCHARGE — Any nonstormwater discharge into the municipal separate storm sewer system (MS4), except as specifically exempted in this code. Discharges which are in compliance with a NPDES stormwater discharge permit are not illicit discharges.
- (3) INDIRECT STORMWATER DISCHARGE — The discharge of treated or untreated stormwater to the waters of the Commonwealth of Massachusetts, including rivers, streams, brooks, or wetlands, without a connection to or discharge to the municipal separate storm sewer system (MS4) before flows reach the water resource.
- (4) STORMWATER DISCHARGE — The discharge of treated or untreated stormwater to the Town's MS4.

DRAINAGE SYSTEM — Same as stormwater system, storm sewer system. **[Added 5-15-2006 by TOR-2006-2]**

DRAIN LATERAL OR CONNECTION — Drainage service connections are private structures to be owned and maintained by the property owner to the point where it connects to a stormwater main, manhole, or catch basin in the street right-of-way or Town's easement. **[Added 5-15-2006 by TOR-2006-2]**

DRY INDUSTRY — A classification of user which includes all industries which do not use water for processes, do not use large volumes of water for cleaning, or for which total annual wastewater production is less than 100,000 cubic feet. **[Added 8-12-1981]**

DUMPING — An act or omission of any person or entity, the proximate result of which is the introduction of pollutant(s) to the MS4, which is an illicit discharge. **[Added 5-15-2006 by TOR-2006-2]**

DWELLING UNIT — A single-family house, one apartment or one condominium unit shall constitute one dwelling unit. **[Added 8-12-1981; amended 7-10-1989 by TOR-89-9]**

EPA or ENVIRONMENTAL PROTECTION AGENCY — The United States Environmental Protection Agency, a department of the federal government that requires compliance with the Clean Water Act and NPDES permitting. **[Added 5-15-2006 by TOR-2006-2]**

EXCESSIVE — Amounts of concentration of a constituent of a wastewater which in the judgment of

the municipality:

- (1) Will cause damage to any facility;
- (2) Will be harmful to a wastewater treatment process;
- (3) Cannot be removed in the treatment works to the degree required in the limiting streams classification standards of the Connecticut River and/or its tributaries;
- (4) Can otherwise endanger life and/or property; or
- (5) Can constitute a nuisance.

EXISTING DISCHARGE — Any discharge to the MS4 which is under construction or operation at the time of the enactment of this definition. **[Added 5-15-2006 by TOR-2006-2]**

FLOW ATTENUATION — Prolonging the flow time of runoff to reduce the rate of the peak discharge. **[Added 5-15-2006 by TOR-2006-2]**

GARBAGE — Solid wastes from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

GENERAL BENEFIT AREA — The part of Town that is served, or has the potential to be served, directly or indirectly, by the existing and proposed system of sewerage or drainage, which shall include the area within the improvement area. **[Added 8-12-1981]**

GROUNDWATER RECHARGE — The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil. **[Added 5-15-2006 by TOR-2006-2]**

HYDROLOGY MODEL — **[Added 5-15-2006 by TOR-2006-2]**

- (1) TR20, a watershed hydrology model developed by the Natural Resources Conservation Service that is used to route a design storm hydropograph through a pond.
- (2) TR55, Urban Hydrology for Small Watersheds, a publication developed by the Natural Resources Conservation Service to calculate stormwater runoff and an aid in designing detention basins.
- (3) HydroCAD, a computer model which utilizes the TR20 or TR55 method for stormwater runoff modeling.

ILLICIT CONNECTION — Any surface flow or conveyance of flows to the MS4 which contains nonstormwater discharges except as exempted within this chapter. **[Added 5-15-2006 by TOR-2006-2]**

ILLICIT STORMWATER DISCHARGE — Any nonstormwater discharge into the municipal separate storm sewer system (MS4), except as specifically exempted in this chapter. Discharges which are in compliance with a NPDES stormwater discharge permit are not illicit discharges. **[Added 5-15-2006 by TOR-2006-2]**

IMPROVEMENT AREA — The area served by the proposed sewerage or drainage project, the boundaries of which shall include only those parcels or portions of parcels that could be directly connected to the proposed common sewers or drains, such that a building sewer or drain would not have to pass through adjacent private land to serve each parcel. **[Added 8-12-1981]**

INDIRECT STORMWATER DISCHARGE — The discharge of treated or untreated stormwater to

the waters of the Commonwealth of Massachusetts, including rivers, streams, brooks, or wetlands without a connection to or discharge to the municipal separate storm sewer system (MS4) before flows reach the water resource.[Added 5-15-2006 by TOR-2006-2]

INDUSTRIAL USER — An industry discharging industrial wastewater to a public sewer.[Added 1-21-1986 by TOR-85-4]

INDUSTRIAL WASTES — The liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

INDUSTRY — An establishment with facilities for manufacturing, processing, fabricating, finishing, assembling, testing or packaging goods, including materials, chemicals, by-products and finished and unfinished products. And furthermore, "industry" shall mean any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

- (1) Division A, Agriculture, Forestry and Fishing.
- (2) Division B, Mining.
- (3) Division D, Manufacturing.
- (4) Division E, Transportation, Communications, Electric, Gas and Sanitary Services.
- (5) Division I, Services.

INTERFERE — A discharge by an industrial user which, along or in conjunction with discharges by other sources, inhibits or disrupts the Town's wastewater work, its treatment processes or operations or its sludge processes, use or disposal and which is a cause of a violation of any requirement of the Town's National Pollutant Discharge Elimination System permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal by the Town in accordance with the following statutory provisions and regulations or permits issued thereunder for more stringent state or local regulations: § 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) [including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA], the Clean Water Act, the Toxic Substances Control Act and the Marine Protection Research and Sanctuaries Act.[Added 1-21-1986 by TOR-85-4]

LOT — An area of land in one ownership, with definite boundaries, used or available for use as the site for one or more dwelling or business units.[Added 8-12-1981; amended 7-10-1989 by TOR-89-9]

MAXIMUM DAILY FLOW — The highest volume in gallons measured at a metering station or other point during any continuous twenty-four-hour period.[Added 1-21-1986]

MS4 or MUNICIPAL SEPARATED STORM SEWER SYSTEM — The system of conveyances of mains, laterals, swales, catch basins, roadway gutters, and other BMPs located within public ways and easements established and conveyed and accepted by the Town for utility and drainage purposes. Drainage structures constructed in accordance with Planning Board requirements for subdivisions and meeting DPW requirements shall also be part of the MS4.[Added 5-15-2006 by TOR-2006-2]

NATURAL OUTLET — Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

NPDES: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM — Permitting

required by the EPA for various types of discharges to the waters of the United States.[**Added 5-15-2006 by TOR-2006-2**]

NON-STORMWATER DISCHARGE — Discharge which is composed of constituents which are not stormwater except as specifically exempted within the chapter.[**Added 5-15-2006 by TOR-2006-2**]

OWNER — The owner or occupant of land, and in the case of permit applications under Article III, any person intending to acquire an ownership interest in land.[**Added 7-9-1984**]

PARCEL — Real property within the limits of an improvement area, or general benefit area, consisting of one lot; or two or more potential lots, calculated on the basis of zoning in effect at the time of assessment, which are under one ownership.[**Added 8-12-1981; amended 7-10-1989 by TOR-89-9**]

PASS-THROUGH — The discharge of pollutants through the Town's wastewater works into navigable waters in quantities or concentrations which, alone or in conjunction with discharges from other sources, are a cause of a violation of any requirement of the Town's National Pollutant Discharge Elimination System permit, including an increase in the magnitude or duration of a violation.[**Added 1-21-1986**]

PERMITTING AUTHORITY — The Department of Public Works.[**Added 5-15-2006 by TOR-2006-2**]

PERSON — Any individual, firm, company, association, society, corporation or group, including a city, county or other governmental unit.

pH — The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

POLLUTANT — Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the commonwealth. Pollutants shall include, without limitation:[**Added 5-15-2006 by TOR-2006-2**]

- (1) Paint, varnish, and solvents.
- (2) Oil, anti-freeze, and other automotive fluids.
- (3) Nonhazardous liquid and solid wastes and yard wastes.
- (4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnance, accumulations and floatables.
- (5) Pesticides, herbicides, and fertilizers.
- (6) Hazardous materials and wastes.
- (7) Sewage, fecal coliform and pathogens.
- (8) Dissolved and particulate metals.
- (9) Animal wastes and pet wastes.
- (10) Rock, sand, salt and soils.
- (11) Construction wastes and residues.
- (12) Noxious or offensive matter of any kind.

POTENTIAL UNIT — A dwelling or business unit not in existence at the time of assessment, but which could be built on a parcel or a portion thereof and connected to a common sewer or drain at a later date, provided that potential units shall be calculated on the basis of zoning in effect at the time the assessment is made.**[Added 8-12-1981; amended 7-10-1989 by TOR-89-9]**

PRIVATE WAY — A right-of-way which has been established by a Town Board, but which has not been accepted as a public way. This right-of-way may or may not have roadway or utility structures for use by the public or abutters within its established area.**[Added 5-15-2006 by TOR-2006-2]**

PROPERLY SHREDDED GARBAGE — The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.

PUBLIC SEWER — Any sewer owned and maintained by the Town.**[Amended 1-21-1986 by TOR-85-4]**

PUBLIC WAY — A right-of-way which has been established and accepted as a public way by the appropriate Town entity. It shall include those structures which have been built for the use of the public for highway purposes including all utilities owned by the Town above and below ground.**[Added 5-15-2006 by TOR-2006-2]**

SANITARY LATERAL OR CONNECTION — Sanitary service connections are private structures to be owned and maintained by the property owner to the point where it connects to a sanitary main in the right-of-way or Town's easement; same as "building sewer."**[Added 5-15-2006 by TOR-2006-2]**

SANITARY SEWER — A sewer which carries sewage and to which storm-, surface and ground waters are not intentionally admitted.

SD PERMIT or STORM DRAIN PERMIT — A permit given by the DPW to applicants which authorizes the discharge of runoff directly to the MS4 and indirectly to the waters of the commonwealth.**[Added 5-15-2006 by TOR-2006-2]**

SERVICE AREA — The area served or capable of being served in the future by the proposed pressure improvement system.**[Added 7-10-1989 by TOR-89-9]**

SERVICED PROPERTY — A part or all of a parcel within an improvement area that could be directly served by the new sewerage or drainage system, regardless of whether or not any dwelling or business units are actually connected to the sewers or drains.**[Added 8-11-1981; amended 7-10-1989 by TOR-89-9]**

SEWAGE — A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground-, surface and storm waters as may be present.

SEWAGE TREATMENT PLANT — Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS — All facilities for collecting, pumping, treating and disposing of sewage.

SEWER — A pipe or conduit for carrying sewage.

SEWERED STREET — A public way or a way which the Town Clerk certifies is maintained and used as a public way, or a way shown on a plan approved in accordance with the Subdivision Control Law,⁵⁵ or a way in existence when the Subdivision Control Law became effective in the Town, which

55. Editor's Note: See MGL c. 41, § 81K through 81GG, inclusive, and Ch. 159, Subdivision of Land.

contains sewerage or drainage facilities to serve the existing and potential dwelling and business units abutting the street.[**Added 8-12-1981**]

SLUG — Any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average twenty-four-hour concentration of flows during normal operation.

STORM DRAIN (sometimes termed "storm sewer") — A sewer, ditch or channel which carries storm- and surface waters, other than unpolluted cooling water. Except where the context would clearly designate one or the other, the term encompasses both underground piping and surface drainage easements containing ditches, swales, channels or detention or retention basins for the handling of water.[**Amended 7-9-1984; 5-15-2006 by TOR-2006-2**]

STORM DRAINAGE SYSTEM — Publicly owned facilities by which stormwater is collected and/or conveyed, including, but not limited to, public roads with drainage systems.[**Added 5-15-2006 by TOR-2006-2**]

STORMWATER DISCHARGE — The discharge of treated or untreated stormwater to the Town's MS4.[**Added 5-15-2006 by TOR-2006-2**]

SUPERINTENDENT — The Superintendent of Public Works of the Town of Agawam or his authorized deputy, agent or representative.

SURFACE WATER DISCHARGE PERMIT — A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.[**Added 5-15-2006 by TOR-2006-2**]

SUSPENDED SOLIDS — Solids that either float on the surface of or are in suspension in water, sewage or other liquids and which are removable by laboratory filtering and are referred to as nonfilterable residue in the laboratory test prescribed in Standard Methods for the Examination of Water and Wastewater.

TOTAL NUMBER OF UNITS — The summation of all existing and potential dwelling and business units in an improvement area or general benefit area.[**Added 8-12-1981; amended 7-10-1989 by TOR-89-9**]

UNDEVELOPED LAND — A part or all of a parcel that is devoid of any existing dwelling or business units and does not abut a sewered street.[**Added 8-12-1981**]

USER — The person, as defined herein, who holds title to real property within the limits of an area serviced by a sanitary sewer, and his successors in title, who discharges a wastewater. The term "user" shall exclude any entity having a specific agreement in force, approved by the Environmental Protection Agency, for the handling and treating of its wastewater by the Town.[**Added 8-12-1981**]

WASTEWATER — The fluids flowing through the Town sewage system and may be a combination of the liquid and liquid-borne wastes from residences, commercial buildings, industrial plants or institutions.[**Added 8-12-1981**]

WATERCOURSE — A channel in which a flow of water occurs, either continuously or intermittently.

WATER RESOURCE — Same as "waters of the commonwealth."[**Added 5-15-2006 by TOR-2006-2**]

WATERS OF THE COMMONWEALTH — All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater. These are protected water resources through state and/or

federal regulation.[Added 5-15-2006 by TOR-2006-2]

WET INDUSTRY — A classification of user which includes any industry that produces more than 100,000 cubic feet of wastewater per year, or an industry that discharges any volume of wastewater of greater strength than residential wastewater or contains constituents which require pretreatment in accordance with this chapter shall be classified as a "wet industry" for purposes of this chapter.[Added 8-12-1981]

YARD DRAIN — Private catch basin located within lawn area and connected to the MS4 or discharges to a dry well or indirect discharge to waters of the commonwealth.[Added 5-15-2006 by TOR-2006-2]

§ 175-2. Notification of spills to public storm drain system (MS4).⁵⁶ [Added 5-15-2006 by TOR-2006-2]

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system, the person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and DPW. In the event of a release of nonhazardous material, the reporting person shall notify the DPW no later than the next business day. The reporting person shall provide to the DPW written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 175-3. Repair and replacement of water mains by Town.

The Town may repair or replace water mains located in an unaccepted street which has been dedicated for public use upon presentation to the Department of Public Works of a plan of the street and easements to water lines for the entire street, certified as to correctness by an attorney acceptable to the Town Council.

§ 175-4. Water bills to become a lien.

Water bills are a lien upon the real estate owner, and unpaid accounts will bear interest and be added to the tax bill.

§ 175-5. Power of Town to maintain and protect water supply.

The Town, for the purpose of supplying itself and its inhabitants with water for the extinguishment of fires and for domestic and other purposes, upon the advice and approval of the State Board of Health may from time to time, as in its opinion necessity requires, take by purchase or otherwise and hold any lands within the limits of such Town, together with any water or water rights therein, and also all lands, rights-of-way and easements necessary for procuring, holding, protecting and distributing such water, may purchase water to be held by it protected and distributed for such purposes and upon such condition from neighboring municipalities and in general may do such things as are necessary for the purpose of securing, maintaining and protecting such water system or supply. It may also establish hydrants and fountains,

56. Editor's Note: The material contained in former § 175-2, Deposit of certain substances prohibited, was moved to § 175-36A.

regulate the use of such water and fix and collect rates to be paid for the use of the same.

§ 175-6. Power of Town to construct and maintain certain appurtenances.

The Town may construct and maintain upon lands so taken wells, either artesian or of other kinds, filter beds, reservoirs, galleries, dams, standpipes, pumping stations and other necessary work, machinery and structures, may make such excavations, procure and operate such machinery and do such other things as may be necessary for providing and maintaining an effective system of water supply and it may lay and maintain such aqueducts, conduits, pipes and other works over or under any ways within such Town in such manner as shall not unnecessarily obstruct the same.

§ 175-7. Registration of land procured.

The Town shall file and cause to be recorded in the Registry of Deeds for the county a description sufficiently accurate for identification of all lands, rights-of-way, water rights, watercourses or easements which it shall take hereunder, otherwise than by purchase, together with a statement of the purpose for which the same are taken, within 90 days of the date of such taking. Such statements shall be signed by the Mayor.

§ 175-8. Payment of damages.

The Town shall pay all damages to property sustained by any person or corporation by the taking of any land, right-of-way, water sources, water right or easement or by reason of any other thing done by such Town under authority of this article. Any person or corporation entitled to damages under this article who fails to agree with the Town as to the amount thereof may have the same assessed and determined in the manner provided by law in the case of land taken for the laying out of highways by making application therefor within one year after the taking of such land or other property or the doing of any other injury under the authority of this article, but no application shall be made after the expiration of such year. No application shall be made for such assessment of damage for the taking of any water or water rights or any injury thereto until the water is actually withdrawn or diverted by the Town under the authority of this article, and in such last named case, a description and statement shall be deemed to have been filed for the purpose of such assessment and determination until such water is actually withdrawn or diverted.

§ 175-9. Establishment of rates.

The Department of Public Works shall fix just and equitable prices and rates for the use of water, subject to the approval of the Town Council, and shall prescribe the time and manner of payment. The income of the water works shall be applied to defraying all operating expenses, interest charges and payments on principal as they accrue upon any bonds, notes or scrip issued under the authority of this article. If there should be a net surplus remaining after providing for such charges, it shall be used for such new construction as the Department of Public Works may determine upon; and in case a surplus should remain after payment for such new construction, the water rates shall be proportionately reduced. No money shall be expended for new construction by the Department of Public Works except from the net surplus, unless the Town appropriates money therefor.

ARTICLE II
Assessments for Sewers and Drains
[Added 8-1-1983 by TOR-83-19]

§ 175-10. Calculation and method of assessment.

- A. A proportionate cost of each extension of the sewerage or drainage system, including the cost of all required appurtenances thereto, shall be distributed between the Town and the abutters in an equitable manner, based on the final cost of the project, to be calculated as follows:
- (1) The final cost of the project shall be the sum of the following:
 - (a) The total cost of any general benefit facilities within the improvement area, including but not limited to facilities planning for and construction of pumping stations, force mains, trunk and interceptor sewers or main drains, land acquisition and easements.
 - (b) The total cost of special benefit facilities, including all eight-inch-diameter common sewers or twelve-inch-diameter drains and appurtenances thereto. For trunk and interceptor sewers of larger than eight-inch diameter or main drains of larger than twelve-inch diameter, the Superintendent shall estimate the equivalent cost of eight-inch-diameter common sewers or twelve-inch-diameter drains and shall include the estimated cost thereof in his calculation of the total cost of special benefit facilities within the improvement area. The remainder of the cost of trunk and interceptor sewers or main drains shall be proportioned as general benefit facilities costs by the Superintendent.
 - (c) The total cost and expenses incidental to the installation and connection of building sewers or drains in accordance with § 175-33.
 - (2) The assessment for an individual dwelling or business unit shall be the sum of a general benefit assessment and a special benefit assessment.
 - (a) The general benefit assessment shall be calculated based on the total cost of all general benefit facilities within the general benefit area, less any state and federal aid attributable to general benefit facilities, but including any debt contracted for general benefit facilities and interest thereon, divided equally by the total number of units within the general benefit area. The general benefit assessment shall be made in lieu of payment of an entrance fee under § 175-32. The cost of general benefit facilities attributable to undeveloped land not abutting a sewerage or drainage shall not be assessed until such properties are serviced by public sewerage or drainage. The rate of assessment for general benefit facilities shall be equal to the amount of the entrance fee at the time the assessment is made, except where general benefit facilities are being installed under § 175-11A(6) whereunder the rate of assessment shall be the entrance fee plus the total cost of the general benefit facilities.
 - (b) The Town Council shall determine whether it shall pay the whole or a portion or none of the cost of the special benefit facilities, and if a portion, that portion shall be in accordance with § 175-11. The proportionate cost of the special benefit facilities to be paid by the abutters shall be divided equally among the total number of units within the improvement area. The special benefit assessment shall be made on all developed and undeveloped land abutting the proposed sewers or drains. Assessments on each parcel shall be based on the maximum total number of units that could be directly served by the special benefit facilities, calculated on the basis of zoning in effect at the time of assessment.

- (3) In making assessments for sewers and drains, the Town shall use the following procedures with regard to public notice and assessment orders:
 - (a) Whenever the Town Council determines that it shall pay only a portion or none of the special benefit facilities cost, the Council shall, by a majority vote, pass an order stating that betterments are to be assessed. The order of public notice shall contain a description of the improvement area by listing the names of the proposed sewer streets, a locus map and the estimated maximum amount of the general and special benefit assessments. Failure to give notice under this subsection shall not affect the Council's authority to make assessments at a later date.
 - (b) After the sewerage or drainage work is completed, the Superintendent shall calculate the rates of assessment in accordance with this chapter. A majority vote of the Town Council shall be required to make an order of assessment. The order of assessment shall contain the name of each owner and the amount of the general and special benefit assessments on each parcel, as well as a reference to the book and page where the deed for each parcel is recorded.
- B. The Council Clerk shall record public notice and assessment orders in the Hampden County Registry of Deeds within 30 days after adoption of the orders.

§ 175-11. Portion of cost to be paid by Town.

- A. If the Town Council votes to pay less than the whole cost of the special benefit facilities, in providing for the payment of the remaining portion of said system or systems, the Town shall utilize the method of assessment described in § 175-10 and the provisions of Chapters 80 and 83 of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of assessments, to liens therefor and to interests thereon:
 - (1) Where sanitary sewer facilities are installed generally to serve existing homes, businesses or industries, the Town will pay a portion of the total special benefit costs based on the greater of the following methods of calculating its proportionate share:
 - (a) Fifty percent of the total cost of the special benefit facilities less any state and federal aid attributable to special benefit facilities within the improvement area, provided that if the total grants in aid equal or exceed 50%, the Town shall pay no portion of the cost of the special benefit facilities, and if there is no grant, the Town shall pay 50%.
 - (b) The difference between the total cost of the special benefit facilities less any state and federal aid attributable to special benefit facilities within the improvement area, and the product of \$2,000 multiplied by the Engineering News Record Construction Cost Index (ENR Index) at the time the project is bid, divided by a base ENR Index of 3600, multiplied further by the total number of units within the improvement area, so that the special benefit assessment for an individual dwelling or business unit would not be greater than \$2,000 at an ENR Index of 3600, as adjusted to reflect average construction costs at the time the project is bid.
 - (2) Where sanitary sewer facilities are being installed to serve a proposed housing, commercial or industrial development and where the developer/owner requests the Town to make such an installation and the Town agrees to install such facilities, the Town will pay no portion of the cost and the developer/owner shall pay the entire cost of all special benefit facilities for the installation.

- (3) Assessments for which an extension or deferral of payment is made under § 175-15 will be assumed by the Town for the period of deferment. However, the Town shall be reimbursed by the abutter if the extension is terminated for any reason, as provided in said section.
 - (4) The full amount of any abatement granted will be paid for by the Town.
 - (5) The Town will pay all costs and expenses resulting from maintenance, repairs and replacement of any existing common sewer or drain, unless otherwise stated in the order of assessment or assessed under Subsection A(2).
 - (6) The portion of the total cost of any general benefit facilities not assessed under § 175-10 will be assumed by the Town. However, the Town shall be reimbursed for such costs, through future general benefit assessments or the payment of entrance fees.
- B. It is the intent of this article that the portion of the cost of new sewers to be paid for by the Town, including any debt contracted for sewer purposes and interest thereon, shall be paid for with money received from user charges in accordance with this chapter and Chapter 83 of the General Laws. However, any bonds issued by the Town for sewer purposes shall be general obligation bonds. The Town's share of new drains, including any debt contracted for drainage purposes and interest thereon, shall be paid for with money appropriated by or general obligation bonding approved by the Town Council.

§ 175-12. Payment of assessments and charges required.

The owner of any parcel within an improvement area who desires, or is required by a board or commission of the Town or any state or federal agency, to connect to the sewerage or drainage system shall pay at the time of issuance of the connection permit the full general and special benefit assessment, unless the full benefit assessment has already been paid or apportioned in accordance with § 175-13, and shall be responsible for the payment of all user charges required by this chapter, plus the charges for making the connection(s) to the common sewer or drain under § 175-33, and all other applicable fees as determined by the Superintendent. All money collected for sewer purposes shall be allocated to the sewer fund and all money collected for drainage purposes shall be allocated to the general fund.

§ 175-13. Method of payment; apportionment.

All assessments arising from the extension of and/or the connection to the Town sewerage or drainage system shall become liens against the properties to which they apply in accordance with the provisions of the General Laws. The abutters, whether or not they actually connect to the sewerage or drainage system, shall pay the full assessment as a lump sum payment, or a portion of the assessment in a lump sum payment, and the balance in annual payments, with interest at a rate equal to 2% above the rate of interest chargeable to the Town for the project to which the assessment relates. The Assessors may apportion the balance of the assessment into equal principal payments, not exceeding 20, for a term running with the bond issue for the project, or for any other period allowed under the provisions of MGL c. 80, § 13.

§ 175-14. Abatements and redetermination.

- A. In the event that a parcel or a portion of a parcel is included in the improvement area which cannot be completely served by a gravity connection between the building sewer or drain and the common sewer or drain, or cannot be served in its entirety, the assessment against the property shall be adjusted accordingly:
- (1) Owners of properties served only partially by new sewers or drains shall pay an assessment

based on the number of minimum-sized lots, in accordance with the requirements of the Zoning Ordinance,⁵⁷ which can be served, provided that the portion not served is not in common use with the portion served.

- (2) An owner of a developed parcel which cannot be served by a gravity connection between the building sewer and public sewer shall pay an assessment which is reduced by the amount equal to the extra cost of providing a suitable pumping or lifting device adequate to lift the wastewater from the building plumbing system and discharge it to the public sewer. The owner shall fully document the extra cost involved to the satisfaction of the Superintendent. The resulting reduction in the assessment shall not exceed the least of the reasonable extra cost to the owner, or 1/2 of the full assessment. This abatement shall not apply to drain connections requiring sump pumps.
 - (3) Property owned by charitable organizations and nonprofit organizations shall not be exempt from payment of assessments and charges.
- B. In the event that the Board of Appeals grants a variance from the Zoning Ordinance⁵⁸ on a parcel or a portion of a parcel within the improvement area allowing for the construction of one or more dwelling or business units in excess of the number of units that could have been built on the basis of zoning in effect at the time of assessment, the Town Council may redetermine the assessment, with interest.

§ 175-15. Extensions and deferrals.

- A. The Town Council, when making an order of assessment for new sewers or drains, shall extend the time for payment for such assessments made on undeveloped public land and land under conservation or agricultural preservation restriction, provided that the extension shall expire at the time the restriction is removed, the use changes or the land is built upon. Undeveloped public land shall include all Town, county, state, and federally owned land, except public land that is dedicated to park or conservation use, which shall not be assessed under this article. Land subject to a conservation or agricultural preservation restriction shall be as defined in MGL c. 184, § 31. Assessments on portions of such parcels occupied by existing buildings shall not be extended, and the owners thereof shall be required to pay a proportional assessment based on the actual number of dwelling or business units served. The order of assessment may provide that interest will not be charged on such extensions of time for payment.
- B. An abutter may, within six months after the assessment is made, make application to the Town Council for an extension of time for payment of all or a portion of his assessment on land that is not built upon, in accordance with the conditions provided hereinafter:
 - (1) All of the assessment on potential units within a parcel of undeveloped land in agricultural use or used as a cemetery may be extended.
 - (2) A portion of the assessment on potential units within a parcel of undeveloped land in use other than for agricultural purposes or as a cemetery may be extended up to an amount equal to the greater of:
 - (a) Forty percent of the assessment on the potential units, or

57. Editor's Note: See Ch. 180, Zoning.

58. Editor's Note: See Ch. 180, Zoning.

- (b) The amount that could be extended under Subsection B(3) below.
- (3) Table.
- (a) A portion of the assessments on potential units within a parcel abutting a sewer street may be extended based on the following table:

Number of Potential Units (PU's)	Percent of Assessment That Shall Not Be Extended
1 or 2	50% of the assessment on PU's
3 to 7	The sum of: 50% on the first 2 PU's 40% on the remaining PU's
8 and over	The sum of: 50% on the first 2 PU's 40% on the next 5 PU's 25% on the remaining PU's

- (b) The above schedule shall apply only to contiguous parcels; the total assessment on holdings by a single abutter of several individual scattered parcels shall not be considered.
- C. Any extensions of time for payment granted under Subsection B(1) through (3) above shall be subject to an annual payment of the interest on the amount so extended, calculated at the rate provided by MGL c. 83, § 19. All extensions of time for payment ordered by the Town Council shall be recorded in the Hampden County Registry of Deeds by the Council Clerk within 30 days after adoption of the order.
- D. The Town hereby adopts MGL c. 80, § 13B, with regard to deferral and recovery agreements with persons 65 years of age or older, for the total deferment of the sewer and drain assessment on a parcel or a portion of a parcel which is the place of residence of said person or persons, provided that any application for deferral shall be filed with the Council Clerk within six months after the assessment is made.

ARTICLE III
Assessments for Water System Expansion
[Added 7-10-1989 by TOR-89-9]

§ 175-16. Pressure improvement systems required.

- A. The water system of the Town of Agawam has been designed and constructed to provide service to buildings and land at or below the elevation of 270 feet above mean sea level. Any extension of the water system above this elevation will require the installation of a water pumping system and/or elevated tank, hereinafter referred to as pressure improvement systems, to provide adequate pressure and flows in accordance with standards of the Department of Environmental Quality Engineering, the Agawam Department of Public Works and the Agawam Fire Department. All such pressure improvement systems shall meet with the approval of the Agawam Department of Public Works.
- B. In the case of individual buildings where the water system can provide a minimum of 20 pounds per square inch of intake pressure at normal operation of a pressure improvement system under all conditions, including fire flow, the system shall be installed, operated, maintained, repaired and replaced by the owner of the building.
- C. In the case of a multibuilding or multilot development where there will be individual owners, the Agawam Department of Public Works shall install a pressure improvement system. The cost of such system, including construction, engineering, inspection, administration, operation and maintenance, and depreciation shall be assessed against all property that will or may in the future be served or benefited by the pressure improvement system. Any such pressure improvement system shall be designed and constructed to provide service to all contiguous land at or above the elevation of 270 feet above mean sea level.

§ 175-17. Method of assessment.

- A. In making assessments for water pressure improvement systems, the Town shall use the following procedure with regard to public notice and assessments orders:
 - (1) Whenever the Town Council determines that a pressure system shall be constructed by the Town, the Council shall, by a majority vote, pass an order stating that betterments are to be assessed. This order of public notice shall contain a description of the service area and serviced property, a locus map and the estimated maximum amount of the assessment. Failure to give notice under this section shall not affect the Council's authority to make assessments at a later date.
 - (2) After the installation of the pressure improvement system is completed, the Superintendent of Public Works shall calculate the rates of assessment in accordance with this article. A majority vote of the Town Council shall be required to make an order of assessment. The order of assessment shall contain the name of each owner and the amount of the assessment on each parcel, as well as a reference to the book and page where the deed for each parcel is recorded.
- B. The Town Clerk shall record public notices and assessment orders in the Hampden County Registry of Deeds within 30 days after the adoption of the order.

§ 175-18. Determination of assessment.

- A. A proportionate cost of each pressure improvement system, including all costs enumerated in

§ 175-16, shall be distributed in an equitable manner among the serviced property in the service area of the pressure improvement system. The distribution shall be on the basis of dwelling units, business units and potential units all as defined herein. ⁵⁹ The total cost of the pressure improvement system shall be divided equally among the total number of units within the serviced property of the service area. The assessment shall be made against all developed and undeveloped land within the serviced property of the service area. Assessments on each parcel shall, in the absence of any approved subdivision or development plans, be based on the maximum total number of units that could be directly served by the pressure improvement system calculated on the basis of zoning in effect at the time of assessment.

- B. The total cost of the pressure improvement system which is to be assessed shall be determined by the Superintendent of Public Works and include the following:
- (1) Land costs, including interest on any borrowing, unless the land occupied by the pressure improvement system is within a public way or has been granted to the Town.
 - (2) Construction costs, including interest on any borrowing, which includes all costs for the construction of the pressure improvement system and its appurtenances incurred by the Town.
 - (3) Engineering costs, including interest on any borrowing, which includes all design, permit acquisition, construction inspection and contract administration costs incurred by the Town in the construction of the pressure improvement system.
 - (4) Operation, maintenance and repair costs, which shall be a sum of money the interest income from which at a rate of return available to the Town on its money market accounts at the time of assessment determination, but not greater than 7%, will be sufficient to cover the average yearly operation, maintenance and repair costs over the useful life of the system. These costs shall be determined by the Superintendent of Public Works.
 - (5) Depreciation costs, which shall be a sum of money the interest income from which at the rate of return available to the Town on its money market accounts at the time of assessment, but not greater than 7%, will, over the useful life of the system, accumulate sufficient interest without use of the principal to replace the system. This cost shall be determined by the Superintendent of Public Works.

§ 175-19. Payment; special account.

- A. All assessments arising from the expansion of the water system and installation of a pressure improvement system shall become liens against the properties to which they apply in accordance with the provisions of the General Laws. The owner of any parcel within a service area of a pressure improvement system shall pay the assessment or proportional part thereof in full at the time of application for a building permit for a dwelling or business unit(s) or, in the case of an existing dwelling or business unit(s), the assessment or proportional part thereof shall be paid in full upon connection to the water system, unless the full assessment has already been paid or apportioned as provided herein.
- B. The property owner shall pay the full assessment as a lump sum payment or a portion of the assessment in a lump sum payment and the balance in annual payments, with interest for any given calendar year at a rate of 1/2% above the prime rate as published in the Wall Street Journal for the first day of business following January 1 of the year for which interest is being applied. The Assessor

59. Editor's Note: See § 175-1 of this chapter.

may apportion the balance of the assessment into equal principal payments, not exceeding 20, for a term running with any bond issue for the project, or for any other period allowed under the provisions of MGL c. 80, § 13. **[Amended 11-16-1991 by TOR-91-11]**

- C. All moneys collected from the assessment for a water system expansion and pressure improvement system shall be placed in a special interest-bearing account under the direction of the Superintendent of Public Works, and such moneys and interest earned therefrom shall be used solely for the costs enumerated in § 175-18 for each particular pressure improvement system.

§ 175-20. Abatements and redetermination.

- A. In the event that a zone change is granted, a variance is granted by the Board of Appeals or a special permit is issued by a Town agency that allows for the construction on a parcel of more units than could have been built upon the basis of zoning in effect at the time of assessment, the Town Council may redetermine the assessment with interest.
- B. In the event that fewer units are constructed on a parcel than were determined could have been built under the zoning at the time of assessment, then the total assessment on the parcel shall hold and the payment for each dwelling or business unit under § 175-19 shall be increased in inverse proportion to the decreased number of units.

§ 175-21. Exemptions, extensions and deferrals.

- A. Any land or parcel under conservation or agricultural preservation restriction as defined in MGL c. 184, § 31, shall be exempt from assessment under this article, except for the portion of said land or parcels occupied by existing buildings, which shall be required to pay a proportional assessment based on the actual number of dwelling or business units served. Undeveloped public land, including all Town, county, state and federal land, shall not be assessed under this article.
- B. An owner may, within six months after an assessment is made, make application to the Town Council for an extension of time for payment of all or a portion of his land that is not built upon in accordance with the conditions provided hereinafter:
 - (1) All of the assessments on potential units within a parcel of undeveloped land or existing units not served by the Town's water system may be extended. If such extension is granted, the assessment amount so extended shall be subject to an eight-percent annual interest charge compounded. This interest need not be paid annually but shall accumulate as a lien against the property. A condition of a grant of any extension shall be that the assessment plus accumulated interest must be paid in full upon development of the land at the time of building permit application or upon connection of an existing unit to the water system.
 - (2) All extensions of time for payment ordered by the Town Council shall be recorded in the Hampden County Registry of Deeds by the Town Clerk within 30 days after adoption of the order. Said order shall clearly describe the conditions contained in Subsection B(1) above.

ARTICLE IV
Sanitary Sewers, Storm Drains and Connections

§ 175-22. Sewer and storm drain permit applicability. [Amended 7-9-1984; 1-21-1986 by TOR-85-4; 5-15-2006 by TOR-2006-2]

A. Sewer permits.

- (1) No authorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer without first obtaining a written permit from the Superintendent.
- (2) Any person proposing a new discharge into the system or a substantial change in the volume or character of pollutants that are being discharged into the system shall notify the Superintendent at least 45 days prior to the proposed change or connection.
- (3) In the case of industrial users, an industrial discharge permit shall also be required under § 175-49, Industrial pretreatment program requirements, prior to the issuance of a permit under this section. If an industrial discharge permit is amended, modified, suspended or revoked, then the permit issued under this section shall also be amended, modified, suspended or revoked.

B. Storm drain permits.

(1) Applicability.

- (a) The following projects shall be required to comply with the requirements of a storm drain permit:

- [1] Any alteration to sites on parcels of one acre or greater.
- [2] Any alteration to individual lots less than one acre, but which are contiguous or are deemed part of a common project which is one acre or greater.

(b) Exemptions.

- [1] Normal maintenance and improvement of land in agriculture as defined by the Wetlands Protection Act regulation 310 CMR 10.4.
- [2] Stormwater discharges resulting from the activities of Subsection B(1)(a) and (b) which are subject to jurisdiction of the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an order of conditions issued by the conservation Commission shall fall under the DEP's jurisdiction for compliance and enforcement.
- [3] For total parcel areas less than three acres which have proposed alterations of less than 10% of the parcel(s), unless the nature of the proposed change is such that a significant impact on adjacent properties or downstream structures is anticipated. Changes at a site may not be split or phased in order to use this exemption repeatedly. This exemption is at the complete discretion of the DPW.
- [4] The down slope area to the alteration is left in a natural state and undisturbed such that impacts are anticipated to be insignificant.
- [5] The DPW Superintendent may waive strict compliance with any requirement of this SD permit or rules and regulations hereunder.

(2) Permits and procedures.

- (a) Application. A completed application for a storm drain permit shall be filed with the Department of Public Works. Approval must be obtained from the DPW before the beginning of land-disturbing activities that may result in the disturbance of an area of an acre or more and/or an alteration of a site of an acre. Approval to proceed with site changes will be contingent on the application submission's completeness, demonstration of compliance with design standards and inspections.

(b) Inspections.

- [1] Inspections by DPW shall be scheduled as follows.

- [a] After placement of erosion control BMPs (This will be before beginning of land-disturbing activities or clearing.)
- [b] Before backfilling of any underground drainage utilities or structures.
- [c] Walk through to determine final punch list of items remaining.
- [d] Final inspection upon completion of all construction and stabilization of disturbed areas.
- [e] Random inspections may be conducted to ensure compliance with the permit provisions.

- [2] DPW access to make inspections. The filing of an application for a storm drain permit with the DPW shall be deemed as the property owner's permission to the Department of Public Works to have the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspections. Included in the right to enter a property is when the permitting authority has a reasonable basis to believe that a violation of this chapter is occurring or has occurred, and to enter when necessary for the abatement of a public nuisance or correction of a violation of the conditions of the storm drain permit or this chapter.

(c) Reporting.

- [1] Short-term. Periodic construction phase reporting on erosion and sediment control best management practices (BMP) inspections, maintenance, and repairs may be required. Reporting requirements will be determined by the location, size, and potential adverse impact of a specific project. Reports will be made by the owner to the DPW.
- [2] Long-term. The owner may be required to report operation, inspections, maintenance, and repair activities of the site drainage system to the DPW. This will be dependent on the location, size, and potential adverse impacts of a specific site. Reports will be made annually by the owner to the DPW by January 31 for the previous calendar year.

- (d) Enforcement. The Department of Public Works or an authorized agent of the DPW shall enforce this chapter, regulations, orders, violations notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- [1] Civil relief. If a person violates the provisions of this chapter, regulations, permit,

notice, or order issued thereunder, the city may seek injunctive relief in the court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

[2] Orders.

[a] The DPW or an authorized agent of the DPW may issue a written order to enforce the provisions of this chapter or the regulations thereunder, which may include:

[i] Elimination of illicit connections or discharges to the MS4;

[ii] Performance of monitoring, analyses, and reporting;

[iii] That unlawful discharges, practices, or operations shall cease and desist; and

[iv] Remediation of contamination in connection therewith.

[b] If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, directly or through a contractor, and expenses thereof shall be charged to the violator.

[c] Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs.

(3) Rules and regulations. The Department of Public Works may adopt, and periodically amend DPW policies relevant to the administration of this chapter. These policies shall pertain to erosion and sediment control, design guidelines, materials and construction specifications and other issues related to public drainage system.

§ 175-23. Sewer and storm drain installation fees. [Amended 5-15-2006 by TOR-2006-2]

All costs and expenses incident to the installation and connection of the building sewer or storm drain on-site system shall be borne by the owner.

§ 175-24. Separate building sewer required; exception.

A separate and independent building sewer shall be provided for any building required to have sewage collection and treatment by a proper government authority, with the following exception: all multiple-family complexes, a commercial complex, or an industrial complex which has a privately owned and maintained collector system.

§ 175-25. Use of old building sewers.

Old building sewers may be used in connection with new buildings only when approved, in writing, by the Superintendent.

§ 175-26. Sanitary service connection and building sewer connection layout and material requirements. [Amended 5-15-2006 by TOR-2006-2]

The size, slope, alignment and materials of construction of a building sewer and the methods to be used in excavating, placing the pipe, jointing, testing and backfilling the trench shall all conform to the requirements of the Building and Plumbing Code 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 American Society for Testing and Materials and the WPCF Manual of Practice No. 9 shall apply.

§ 175-27. Building sewer connection elevation. [Amended 5-15-2006 by TOR-2006-2]

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 means approved by the Town's Plumbing Inspector and discharged to the building sewer.

§ 175-28. Surface or ground water runoff connections to sanitary system prohibited. [Amended 5-15-2006 by TOR-2006-2]

No person shall make connection of roof downspouts, exterior or interior foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

§ 175-29. Sewer connections to conform to certain requirements. [Amended 5-15-2006 by TOR-2006-2]

- A. The connection of the building sewer into the public sewer shall conform to the requirements of the Commonwealth of Massachusetts Plumbing Code, 248 CMR: Board of State Examiners of Plumbers and Gas Fitters/Building and/or other applicable rules and regulations of the Town, or the procedures set forth in appropriate specifications of the American Society for Testing and Materials and the WPC Manual of Practice No. 9. All such connections shall be made gastight and watertight.
- B. Restaurants, banquet facilities, commercial kitchen requirements. Any facilities at which on-site food preparation, food processing, food-handling, food service, or other related activities which may result in fats, oils, and grease being introduced into the waste stream will be required to design, install, and maintain an oil/water/grease interceptor/separator appropriate for the intended use. No wastes other than those requiring treatment or separation shall be discharged into any interceptor or separator. **[Amended 9-20-2010 by TOR-2010-5]**
- C. Vehicle storage/maintenance facilities. Any commercial facilities which store vehicles, wash vehicles, and perform vehicle maintenance will be required to design, install, and maintain an oil and water, sand and other substance separator, and to seal existing interior floor drains which outlet to the public drainage or sanitary sewer systems. This may also apply to facilities where motor oils, gasoline, antifreeze and similar hazardous liquid wastes are potentially generated or may potentially spill. The system must comply with the Massachusetts Plumbing Code. Sanitary service piping must be such that only wastes requiring treatment or separation shall be discharged into the interceptor or separator.
- D. Existing use. Existing sites with uses as described in Subsections B and C shall have until September 1, 2011, to install required equipment and make required changes to the site. Failure to meet this

deadline will be considered a violation of the sewer permit for the site. Charges shall be assessed by the Department of Public Works to the owner of any property which falls under Subsections A, B, and C above to cover materials, labor, equipment, and administrative costs incurred by the Agawam DPW as a result of noncompliance, plugged sewer mains, plugged sewer services and otherwise excessive fats, oil, grease and/or grit inappropriately being discharged or deposited into the Town's sanitary sewer system. Additionally, the owner shall be subject to other enforcement actions as described in § 175-54. [Amended 9-20-2010 by TOR-2010-5]

§ 175-30. Sewer and storm drain permit application; supervision of connection. [Amended 5-15-2006 by TOR-2006-2]

A. Sewer permit.

- (1) Application. The applicant for a building sewer permit or sanitary sewer connection permit shall make application on a special form furnished by the Town. The permit application shall be pertinent in the judgment of the Superintendent.
- (2) Sewer service connection size material, and appurtenances, such as cleanouts, oil and water separators, shall be installed by the owner as directed by the DPW. The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or his/her representative.

B. Storm drain permit.

- (1) A storm drain permit shall be required for projects as described in § 175-22B. The application shall include the following information, which shall be reflected in the completed application form and permit package.
 - (a) Site location and description.
 - (b) Owner information.
 - (c) Builder/contractor information.
 - (d) Project description.
 - (e) Stormwater management plan.
 - (f) Certification statement.
 - (g) Application/review fee.
- (2) Storm drain (SD) permitting requirements. The following components will be required to receive a storm drain permit at the discretion of the Superintendent of the Department of Public Works.
 - (a) Application. This shall identify the site location, size of parcel(s), name of larger project this site is a part of, owner information, builder/contractor information, project description.
 - (b) Stormwater management plan.

[1] The purpose of the Stormwater Management Plan is to ensure that the runoff from a site has been treated for water quality and quantity impacts during the construction

of the project and during the long term. This treatment includes, but is not limited to, erosion and sediment control to the extent practicable via structural and nonstructural BMPs during construction and the establishment of structural BMPs for long-term controls.

- [2] The Superintendent of the Department of Public Works may require and alter as he sees fit the components of the Stormwater Management Plan. All components of the Stormwater Management Plan shall be prepared and stamped by a licensed professional engineer. That engineer shall be available during the construction phase to advise the builder of any alterations required to protect resource waters and adjacent properties as needed from water volume and water quality impacts due to the project.

[a] Temporary measures. This shall include a written description of proposed temporary BMPs, a plan at an appropriate scale of those BMPs, construction details, a description of maintenance of proposed BMPs, a maintenance schedule, and reporting requirements of erosion and sediment controls and on-site hazardous materials handling and storage, dust control, off-site sedimentation measures, plan and procedures, and certification by the contractor and all subcontractors on the site of adherence to the described construction phase plan. The Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas prepared for the Massachusetts DEP, and others, shall be used as guidance for appropriate erosion and sediment control measures. In addition, the DPW may prepare and make available standards for temporary BMP measures and may update those standards.

[b] Permanent measures. This shall include a written description of proposed permanent BMPs, a plan at a scale of not less than one inch equals 40 feet of those BMPs, construction details, computations in an acceptable format, a description of long-term maintenance of proposed BMPs, a long-term maintenance schedule, and reporting requirements for maintenance and inspections as specified by the DPW. The DPW shall prepare and make available the full standards for permanent BMP measures and may update those standards.

[c] Maintenance. A description of long-term maintenance and inspection schedules shall be submitted for site development projects.

[d] Construction certification statement. A statement to be signed by the contractor and all relevant subcontractors shall be included in the SWM plan certifying that they have read and understand the construction phase requirements and agree to comply.

[e] Certificate of completion. Once all work has been complete, a final inspection has occurred, and the installation has been approved, the DPW shall issue a certificate of completion.

(c) Inspections.

- [1] Compliance inspections shall be required as determined by the Department of Public Works Superintendent or agent. If in the course of inspections by DPW personnel of temporary or permanent BMPs, it is determined that water resources or the MS4 is

not being adequately protected, or that information submitted by the applicant in reporting to the DPW is inadequate, has missing information, or is insufficient, enforcement action will proceed at a level which is appropriate at the discretion of the DPW given the level of the perceived offense.

- [2] Construction phase inspections shall be conducted by the owner or designee as required to determine the adequacy of erosion and sediment controls. Depending on the results of those inspections, sediment control BMPs shall be repaired, maintained, or improved as necessary.
 - [3] Operations inspections. The owner or designee is responsible for performing all maintenance inspections as described in the stormwater management plan. Those inspections must be of adequate frequency and timing to determine the functioning of short-term and long-term stormwater BMPs. If deficiencies are found, they must be remedied in a timely fashion. Adverse impacts off site which are due to deficiencies in the functioning or maintenance of short-term or long-term BMPs are the responsibility of the storm drain permit applicant. The right to enter adjacent properties and affect repairs/remediation shall be the full responsibility of the storm drain permit applicant.
- (d) Maintenance. The SD permit applicant shall be responsible for adequate maintenance of BMPs described in the stormwater management plan for short-term and long-term control measures.
 - (e) Reporting. Reporting requirements shall be based upon the overall size of the project, the nature of proposed changes, existing and proposed site conditions, the proximity of water resource, and other pertinent factors. Reporting may include construction phase reports, final or as-built reports, and annual maintenance reports — Upon the completion of the work the permittee shall submit a Final Storm Drain Report (including certified as-built construction plans) from a Professional Engineer (P.E.) or surveyor (RLS), certifying that all stormwater management devices (catch basins, pipes, detention devices, outlet control structures, vegetated swales, channel improvements) and erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.
 - (f) Review/approval of storm drain permit. The review and approval by the DPW of information submitted for compliance with the storm drain permit does not relieve the applicant of full responsibility for the adequate protection of water resources as required by state and federal law, or to remediate any adverse impacts to downstream or adjacent properties adversely impacted by new runoff flow paths or flow regimes. If, in the course of the construction and/or ongoing maintenance of the proposed BMPs, it is determined by the DPW, the Town, or any other authority which has jurisdiction over the protection of water resources that the measures currently implemented are inadequate, the owner of the site shall be responsible for implementing improvements, adequate maintenance, and inspections of the protection measures such that the resource and adjacent properties are protected.
 - (g) Certification statement. The storm drain permit applicant and the builder/contractor certify that they shall comply with the stormwater management plan, including all short-term and long-term inspections, maintenance/repairs, and operation of the drainage system, and

reporting requirements.

- (h) Storm drain permit/review fees. The fee for review of any storm drain permit application shall be based on the amount of land to be disturbed at the site and the fee structure established by Code. That fee shall be due before the approval of the storm drain permit or before the beginning of land-disturbing activities as appropriate.

§ 175-31. Guarding of excavations; restoration of disturbed property.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Superintendent.

§ 175-32. Schedule of entrance fees.

The Department of Public Works shall establish a schedule of entrance fees and may amend the same from time to time. All fees regarding the Sewer Use Ordinance shall require the approval by the majority vote of the full Town Council. The entrance fee shall be a unit charge for each dwelling or business unit serviced by a direct or indirect connection made to a public sewer. This fee shall be paid prior to any work being commenced by the Town or the owner to effect such connection. A single-family house or one apartment unit shall constitute one dwelling unit, and each individual business in a shopping center or business complex shall constitute one business unit. This fee shall be paid for each unit connected directly to the Town's sewer system as well as for each unit which is later added on to a sewer system which eventually deposits sewage into the Town system. No building sewer permit or sanitary sewer connection permit will be issued unless the person applying for the permit has paid the required entrance fee.

§ 175-33. Installation and connection costs.

Entrance fees as established under § 175-32 shall not include installation and connection costs. All costs and expenses incident to the installation and connection of the building sewers, the installation of or the connection of sanitary sewers or storm drains shall be borne by the owner. The owner shall indemnify the Town from loss or damage that may directly or indirectly be occasioned by the installation of the building sewer or the connection for the sanitary sewer or the storm drain. The Department of Public Works shall establish a schedule of charges for the installation and connection of building sewers and the installation of connections for sanitary sewers and storm drains and may amend the same from time to time. No building sewer permit or sanitary sewer connection permit or storm drain connection permit will be issued unless the person applying for the permit has deposited with the Town a certified check, payable to the Town of Agawam, in the amount determined by the Department of Public Works. In the event that the cost of the installation and connection of a building sewer or the installation of a sanitary sewer or storm drain connection exceeds the amount deposited with the Town by the owner, then the owner shall reimburse the Town for all costs exceeding the amount deposited. If the reimbursement is not made, the costs shall be considered a lien upon the property served by said building sewer.

§ 175-34. Status of private sewers connected to public sewers.

All private sewers and drains laid by private parties in any street, court or way open or proposed to be opened for public travel and accommodation shall become public sewers or drains when connected to public sewers or drains. After the adoption of this chapter, no such sewer shall be connected with a public sewer and no such drain shall be connected with a public drain until plans showing size, material, construction, depth and location are approved by the Superintendent and until the owner shall convey, in writing, to the Town exclusive control over the same, with the right to enter such street, court or way

and dig up the same so far as necessary for repairing and controlling such sewer or drain and making connections therewith.

§ 175-35. Stormwater management plan. [Added 7-9-1984; amended 5-15-2006 by TOR-2006-2]

The stormwater management plan shall demonstrate a comprehensive plan intended to address changes in runoff characteristics due to a proposed construction project. Both short-term and long-term alterations in flow paths, runoff volume, and runoff characteristics must be addressed. The protection of regulated water resources is required. The use of natural preexisting vegetation and/or the planting of native species to provide runoff mitigation is strongly encouraged.

- A. Stormwater management performance standards. The Superintendent of the Department of Public Works may alter the stormwater management performance standards at his discretion. These standards do not relieve the applicant from complying with all state and federal regulations.
- B. Construction erosion and sediment controls. Temporary control measures to keep disturbed soils on the construction site, prevent erosion and control and remove sedimentation due the construction process. The Department of Public Works shall develop design guidelines for this purpose. They shall be based upon Massachusetts Department of Environmental Protection Erosion and Sediment Control Policies. The erosion and sediment control plan shall be prepared by a registered professional engineer.
- C. Permanent measures; runoff quality and quantity best management practices.
 - (1) New development. New commercial, industrial, and residential sites, unless exempted in § 175-22B, must comply with the stormwater management performance standards.
 - (2) Redevelopment. Previously developed sites must meet the stormwater management standards to the maximum extent practicable. However, if it is not practicable to meet all the standards, the new (retrofitted or expanded) stormwater management system must be designed to improve existing conditions.
 - (a) Stormwater management measures shall be required to satisfy the control requirements and shall be implemented in the following order of preference:
 - [1] Flow attenuation and pollutant removal of runoff on site to existing areas with grass, trees, and similar vegetation and through the use of open vegetated swales and natural depressions with appropriate stabilization measures to ensure long-term operation.
 - [2] Stormwater detention pond for the temporary storage of runoff, which is designed so as not to create a permanent pool of water.
 - [3] Stormwater retention structures for the permanent storage of runoff by means of a permanent pool of water. This type of system will not be allowed for subdivisions.
 - [4] Retention and evaporation of stormwater on rooftops or in parking lots. This type of system will not be allowed for subdivisions.
 - (b) Peak flow rates. Peak flow rates for the post-construction conditions must not exceed the peak flow rates for the preconstruction condition for one-hundred-year twenty-four-hour design storm events. The two-year twenty-four-hour, ten-year twenty-four-hour post-construction peak flow rate must be mitigated to the maximum extent practicable.

- (c) Minimize pollutants. Best management practices shall be employed to minimize pollutants in stormwater runoff prior to discharge into a separate storm drainage system or water body. Runoff from parking lots over two acres shall be treated by oil and water separators or other controls to remove oil and sediment.
- (d) Projects involving the storage or use of hazardous chemicals or petroleum products shall incorporate handling and storage best management practices that prevent such chemicals from contaminating runoff from the site into infiltration systems, receiving water bodies, or the MS4, and shall include a list of such chemicals in the application.
- (e) Connection to MS4. If the destination for the outlet of a detention system is the MS4, the applicant must evaluate the existing capacity and condition of that system. If there are existing deficiencies or extra capacity is not available to accept additional flows from the project site, the applicant will be required to design and construct improvements or reduce the outlet flow rate based on existing capacity.
- (f) Emergency overflow. All detention ponds shall be designed to provide an emergency overflow system, and incorporate measures to provide a nonerosive velocity to flow along its length and at any outfall.
- (g) Down stream structures. The designed release rate of any stormwater structure shall be modified if any increase in flooding or stream channel erosion would result at a down stream dam, highway, structure, or normal point of restricted stream flow.
- (h) Centralized detention facilities. Certain industrial areas have centralized detention facilities. The following describes the allowed percent of impervious area before on-site detention is required.

Site Location	Site Impervious Area Credit for Centralized Detention
Agawam Regional Industrial Park Bowles Road, Almgren Drive, Abrahms Drive	25%
Suffield St. Industrial Park Gold Street	50%
Moylan Lane	25%

- (i) Detention ponds. The Department of Public Works shall develop design guidelines for this purpose. These standards may be updated from time to time. Public safety shall be considered in the design of any stormwater facilities. Detention ponds on private sites are encouraged to utilize the DPW design guidelines; at the DPW's discretion certain design standards may not apply to private sites. Detention ponds within easements to the Town must follow all design standards as directed by the DPW Superintendent.
- (j) (Reserved)
- (k) (Reserved)
- (l) Detention pond maintenance requirements. Detention ponds within easements to the Town

of Agawam require minor maintenance to be performed by the property owner on a regular basis.

- [1] Remove clogs to the outlet structure caused by leaves, branches, grass clippings, or other debris.
 - [2] All grassed areas must be mowed a minimum of two times per year (spring and fall) to reduce weed growth. If areas become bare, they must be reseeded to sustain vegetative cover.
 - [3] Detention ponds and swales may not be filled in or altered such that the intended design and functioning of the drainage system is impaired.
 - [4] Landscaping, fences, or other utilities or structures may not be placed so that access to the detention pond or drainage structures is impaired.
 - [5] The area surrounding the fenced detention area is to be kept landscaped or grassed.
- (m) Calculation submittals for review by the DPW shall include the following components.
- [1] Locus map.
 - [2] Site plan. This plan must include all relevant information for the hydrologic modeling of the site. Information shall include preconstruction and post-construction conditions at the same scale, which is appropriate for complexity and size of the project.
 - [3] Existing conditions and proposed impact mitigation; description/investigation of both up-gradient conditions which release runoff to the site and down-gradient areas which are the destination of the runoff from the site in question. The extent of this investigation must be such that the project designer and the DPW reviewer can have a good understanding of existing conditions, including flow paths, flooding conditions, flow-limiting structures, wetlands or other water resources' ability to withstand current runoff flow rates and volumes. Proposed structures and improvements must be such that they extend far enough down stream to mitigate the proposed development and increases in impervious areas.
 - [4] Soil survey information; copy of Hampden County Soil Survey Map with site clearly outlined at the scale of the map. Copy must be clear such that soil type and hydrologic soil group can be determined. Also, list the soil types, and relevant characteristics for the purpose of modeling the project's runoff.
 - [5] Hydrologic modeling data. All areas shall be modeled utilizing the TR 55 or TR 20 method of drainage calculation as appropriate. Submittals shall include the following information. Submittals will not be reviewed until complete information is given in an easy-to-follow format. The use of tables, summaries, and accompanying back-up data is strongly encouraged.
 - [a] Drainage subarea designations and outline locations for pre- and post-construction condition.
 - [b] Time of concentration path location, path length, surface grade, soil type boundary location for pre- and post-construction condition.

- [c] Modeling method description.
 - [d] Model data for pre- and post-construction conditions, including model of all proposed flow rate control structures.
 - [e] Model output for pre- and post-construction conditions, including model of all proposed flow rate control structures.
 - [f] Preconstruction peak flow rate and post-construction peak flow rate at all design points for the site.
- [6] Design storm events. One-hundred-year twenty-four-hour storm event: post-construction must not exceed the preconstruction peak flow rate. Two-year twenty-four-hour, ten-year twenty-four-hour peak flow rates must be mitigated to the maximum extent practicable.
- [7] Detention pond design. Seasonal high groundwater elevation must be determined by a certified soil evaluator or certified professional soil scientist for the proposed location of the detention pond. There must be a one-foot separation between the lowest elevation of the detention pond and the seasonal high groundwater elevation. The side slopes of the detention pond must not exceed 3:1 and have a sinuous shape. Contributing area for each detention pond shall be a maximum of 10 acres. It shall be less depending on the characteristics of the preconstruction site drainage pathways. An overland spillway shall be included such that if the capacity of the detention pond is exceeded or the outlet becomes temporarily clogged, a defined overland flow path has been established which is adequately reinforced to resist erosion and to protect adjacent property from drainage flows.
- [8] Outlet to water resources. Structures shall adequately dissipate energy of outlet effluent such that down stream wetlands, brooks, streams, and adjacent properties are not damaged by any increase in peak flows due to construction phase and post-construction conditions. Analysis of downstream conditions and natural drainage features ability to adequately handle construction phase and post-construction flow will be performed, analyzed, and reported as part of the storm drain permit application. Appropriate remediation of down stream structures must be proposed.
- [9] Summary table of peak flow comparisons of pre- and post-development runoff rates for the appropriate design storm depending on the location relative to protected resource waters.

D. Operation and maintenance, Long-Term.

- (1) An operation and maintenance manual shall be developed by the project designer for the owner's use once construction on the proposed system is complete. The manual will include a description of each component of the drainage system, inspections, maintenance, and the frequency of each for continued operation of the system.
- (2) See § 175-30B(5) for reporting requirements.

E. Owner/contractor certification statement; performance; and certificate of completion.

- (1) Certification. The owner or authorized representative and all contractors and subcontractors shall sign certification statements as part of the permit application and the stormwater

management plan. In signing the plan, the authorized representative certifies that the information is true and assumes liability for the plan. Official signatures provide a basis for an enforcement action to be taken against the person signing the document.

(a) The owner certification statement shall read:

"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 gathered and evaluated the information submitted. Based on my inquiry of the person(s) 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.

(b) Contractors and subcontractors certification statement.

[1] Contractors and subcontractors certification statement shall read:

"I certify under penalty of law that I understand the terms and conditions of the Storm Drain Permit that authorizes stormwater discharges associated with industrial activity from the construction site identified as part of this certification."

[2] The storm drain permit application shall list all contractors and subcontractors who will implement the measures identified in the stormwater management plan.

(2) Performance.

- (a) Subdivisions. The storm drain permit requirements shall be included in the Planning Board's bond amount for subdivision construction, in that the subdivision plans shall reflect the requirements of the DPW storm drain permit. The bond amount for the drainage system shall reflect all structures proposed in the public way and within easements to be given to the Town for drainage purposes.
 - (b) Site plans. The DPW will request that the building occupancy permit be withheld until the DPW has issued a storm drain certificate of compliance for the proposed drainage system.
- (3) Storm drain permit certificate of compliance. A certificate of compliance shall be issued by the Department of Public Works once the following has been completed.
- (a) A final inspection of the completed work by the Town Engineer.
 - (b) Certification by a P.E. or R.L.S of the design volume of detention facilities.

- (c) Submission of storm drain final report as described in § 175-30B(2)(e).
- F. Storm drain permit fees. The Department of Public Works may charge fees for application review and inspections.
- (1) Application fees shall be charged as follows, based upon the project area of disturbance. The fee shall be due at the time of permit application before review begins.

Permit Application Fees

Parcel Area or Area of Disturbance (acres)	Fee
1 to 5	\$200
Above 5 to 20	\$700
Above 20 to 50	\$1,500
Above 50	\$1,500 plus \$25 per acre above 50

- (2) Inspection fees shall be charged as follows, based upon the project area of disturbance. The fee shall be due before land-disturbing activities begin.

Inspection Fees

Parcel Area or Area of Disturbance (acres)	Fee
1 to 5	\$100
Above 5 to 20	\$350
Above 20 to 50	\$750
Above 50	\$750 plus \$10 per acre above 50

- (3) Determination of area of disturbance category. If the area of the parcel(s) and area of project disturbance differ such that the area of disturbance will be in a lower fee category, the applicant may submit a certified statement by the project designer, a P.E., of the project's area of disturbance. If during construction the area of disturbance is expanded, the greater fee will be due before the certificate of completion will be issued. Emergency remediation, not included in the originally approved permit but required due to field conditions, outside of the project site will not be included in this area.

ARTICLE V

Use of Public Sanitary Sewers and Storm Drains**§ 175-36. Illicit discharges and connections. [Amended 5-15-2006 by TOR-2006-2]**

- A. Deposit of certain materials into sewer, manhole or catch basin prohibited. No person shall place or throw any dead or decaying animal or vegetable matter, ashes, bottles, broken glass, tin cans, stones, earth or any other foreign substances into any sewer, manhole or catch basin.
- B. Prohibited discharges to sanitary system. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer.
- C. Prohibited discharges to storm drain system. In order to prevent pollutants from entering the Town's municipal separate storm sewer system (MS4), the following activities are prohibited.
 - (1) Illicit discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or nonstormwater discharge into the municipal separate storm sewer system (MS4). Examples of illicit discharges include, but are not limited to, antifreeze, motor oil, pesticides, cleaning products, pet wastes, concentrated fertilizers, concentrated herbicides, bleach, concrete wash water, sediment laden construction runoff.
 - (2) Illicit connection. No person shall construct, use, allow, maintain or continue any illicit connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
 - (3) Obstruction of MS4. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Superintendent.
 - (4) Exemptions.
 - (a) Emergency activities that are immediately necessary for the protection of life, property or the environment as determined by the Department of Public Works, Police Department, or Fire Department.
 - (b) Roadway maintenance activities essential to public health and safety.
 - (c) The following nonstormwater discharges or flows are exempt from the prohibition of nonstormwaters, provided that the source is not a significant contributor of a pollutant to the municipal storm drain system.
 - [1] Waterline flushing.
 - [2] Flow from portable water sources.
 - [3] Springs.
 - [4] Natural flow from riparian habitats and wetlands.
 - [5] Diverted stream flow.
 - [6] Rising groundwater.
 - [7] Uncontaminated groundwater infiltration as defined in 40 CFR 35 2005(20), or

uncontaminated pumped groundwater.

- [8] Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation.
- [9] Discharge from landscape irrigation or lawn watering.
- [10] Water from individual residential car washing and nonprofit or charitable organization as part of a fund-raising activity on behalf of said organization.
- [11] Discharge from dechlorinated swimming pool water (less than one ppm chlorine), provided that the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance.
- [12] Discharge from street sweeping.
- [13] Dye testing, provided that verbal notification is given to the DPW Superintendent prior to the time of the test.
- [14] Nonstormwater discharge permitted under an NPDES permit or a surface water discharge permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations.
- [15] Discharge for which advanced written approval is received from the Superintendent as necessary to protect public health, safety, welfare or the environment.
- [16] Agricultural activities for normal maintenance or improvement of land as defined by the Massachusetts Wetlands Protection Act 310 CMR 10.04 and other implementing regulations as appropriate. Activities not exempted include spill of materials onto roadways from hauling agricultural products or fertilizers.

§ 175-37. Discharge of unpolluted drainage.

Stormwater and all other unpolluted drainage shall be discharged to a natural outlet if such outlet is reasonably accessible. If no such outlet is available, such unpolluted wastes may be discharged into combined sewers or storm sewers if approved by the Superintendent.

§ 175-38. Prohibited discharges. [Amended 7-9-1984]

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- A. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
- B. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of the sewage treatment plant.
- C. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works, such as but not limited to

ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

§ 175-39. Discharge of harmful substances.

No person shall discharge or cause to be discharged any substances, materials, waters or wastes if it appears likely, in the opinion of the Superintendent, that such substances, materials, water or wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream or can otherwise endanger life, limb or public property or constitute a nuisance. In forming this opinion as to the acceptability of these substances, materials, waters or wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, the materials of construction of the sewers, the nature of the sewage treatment process, the capacity of the sewage treatment plant, the degree of treatability of wastes in the sewage treatment plant and other pertinent factors. This prohibition shall include but not be limited to the following:

- A. Any liquid or vapor having a temperature in excess of 140° F., unless the Town requires a lower temperature limit to ensure that the temperature of influent wastewater at the Town's wastewater treatment works does not exceed 104° F. [Amended 1-21-1986 by TOR-85-4]
- B. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32° and 150° F. (0° and 65° C.).
- C. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of 3/4 horsepower [0.76 horsepower metric] or greater shall be subject to the review and approval of the Superintendent.
- D. Any waters or wastes containing strong acid, iron, pickling wastes or concentrated plating solutions, whether neutralized or not, unless heavy metals and other sludge have been adequately removed from said wastes in the opinion of the Superintendent.
- E. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.
- F. Any waters or wastes containing phenols or other taste- or odor-producing substances in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies or jurisdiction for such discharge to the receiving waters.
- G. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations.
- H. Any waters or wastes having a pH in excess of 9.6 or any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
- I. Materials which exert or cause:
 - (1) Unusual concentrations of inert suspended solids (such as but not limited to fuller's earth, lime slurries and lime residues) or of dissolved solids (such as but not limited to sodium chloride and

sodium sulfate).

- (2) Excessive discoloration (such as but not limited to dye wastes and vegetable tanning solutions).
 - (3) Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
 - (4) Unusual volume of flow or concentration of wastes constituting slugs as defined herein.
- J. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

§ 175-40. Powers of Superintendent regarding discharge of deleterious substances.

- A. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters or wastes contain the substances or possess the characteristics enumerated in § 175-39 of this article, and which in the judgment of the Superintendent may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:
- (1) Reject the wastes,
 - (2) Require pretreatment to a condition acceptable to the Superintendent for discharge to the public sewers,
 - (3) Require control over the quantities and rates of discharge, and/or
 - (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of § 175-45 of this article.
- B. If the Superintendent permits the pretreatment or equalization of waste flow, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent, and subject to the requirements of all applicable codes, ordinances and laws.

§ 175-41. Grease, oil and sand interceptors.

Grease, oil and sand interceptors will be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be located as to be readily and easily accessible for cleaning and inspection.

§ 175-42. Maintenance of flow-equalizing facilities.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

§ 175-43. Control manhole.

When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other

appurtenances, in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

§ 175-44. Measurements, tests and analyses.

- A. All measurements, tests, and analyses of the characteristics of water and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb and property. The particular analyses involved will determine whether a twenty-four-hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls, whereas pH's are determined from periodic grab samples.
- B. All industries discharging into a public sewer shall perform such monitoring of their discharges as the Superintendent and/or other duly authorized employees of the Town may reasonably require, including installation, use and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the Superintendent. Such records shall be made available upon request by the Superintendent to other agencies having jurisdiction over discharges to the receiving waters.

§ 175-45. Industrial wastes of unusual strength.

No statement contained in this article shall be construed as preventing any special agreement or arrangement between the Town and any industrial concern whereby an industrial waste of unusual strength of character may be accepted by the Town for treatment, subject to payment therefor, by the industrial concern. Such agreement may not waive pretreatment standards (local and categorical), unless such a waiver is granted by mechanism established under the General Pretreatment Regulations. Prohibited discharge standards may not be waived under any circumstances.

§ 175-46. Septic tank solids.

No septic tank solids shall be discharged into the Town's sewage works. All septic tank waste shall be discharged at a designated location at the Bondi Island Treatment Plant.

§ 175-47. Waters contaminated with silt and sediment. [Added 7-9-1984]

No waters contaminated with silts or sediment shall be discharged into a watercourse, detention area or storm drain.

ARTICLE VI
Industrial Wastes

§ 175-48. Agreements for handling and treatment; charges.

- A. The Department of Public Works, subject to the approval of the Mayor, is authorized and empowered to enter into agreements or to make other arrangements for handling and treating industrial wastes which in its opinion are amenable to treatment in the Town's facilities.
- B. The Superintendent, subject to the approval of the Mayor, shall determine charges to be levied against various industries for the handling and treating of its industrial wastes.

§ 175-49. Industrial pretreatment program requirements. [Added 1-21-1986 by TOR-85-4]

- A. All persons discharging wastewater into a public sewer shall comply with federal and state industrial pretreatment regulations, as amended. Industrial users shall comply with federal and state general pretreatment standards and with applicable categorical standards. Compliance with such standards shall be achieved no later than the date such standard is effective, unless a shorter compliance time is specified by the Town or city.
- B. The city and Town personnel may randomly sample and analyze the discharge of industries connected to a public sewer and may conduct surveillance and inspection activities to identify, independent of information supplied by such persons, occasional and continuing noncompliance with this chapter, and the City of Springfield Sewer Use Ordinance, as amended. Such authorization shall include the right to enter private property to the extent necessary and the right to inspect and copy records required to be kept under this chapter and other applicable laws.
- C. Within 120 calendar days after the effective date of this amendment, all industrial users shall apply to the city as permit holder for the operation of the wastewater treatment facility for an industrial discharge permit. Such application shall be made by completing a form developed by the city. Beginning 240 calendar days after the effective date of this amendment, no industrial user may continue to discharge wastewater to a public sewer without an industrial discharge permit duly issued by the city.
- D. The terms of an industrial discharge permit may be modified by the city and a reasonable time provided for compliance with such modified terms. Violations of the terms of such permits are violations of this section. Where a conflict exists between the terms of a duly issued permit and this section, this section shall govern, unless the permit is more restrictive. Permits may be issued for a maximum period of three years and may not be transferred to a new owner or occupant of the premises without the written approval of the city and the Town.
- E. Modification, suspension or revocation of permit.
 - (1) A permit may be modified, suspended or revoked at the discretion of the city.
 - (a) For violation of the terms and conditions of the permit.
 - (b) For violations of this article.
 - (c) For violations of any state or federal statutory provisions or regulations.
 - (d) For falsification of any information or reports submitted to the city.

- (e) For tampering with any monitoring equipment or methods.
 - (f) For changes in conditions, or the existence of a condition, which requires either a temporary or permanent reduction or elimination of the authorized discharge.
 - (g) To require compliance with applicable pretreatment or other water pollution standards promulgated by state or federal agencies.
 - (2) If the city or Town determines that conditions exist that constitute an imminent endangerment to the health or welfare of persons or an endangerment to the environment or which threaten to interfere with the operation of the public sewer or wastewater facility, the city or Town may immediately modify, suspend or revoke said permit and shall give notice to the permit holder of said action and the right of the permit holder to request a hearing before the city or Town within 48 hours of the revocation, suspension or modification. Upon notification of the permit holder's request for hearing, the city or Town shall establish a hearing date and time within one working day of the request for a hearing.
 - (3) In all instances of revocation, modification or suspension of a permit, the city shall notify the permit holder 14 days prior to the effective date of said permit action, and of the permit holder's right to request a hearing before the city within seven days of said notice. Upon notification of the request for hearing, the city shall establish a hearing date and time within seven days of the request for a hearing.
 - (4) If the permit holder does not request a hearing within the proper time period, the action of the city shall become final. Following the hearing, the city may take such action as it deems appropriate as to the suspension, revocation or termination of said permit.
- F. All new industrial users proposing to discharge wastewater to a public sewer shall apply to the city for an industrial user discharge permit at least 60 calendar days before connecting to the public sewer. As part of such application, the city may require the applicant to obtain written certification from the appropriate federal and state regulatory agencies as to whether the applicant falls within particular industrial categories or subcategories for purposes of industrial pretreatment standards.
- G. Amendment application.
- (1) Within 90 calendar days after adoption by a federal or state regulatory agency of a categorical pretreatment standard, existing industries subject to such standards shall submit an industrial discharge permit amendment application containing information required under applicable federal and state industrial pretreatment reporting regulations in the form required by the city. (Such permit amendment application is in addition to the industrial user discharge permit application required above.) Such information, as a minimum, shall include:
 - (a) The name and address of the facility, including the name of the operators and owners.
 - (b) A list of all environmental permits held by or for the facility.
 - (c) A brief description of the nature, average rate of production and Standard Industrial Classification of the operations carried out at such facility.
 - (d) A schedule of actions to be taken to comply with the categorical standards.
 - (e) Information showing the measured average daily and maximum daily flow, in gallons per day, to the public sewer from regulated process streams and from other streams.

- (f) An identification of the industrial pretreatment standards applicable to each regulated process.
 - (g) An analysis identifying the nature and concentration of pollutants in the discharge.
- (2) The city may require that additional information be included in such application.
- H. Beginning 180 days after the adoption of federal or state categorical pretreatment standards, industries subject to such standards may not discharge industrial wastes from processes regulated by such categorical standards to a public sewer, unless an industrial discharge permit amendment is approved by the city and its terms are being met. Such permit amendment may include a compliance schedule for activities necessary to meet pretreatment standards.
- I. Within 90 days after the date for final compliance by existing industries with applicable categorical pretreatment standards, or in the case of a new source, following commencement of the introduction of wastewater into a public sewer, such industries shall submit a report indicating the nature and concentration of pollutants in the discharge from the regulated process(es) governed by categorical pretreatment standards and the average and maximum daily flow for these process units. Such report shall state whether the applicable pretreatment standards are being met on a consistent basis and, if not, what additional operation and maintenance practices or pretreatment is necessary. Such industrial users shall also submit before June 1 and December 1 each year, unless required more frequently by the city, a report indicating the nature and concentration of pollutants in the discharge, average and maximum daily flows and violations of applicable categorical pretreatment standards. Additional requirements for such periodic reports may be imposed by the city.
- J. Industrial users shall immediately notify the city and Town in person or by telephone, followed by written notice of any slug discharged by such user.
- K. Reports and permit applications submitted by industries under this section shall be signed by an authorized representative. An authorized representative may be:
 - (1) A principal executive officer of at least a level of Vice President, if the industrial user is a corporation.
 - (2) A general partner of the proprietor, if the industrial user is a partnership or sole partnership.
 - (3) A duly authorized representative of either of the individuals designated above, if such representative is responsible for the overall operation of the subject facility.
- L. Records.
 - (1) Industries subject to the reporting requirements of this section shall maintain records of information resulting from monitoring activities required to prepare such reports. Such records shall include for each sample:
 - (a) The date, exact place, method and time of sampling the name(s).
 - (b) The dates analyses were performed.
 - (c) The name(s) of the person(s) performing the analyses.
 - (d) The analytical techniques and methods used.
 - (e) The results of such analyses.

- (2) Such records shall be maintained for a minimum of three years and shall be made available for inspection and copying by the city or the Town.
- M. No person may utilize dilution as a means of complying with federal, state or local discharge limitations. The city may impose mass limitations (in addition to concentration limitations) on the discharge of any pollutant by any person.
- N. The city shall annually publish a report of industrial users that were significant violators during the previous 12 months in the largest daily newspaper published in the Town where such industrial users are located. For purposes of this provision, a significant violation includes:
 - (1) A violation remaining uncorrected 45 days after notification of noncompliance.
 - (2) A pattern of noncompliance over a twelve-month period.
 - (3) A failure to accurately report noncompliance.
 - (4) A violation resulting in the director's exercise of the city's powers.
- O. The annual operating costs incurred by the city of implementation of the industrial pretreatment program, including the costs of labor, equipment, monitoring, sample analyses by city and outside laboratories and related items, shall be recovered from industrial users. The city shall establish annual permit fees to be paid by industrial users in the amounts necessary to recover such costs. The city may set different levels of permit fees for various classes of industrial users and may adjust such fees on an annual basis to ensure that the industrial pretreatment program costs are fully recovered.
- P. Powers for self-help remedy.
 - (1) The city or Town, after notifying the discharger by telephone or in person, may immediately halt or prevent any discharge of pollutants to a public sewer that reasonably appears to present an imminent endangerment to the health or welfare of persons, or any such discharge presenting, or which may present, an endangerment to the environment or which threatens to interfere with the operation of the city's wastewater work or the public sewer. Actions which may be taken by the city or Town may include, but are not limited to, seeking injunctive relief, entry on private property to halt such discharge, blockage of a public sewer to halt such discharge or demand of specific action by the discharger.
 - (2) The city or Town is authorized to take all appropriate action to enforce the terms of an industrial discharge permit or this section.
- Q. Penalties. Persons violating permits issued by the city or this section shall be penalized up to \$1,000 per violation. The city or the Town may initiate court action to impose the maximum penalties authorized herein and by other laws. Each day of a continuing violation shall be considered a separate violation.
- R. Power regarding injunctive relief. The city or Town may seek from a court of competent jurisdiction an order enjoining the violation of any provision of this section or permit issued by the city.

ARTICLE VII
Protection From Damage and Maintenance
[Amended 7-9-1984]

§ 175-50. Damage to sewage works prohibited.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, contaminate or tamper with any structure, culvert, channel, appurtenance or equipment which is a part of the sewage works or storm drainage system. Any person violating this provision shall be subject to arrest and criminal prosecution.

§ 175-51. Soil erosion and sediment control plan. [Amended 5-15-2006 by TOR-2006-2]

See stormwater management plan requirements in § 175-35.

§ 175-52. Maintenance of surface storm drainage easements. [Amended 5-15-2006 by TOR-2006-2]

- A. General requirements. The owner of land on which is located a surface storm drainage easement shall not cause or permit the same to become clogged or any water flow into or through the same to be impeded by debris, siltation, vegetation (in excess of what is needed to control erosion), the placement of any structure or otherwise; nor shall the owner cause or permit any condition to exist, such as loss of suitable ground cover, which would contribute to the erosion or siltation of the drainage channel. Any continuing violation of this section after reasonable notice from the Superintendent shall entitle the Town to enter onto the easement to repair or correct the offending condition and bill the costs thereof to the owner.
- B. Detention ponds; maintenance requirements. Detention ponds within easements to the Town of Agawam require minor maintenance to be performed by the property owner on a regular basis.
- (1) Remove clogs to the outlet structure caused by leaves, branches, grass clippings, or other debris.
 - (2) All grassed areas must be mowed a minimum of two times per year (spring and fall) to reduce weed growth. If areas become bare, they must be reseeded to sustain vegetative cover.
 - (3) Detention ponds and swales may not be filled in or altered such that the intended design and functioning of the drainage system is impaired.
 - (4) Landscaping, fences, or other utilities or structures may not be placed so that access to the detention pond or drainage structures is impaired.
 - (5) The area surrounding the fenced detention area is to be maintained and kept landscaped or grassed.

ARTICLE VIII
Miscellaneous Provisions

§ 175-53. Power and authority of inspectors. [Amended 7-9-1984; 1-21-1986 by TOR-85-4]

In addition to the rights set forth in § 175-49 of this chapter, the Superintendent and other duly authorized employees of the Town having proper credentials and identification shall be permitted to enter all property for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter.

§ 175-54. Enforcement; violations and penalties. [Amended 5-15-2006 by TOR-2006-2]

The Department of Public Works shall enforce this chapter, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- A. Industrial pretreatment for sanitary system. The procedures and penalties for those violating § 175-49 or any other provision of this chapter relating to industrial pretreatment requirements are set forth in § 175-49 only.
- B. Sanitary sewers and storm drain system. The enforcement procedures to ensure compliance with the requirements of the storm drain permit and pertaining to the sanitary system as described in this chapter shall proceed as follows.
 - (1) Step One: verbal notice of violation. If the violation is not addressed to the satisfaction of the DPW and within an appropriate time frame of seven days from the verbal notice of violation, enforcement shall proceed to Step 2. The seven-day time period may be extended by agreement between the DPW and the violator.
 - (2) Step Two: written notice of violation. If the violation is not addressed to the satisfaction of the DPW and within seven days from the issuance of the written notice, enforcement shall proceed to Step 3. The seven-day time period may be extended by mutual agreement between the DPW and the violator. The written order will describe maintenance, installation or performance of additional erosion and sediment control measures, abatement or remediation activities, required proposal for remediation by professional design consultants and may include actions specified in Subsection B(5), (6), (7) and (8).
 - (3) Step Three: fines. Fines shall be levied against the owner of the property which has caused the violation and/or the applicant for the storm drain permit or sewer permit as appropriate for that location. Fines shall be imposed up to a maximum of \$300 per day for each offense for a maximum of \$3,000 per offense.
 - (4) Step Four: Suspension of access to MS4 or the sewer system as appropriate.
 - (5) Emergency enforcement action. The Superintendent may determine that an eminent threat to public health, safety, or the environment exists. Skipping the normal order of enforcement action may be required, including immediate implementation of Step Four, suspension of access to the MS4. The DPW or designated agent may take immediate action to suspend access to the MS4 or perform actions to bring the site into compliance. The DPW has the right to bill the violator for penalty fees, reasonable costs of materials, and manpower to perform these emergency actions, and administrative costs. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town, including administrative costs. The violator

or property owner may file a written protest objecting to the amount or basis of costs with the DPW within 30 days of receipt of the notification of the costs incurred.

- (6) Any bills sent to violators which remain unpaid for a time period of 30 days, or the time in which to protest, or within 30 days following a decision by the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a lien against the property until paid.
 - (7) Restoration of land. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the DPW, or its designated agent, may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
 - (8) Hold on storm drain permit. No new DPW storm drain permits will be issued to owners or contractors that have enforcement orders currently in effect against any project. The hold will be released once all remediation work is complete and approved by DPW.
 - (9) Stop-work orders. The DPW may issue stop-work orders on any project which is found in violation of the storm drain permit or this chapter until adequate corrective action is complete to the satisfaction of the DPW.
- C. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town of Agawam may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, in which case the Town of Agawam Superintendent of Public Works, or his/her designee shall be the enforcing person. The penalty for the first violation shall be \$300. The penalty for the second violation shall be \$300. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- D. Entry to perform duties under this chapter. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Town of Agawam, the Superintendent of Public Works or his/her designee, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this chapter and regulations and may make or cause to be made such examinations, surveys or sampling as deemed reasonably necessary.
- E. Appeals. The decisions or orders of the Superintendent of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.
- F. Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law.

§ 175-55. Liability for loss, damage and other expenses.

Any person violating any of the provisions of this chapter shall become liable to the Town for any expense, loss or damage, including reasonable legal fees, occasioned the Town by reason of such violation.

§ 175-56. Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

§ 175-57. Severability.

The invalidity of any section, clause, sentence or provision of this chapter shall not affect the validity of any other part of this chapter which can be given effect without such invalid part or parts.

§ 175-58. Licensing of contractors.

No contractor or person shall be allowed to install or repair a building sewer and/or sanitary sewer or storm drain unless properly licensed by the Superintendent. Such licenses shall be renewed annually. Fees for such licenses shall be established by the Superintendent. Said licenses may be canceled by the Superintendent, at his discretion, for violation of this chapter.

§ 175-59. When effective.

This chapter shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

ARTICLE IX
User Charge
[Added 2-7-1977]

§ 175-60. User charge in addition to other fees.

All users shall pay regular charges for service as enumerated in § 175-61 in addition to charges and assessments for construction of the sewers, entrance fee and connection charge, as provided for elsewhere in this article and in this chapter.

§ 175-61. Rates.

- A. User charges shall consist of a unit charge per 100 cubic feet of wastewater discharged into the public sewers, plus surcharges for excess strength of wastewater discharged. The unit charge and surcharges shall be determined by the Department of Public Works with Town Council approval. Where metering devices are not installed by the owner for the purpose of measuring the actual quantity of wastewater discharged, the water use measured by a standard Town water meter shall be used for billing purposes. Where water meters are not installed or where a user does not purchase water from the Town, then the owner shall install a Town-approved wastewater metering device or, in the case of a residential user, be charged in accordance with the following flat rate schedule. The charges which follow apply to all classes of users, including residential, commercial, institutional, governmental, charitable and nonprofit.
- B. Rates. **[Amended 9-18-2002 by TR-2002-19]**
- (1) All users, unless otherwise specified in Subsection D herein, will be charged at the rate of \$2 per 100 cubic feet of wastewater discharged into a public sewer. The amount of wastewater discharged shall, in most cases, be determined from the Water Department meter readings and shall be equal in volume to the water measured by the water meter, with the following exception. It is recognized that not all water consumed by a residential user is diverted to the sewer. Some water is used for lawn sprinkling, car washing and other uses which do not contribute wastewater to the sewer. Therefore, the volume of wastewater discharged by residential users shall be assumed to be 90% of the water metered, and the sewer use charge shall be based on this reduced volume.
 - (2) In the event that a residential user does not have Town water service, then he shall be charged a flat rate of \$180 per year per dwelling unit, which is equivalent to a yearly wastewater discharge of 9,000 cubic feet. A single-family home or single apartment shall constitute one dwelling unit.
 - (3) The above user charges shall be billed on at least a semiannual basis, and bills will be issued in conjunction with the water bills. The minimum charge for any billing shall be \$20 to cover administrative costs. **[Amended 6-21-2022 by Ord. No. TOR-2022-9]**
- C. A credit will be allowed for nonresidential users consuming metered water which is not discharged into the wastewater collection system (such as coolant water), provided that a separate Town-approved sealed meter is provided by the owner to measure this water.
- D. Surcharges. Surcharges over and above the rate listed in Subsection B(1) above will be levied against domestic, commercial and industrial users who discharge above-average concentrations of wastewater into the system. Surcharges shall be assessed at least at the following rates: **[Amended 6-21-2022 by Ord. No. TOR-2022-9]**

Type of Surcharge	Unit	Surcharge Per Unit
BOD*	1 lb. of BOD5	\$0.0275 per lb.
Suspended solids**	1 lb. of SS	\$0.022 per lb.

NOTES:

*Pounds of BOD5 subject to a surcharge are calculated by the following equation: $(C2 - 300) \times 0.00624 \times Q = SS$, subject to surcharge where C2 is the concentration of suspended solids in milligrams per liter of the wastewater and Q is the actual metered water use or wastewater discharge measured in units of 100 cubic feet. The rates assessed for surcharges may be adjusted from time to time to reflect the current rates paid by the Town for the treatment of each pound of BOD5 and each pound of suspended solids at the Bondi Island Treatment Plan plus a ten-percent surcharge to cover the Town's administrative costs.

E. Metering, sampling, testing and billing shall be as follows:

- (1) All rates for users connected to the Town's water system are based on metered use of water or metered discharge of wastewater.
- (2) The installation and maintenance of all wastewater meters and sampling stations shall be at the expense of the owner. Such installation shall be approved by the Town prior to its installation.
- (3) All sampling and testing to determine BOD{5} and suspended solids shall be carried out by agents of the Town using the facilities of the owner pursuant to Subsection E(2) above. The user shall reimburse the Town for all expenses incurred by it in carrying out sampling and testing.
- (4) Charges for all types of users will be assessed semiannually and will be levied in conjunction with the water bills.

F. All rates and fees set above in this § 175-61 shall be adjusted from time to time by the Department of Public Works subject to the approval of the City Council. **[Added 6-21-2022 by Ord. No. TOR-2022-9]****§ 175-62. Initial user charges.**

Initial user charges shall be levied in accordance with the rate schedule presented in § 175-61 above on all property subject to the charges as defined in § 175-60 above, beginning with all water bills issued as a result of a series of water meter readings beginning January 1, 1977.

§ 175-63. Authority to collect charges; deposit in Sewer Use Fund.

- A. The Superintendent shall forward to the Town Collector for collection all user charges, including collection of capital, maintenance and operation and other payments, from industries as specified in the contracts, agreements and amendments thereto between the Town and individual industries

receiving service from the Town. The Town Collector shall have the authority to use all legal means available to collect charges and payments when due, including the collection of delinquent payments through property liens. A late payment fee will be charged on accounts which have not been paid within 60 days after issuance of the bill. The owner of the property will be charged for all sewer use fees, late payment fees and demand payment fees. The late payment fee shall be 6% of the unpaid current bill amount. The demand payment fee shall be 12% of the unpaid current bill amount.

- B. All charges and payment collected shall be deposited to the appropriate account of the Sewer Use Fund established for the operation, maintenance and improvement of the wastewater facilities under the Sanitation Division of the Department of Public Works.

ARTICLE X
Industrial Users

§ 175-64. Treatment agreements.

Nothing in this chapter shall prevent the Town of Agawam, acting through its Department of Public Works, from entering into separate agreements with industrial users for the handling and treating of industrial wastes as specified in § 175-48 of this chapter, enacted July 1, 1974.

§ 175-65. Approval by Environmental Protection Agency required.

Said separate agreements must be approved by the Environmental Protection Agency. All industries or industrial users as defined in § 175-1 shall be obligated to pay that portion of any federal grant amount made after March 1, 1973, which is allocable to treatment of their wastes.

ARTICLE XI
Backflow and Cross-Connection Regulations
[Added 7-5-1988 by TOR-88-10]

§ 175-66. Authority and responsibility.

Under Public Law 93-523, the Safe Drinking Water Act of 1974, and Massachusetts Regulation 310 CMR, § 22.22, Protection of Sources of Water, the Water Purveyor has the primary responsibility for preventing water from unapproved sources, or any other substances, from entering the public potable water system.

§ 175-67. Purpose.

The purpose of this regulation is to:

- A. Protect the public potable water supply of the area served by the Agawam Department of Public Works from the possibility of contamination or pollution by isolating within its customer's internal distribution system(s) or its customer's private water system(s) such contaminants or pollutants which could backflow or back-siphon into the public water supply system.
- B. Promote the elimination or control of existing cross-connections, actual or potential, between its customer's in-plant potable water system(s) and nonpotable systems, plumbing fixtures and industrial piping systems.
- C. Provide for the maintenance of a continuing program of cross-connection control which will systematically and effectively prevent the contamination or pollution of all potable water systems by cross-connection.

§ 175-68. Installation of backflow prevention devices.

The Superintendent of Public Works shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow or back-siphonage of contaminants or pollutants through the water service connection. If, in the judgment of said 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 Superintendent 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 a ground for discontinuing water service to the premises until such device or devices have been properly installed.

§ 175-69. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AIR GAP — The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or a 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 Department of Public Works standards.

- A. **REDUCED PRESSURE PRINCIPLE DEVICE** — An assembly of two independently operating approved check valves with an automatically operating differential relief valve between the two check valves, tightly closing shutoff valves on either side of the check valves, plus properly located test cocks for the testing of the check and relief valves.

- B. **DOUBLE CHECK VALVE ASSEMBLY** — An assembly of two independently operating approved check valves with tightly closing shutoff valves on each side of the check valves, plus properly located test cocks for the testing of each check valve.
- C. **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.

APPROVED — Accepted by the Superintendent as meeting an applicable specification stated or cited in this regulation, or as suitable for the proposed one.

AUXILIARY WATER SUPPLY — Any water supply on or available to the premises other than the purveyor's approved public potable water supply.

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.

BACK-SIPHONAGE — 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.

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 back-siphonage 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 to and 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-CONNECTIONS 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.

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:

- A. **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 Superintendent, may create a danger to the health and well-being of the water consumer.
- B. **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.
- C. **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.

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.

SUPERINTENDENT OF PUBLIC WORKS — The Superintendent or his designated agent in charge of the Water Division of the Department of Public Works of the Town of Agawam who is invested with the responsibility for the implementation of an effective cross-connection control program and for the enforcement of the provisions of this article.

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 Commonwealth of Massachusetts, Department of Environmental Quality Engineering, Division of Water Supply, for human consumption.

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, USED — Any water supplied by a water purveyor from a public potable water system to a consumer's water system after it has passed through the point of delivery and is no longer under the sanitary control of the water purveyor.

§ 175-70. Water system components.

- A. The water system shall be considered as made up of two parts: the utility system and the customer system.
- B. The utility system shall consist of the source facilities and the distribution system and shall include all those facilities of the water system under the complete control of the utility, up to the point where the customer's system begins.
- C. The source shall include all components of the facilities utilized in the production, treatment, storage and delivery of water to the distribution system.
- D. The distribution system shall include the network of conduits used for the delivery of water from the source to the customer's system.
- E. The customer's system shall include those parts of the facilities beyond the termination of the utility distribution system which are utilized in conveying utility-delivered domestic water to points of use.

§ 175-71. Inspections; denial or discontinuance of service.

The customer's system should be open for inspection at all reasonable times to authorized representatives of the Department of Public Works to determine whether cross-connections or other structural or sanitary hazards, including violations of this regulation, exist. When such a condition becomes known, the Superintendent shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with state and Town statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto. All expenses relating to the disconnection and reconnection shall be at the customer's expense.

§ 175-72. Installation of backflow prevention devices.

- A. 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 internal cross-connection that cannot be permanently corrected and controlled or 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.
- B. The type of protective device required under this section shall depend upon the degree of hazard which exists as follows: In the case of any premises where there is an auxiliary water supply as stated in this section, or where there is any material dangerous to health which is handled in a fashion as 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 principal backflow prevention device at the service connector.
- C. In the case of any premises where there is water or a 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.
- D. 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 back-siphonage 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 principal

backflow prevention device shall be installed in each service to the premises.

- E. Any backflow prevention device required herein shall be of a model and size approved by the Superintendent. The term "approved backflow prevention device" shall mean a device that is on the approved list of backflow prevention devices as revised by the Massachusetts Department of Environmental Quality Engineering, Division of Water Supply. Said approval lists have been adopted by the Superintendent.
- F. Cross-connection by containment at the service connection shall be required only at the types of facilities listed in 310 CMR 22.22 Sec. 9, entitled "Location of Devices." **[Added 4-21-1992 by TOR-92-6; amended 9-7-1999 by TOR-99-4]**
- G. Any customer subject to the provisions of this article may acquire backflow prevention devices from whatever source they desire, and engage the services of whatever duly licensed plumber they desire to install such devices. **[Added 4-21-1992 by TOR-92-6]**
- H. The customer shall be responsible for filing an application and plan with the Superintendent of Public Works for any cross-connection requiring the installation of a reduced pressure backflow preventer or testable double check valve assembly. The customer shall receive approval of the proposed installation and a permit for the cross-connection from the Superintendent prior to proceeding with the work. The expense for the preparation of the application and plans as well as the costs incurred by the Department of Public Works in the review, approval and permitting of each device shall be the responsibility of the customer. **[Added 9-7-1999 by TOR-99-4]**

§ 175-73. Routine testing. [Amended 9-7-1999 by TOR-99-4]

- A. The Department of Public Works shall be responsible for the required testing of backflow prevention devices. Reduced pressure backflow preventers shall be tested and inspected at least semiannually and double check valve assemblies shall be tested and inspected annually. The customer owning the device will be charged for these tests.
- B. Backflow device testing and inspection will be performed by a Massachusetts DEP certified backflow tester.
- C. The testing shall be conducted during the regular business hours of the Department of Public Works. Exceptions to this, when at the request of the customer, may require additional charges to cover the increased cost to the Department.
- D. Any backflow preventer which fails during a periodic test must be repaired or replaced by a licensed plumber at the expense of the customer. When repairs are necessary, upon completion of the repair, the device will be retested at the customer's expense to ensure proper operation. High hazard situations will not be allowed to continue unprotected if the backflow preventer fails the test and cannot be repaired immediately. In other situations, a compliance date of not more than 14 days after test date will be established. The Customer is responsible for having spare parts, repair tools, or a replacement device on hand. Parallel installation of two devices is an effective means of the customer ensuring that uninterrupted water service remains during testing or repair of devices and is strongly recommended when the owner desires such continuity.
- E. Backflow prevention devices will be tested more frequently than specified above in Subsection A in cases where there is a history of test failures and the Department feels that due to the degree of hazard involved, additional testing is warranted. The cost of such additional tests will be borne by the customer.

§ 175-74. Existing nonconforming devices.

All presently installed backflow prevention devices which do not meet the requirements of this article 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 under § 175-71, be excluded from the requirements of these rules so long as the Superintendent of Public Works 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 article.

§ 175-75. Power of Department of Public Works. [Amended 4-21-1992 by TOR-92-6]

- A. Any decision relating to the enforcement of this article shall be made by the Agawam Department of Public Works. Following an inspection under § 175-71, any decision pertaining to what type of backflow device is required or whether a particular backflow device is required by state regulations or Town ordinance may be appealed to a committee made up of representatives of the Health, Water and Building Departments.
- B. Any appeal must be requested in writing by the customer within 14 days following receipt of written notice by the Agawam Department of Public Works ordering installation of backflow devices. A hearing shall be held within 21 days following receipt of the appeal notice by the Committee. The Committee shall indicate its decision in writing to all parties within 10 days of the hearing, unless otherwise agreed upon by the parties.

§ 175-76. Application, permitting, testing and maintenance charges. [Amended 4-21-1992 by TOR-92-6; 9-7-1999 by TOR-99-4]

- A. The Department of Public Works shall establish fees for the approval, permitting, testing and/or maintenance of backflow prevention devices, and may amend said fees from time to time. All fees set by the Department of Public Works shall be charged to the owner of the property where the devices are installed and shall be subject to the approval of the Agawam Town Council. **[Amended 6-21-2022 by Ord. No. TOR-2022-9]**
- B. The following fees are hereby established by the Department of Public Works and approved by the Agawam Town Council:
 - (1) There shall be a fee of \$25 per test per device for all backflow prevention devices required by the regulations promulgated by the Commonwealth of Massachusetts as amended from time to time.
 - (2) There shall be a fee of \$45 per device for the application review and permitting of devices requiring same under § 175-72H above.
 - (3) There shall be no fee for the permitting or testing of those backflow prevention devices installed at the service connection which are required solely by this article, and not otherwise required by the regulations promulgated by the Commonwealth of Massachusetts as amended from time to time.

§ 175-77. Records and reports. [Added 9-7-1999 by TOR-99-4]

- A. Records. The Department of Public Works will initiate and maintain the following:

- (1) Master files on customer cross-connection tests and/or inspections.
 - (2) Master files on approved cross-connection installations.
 - (3) Master files on facilities surveyed and violations found.
 - (4) Master files on correspondence, violations notices and enforcement actions.
- B. Reports. The Department of Public Works will submit reports, such as listing of cross-connection and respective devices and summary of cross-connection inspections and surveys, to the DEP upon its request.

STORMWATER MANAGEMENT

Chapter 176

STORMWATER MANAGEMENT

[HISTORY: Adopted by the City Council of the Town of Agawam 6-3-2024 by Ord. No. TOR-2024-6. Amendments noted where applicable.]

ARTICLE I
General Provisions

§ 176-1. Authority.

- A. This chapter is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.
- B. The Superintendent of the Department of Public Works or designated representative shall administer, implement and enforce this chapter. Any powers granted to or duties imposed upon the Superintendent of the Department of Public Works may be delegated in writing by the Superintendent of the Department of Public Works to employees or agents of the Department of Public Works.

§ 176-2. Definitions.

- A. Word usage. "Shall" is mandatory; "may" is permissive.
- B. Definitions. Unless the context specifically indicates otherwise, the meanings of terms used in this chapter shall be as follows:

ABUTTER — One who holds title to real property within the limits of an improvement area, and his successors in title.

ACRE — A unit of land equal to 43,560 square feet.

ACTIVE GROUNDWATER DEWATERING DEVICE — Any active device used to transport groundwater, i.e., a sump pump.

AGRICULTURAL ACTIVITY — Producing or raising one or more of the following agricultural commodities for commercial purposes:

- (1) Animals, including but not limited to livestock, poultry, and bees;
- (2) Fruits, vegetables, berries, nuts, maple sap, and other foods for human consumption; and
- (3) Feed, seed, forage, tobacco, flowers, sod, nursery or greenhouse products, and ornamental plants or shrubs, and as further defined by the Massachusetts Wetlands Protection Act⁶⁰ and its implementing regulations.

ALTER — Any activity that 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 stormwater management permit.

AS-BUILT DRAWING — Drawings that completely record and document applicable aspects and features of conditions of a project following construction using stormwater management plans derived from a stormwater management permit.

AUTHORIZED ENFORCEMENT AGENCY — The Department of Public Works, its employees, or agents designated to enforce this chapter on behalf of the Superintendent.

60. Editor's Note: See MGL c. 131, §§ 40 and 40A.

BEST MANAGEMENT PRACTICES (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 development's impact on the watershed through the use of nonstructural stormwater management practices. Better site design includes conserving and protecting natural areas and green space, reducing the area of impervious surface, and using natural features for stormwater management.

CERTIFICATE OF COMPLETION (COC) — A document issued by the Stormwater Authority after all construction activities have been completed, which states that all conditions of an issued stormwater management permit have been met and that a project has been completed in compliance with the conditions set forth in a stormwater management permit.

CLEAN WATER ACT — The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

COMMON PLAN OF DEVELOPMENT OR SALE — A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

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.

DEP or DEPARTMENT OF ENVIRONMENTAL PROTECTION — A department of the Commonwealth of Massachusetts which regulates environmental concerns, including but not limited to the Wetland Protection Act and as co-permittee of certain NPDES permits with the EPA.

DISCHARGE — The following are the definitions of terms used in this section:

- (1) **DIRECT STORMWATER DISCHARGE** — The discharge of treated or untreated stormwater directly to the MS4, which may or may not subsequently discharge to the waters of the Commonwealth of Massachusetts, including rivers, streams, brooks, or wetlands.
- (2) **ILLICIT STORMWATER DISCHARGE** — Any nonstormwater discharge into the municipal separate storm sewer system (MS4), except as specifically exempted in this code. Discharges which are in compliance with a NPDES stormwater discharge permit are not illicit discharges.
- (3) **INDIRECT STORMWATER DISCHARGE** — The discharge of treated or untreated stormwater to the waters of the Commonwealth of Massachusetts, including rivers, streams, brooks, or wetlands, without a connection to or discharge to the municipal separate storm sewer system (MS4) before flows reach the water resource.
- (4) **STORMWATER DISCHARGE** — The discharge of treated or untreated stormwater to the Town's MS4.
- (5) **DISCHARGE OF POLLUTANTS** — The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or commonwealth from any source.

DPW or DEPARTMENT OF PUBLIC WORKS — The administrative body for public works in the Town of Agawam.

DRAIN LATERAL OR CONNECTION — Drainage service connections are private structures to be owned and maintained by the property owner to the point where it connects to a stormwater main, manhole, or catch basin in the street right-of-way or Town's easement.

DRAINAGE EASEMENT — A legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

DRAINAGE SYSTEM — Same as stormwater system, storm sewer system.

DUMPING — An act or omission of any person or entity, the proximate result of which is the introduction of pollutant(s) to the MS4, which is an illicit discharge.

EPA or ENVIRONMENTAL PROTECTION AGENCY — The United States Environmental Protection Agency, a department of the federal government that requires compliance with the Clean Water Act and NPDES permitting.

EROSION — The wearing away of the land surface by natural or artificial forces, such as wind, water, ice, gravity, or vehicle traffic, and subsequent detachment and transportation of soil particles.

EROSION AND SEDIMENT CONTROL PLAN — Is a document containing narrative, drawings and details—developed by a qualified professional engineer (PE) or a certified professional in erosion and sedimentation control (CPESC)—that includes best management practices or equivalent measures designed to control surface runoff, erosion, and sedimentation during construction and construction-related land disturbance activities.

EROSION CONTROL — The prevention or reduction of the movement of soil particles or rock fragments.

EXISTING DISCHARGE — Any discharge to the MS4 which is under construction or operation at the time of the enactment of this definition.

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.

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 through 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.

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, but not including water in man-made structures.

GROUNDWATER RECHARGE — The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

GRUBBING — The act of clearing land surface by digging up roots and stumps.

HAZARDOUS MATERIAL OR WASTE — Any material, 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 to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or

infectious waste, acid and alkali, and any substance defined as toxic or hazardous under MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

ILLCIT CONNECTION — Any surface flow or conveyance of flows to the MS4 which contains nonstormwater discharges except as exempted within this chapter.

ILLCIT STORMWATER DISCHARGE — Any direct or indirect nonstormwater discharge into the municipal separate storm sewer system (MS4), including, without limitation, sewage, process wastewater, or wash water, and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this chapter. Specific exemptions are described in this chapter. Discharges which are in compliance with a NPDES stormwater discharge permit are not illicit discharges.

IMPERVIOUS SURFACE — Any material or structure on or above the ground that reduces the infiltrating capacity of soils or prevents water from infiltrating through the underlying soil. "Impervious surface" is defined to include, without limitation: paved parking lots and roads, rooftops, driveways, patios, and other paved and gravel surfaces.

IMPROVEMENT AREA — The area served by the proposed drainage project, the boundaries of which shall include only those parcels or portions of parcels that could be directly connected to the proposed common sewers or drains, such that a building sewer or drain would not have to pass through adjacent private land to serve each parcel.

INDIRECT STORMWATER DISCHARGE — The discharge of treated or untreated stormwater to the waters of the Commonwealth of Massachusetts, including rivers, streams, brooks, or wetlands without a connection to or discharge to the municipal separate storm sewer system (MS4) before flows reach the water resource.

INFILTRATION — The downward movement of water from the surface to the subsoil so as to permit groundwater recharge and the reduction of stormwater runoff from a project site.

LAND USE WITH HIGHER POTENTIAL POLLUTANT LOAD (LUHPPL) — Land uses such as auto salvage yards, auto fueling facilities, exterior fleet storage yards, vehicle service and equipment cleaning areas, commercial parking lots with high intensity use, road salt storage areas, outdoor storage and loading areas of hazardous substances, confined disposal facilities and disposal sites, marinas, boat yards, or other uses identified by the Massachusetts Stormwater Handbook.

LOW IMPACT DEVELOPMENT (LID) — A development strategy that seeks to mimic (or in the case of redevelopment, restore/recreate) a site's predevelopment hydrology through protection of on-site natural features and better site design that limits impervious areas, preserves open space, and uses decentralized small-scale facilities to capture and manage rainfall (or snowmelt) close to where it falls. These small-scale facilities serve to slow, absorb, and treat flow and include bioretention areas, grassed swales, porous pavements, cisterns, and green roofs and walls.

MASSACHUSETTS STORMWATER HANDBOOK AND STORMWATER STANDARDS — The guidance issued by MassDEP, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and Massachusetts Clean Waters Act, MGL c. 21, §§ 23 through 56. The Handbook and Standards addresses stormwater impacts through implementation of performance standards to promote increased stormwater recharge, the treatment of more runoff from polluting land uses, low impact development (LID) techniques, pollution prevention, the removal of illicit discharges to stormwater management systems, and improved operation and maintenance of stormwater best management practices (BMPs). MassDEP applies the Stormwater Management Standards pursuant to its authority under the Wetlands Protection Act, MGL c. 131, § 40, and

the Massachusetts Clean Waters Act, MGL c. 21, §§ 26 through 53. The revised Stormwater Management Standards have been incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

MS4 — See "municipal separate storm sewer system" below.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM — The system designed or used for collecting or conveying stormwater, that may include any public or unaccepted streets with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Agawam.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT — A permit issued by United States Environmental Protection Agency or jointly with the state that regulates the discharge of pollutants to waters of the United States.

NATURAL OUTLET — Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

NEW DEVELOPMENT — Any construction activities or land alteration on a site that has not previously been altered to include buildings or impervious surfaces.

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.

NONSTORMWATER DISCHARGE — Discharge which is composed of constituents which are not stormwater except as specifically exempted within this chapter.

NPDES — See above: "National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit."

OPERATION AND MAINTENANCE PLAN — A plan that defines the functional, financial and organizational mechanisms for the ongoing operation and maintenance of the stormwater management system to ensure that it continues to function as designed.

OWNER — The owner or occupant of land, and in the case of stormwater management permit applications, any person intending to acquire an ownership interest in land. A person with a legal or equitable interest in a property.

PERMITTEE — The owner of the site in the case of stormwater management permit application.

PERMITTING AUTHORITY — See "Stormwater Authority" below.

PERSON — Any individual, group of individuals, firm, company, association, partnership, society, trust, estate, corporation or group, including a city, county or other governmental entity.

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.

POLLUTANT — Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the commonwealth. Pollutants shall include, without limitation:

- (1) Paint, varnish, and solvents.

- (2) Oil, anti-freeze, and other automotive fluids.
- (3) Nonstormwater liquids.
- (4) Solid wastes and yard wastes.
- (5) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinance, accumulations and floatables.
- (6) Pesticides, herbicides, and fertilizers.
- (7) Hazardous materials and wastes.
- (8) Sewage, fecal coliform and pathogens.
- (9) Dissolved and particulate metals.
- (10) Animal wastes and pet wastes.
- (11) Rock, sand, salt and soils.
- (12) Construction wastes and residues.
- (13) Noxious or offensive matter of any kind.

RECHARGE — The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

REDEVELOPMENT — Any construction, land alteration, or improvement of impervious surfaces resulting in earth disturbances. Municipal roadway widening or improvements that increase the amount of impervious surface on the redevelopment site by greater than or equal to a single lane width shall meet the requirements for redevelopment activities.

RUNOFF — Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT — Any mineral or organic soil material that is transported by wind or water from its origin to another location, the product of erosion processes.

SEDIMENTATION — A process of depositing material that has been suspended and transported in water.

SITE — The area extent of construction activities, including but not limited to the creation of new impervious surface and modifications to existing impervious surface, or other site alterations.

STOP-WORK ORDER — An order issued which requires that all construction activity on a site be stopped.

STORM DRAIN (sometimes termed "storm sewer") — A sewer, ditch or channel that carries storm- and surface waters, other than unpolluted cooling water. Except where the context would clearly designate one or the other, the term encompasses both underground piping and surface drainage easements containing ditches, swales, channels or detention or retention basins for the handling of water. A storm drain can be either publicly or privately owned. If publicly owned, it is part of the municipal separate storm sewer system or MS4 (see definition above).

STORM DRAIN PERMIT or SD PERMIT — A permit given by the DPW to applicants which authorizes the discharge of runoff directly to the MS4 and indirectly to the waters of the commonwealth.

STORM DRAINAGE SYSTEM — A system by which stormwater is collected and/or conveyed. Such a system can be either publicly or privately owned. If publicly owned, it is part of the municipal separate storm sewer system or MS4 (see definition above).

STORMWATER — Runoff from precipitation or snow melt.

STORMWATER AUTHORITY — The Town of Agawam Department of Public Works. The Stormwater Authority administers, implements, and enforces this chapter and associated regulations. Other boards and/or departments may participate in the review process of Article III as defined.

STORMWATER DISCHARGE — The discharge of treated or untreated stormwater to the Town's MS4.

STORMWATER 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.

STORMWATER MANAGEMENT PERMIT — A permit issued by the Stormwater Authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the adverse effects of uncontrolled and untreated stormwater runoff.

STORMWATER MANAGEMENT PLAN — A plan to be submitted with the application for a stormwater management permit, which shall include current and proposed site conditions, proposed improvements, proposed stormwater control measures, development schedules, and such other matters as may be required by the Stormwater Authority.

SUPERINTENDENT — The Superintendent of Public Works of the Town of Agawam or his authorized deputy, agent or representative.

SURFACE WATER DISCHARGE PERMIT — A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

TOXIC MATERIAL OR WASTE — See "hazardous material or waste" above.

WASTEWATER — Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product.

WATER RESOURCE — Same as "waters of the commonwealth."

WATERCOURSE — A channel in which a flow of water occurs, either continuously or intermittently.

WATERS OF THE COMMONWEALTH — All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater. These are protected water resources through state and/or federal regulation.

YARD DRAIN — Private catch basin located within lawn area and connected to the MS4 or discharges to a dry well or indirect discharge to waters of the commonwealth.

§ 176-3. Regulations.

The Superintendent of the Department of Public Works may adopt, and periodically amend rules and

regulations—relating to the procedures, standards, and administration—to effectuate the purposes of this chapter. Failure by the Superintendent of the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this chapter.

§ 176-4. Enforcement.

A. Authorized enforcement agency. The Department of Public Works will serve as the authorized enforcement agency. The Department of Public Works or an authorized agent of the Department of Public Works shall enforce this chapter and any associated regulations, orders, violations notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Enforcement and penalties.

(1) Criminal and civil relief.

- (a) Any person who violates any provision of this chapter, associated regulations, permit, notice, or order thereunder shall be punished by a fine not to exceed \$300 per violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (b) The Department of Public Works may seek injunctive relief in the court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(2) Orders.

- (a) The Department of Public Works or an authorized agent of the Department of Public Works may issue a written order to enforce the provisions of this chapter or the regulations thereunder, which may include:

- [1] Elimination of illicit connections or discharges to the MS4;
- [2] Performance of monitoring, analyses, and reporting;
- [3] Cessation of unlawful discharges, practices, activity, or operations;
- [4] Maintenance, installation, or performance of additional erosion and sediment control measures;
- [5] Implementation of measures to minimize the discharge of pollutants until such time as the illicit connection or discharge of pollutants shall be eliminated; and
- [6] Remediation of contamination in connection therewith.

- (b) If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further provide that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Department of Public Works may, at its option, undertake such work, directly or through a contractor, and expenses thereof shall be charged to the violator.
- (c) Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the City, including administrative costs.

- (d) The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Authority within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57, after the 31st day at which the costs first become due.
- (e) Written orders shall contain the following:
 - [1] The name and address of the owner applicant;
 - [2] The address when available or the description of the building, structure, or land upon which the violation is occurring;
 - [3] A statement specifying the nature of the violation;
 - [4] A description of the remedial measures necessary to bring the development activity into compliance with this chapter and a time schedule for the completion of such remedial action;
 - [5] A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - [6] A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 30 days of service of notice of violation pursuant to the procedures of MGL c. 40a, § 15.
- (3) Emergency enforcement action.
 - (a) The Superintendent of Public Works may determine that an eminent threat to public health, safety, or the environment exists. Skipping the normal order of enforcement action may be required, including immediate suspension of access to the MS4. The Department of Public Works or designated agent may take immediate action to suspend access to the MS4 or perform actions to bring the site into compliance. The Department of Public Works has the right to bill the violator for penalty fees, reasonable costs of materials, and manpower to perform these emergency actions, and administrative costs. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department of Public Works within 30 days of receipt of the notification of the costs incurred.
 - (b) Any bills sent to violators which remain unpaid for a time period of 30 days, or the time in which to protest, or within 30 days following a decision by the Department of Public Works affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a lien against the property until paid.
- (4) Restoration of land. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Department of Public Works, or its designated agent, may take necessary corrective action, the

cost of which shall become a lien upon the property until paid.

- (5) Hold on certificate of occupancy and/or storm drain permit.
 - (a) For development or redevelopment projects, a certificate of occupancy will not be granted until corrections to all stormwater practices have been made and accepted by the Department of Public Works.
 - (b) No new Department of Public Works storm drain permits will be issued to owners or contractors that have enforcement orders currently in effect against any project. The hold will be released once all remediation work is complete and approved by Department of Public Works.
- (6) Stop-work orders.
 - (a) The Department of Public Works may issue stop-work orders on any project which is found in violation of the storm drain permit or this chapter until adequate corrective action is complete to the satisfaction of the Department of Public Works.
 - (b) Persons receiving a notice of violations will be required to halt all construction activities. This "stop work order" will be in effect until the Department of Public Works confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter. The Department of Public Works may utilize the services of a Massachusetts registered engineer to verify compliance at the applicant's expense.
- (7) Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town of Agawam may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, in which case the Town of Agawam Superintendent of Public Works, or his/her designee, shall be the enforcing person. The penalty for the first violation shall be a warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (8) Entry to perform duties under this chapter. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Town of Agawam, the Superintendent of Public Works or his/her designee, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this chapter and regulations and may make or cause to be made such examinations, surveys or sampling as deemed reasonably necessary.
- (9) Appeals. The decisions or orders of the Superintendent of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.
- (10) Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law.

§ 176-5. Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect any other provisions or applications of this chapter, and shall

continue in full force and effect.

§ 176-6. Transitional provisions.

Property owners shall have 90 days from the effective date of this chapter to comply with its provisions, provided good cause is shown for the failure to comply with this chapter during that period unless local, state, or federal agencies deem that immediate actions are warranted.

ARTICLE II
Illicit Connections and Discharges

§ 176-7. Purpose; objectives; findings.

- A. Purpose. The purpose of this article is to regulate illicit connections and discharges to the storm drain system, which is necessary for the protection of the Town of Agawam's water bodies, wetlands, and groundwater, and to safeguard the public health, safety, welfare and the environment.
- B. The objectives of this article are:
 - (1) To prevent pollutants from entering the municipal separate storm sewer system;
 - (2) To prohibit illicit connections and unauthorized discharges to the stormwater system;
 - (3) To require the removal of all such illicit connections;
 - (4) To comply with state and federal statutes and regulations relating to stormwater discharges;
 - (5) To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring, and enforcement.
- C. Increased and contaminated stormwater runoff are major causes of:
 - (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
 - (2) Contamination of drinking water supplies;
 - (3) Alteration or destruction of aquatic and wildlife habitat; and
 - (4) Local flooding.

§ 176-8. Applicability.

- A. This article shall apply to all flows entering the storm drain system owned and operated by the Town of Agawam.
- B. For permitted connection to the MS4, see Article III in this chapter.

§ 176-9. Prohibited activities.

- A. Obstruction of the MS4. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Superintendent.
- B. Illicit connection. No person shall construct, use, allow, maintain or continue any illicit connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection. No grandfathering is permitted.
- C. Connections.
 - (1) No one shall tie any pump, cellar, yard, roof or area drain directly into the municipal storm drain system without written approval from the Superintendent of the Department of Public Works.
 - (2) It is prohibited for anyone with a private drainage system from tying into the public storm drain

system without written approval from the Superintendent of the Department of Public Works. The maintenance of any and all private drainage systems up to the point of connection to the municipal system shall be the responsibility of the owners.

- (3) The Superintendent of the Department of Public Works reserves the right to rescind permission of a connection to the municipal storm drain system if it deems the private drainage system is not properly maintained.
- D. Prohibited discharges to storm drain system. No person shall dump, discharge, cause or allow to be discharged any pollutant or nonstormwater discharge into the municipal separate storm sewer system (MS4). Examples of illicit discharges include, but are not limited to, antifreeze, motor oil, pesticides, cleaning products, pet wastes, concentrated fertilizers, concentrated herbicides, bleach, concrete wash water, sediment laden construction runoff.
- (1) Catch basins. No person shall directly or indirectly dump, discharge or cause or allow to be discharged into any catch basin any solid waste, construction debris, paint or paint product, antifreeze, hazardous waste, oil, gasoline, grease and all other automotive and petroleum products, solvents and degreasers, drain cleaners, commercial or household cleaners, soap, detergent, ammonia, food and food waste, grease or yard waste, animal feces, dirt, sand gravel or other pollutant. Any person determined by the applicable authority to be responsible for the discharge of any of the above substances to a catch basin may be held responsible for cleaning the catch basin and any other portions of the stormwater system impacted according to Town standards and requirements or paying the cost for such cleaning. In addition, the person shall be responsible for paying any penalties assessed by the Town.
 - (2) Septage. No person shall discharge or cause or allow to be discharged any septage, or septage tank or cesspool overflow into the Town's storm drain system.
 - (3) Storage and disposal of hazardous material. No one shall dispose of anything other than clear water into the Town's storm drain system. The disposal of waste, gasoline or any other hazardous material into the storm drain system is strictly prohibited and is in violation of state and federal pollution laws.
 - (4) Discharge of unpolluted drainage. Stormwater and all other unpolluted drainage shall be discharged to an appropriate stormwater management best management practice or natural outlet. If no such outlet is available, such unpolluted wastes may be discharged into the sanitary sewers or storm sewers if approved by the Department of Public Works Superintendent.
 - (5) Waters contaminated with silt and sediment. No waters contaminated with silts or sediment shall be discharged into a watercourse, detention area or storm drain.
- E. Exemptions.
- (1) Emergency activities that are immediately necessary for the protection of life, property or the environment as determined by the Department of Public Works, Police Department, or Fire Department.
 - (2) Roadway maintenance activities essential to public health and safety.
 - (3) The following nonstormwater discharges or flows are exempt, provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:
 - (a) Municipal waterline flushing.

- (b) Flow from potable water sources.
- (c) Springs.
- (d) Natural flow from riparian habitats and wetlands.
- (e) Diverted stream flow.
- (f) Rising groundwater.
- (g) AC condensation.
- (h) Water from crawl space pumps.
- (i) Footing drains.
- (j) Residential building wash waters without detergents.
- (k) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater.
- (l) Water from exterior foundation drains.
- (m) Discharge from landscape irrigation or lawn watering.
- (n) Water from individual residential car washing.
- (o) Discharge from dechlorinated swimming pool water (less than one ppm chlorine), provided that the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance.
- (p) Discharge from street sweeping.
- (q) Dye testing, provided that verbal notification is given to the Superintendent of the Department of Public Works prior to the time of the test.
- (r) Nonstormwater discharge permitted under an NPDES permit or a surface water discharge permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations.
- (s) Discharge for which advanced written approval is received from the Superintendent as necessary to protect public health, safety, welfare or the environment.
- (t) Agricultural activities for normal maintenance or improvement of land as defined by the Massachusetts Wetlands Protection Act, 310 CMR 10.04, and other implementing regulations as appropriate. Activities not exempted include spill of materials onto roadways from hauling agricultural products or fertilizers.

§ 176-10. Emergency suspension of storm drain system.

The Superintendent of the Department of Public Works or designated representative may suspend storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of

harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Superintendent of the Department of Public Works or designated representative may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

§ 176-11. Watercourse protection.

- A. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.
- B. Failure by the property owner to maintain the watercourse does not constitute an obligation on the part of the Town to assume this responsibility.
- C. Where a privately owned drainage structure is failing, the Town has the option to step in and perform emergency repairs as may be necessary. The owner will be billed and must pay all costs associated for work performed on behalf of the Town related to compliance with this section.

§ 176-12. Notification of spills.

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system, the person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal Fire and Police Departments and Department of Public Works. In the event of a release of nonhazardous material, the reporting person shall notify the Department of Public Works no later than the next business day. The reporting person shall provide to the Department of Public Works written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

ARTICLE III
stormwater Management Permit

§ 176-13. Purpose.**A. Purpose.**

- (1) The purpose of this article is to better manage land development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Agawam by establishing minimum requirements and procedures to control the adverse impacts associated with stormwater runoff from new development and redevelopment.
- (2) The proper management of stormwater runoff will meet the following objectives:
 - (a) Establish regulations for land development activities that preserve the health of water resources by reducing the adverse water quality impacts from stormwater discharges to rivers, lakes, reservoirs, and streams in order to attain federal water quality standards;
 - (b) Require that new development, redevelopment, and all land conversion activities maintain the natural hydrologic characteristics of the land and treat for water quality in order to: reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
 - (c) Prevent the discharge of pollutants, including hazardous chemicals, into stormwater runoff;
 - (d) Minimize the volume and rate of stormwater discharges to rivers, streams, reservoirs, lakes and ponds during and following development activities;
 - (e) Prevent erosion and sedimentation from land development, and reduce stream channel erosion caused by increased runoff;
 - (f) Provide for the recharge of groundwater aquifers and maintain the base flow of streams;
 - (g) Advance the use of low-impact development and better site design practices such as limiting disturbance, reducing impervious surface, treating and infiltrating stormwater at the source, using environmentally sensitive site design, and the preservation of open space and other natural areas;
 - (h) Provide stormwater facilities that are attractive, maintain the natural integrity of the environment, and are designed to protect public safety;
 - (i) Establish maintenance provisions to ensure that stormwater treatment practices will continue to function as designed over the long term.
- (3) This chapter and its associated regulations are also intended to bring Agawam into compliance with requirements in the United States Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts ("Massachusetts Small MS4 General Permit").

§ 176-14. Applicability.**A. Administrative review or permit.**

- (1) No person may initiate a construction activity or land disturbance, including clearing, grubbing, land grading, earthmoving, or other development or redevelopment activities that results in the disturbance of land in excess of the thresholds described below without administrative review for stormwater management or approval or waiver of the requirement for a stormwater management permit by the Town's Stormwater Authority.
 - (a) Administrative review for stormwater management is required for new development or redevelopment projects that will create, individually or part of a common plan of development or sale, between 5,000 and up to but not including 43,560 square feet of disturbance.
 - (b) A stormwater management permit is required for new development or redevelopment projects that will disturb one acre (43,560 square feet) or more of land or create 5,000 square feet or more of impervious cover. This includes construction activities for new development or redevelopment that disturb less than one acre if that disturbance is part of a larger common plan of development or sale that all together disturbs one or more acres.
 - (2) Notwithstanding any exemption provided for below, any alteration, redevelopment, or conversion of land use to a "land use with higher potential pollutant loads" as defined in the most recent version of the Massachusetts Stormwater Handbook, such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots, and other potential water quality concerns shall require a stormwater management permit.
- B. Exemptions. The following use and activities are exempt from the requirements for administrative review for stormwater management or a stormwater management permit. All exempt uses and activities must still comply with the purposes and the performance standards described in the accompanying regulations. Failure of an exempt activity to comply with the purposes and performance standards described in the associated regulations shall be interpreted as a violation and exempt status revoked. Note that changes at a site may not be split or phased in order to use this exemption repeatedly.
- (1) Any agricultural activity that is consistent with an approved soil conservation plan prepared or approved by the Natural Resources Conservation Service.
 - (2) Any logging that is consistent with a forest cutting plan approved under the Forest Cutting Practices Act⁶¹ by the Massachusetts Department of Conservation and Recreation.
 - (3) Activities that are exclusively limited to maintenance and improvement of existing sidewalks, municipal roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects). Note that roadway widening or improvements that increase the amount of impervious surface area on the redevelopment site by greater than or equal to a single lane width are subject to the requirements of this article and associated regulations.
 - (4) Repairs to any stormwater treatment system deemed necessary by the Department of Public Works.
 - (5) Any emergency activity that is immediately necessary for the protection of life, property or the environment, as determined by the Department of Public Works, Board of Health or Police and Fire.

61. Editor's Note: See MGL c. 132, § 40 et seq.

§ 176-15. Administration.**A. Responsibility.**

- (1) As the Stormwater Authority, the Department of Public Works shall administer, implement and enforce this article. Any powers granted to or duties imposed upon the Department of Public Works may be delegated in writing by the Superintendent of Public Works to employees or agents of the Department of Public Works.
- (2) The Department of Public Works may also designate Town Boards, including (but not limited to) the Planning Board, Zoning Board of Appeals, Conservation Commission, and the Board of Health, and/or their agents to review permit applications within the designated Board's expertise (the "Reviewing Board") and to make recommendations to the Department of Public Works. Such review shall follow the standards and criteria contained in the associated regulations. Projects or activities approved by the Department of Public Works shall be deemed in compliance with the intent and provisions of this chapter and associated regulations.

B. Fees.

- (1) The Department of Public Works may establish a permit review fee schedule, based on the type and complexity of projects, and may update this fee as needed, all subject to the approval of the City Council, to cover the costs of permit administration for stormwater management permits.
- (2) The Stormwater Authority is authorized to retain a registered professional engineer (PE) or other professional consultant to advise the Stormwater Authority on any or all aspects of the application and/or the project's compliance with conditions of a review or permit. The Stormwater Authority may require the applicant to pay reasonable costs to be incurred by the Stormwater Authority for the employment of outside consultants pursuant to Stormwater Authority regulations as authorized by MGL. c. 44, § 53G.

C. Coordination with other required permits.

- (1) Projects undergoing permitting under site plan review under the Zoning Bylaw (Chapter 180) or under the Subdivision Regulations (Chapter 159) that also require a stormwater management and erosion control permit shall submit drainage reports, stormwater management plan, and erosion and sediment control plan, construction drawings, specifications, operation and maintenance plan, and as-built information in accordance with this article and associated regulations.
- (2) For projects where stormwater discharges are subject to jurisdiction of the Wetlands Protection Act, the Conservation Commission will include the Department of Public Works in the application review process. An order of conditions issued by the Conservation Commission that demonstrates a project's compliance with the Massachusetts Stormwater Management Standards and the MS4 permit standards within this chapter and associated regulations will serve as the stormwater management permit.

D. Inspection and site supervision. The Stormwater Authority or its designated agent shall require inspections to verify and document compliance with the administrative review for stormwater management or stormwater management permit.**E. Waivers.**

- (1) The Stormwater Authority, or its authorized agent, may waive strict compliance with any

requirement of this chapter or associated regulations promulgated hereunder, where such action is:

- (a) Allowed by federal, state and local statutes and/or regulations; and
 - (b) In the public interest; and
 - (c) Not inconsistent with the purpose and intent of this chapter.
- (2) Any person seeking a waiver must submit a written waiver request. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this chapter does not further the purposes or objectives of this chapter.
- (3) All waiver requests shall require a public hearing.
- (4) If in the opinion of the Stormwater Authority or its authorized agent, additional time or information is required for review of a waiver request, the Stormwater Authority may continue a hearing to a date certain announced at the meeting. In the event the applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

AGAWAM CODE

Chapter 177

WEIGHTS AND MEASURES

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

ARTICLE I

Noncriminal Disposition
[Adopted 6-6-2005 by TOR-2005-4]**§ 177-1. Alternative proceedings for violations.**

Any violation of this chapter, Chapter 177, and any violation of MGL c. 6 § 115A, MGL c. 94 §§ 176, 177, 184E, 295B, 295C, 295CC, 295F, 299, 303F, MGL c. 98 §§ 25; 26, 31, 42, 45, 55, 56A, 56B, 56C, or any other law which provides for a civil penalty for the violation thereof, may, in the discretion of the Sealer of Weights and Measures or his designee, be enforced by the noncriminal complaint method for which provision is made, and/or as set forth in MGL c. 40, § 21D, as amended from time to time, that is, noncriminal disposition. Fines issued pursuant to § 177-1 shall be as follows:

- A. First offense: \$20.
- B. Second offense: \$25.
- C. Third offense and each subsequent offense: \$50.

ZONING

Chapter 180

ZONING

[HISTORY: Adopted by the Town Council of the Town of Agawam 12-21-1972 as Ch. 20 of the Code of the Town of Agawam. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 82.

Subdivision of land — See Ch. 159.

Fees — See Ch. 103.

Water and sewers — See Ch. 175.

Fire prevention — See Ch. 106.

ARTICLE I
General Provisions

§ 180-1. Purpose.

For the purpose of promoting the health, safety, convenience, morals and welfare of its inhabitants, the Town, under the authority granted by MGL c. 40A, §§ 1 to 22 inclusive, does hereby enact this chapter, to be hereafter known and designated as the "Zoning Ordinance" of the Town. Further purposes of this chapter are to lessen congestion in the streets, to secure safety from fire, panic and other danger, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements and to increase the amenities of the Town.

§ 180-2. Definitions and word usage. [Amended 3-21-1994 by TOR-94-1; 2-20-2001 by TOR-2001-1; 5-20-2002 by TOR-2002-15; 2-6-2006 by TOR-2005-12; 11-5-2008 by TOR-2008-2; 11-7-2012 by TOR-2012-3; 5-5-2014 by TOR-2014-1; 10-7-2019 by Ord. No. TOR-2019-6; 2-16-2020 by Ord. No. TOR-2020-9; 10-21-2024 by Ord. No. TOR-2024-8]

- A. For the purpose of this chapter, certain terms and words shall have the following meanings. Words used in the present tense include the future; the plural number includes the singular; the words "used" or "occupied" include the words "designed," "arranged," "intended" or "offered to be used or occupied"; the words "building," "structure," "lot," "land" or "premises" shall be construed as though followed by the words "or any portion thereof"; and the word "shall" is always mandatory and not merely directory.
- B. Terms and words not defined herein but defined in the Building Code⁶² or Subdivision Regulations⁶³ shall have the meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meanings given in the most recent edition of Webster's Unabridged Dictionary.
- C. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

ABANDONMENT — The cessation of a nonconforming use or structure as indicated by the visible or otherwise indicated intention to discontinue a nonconforming use of a structure or a lot, or the cessation of a nonconforming use or structure by its replacement with a conforming use or structure.

ACCESSORY BUILDING — A subordinate building, located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to the main or principal use permitted in the district.

ACCESSORY USE — A use customarily incidental to that of the main or principal building or use of the land.

ADEQUATE CAPACITY — Capacity is considered to be adequate if the grade of service is p. 05 or better for a worst-case day in a preceding month, based on the Erlang B Tables, prior to the date of application; or as measured using direct traffic measurement of the personal wireless service facility in question for existing facilities requesting major modification and where the call blocking is due to frequency contention at the antenna(s).

62. Editor's Note: See Ch. 82, Building Construction.

63. Editor's Note: See Ch. 159, Subdivision of Land.

ADEQUATE COVERAGE — Coverage is considered to be adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal for at least 75% of the covered area is greater than -95 dbm. It is acceptable for there to be holes within the area of adequate coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the base station. For the limited purpose of determining whether the use of a repeater is necessary or desirable, there shall be deemed not to be adequate coverage within said holes. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.

ADULT DAY-CARE FACILITY — A building or structure where care, protection, and supervision are provided, on a regular schedule, to adults over the age of 18.

AGRICULTURE — The production, keeping or maintenance, for sale or lease, of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, swine, horses, mules, ponies, or goats or any mutations of hybrids thereof, including the breeding and grazing of any or all such animals, bees, and apiary products, for animals, trees and forest products; fruits of all kinds, including grapes, nuts and berries, vegetables, floral, nursery, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program.

ALTERATION — Any construction, reconstruction or other action resulting in a change in the structural parts, height, number of stories, exits, size, use or location of a building or other structure.

AMUSEMENT PARK — A commercially operated park with a predominance of outdoor games and activities for entertainment, including shows or riding devices, games of skill or chance, or any combination of shows, riding devices, water slides, miniature golf, batting cages or any combination of several enterprises, such as revolving wheels, merry-go-rounds, giant swings, panoramas, musical and theatrical entertainments, or riding devices, whether carried on, engaged in or conducted as one enterprise or by several concessionaries, and whether an admission fee is charged for admission to all such shows for entertainment, or a separate fee for admission is charged for each amusement.

ANIMAL CLINIC OR HOSPITAL — A place where animals or pets are given medical or surgical treatment, and the boarding of animals is limited to short-term care incidental to the clinic or hospital use.

ANTENNA — A device which is attached to a tower or other structure for transmitting and receiving electromagnetic waves.

APARTMENT HOUSE — A building or structure arranged, intended and designed to be occupied by two to eight families, living independently of each other, and each including its own separate kitchen and bathroom accommodations. Garden-type apartments shall be considered as an apartment house.

ATTIC — The unfinished space between the ceiling of the top story of a building and its roof which is not used for living, sleeping or eating quarters.

BASE STATION — The primary sending and receiving site in a wireless telecommunications network.

BUILDING — A structure enclosed within exterior walls or firewalls, built, erected and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed, where the context requires, as though followed by words "or part or parts thereof." A porch or an attached garage, greenhouse or similar structure is to be considered as part of a building when considering the requirements of setback, side or rear yards.

BUSINESS — The transacting or carrying on of a trade or commercial enterprise with a view to profit or for livelihood.

CEMETERY — Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematoriums, mausoleums, and funeral establishments, when operated in conjunction with and within the boundary of such cemetery under the care and supervision of the Town or other public authority.

CHANNEL — The segment of the radiation spectrum from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

CHILD-CARE FACILITY — Facilities that serve children under seven years of age, or 16 years if the children have special needs, or school-age children (under 14 years of age or 16 years if they have special needs), in programs that are held before or after school hours or during vacations. A child-care facility defined in MGL c. 28A, § 9.

CLUB OR LODGE, PRIVATE — Buildings, structures and premises used by a nonprofit social or civic organization or by a nonprofit organization, catering exclusively to members and their guests for social, civic, recreation, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

COMMERCIAL RECREATION, INDOORS — A structure for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Places of assembly shall include theaters, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

COMMERCIAL RECREATION, OUTDOORS — Driving range, bathing beach, sports club, horseback-riding stable, boathouse, marina or other commercial recreation carried on, in whole or in part, outdoors, except those activities more specifically designated in this chapter.

COMMUNICATION EQUIPMENT SHELTER — A structure located at a base station designed principally to enclose equipment used in connection with personal wireless service transmissions.

CONVENIENCE STORE — A retail store that sells groceries and may also sell gasoline; does not include automotive service stations or vehicle repair shops.

CREMATORY — A building containing a furnace designed and intended to be used for cremating the dead and owned and controlled by a cemetery corporation or crematory corporation duly organized under the laws of the state.

DBM — Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to one milliwatt.

DETACHED — Separate from.

DRIVEWAY — A private vehicular right-of-way providing access to a lot from a street or private way.

DRIVEWAY - COMMON/SHARED — A driveway that provides shared access to two or more neighboring lots.

DWELLING — A building designed and occupied as the living quarters of one or more families. Single- and two-family dwellings shall be designed for and occupied by not more than one or two families, respectively. A multifamily dwelling shall be one designed for and occupied by two or more families. Hotels, lodging houses, hospitals, membership clubs, or dormitories shall not be considered

dwelling.

EARTH REMOVAL — Extraction of sand, gravel, topsoil, or other earth for sale or for use at a site removed from the place of extraction, exclusive of the grading of a lot preparatory to the construction of a building for which a building permit has been issued or the grading of streets in accordance with an approved definitive plan, and exclusive of granite operations.

EDUCATIONAL USE — Use of land or structures for education purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a nonprofit education corporation. Educational facilities not exempted from regulation by MGL c. 40A, § 3.

EMF — Electromagnetic frequency radiation.

ERECT — To build, construct, reconstruct, move upon, or conduct any physical development of the premises required for a building; to excavate, fill, drain, and the like preparation for building shall also be considered to erect.

ESSENTIAL SERVICES — Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems, whether underground or overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

FACILITY SITE — The location within a Wireless Telecommunications Overlay District leased by one or more personal wireless service providers and upon which one or more personal wireless service facility(ies) and required landscaping are located.

FAMILY — A number of individuals related by blood, marriage and/or adoption or a group of unrelated individuals, not to exceed four, who are occupying a dwelling unit and living as a single nonprofit housekeeping unit. This definition, however, does not apply to nonrelated disabled persons as defined by any applicable federal and/or state law and/or regulations.

FAMILY DAY-CARE FACILITY — Any private residence which on a regular basis receives for temporary custody and care, during part or all of the day, children under seven years of age or children under 16 years of age if such children have special needs; provided, however, in either case, that the total number of children shall not exceed more than six, excluding participating children living in the residence.

FARMSTAND — A facility for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop raised on land of the owner or lessee, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of land containing more than five acres on which the facility is located, used primarily for agriculture in conformance with MGL c. 40A, § 3.

FCC — Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

FCC 96-326 — A report and order which sets new national standards for emissions of radio frequency emissions from FCC-regulated transmitters.

FENCE — An artificially constructed barrier of wood, decorative metal, chain link, vinyl or composite, or other things such as a natural barrier which the Building Inspector considers equivalent

thereto, erected to enclose or screen areas of land.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

FLOODWAY FRINGE — The land in the floodplain within a community subject to a one-percent-or-greater chance of flooding in a given year that is located outside of the floodway.

GARAGE, PRIVATE — A building or space used as an accessory to or a part of a main building permitted in any residential district, and providing for the storage of one or more motor vehicles and in which no business, occupation or service for profit is in any way conducted.

GARAGE, PUBLIC — A garage, other than a private or storage garage, which is used for the short-term parking of vehicles.

GARAGE, REPAIR — A building or portion thereof, other than a private or storage garage, designed or used for equipping, servicing, repairing, hiring, selling, and/or storing of motor vehicles. The term "repairing" shall not include an automobile body repair shop nor the rebuilding, dismantling, or storage of wrecked or junked vehicles.

GASOLINE SERVICE STATION — A gasoline service station shall include any business selling or offering for sale any motor fuel, such as gasoline or diesel fuel, to the public, whether or not the public is permitted or expected to operate the pump to put the fuel into a motor vehicle's fuel tank or a container, and shall include gasoline filling stations and gasoline self-service stations. For the purposes of this chapter, "gasoline service station" shall also include any site used or operated as a retail refueling site, including the fuels of gasoline, propane, electricity and hydrogen.

GHZ — Gigahertz: one billion hertz.

GRADE OF SERVICE — A measure of the percentage of calls which are able to connect to the base station during the busiest hour of the day. Grade of service is expressed as a number, such as p. 05, which means that 95% of callers will connect on their first try. A lower number (p. 04) indicates a better grade of service.

HALF STORY — The space between the ceiling of the top story of a building and the roof where the area and height are sufficient for sleeping and living quarters.

HAZARDOUS MATERIAL — Any substance which is listed in, but not limited to, the EPA priority pollutants as described in Section 307(a) of the Clean Water Act, as amended.

HEIGHT — The vertical distance from the average finished grade of the adjacent ground to the top of the structure of the highest roof beams of a flat roof, or the mean level of the highest gable or slope of a hip roof.

HERTZ — One hertz is the frequency of an electric or magnetic field which reverses polarity once each second or one cycle per second.

HOME OCCUPATION — An occupation, business, trade, service or profession which is incidental to and conducted in a dwelling unit or in a building or other accessory structure thereto, by a resident thereof.

HOSPITAL — An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution related facilities such as laboratories, outpatient facilities or training facilities, a sanitarium, and clinic. The term "hospital" does not include a rest home, nursing home and/or convalescent home.

HOUSEKEEPING UNIT — See definition of "family."

JUNK VEHICLE — A wrecked, damaged, destroyed, nonoperational, abandoned or disassembled trailer, house trailer, boat, tractor, automobile, aircraft, or other motor vehicle, or any parts thereof. A junk vehicle includes apparently inoperable, immobile, disassembled or extensively damaged vehicles. Evidence of nonoperation and damage includes, but is not limited to, a buildup of debris that obstructs use, a broken window or windshield, a missing wheel, a flat tire, a nonfunctional motor or transmission, missing bumpers, or missing plates and the like.

KENNEL, COMMERCIAL — An establishment licensed to operate a facility housing dogs, cats, or other household pets and where grooming, breeding, boarding, training or selling of animals is conducted as a business.

KENNEL, PRIVATE — Any building or land designated or arranged for the care of dogs, cats or other household pets belonging to the owner of the residential, principal use, kept for purposes of show, hunting, or as pets.

LODGING HOUSE — A building containing more than five lodging units for semipermanent residence (longer than one week) for compensation and which meals may also be supplied as part of the fee. This shall not include bed-and-breakfast home uses, congregate housing, motels, hotels, multifamily dwellings, or nursing homes.

LIGHT MANUFACTURING — Fabrication, assembly, processing, finishing work or packaging.

LOADING SPACE, OFF-STREET — Space located on the same lot with a principal building, or contiguous to a group of buildings, for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. It shall abut a street, alley, or other appropriate means of ingress or egress.

LOT — A continuous parcel of land with legally definable boundaries.

LOT, AREA — The horizontal area of the lot exclusive of any area in a street or recorded way open to public use.

LOT, CORNER — A lot located at the intersection of two or more streets.

LOT, DEPTH OF — The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot.

LOT, FRONTAGE OF — A lot line coinciding with the sideline of a street which provides legal rights of vehicular access and actual physical vehicular access to the lot. Frontage shall be measured continuously along a street and shall be the horizontal distance between the side lot lines measured at the point where the side lot lines intersect with the front setback line. Lots adjacent to paper streets may not use any portion of the paper street in calculating frontage or lot area.

LOT LINE — A line dividing one lot from another, or from a street or any public place.

LOT LINE, REAR — The lot line opposite the street line, except that, in the case of a corner lot, the rear lot line shall be the line opposite the street line on which the building is numbered or would be numbered.

MAJOR MODIFICATION OF AN EXISTING FACILITY — A major modification is defined as a modification that substantially changes the physical dimensions of a tower or station by including one of the following conditions:

- (1) An increase in the height of the tower by more than 10% or by the height of one additional antenna;
- (2) A protrusion from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater;
- (3) An installation of more than the standard number of new equipment cabinets but not to exceed four cabinets;
- (4) Any excavation or deployment outside the current site of the tower or wireless service facility;
- (5) The change would defeat the existing concealment elements of the tower or wireless service facility; or
- (6) The change does not comply with conditions associated with the prior approval of construction or modification of the tower or wireless service facility unless the noncompliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds identified.

MEDICAL CENTER OR CLINIC — A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

MHZ — Megahertz: one million hertz.

MILE — A mile (5,280 feet) is to be measured from a point on an imaginary line which is perpendicular to the vertical line at that point.

MONITORING — The measurement, by the use of instruments in the field, of the radiation from a site as a whole or from individual personal wireless service facilities, towers or antennas.

MONITORING PROTOCOL — The testing protocol, initially the Cobbs Protocol, which is to be used to monitor the emissions from existing and new personal wireless service facilities and towers upon adoption of this chapter. The SPGA may, as the technology changes, require, by written regulation, the use of other testing protocols. A copy of the monitoring protocol shall be on file with the Town Clerk.

MONOPOLE — A single self-supporting vertical pole with below-grade foundations.

MOUNT — The structure or surface upon which antennas are mounted, including the following four types of mounts:

- (1) Roof-mounted: mounted on the roof of a building.
- (2) Side-mounted: mounted on the side of a building.
- (3) Ground-mounted: mounted on the ground.
- (4) Structure-mounted: mounted on a structure other than a building.

MOTEL — A building or buildings intended and designed for transient overnight or extended occupancy, divided into separate units within the same building, with or without a public dining facility.

MOTOR VEHICLE COMMERCIAL — Any vehicle used or designed to be used for business or commercial purposes that infringes on the residential character of residential districts and includes, but is not necessarily limited to, a bus, cement truck, commercial tree-trimming equipment, construction equipment, dump truck, garbage truck, panel truck, semitractor, semitrailer, stake bed truck, step van, tank truck, tar truck, fire truck, or the like, or other commercial-type vehicle licensed by the state as a commercial vehicle or truck.

MOTOR VEHICLE GENERAL OR BODY REPAIR — An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicles and their bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage of vehicles for the cannibalization of parts or fuel sales.

MUNICIPAL FACILITIES — Facilities owned or operated by the Town of Agawam.

NONCONFORMING BUILDING OR STRUCTURE — A building or structure, existing at the effective date of this chapter, or any subsequent amendment thereto, which does not conform to one or more provisions of this chapter.

NONCONFORMING LOT — A lot lawfully existing at the effective date of this chapter, or any subsequent amendment thereto, which is not in accordance with all the provisions of this chapter.

NONCONFORMING USE — A use lawfully existing at the time of adoption of this chapter, or any subsequent amendment thereto, which does not conform to one or more provisions of this chapter.

NURSING, REST HOME OR CONVALESCENT HOME — An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

OFF-SITE MEDICAL MARIJUANA DISPENSARY (OMMD) — A registered marijuana dispensary that is located off site from the cultivation/processing facility (and controlled and operated by the same registered and approved not-for-profit entity which operates an affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and educational materials to registered qualifying patients or their personal caregivers in accordance with the provisions of 105 CMR 725.00.

OFF-STREET PARKING SPACE — A space of 200 square feet or more plus access and maneuvering space, whether inside or outside a structure, for exclusive use as a parking stall for one motor vehicle, and further being surfaced with durable pavement.

OPEN SPACE — The space on a lot unoccupied by buildings, structures, driveways, off-street parking or loading spaces or other impervious surfaces.

ORDINARY HIGH-WATER MARK — The highest point on the bank of a floodway or floodplain at which the water level has been for a sufficient period of time to leave a definite mark.

PERSONAL WIRELESS SERVICES — Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services. These services include cellular services, personal communications services (PCS), specialized mobile radio services and paging services.

PERSONAL WIRELESS SERVICE FACILITY — All equipment (excluding any repeaters) with which a personal wireless service provider broadcasts and receives the radio frequency waves which carry their services and all locations of said equipment or any part thereof. This facility may be sited on one or more towers or structures(s) owned and permitted by another owner or entity.

PERSONAL WIRELESS SERVICE PROVIDER — An entity licensed by the FCC to provide personal wireless services to individuals or institutions.

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 chapter. Any other use within the main structure or the use of any other structure or land on the same lot and incidental or supplementary to the principal use and permitted under this chapter shall be considered an accessory use.

RADIATION PROPAGATION STUDIES OR RADIAL PLOTS — Computer-generated estimates of the radiation emanating from antennas or repeaters sited on a specific tower or structure. The height above mean sea level, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide adequate coverage for the personal wireless service facility proposed for that site.

REAR YARD — The required unoccupied space or area within the rear lot line and the part of the principal building nearest such rear lot line.

REGISTERED MARIJUANA DISPENSARY (RMD) — A use operated by a not-for-profit entity registered and approved by the Massachusetts Department of Public Health in accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, also to be known as a "medical marijuana treatment center," that acquires, cultivates, possesses, processes (including development of related products such as food, 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. An RMD shall explicitly include facilities which cultivate and process medical marijuana and which may also dispense and deliver medical marijuana and related products. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.

RESTAURANT — A building, or portion thereof, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast-food establishments."

RESTAURANT, FAST-FOOD — An establishment engaged primarily in the business of preparing food and purveying it on a self-service or semi-self-service basis. Customer orders and/or service may be by means of a walk-up counter or window designed to accommodate automobile traffic. Consumption is either on or off the premises.

RESTAURANT, DRIVE-IN AND DRIVE-THROUGH — A restaurant which provides convenient vehicular access and may provide service to customers while in their vehicles.

SANITARIUM — A hospital used for treating chronic and usually long-term illness.

SEMIDETACHED DWELLING — A single-family residential unit that is joined on one side to another single-family residential unit having a party wall between the units.

SERVICES, PROFESSIONAL — Establishments primarily engaged in rendering services by professional persons on a fee or contract basis, including, but not limited to, the following: accounting, auditing, and bookkeeping; medical, dental or health; planning, engineering and architectural; education and science; attorneys and notary publics; etc.

SETBACK — The minimum required unoccupied space or area between the street line of which the

building is numbered or would be numbered and the part of the building nearest such street line, such unoccupied space or area extending the entire width or distance across the lot.

SIDE LOT LINE — The line dividing one lot from another.

SIDE YARD — The required unoccupied space and area within the lot between the side lot line and parts of the building nearest such side lot line. In the case of a corner lot, one of the side yards shall be the unoccupied space or area between the street line of the side street and the parts of the building nearest to such street line.

SIGN — Any device, surface or framework on which words, symbols or other designs are inscribed or displayed and designed to call attention thereto, including flags, banners and the like.

SIGN, ACCESSORY — Any sign that advertises or indicates the person occupying the premises on which the sign is erected or maintained or the business transacted thereon or the products sold thereon.

SIGN, AREA OF —

- (1) Area of the face. The area of the face of a sign shall be considered to include all lettering, working and accompanying designs and symbols, together with the background on which they are displayed and any cutouts or extensions.
- (2) The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window shall be considered to be that of the smallest quadrangle or triangle which encompasses all the letters and symbols.
- (3) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
- (4) In computing the area of the signs, both sides of V-shaped signs, but only one side of the back-to-back signs, shall be counted.

SIGN, BILLBOARD — Any nonaccessory sign greater in face area than 40 square feet.

SIGN, COLOR — The color concept of the sign shall be such that it does not violate the purpose of this chapter.

SIGN, INSTRUCTIONAL — Signs indicating "entrance," "exit" or the like, erected on premises for the direction of persons or vehicles.

SIGN, OUTDOOR ADVERTISING BOARD — The Outdoor Advertising Board of the Commonwealth or any board or official which may hereafter succeed to its powers or functions.

SIGN, OVERHANGING — A sign or other advertising device which hangs or extends over a sidewalk or a way in which the public has a right of access. Wall signs and standing signs shall not be included in this definition.

SIGN, REAL ESTATE — A sign advertising the sale, rental or lease of the premises on which it is maintained.

SIGN, STANDING — A sign standing or hanging free on its own support; such support may be attached to a building or fixed in or to the ground. Standing signs may have two faces or sides showing in opposite directions.

SIGN, STRUCTURE — The supports, uprights, bracing and framework of a sign. Any color applied to the "structure" shall meet the purposes of this chapter.

SIGN, TEMPORARY — Any sign, including its supporting structure, intended to be maintained for a period less than 180 days for agricultural purposes and 60 days for any other purposes.

SIGN, WALL — A sign fastened or affixed parallel to and within 12 inches of the wall of a building.

SIGN, WINDOW — A sign painted or placed on the inside or outside of a window.

SINGLE-FAMILY DWELLING — A structure designed exclusively for and occupied exclusively by one family.

SITE PLAN — A plan, to scale, showing uses and structures proposed for a parcel of land as required by the zoning regulations, including lot lines, streets, building sites, buildings, landscape features, traffic circulation, parking, drainage, utilities, signs, topography and lighting within the parcel.

SPECIAL PERMIT GRANTING AUTHORITY — The Board of Appeals of the Town of Agawam.

STORAGE CAPACITY OF A FLOODPLAIN — The volume of space above an area of floodplain that can be occupied by floodwater of a given stage at a given time, regardless of whether the water is moving.

STORY — The horizontal portion through a building between floor and ceiling. The word "story" shall not include the portion of the basement or cellar of a building above grade or an attic as defined in this section.

STREET — An accepted Town way, or a way established by or maintained under county, state, or federal authority, or a way established by a subdivision plan approved in accordance with the Subdivision Control Law,⁶⁴ actually constructed to specifications or for which adequate security exists to construct such a way.

STREET LINE — The dividing line between a street and a lot and, in the case of a public way, the street line established by the public authority laying out such way upon which the lot abuts.

STREET, PAPER — A street shown on a recorded plan but never built on the ground.

STREET RIGHT-OF-WAY — A general term denoting land, property or interest therein, usually a strip acquired for or devoted to a planned roadway. A street right-of-way should be sufficient to accommodate the ultimate roadway, including, but not limited to, the street pavement, shoulder, grass strip, sidewalk, public utility facilities, street trees, and snow storage.

STRUCTURE — A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin fence, sign, flagpole, recreational tramway, and mast for radio antenna or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof."

SUBSTANTIAL IMPROVEMENT IN THE FLOODPLAIN — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the assessed value of the structure either before the improvement is started or, if the structure has been damaged and is being restored, before the damage occurred. Substantial improvement is started when the first alteration of any structural part of the building commences.

TOWER — A monopole that is designed to support personal wireless service transmission, receiving and/or relaying antennas and/or equipment.

TRAILER — Any so-called automobile trailer, mobile home or trailer coach, including any portable structure, means of conveyance or vehicle so designed or constructed, altered or converted in any

64. Editor's Note: See MGL c. 41, § 81K et seq.

manner as to permit occupancy thereof for dwelling or sleeping purposes.

TRUCKING TERMINAL — Terminal facilities for handling freight, with or without maintenance facilities.

UNREGISTERED MOTOR VEHICLES — Any motor vehicle or trailer not registered in accordance with Massachusetts General Laws Chapter 90, or any motor vehicle which fails to carry or display its license plate as provided in § 6 of said Chapter 90; or any motor vehicle or trailer owned by a nonresident who has failed to comply with the registration laws of the nonresident state or country.

USE, SUBSTANTIALLY DIFFERENT — A use which by reason of its normal operation would cause readily observable differences in patronage, service, sight, noise, employment or similar characteristics from the use to which it is being compared.

WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT (WTOD) — Specific area(s), determined by engineering analysis to contain sites where adequate service may be provided to the Town of Agawam, which, at the same time, have the potential of reducing or mitigating negative impacts in accordance with the overlay district as defined in this chapter.

YARD — A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

YARD, FRONT — A yard extending the full width of the lot and situated between the street line and nearest point of the building.

YARD, REAR — The required unoccupied space or area within the rear lot line and the part of the principal building nearest such rear lot line.

YARD, SIDE — The required unoccupied space or area within the lot between the side lot line and parts of the building nearest such side lot line. In the case of a corner lot, one of the side yards shall be the unoccupied space or area between the street line of the side street and the parts of the building nearest to such street line.

§ 180-3. Districts enumerated; Building Zone Map.

- A. For the purpose of this chapter, the Town shall be divided into 13 classes of districts as follows: **[Amended 4-3-2006 by TR-2006-9; 8-12-2013 by TOR-2013-6; 6-2-2014 by TOR-2014-4]**

Residence A-1 Districts

Residence A-2 Districts

Residence A-3 Districts

Residence A-4 Districts

Residence A-5 Age-Restricted Housing District

Residence A-6 Low-Density Multifamily
Community District

Residence B Districts

Agriculture Districts

Business A Districts

Business B Districts

Mixed-Use Business C District

Industrial District A

Industrial District B

- B. The boundaries of each district area hereby established as shown on the building zone map entitled: "Town of Agawam, Building Zone Map" one inch equals 800 feet and dated effective 1960, revised September 7, 2006, which is hereby declared to be a part of this chapter. Such shall be hereinafter referred to as the "Building Zone Map."⁶⁵ [Amended 5-21-2007 by TOR-2007-4]

§ 180-4. Filing of plans.

Unless otherwise ordered by the Inspector of Buildings, all applications for building permits under the provisions of the Building Code⁶⁶ of the Town shall be accompanied by plans in duplicate. Such plans shall be drawn to scale, shall show the actual dimensions, radii and angles of the lot to be built upon, the exact size and location on the lot of the main building and accessory buildings to be erected and such other information as may be amended. One copy of the plans filed by the applicant shall be returned to him when approved by the Inspector of Buildings.

§ 180-5. Validity of existing building permits.

Any building permit issued prior to a notice of a hearing on the question of the enactment of this chapter shall be valid, provided that the construction work thereunder is commenced within six months after its issuance.

§ 180-6. Certificate of occupancy.

- A. Hereafter no land shall be occupied or used and no building or structure which is erected or altered or in which the type of use is changed shall be occupied or used, in whole or in part, for any purpose until a certificate of occupancy is issued by the Inspector of Buildings stating that the building, structure or use complies with the provisions of this chapter. No such certificate shall be issued unless the building or structure and its uses, as well as the uses of all the premises, are in conformity with the provisions of this chapter.
- B. A certificate of occupancy shall be required for any of the following:
- (1) Any occupancy and use of a building hereinafter erected or altered.
 - (2) Any change in use of an existing building or structure or premises to a different use.
 - (3) Any change in use of a nonconforming use.
- C. Upon completion or alteration of any building or structure and prior to the use of any such building, structure or premises, a certificate of occupancy shall be applied for on a form furnished by the Inspector of Buildings. Such application shall be acted upon within two days after the filing thereof.

§ 180-7. Nonconforming uses.

- A. A nonconforming use and/or building is the lawful use of a structure or land, or lawful construction of a building at the time of the enactment of this chapter or of a prior ordinance applicable thereto,

65. Editor's Note: The Building Zone Map is included as an attachment to this chapter..

66. Editor's Note: See Ch. 82, Building Construction.

but which does not conform to the requirements after the adoption of this chapter or to this chapter as amended in the district in which it is located. **[Amended 3-7-2016 by TOR-2015-9]**

- B. A building, structure, land or use which at the time of the enactment of this chapter is considered nonconforming: **[Amended 3-7-2016 by TOR-2015-9]**
- (1) May be continued in that use except as provided in Subsection D of this section.
 - (2) Alteration and/or enlargement of existing nonconforming one- and two-family residential structures:
 - (a) The Zoning Administrator has the authority to issue permits, in writing, for alterations or enlargements thereto, if such alteration or enlargement, of and by itself, does not create any new nonconformities.
 - (b) In all other circumstances a permit must be applied for and granted by the ZBA.
 - (3) May be changed to a more restricted use, provided that, when so changed, it shall not be returned to the less restricted use.
 - (4) May be rebuilt or restored and again used as previously, in case of a building destroyed or damaged by fire, explosion or other casualty, provided that not more than 75% of the building or structure exclusive of foundations has been so damaged or destroyed, except that the Board of Appeals may order a permit issued in any case of such loss. Rebuilding or restoration, when permitted, shall be commenced within six months after such catastrophe or disaster and continuously carried to completion.
- C. When a nonconforming use is discontinued as evidenced by lack of use or vacancy for a continuous period of 12 months or by the substitution of a more restricted use or of a conforming use, such nonconforming use shall not thereafter be reestablished, and all future uses shall be in conformity with the provisions of this chapter.
- D. This section shall apply to any change of use and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent.

§ 180-8. Supplementary regulations. [Amended 12-18-2006 by TOR-2006-10; 6-15-2009 by TOR-2008-6; 11-19-2018 by TOR 2018-14; 2-16-2020 by Ord. No. TOR-2020-9; 10-21-2024 by Ord. No. TOR-2024-8]

- A. Cornices. Cornices may extend not more than three feet over into any required front, side or rear yards.
- B. Fences or walls. Fence heights shall not exceed four feet on the setback portion of any lot perimeter and shall not exceed 6 1/2 feet in height on the remainder of the lot perimeter. On a lot which is adjacent to a higher zone classification, the fence heights shall conform to the higher classification. Notwithstanding the foregoing, fences may be erected by special permit to a height in excess of four feet, but not to exceed 6 1/2 feet, on the setback portion of any corner lot perimeter only. No fence, wall or natural barrier shall be constructed so as to create a safety hazard for vehicles or pedestrians entering or exiting driveways and streets. All fences and walls shall be properly maintained. Any fence or wall found to be in disrepair shall be promptly repaired or removed.

- C. Unsafe buildings. This chapter shall not be considered as preventing the strengthening or the restoration to a safe condition of any building or wall declared unsafe by the Inspector of Buildings.
- D. Minimum open spaces. No lot shall be reduced in size or area so that any required yard, court or open space will be smaller than is prescribed by this chapter for the district in which it is located.
- E. Location of automobile services. Public garages, automobile repair shops, greasing stations, storage battery service stations, gasoline filling stations or any of their appurtenances or accessory uses shall hereafter be erected or placed at least 25 feet from any residence or agricultural district. Driveways and parking areas shall not have entrances or exits for motor vehicles within 100 feet, measured along the street line, of property on which there is a school, library, church, playground or institution for the sick, blind or feeble or for children under 16 years of age.
- F. Vision clearance. On any corner lot vision clearance shall be provided in the following manner:
 - (1) On a corner lot in any Business A and Business B District the side line shall be a minimum of 10 feet from the side street and the parking of vehicles in this side area is prohibited.
 - (2) A triangular area free from obstruction shall be provided in which nothing shall be erected or maintained between a point 2 1/2 feet above the street grade and a point eight feet above the street grade and measuring at least 10 feet back from the point of intersection on each of such streets.
- G. Removal of topsoil, sand and gravel.
 - (1) Unless otherwise provided in this section, there shall be no removal from the premises in any district of any sod, loam, clay, sand, gravel or quarried stone except as surplus material resulting from the construction of a building on the premises or the installation of a structure on the premises for which a permit has been issued.
 - (2) The Board of Appeals may grant a permit in any district for the removal of sod or loam from any area, provided that no less than four inches of topsoil or loam remains, and provided further that the entire area disturbed is seeded with a suitable cover crop or is put to cultivation.
 - (3) The Board of Appeals, after public hearing, may permit the removal of sand, gravel or clay in any district under the following conditions:
 - (a) The applicant shall submit a plan showing existing grades in the area from which the above material is to be removed, together with finished grades at the conclusion of the operation.
 - (b) The plan shall provide for proper drainage of the area of the operation during and after completion, and no bank shall exceed a slope of one foot of vertical rise in 1 1/2 feet of horizontal distance except in ledge rock. No removal shall take place within 20 feet of a property line, except that, where the grade from a property line rises towards the lot where removal is to take place, material lying above the grade at the property line may be removed.
 - (c) At the conclusion of the operation or of any substantial portion thereof, the whole area where removal takes place shall be covered with not less than four inches of topsoil and seeded with a suitable cover crop, except where ledge rock is exposed.
 - (d) Before a permit is granted under this section, the applicant, if required by the Board of Appeals, shall post a bond with the Town Treasurer in an amount approved by the Board

of Appeals as sufficient to guarantee conformity with the provisions of the permit issued hereunder.

- H. Animal hospitals, kennels and runs. Kennel runs or accessory buildings and the raising of fur-bearing animals on land zoned as agricultural is allowed only after a hearing by the Board of Appeals. This land parcel must be five acres or more in area, with the following additional requirements:
 - (1) The setback shall be 500 feet from the street line.
 - (2) The side lot line shall be 200 feet.
 - (3) The rear yard setback shall be 200 feet.
- I. Measurement of setbacks. To make provision for future fifty-foot roads, in the case of lots fronting on streets less than 50 feet in width, the required front yard setback shall be measured from a point 25 feet from the existing center of the roadway.
- J. Swimming pools in residential districts. No swimming pool shall be constructed within any required front yard, nor within 10 feet from any side or rear lot line. Below-ground swimming pools having a depth of two feet shall be surrounded by a protective fence not less than four feet high. Any opening in such fence shall be protected by a gate equipped with a secure locking device.
- K. Keeping of horses and ponies. Notwithstanding the permitted uses contained in the individual zoning district and sections of this chapter, the keeping of horses and ponies shall be permitted only in Agricultural, Residence A-2, Industrial A and B and Business A and B Districts, subject to the following requirements and regulations:
 - (1) Acreage. Three-fourths acre (32,670 square feet) shall be required for one horse or pony; 1/2 acre (21,780 square feet) shall be required for each additional equine. Foals under six months shall not be counted.
 - (2) Fences must be adequate to contain the animal within the property boundary.
 - (3) Barn location and setback requirements shall be as specified in the present Building Code⁶⁷ for outbuildings.⁶⁸
- L. Farm worker housing. Housing for farm workers located on land used for farming or agricultural purposes shall constitute an accessory use to farming in accordance with the Agawam Zoning Code § 180-37, and such housing is a permitted use as of right in an Agricultural District Zone and/or on parcels of land not in an agricultural zone exceeding five acres which are used for agricultural purposes. This regulation shall be applicable to all requests for site plan, building permit and all other approvals relating to farm worker housing, whether the request(s) involve the use, expansion, reconstruction of existing structures, and/or new construction of buildings or structures.
- M. Common or shared driveways are prohibited.

§ 180-8.1. Keeping of hens. [Added 12-18-2023 by Ord. No. TOR-2023-10]

- A. Application. This section shall apply to the accessory use of keeping hens on parcels being utilized as

67. Editor's Note: See Ch. 82, Building Construction.

68. Editor's Note: TOR-97-10, adopted 10-20-1997, added provisions for a moratorium on commercial wireless communications facilities to immediately follow this subsection. Said provisions were subsequently repealed 3-2-1998 by TOR-97-13. For current provisions on wireless communications facilities, see Article XIV, Personal Wireless Service Facilities and Towers.

single-family residences in the Residence A-1 District, the Residence A-2 District and the Agricultural District. This section shall not apply to agricultural uses exempt under MGL c. 40A, § 3.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

COOP or HENHOUSE — A structure designed to house hens.

HEN — A female chicken.

PEN or RUN — A completely enclosed outdoor area designed to allow hens access to the outdoors while providing protection from predators.

ROOSTER — A male chicken.

C. Standards and conditions.

- (1) Keeping of hens for commercial use shall be prohibited.
- (2) Slaughtering of hens on the premises shall be prohibited.
- (3) Keeping of roosters shall be prohibited.
- (4) The maximum number of hens allowed on a single parcel shall be limited to:
 - (a) Six on a lot with less than 21,780 square feet;
 - (b) Twelve on a lot with at least 21,780 square feet but less than 43,560 square feet; and
 - (c) Eighteen on lot with at least 43,560 square feet.
- (5) Hens shall be contained within an enclosed structure ("coop") or fenced area at all times; free-range roaming shall be prohibited.
- (6) Coops shall have a minimum of three square feet per hen. Coops shall be connected to a fenced run, which shall provide a minimum of 10 square feet per hen.
- (7) All structures used for the keeping of hens shall:
 - (a) Be located in the rear yard of the parcel;
 - (b) Be set back a minimum of 15 feet from all lot lines;
 - (c) Be located at least 50 feet from any building or structure used for human habitation that is located on any abutting property, which shall include property that borders on and directly touches the property border of the applicant as well as property directly opposite the applicant on any public or private street or way; and
 - (d) Be located at least 200 feet from the high water mark of any known source of drinking water supply or any tributary thereof, or any surface water and at least 50 feet from any well. "Surface water" shall mean all waters other than groundwater, including, but not limited to, rivers, streams, lakes, ponds, springs, estuaries, wetlands, and vernal pools.
- (8) In addition to complying with all of the above requirements, any person proposing to keep hens shall at all times be in compliance with any Board of Health regulations pertaining to the keeping of hens.
- (9) Town officials, including but not limited to the Animal Control Officer, Health Agent,

Sanitarian Inspector, Inspector of Buildings, and/or the Local Inspector, shall be afforded access to the property for inspection.

D. Special permit requirements.

- (1) In order to keep hens under this section, the applicant must obtain a special permit from the Board of Appeals under § 180-11.
- (2) Required information for special permit application:
 - (a) If the applicant is not the property owner, the applicant shall provide a written statement from the property owner(s) authorizing the applicant to keep hens on the property. The statement shall include the maximum number of hens allowed by the property owner.
 - (b) A plan, drawn to scale, showing property boundaries and the layout of all structures and uses on the primary lot, as well as location of structures on abutting lots. The plan shall also indicate any surface water or drinking water supply or tributary thereof within 200 feet of the proposed coop or henhouse, and any well within 50 feet of the proposed coop or henhouse.
 - (c) Maximum number of hens proposed to be kept.
 - (d) Other appropriate information and materials necessary to demonstrate that the proposed keeping of hens will not be a nuisance due to noise, odor, damage, or threat to public health.

E. Required findings for issuance of a special permit. In addition to the standards for review contained in § 180-11, the Board of Appeals shall make the following required findings:

- (1) The proposed coop or henhouse is in compliance with all required setbacks from lot lines, dwellings, and water features;
- (2) The proposed coop or henhouse will provide adequate space for the requested number of hens;
- (3) The proposed number of hens will not exceed the maximum allowed per parcel;
- (4) The proposed keeping of hens will be for personal use by the applicant only, and not for the sale of eggs, fertilizer, breeding, or other commercial use;
- (5) The proposed keeping of hens will not constitute a nuisance by reason of noise, odor, damage, or threat to public health, including the disposal of hen waste; and
- (6) The applicant has a demonstrated plan for disposal of hen waste that will not constitute a nuisance and does not include disposal into municipal trash and/or recycling containers.

§ 180-9. Repetitive petitions before Board of Appeals.

No appeal or petition under MGL c. 40A, § 15(3), as amended, for a variance from the terms of this chapter with respect to a particular plot of land and no application under MGL c. 40A, § 20 for a special exception to the terms of this chapter which has been unfavorably acted upon by the Board of Appeals shall be considered on its merits by such Board within two years after the date of such unfavorable action except with the consent of all the members of the Planning Board.

§ 180-10. Repetitive petitions before Town Council.

No proposed ordinance or amendment making a change in this chapter which has been unfavorably acted upon by the Town Council shall be considered on its merits by the Town Council within two years after the date of such unfavorable action unless adoption of such proposed ordinance or amendment is recommended in the final report of the Planning Board as required by MGL c. 40A, § 6, as amended.

§ 180-11. Special permits. [Amended 12-5-1988 by TOR-88-19; 1-19-1993 by TOR-92-17; 11-19-2018 by TOR 2018-15]

- A. Authority and rules. The Board of Appeals by virtue of the authority vested in it by statute may, after public notice and hearing, in appropriate cases and subject to appropriate conditions and safeguards grant a special permit in harmony with the general purpose and intent of this chapter. The special permit granting authority may adopt and from time to time amend rules and regulations relative to the issuance of such permits and shall file a copy of said rules and regulations in the office of the Town Clerk.
- B. Hearing, notice and decision.
- (1) The special permit granting authority shall hold a public hearing within 65 days after the filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.
 - (2) The special permit granting authority shall require notice be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the hearing, and by posting such notice in a conspicuous place in the Town Hall. Notice shall be sent by mail, postage prepaid, to the petitioner, abutters and owners of land within 300 feet of the property line as they appear on the most recent applicable tax list, including those in another city or Town and the Planning Boards of all abutting cities and towns. Such notice shall be prepared, published, posted and mailed by the Board of Appeals.
 - (3) The special permit granting authority shall act within 90 days following the public hearing. Failure to take final action upon an application for a special permit within said 90 days shall be deemed a grant of the permit applied for.
 - (4) Upon granting of a special permit, a copy shall be issued to the owner and the applicant, if other than the owner of the property, certified by the special permit granting authority. No special permit shall take effect until a copy of the decision certified by the Town Clerk that 20 days have elapsed and no appeal has been filed, or if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds wherein the land is located.
- C. Duration. A special permit granted by the special permit granting authority shall lapse if a substantial use thereof has not commenced within three years, or in the case of construction, if construction has not begun within said three years. Exception may be made for good cause by the special permit granting authority.
- D. Special consideration. Special permits shall be issued by the special permit granting authority for uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production where the special permit granting authority finds that the proposed accessory use does not substantially derogate from the public good.

- E. Planning Board report. The Planning Board shall transmit a report to the special permit granting authority on each special permit application. The Planning Board shall be notified at least 35 days prior to the public hearing on such a special permit. However, the special permit granting authority may act in the absence of a report from the Planning Board after this thirty-five-day period.
- F. Zoning Officer report. The Zoning Officer shall transmit a report to the special permit granting authority on each special permit application. The Zoning Officer shall be notified at least 35 days prior to the public hearing on such a special permit. However, the special permit granting authority may act in the absence of a report from the Zoning Officer after this thirty-five-day period.
- G. Standards for review. The Board of Appeals shall not approve any such application for a special permit unless it finds in its judgment all of the following conditions are met:
 - (1) Social, economic, or community needs which are served by the proposal;
 - (2) Traffic flow and safety, including parking and loading;
 - (3) Adequacy of utilities and other public services;
 - (4) Neighborhood character and social structures;
 - (5) Impacts on the natural environment;
 - (6) Potential fiscal impact, including impact on Town services, tax base, and employment.
- H. Conditions attached to special permit approvals. In approving a special permit, the special permit granting authority may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as, but not limited to, the following:
 - (1) Requirement of front, side or rear yards greater than the minimum required by this chapter.
 - (2) Requirement of screening of parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, planting or other devices.
 - (3) Modification of the exterior features or appearance of the structure.
 - (4) Limitation of the size, number of occupants, method or time of operation or extent of facilities.
 - (5) Regulation of number, design and location of access drives or other traffic features.
- I. Effect of denial. If the special permit granting authority after said hearing denies the use applied for, no further application for the same use will be entertained by the Board of Appeals for a period of two years from the date of said denial.

§ 180-12. Special permit for animal hospital.

A special permit may be granted for an animal hospital, but only in Business A and Business B Districts and with the additional requirements that animal hospitals shall be separate buildings in themselves and that no animals shall be kept out of the building in cages, runs, kennels or yards. A special permit may be granted subject to any other conditions and safeguards as are prescribed by the Board of Appeals.

§ 180-13. Site plans. [Added 5-7-1990 by TOR-90-26]

- A. Site plans prepared and approved in accordance with this section shall be required to assist the

Inspector of Buildings in the review of certain applications for building permits and to assure compliance with all applicable requirements of this chapter.

B. A site plan shall be required and shall be submitted in each of the following situations:

- (1) Any proposed residential, business, industrial, institutional or other use of a new or renovated structure or of a parcel of land, or any change in any such use, structure or parcel, except for one-family detached dwellings and duplexes on separate lots; provided, however, that, upon application, the Inspector of Buildings may waive the site plan review and approval requirement for proposals involving a) a change in use only, b) construction or alteration of nonresidential structures not to exceed 2,000 square feet of additional gross floor area, or c) construction or alteration of structures that are accessory to a nonresidential structure. For the purposes of computing gross floor area, the Inspector of Buildings must aggregate all alterations or construction completed within the immediately preceding five years. **[Amended 9-5-2018 by TOR 2018-11]**
- (2) Any nonresidential use of a one-family dwelling.
- (3) Any use requiring a special permit from the Board of Appeals. For this section, residences which are to be used solely for residential purposes are exempt. **[Amended 1-21-2003 by TOR-2002-8]**
- (4) Any major change in any condition or feature which is not in conformance with any feature of a previously approved site plan. Changes to parking and/or curb cuts will always necessitate site plan review.

C. Procedure.

- (1) An applicant for site plan review under this section shall file an electronic copy of an application and a site plan, plus four hard copies of the site plan, and an electronic copy of the stormwater management plan, plus one hard copy of the stormwater plan and an electronic copy of the pre-and post-development stormwater calculations when applicable with the Building Department . The site plan shall be prepared by an engineer, architect or landscape architect unless otherwise specified by the Planning Board. **[Amended 10-7-2019 by Ord. No. TOR-2019-9]**
- (2) The Inspector of Buildings shall, within five days of receipt, transmit to the Planning Board four copies of the application and site plan and an electronic copy of the stormwater management plan. **[Amended 12-6-2021 by Ord. No. TOR-2021-4]**
- (3) All site plans shall be prepared to scale on standard sheets of 24 inches by 36 inches to show with reasonable accuracy the following information, in addition to that required in § 180-4:
 - (a) A title block, containing the street address, applicant's name and address, date, scale and the name of the preparer of the plan.
 - (b) A site layout at a scale of no smaller than one inch equals 50 feet.
 - (c) Topography of the site and adjacent lands.
 - (d) Provision for the handling of vehicular traffic flow. All curb cuts must be clearly defined with widths and radii noted on the plan. Radii shall meet Town standards. Parking lot and site traffic flow must be clearly noted with signs or other methods if it is to be maintained as one-way.

- (e) Parking areas and loading areas.
 - (f) Drainage. The plan must be submitted to the Department of Public Works for input prior to Planning Board review.
 - (g) All public utilities (sewer, water, gas, electric).
 - (h) Landscaping. All landscaped areas are to be designated on the plan. These areas are to specify species type and size.
 - (i) Sign location only.
 - (j) Exterior lighting.
 - (k) Rendering or elevations, including all mechanical facility support items originating from or terminating on the building exterior, or both.
 - (l) The location and characteristics of any proposed screening, fencing or other buffers.
 - (m) The location of any wetlands, streams, drainage swales and areas subject to flooding.
 - (n) Storm drain permit requirements pursuant to Chapter 175, §§ 175-22 to 175-30, inclusive, of the Code of the Town of Agawam, when applicable. **[Added 10-7-2019 by Ord. No. TOR-2019-9]**
 - (o) Stormwater management plan requirements pursuant to Chapter 175, § 175-35 of the Code of the Town of Agawam, when applicable. **[Added 10-7-2019 by Ord. No. TOR-2019-9]**
- (4) Within 21 days of receipt, the Planning Board shall hold a public meeting. The Planning Board shall within 35 days of receipt approve the site plan, approve it with modifications or return it for changes or additional information. When changes have been made or additional information provided, the above-specified time limits will apply. The Planning Board can in certain cases extend the review period if done so in writing and for good reason; however, the review period shall not exceed 90 days. A report containing the findings of the Board shall be submitted to the Inspector of Buildings for consideration in issuing a building permit.
- (5) Any application for a building permit requiring site plan approval shall not be deemed complete until such site plan is submitted.
- (6) Any decision pursuant to a site plan review shall be subject to the right of appeal to the Board of Appeals.

§ 180-14. Changes in Building Zone Map.

No zone as indicated on the Building Zone Map which is a part of this chapter shall be changed until after the Planning Board has held a public hearing thereon after due notice given and has submitted a final report with the recommendations to the Town.

§ 180-15. Enforcement.

The Inspector of Buildings shall enforce the provision of this chapter or any amendment thereof. He shall refuse to grant a permit for the construction, addition, alteration or change of use of any building, structure or premises if such proposed construction, addition, alteration or change of use would be in violation of any of the provisions of this chapter, as amended. State and Town officers shall refuse any permit or license

for a new use of a building, structure or land which would be in violation of this chapter or amendment thereof.

§ 180-16. Violations and penalties. [Amended 5-25-1989 by TOR-89-2]

Any person, partnership, trust, association or corporation violating any provision of this chapter, any condition under which any permit is issued or any decision rendered by the Board of Appeals shall be fined not more than \$100 nor less than \$25 for each offense. Each day that such violation exists shall constitute a separate offense under this section.

§ 180-16.1. Noncriminal proceedings for violations. [Added 11-21-2005 by TOR-2005-2]

- A. Any violation of this Chapter 180 may, in the discretion of the Board of Appeals, be enforced by the Zoning Enforcement Officer, or the Inspector of Buildings, or their designee, by the noncriminal complaint method for which provision is made, and/or as set forth in MGL c. 40, § 21D, as amended from time to time, that is, non-criminal disposition. Fines issued pursuant to § 180-16.1 shall be as follows:
 - (1) First offense: \$25.
 - (2) Second offense: \$50.
 - (3) Third offense and each subsequent offense: \$100.
- B. Each day on which a violation exists shall constitute and be deemed a separate offense.

ARTICLE II
Residence A-1 Districts

§ 180-17. Permitted uses. [Amended 12-18-2023 by Ord. No. TOR-2023-10]

In a Residence A-1 District as indicated by the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. A one-family dwelling for one housekeeping unit only.
- B. The office of a physician, surgeon, dentist or lawyer residing on the premises. No display, sign or other advertising device shall be permitted except an interior illuminated, reflective or nonilluminated professional nameplate having an area of not more than 144 square inches.
- C. Town buildings, county, state and federal buildings, playgrounds and parks and such accessory buildings as may be ordered by the Board of Public Officers or Town officials having charge of the land upon which such accessory buildings are or will be erected.
- D. Real estate signs having an area of not more than six square feet advertising the sale, rental or lease of the premises on which they are maintained.
- E. Cemeteries adjacent to or in extension of existing cemeteries and crematories, provided that such crematories are situated within cemeteries.
- F. Accessory uses customarily incident to any use or building permitted by this section, provided that such use of buildings shall not be offensive or dangerous to life by reason of health or fire, and provided further that such accessory use shall not include any activity conducted for gain. No advertising device, whether illuminated or otherwise, shall be permitted in connection with such accessory uses or building.
- G. The keeping and raising of poultry, livestock and pigeons, whether raised for the table or other purposes, or other like objectionable uses are prohibited. The keeping and raising of hens may be allowed by special permit under § 180-8.1.
- H. Private garages, provided that no business, service or industry is conducted therefrom or therein. Not more than one motor vehicle for each 5,000 square feet of lot area or fraction thereof up to a limit of five vehicles per lot shall be permitted. Space for motor vehicles shall not be used, leased or rented for commercial vehicles. No commercial vehicles shall be parked on a lot in the open. These space regulations shall apply to vehicles regularly left on the lot, whether housed or in the open. The presence of more than one unregistered vehicle is prohibited.⁶⁹

§ 180-18. Height regulations.

A residence building shall not exceed 2 1/2 stories or more than 35 feet in height. Town buildings shall not exceed 50 feet in height. The height provisions shall not apply to chimneys or flag or radio poles. An accessory building shall not exceed 1 1/2 stories or 25 feet in height.

§ 180-19. Setback requirements.

- A. No part of any building shall be placed within 35 feet of any street line, and on a corner lot, except as

⁶⁹. Editor's Note: See Ch. 172, Vehicles, Unregistered.

otherwise provided in this section, no part of any building shall be created or altered so as to be less than 35 feet from any street line.

- B. No part of any garage or other accessory building situated within 65 feet of any street line shall extend within 15 feet of any lot line intersecting such street which serves as a side lot line located in any residence district or within 15 feet of any street line. An accessory building shall be placed at least five feet from any side lot line.
- C. On a corner lot, no part of any building shall be erected or altered so as to be less than 30 feet from any street line.
- D. When a dwelling or its attached garage is to be erected on a lot in a Residence A-1 District adjoining a business or industrial district, the setback from the street line on which it faces need not exceed 30 feet.
- E. Existing open porches which are 30 feet or more from the street line may be enclosed. **[Amended 11-19-2018 by TOR 2018-14]**

§ 180-20. Yards.

- A. Side yards. There shall be a side yard between a principal building and each side lot line which shall be 15 feet wide in its least dimension. Detached garages or accessory buildings shall be placed at least five feet from a side lot line if located more than 65 feet from a street line.
- B. Rear yards.
 - (1) There shall be a rear yard on every lot between the principal building and the rear lot line. It shall be not less than 25 feet deep in its least dimension.
 - (2) A one-story accessory building shall be placed at least five feet from the rear lot line. A one-and-one-half-story accessory building shall be placed at least 10 feet from the rear lot line.

§ 180-21. Lot size.

No lot shall have a frontage of less than 125 feet on a street or an area of less than 17,000 square feet.

§ 180-22. Lot coverage.

No principal building shall be erected or altered so as to cover more than 30% of the area of the lot on which it is located.

ARTICLE III
Residence A-2 Districts

§ 180-23. Permitted uses. [Amended 11-19-2018 by TOR 2018-16; 12-18-2023 by Ord. No. TOR-2023-10]

In any Residence A-2 District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. Any use permitted in a Residence A-1 District.
- B. A one-family detached dwelling for one housekeeping unit only; provided, however, that the Board of Appeals, upon an appeal from an order or decision made by the Inspector of Buildings and if it deems such action wise and if it shall appear to the Board that such action will tend to preserve the standard and character of the neighborhood, may authorize a variation in the use of a one-family dwelling existing at the time of the adoption of this Article so that such dwelling may be altered and improved and facilities added for a second housekeeping unit. In all such cases the petitioner, as a condition precedent to the privilege herein granted, shall present adequate plans setting forth the changes and improvements to be made and shall have secured the written consent and approval of at least three of the following property owners:
 - (1) The owner of the lot on either side of the petitioner's property.
 - (2) The owner of the lot adjacent in the rear of the petitioner's property.
 - (3) The owner of the lot directly across the street therefrom. Where the petitioner is the owner of a lot on either side, in the rear or across from the property for which a variation is requested, such lot shall be omitted, in which case written consent and approval shall be secured from the owner of the property next to that owned by the petitioner. In case there are two or more lots adjacent in the rear or sides of the petitioner's property, the owner of the lot which abuts the greater length on the petitioner's property shall be deemed the owner of the lot adjacent to the petitioner's property, as used in this section.

In the case of an appeal for a variation involving a dwelling situation on a corner lot or so located that the obtaining of the exact numerical assents of the owner above enumerated is unreasonable or impossible, the Board of Appeals may grant the variation, provided that the consents of the property owners are obtained substantially in accordance with the principals herein set forth as may be determined by the Board of Appeals. The power to authorize such variation of the use of existing dwellings shall be within the sound discretion of the Board of Appeals, and no variation in use shall be granted unless it shall be clear that the relief requested will not be detrimental to the best interests of the vicinity and will be in harmony with the general purpose and intent of this chapter. Each case shall be considered on its own merits, and no case shall raise a presumption in favor of any other case. No decision of the Board of Appeals shall be considered as changing or affecting the zoning of any Residence A-2 District.

- C. The office or studio of a dentist, artist, architect, professional engineer or teacher of scholastic subjects residing on the premises or a beauty parlor wherein one of the residents is the sole operator. The space occupied by such office, studio or parlor shall not exceed 20% of the total floor area of the dwelling, exclusive of the basement. No display, sign or other advertising device shall be permitted except an interior illuminated, reflective or nonilluminated professional nameplate having an area of not more than 144 square inches. The studios or offices of dancing or music teachers, photographers, masseurs, veterinarians, riding schools and other similar businesslike pursuits are prohibited.
- D. The renting of rooms and the furnishing of table board to not more than four resident persons in a dwelling occupied as a private residence. No display, sign or other advertising device, illuminated or otherwise, shall be visible from the street except a nonilluminated announcement sign having an area of not more than 144 square inches.
- E. Schools for academic purposes only and community center buildings, except dancing or bowling and like activities, provided that there is no display or advertising visible from the street, other than as permitted in Subsection C of this section.
- F. Colleges, public libraries or museums, churches or other places of worship, parish houses and Sunday school buildings.
- G. Private kindergartens and day nurseries conducted in otherwise permitted buildings in this district, provided that not more than 25% of the floor area of the building, exclusive of the basement, is used primarily for this purpose.
- H. Bus passenger stations or shelters, not including repair service or garaging.

- I. Telephone exchange buildings.
- J. Accessory buildings and uses customarily incident to any use permitted in this section, provided that such use shall not be offensive or dangerous to life by reason of health or fire, and provided further that such accessory use shall not include any activity conducted for gain. No advertising device, whether illuminated or otherwise, shall be permitted, except that an interior illuminated, reflective or nonilluminated announcement sign having an area of not more than 144 square inches may be displayed.
- K. The keeping and raising of poultry, livestock and pigeons, whether raised for the table or other purposes, or other like objectionable uses are prohibited. The keeping and raising of hens may be allowed by special permit under § 180-8.1.
- L. Private garages, provided that no business, service or industry is conducted therefrom or therein. Not more than one motor vehicle for each 5,000 square feet of lot area or fraction thereof, nor more than five motor vehicles, not more than one of which may be unregistered, shall in any case be kept on the premises. Only one such vehicle may be a commercial vehicle and of not more than 3/4 ton's weight of capacity. Space for motor vehicles shall not be leased or rented for commercial vehicles. No commercial vehicles shall be parked on a lot in the open. These space regulations shall apply to vehicles regularly left on the lot, whether housed or in the open.
- M. Not more than one house trailer may be kept on the premises. The trailer shall not be used for living quarters while so located except when the residence has been damaged or destroyed to the point of being deemed uninhabitable by Town officials and for no longer than 12 months. Space shall not be leased or rented for trailers.
- N. Uses outlined in § 180-37B and C, when the line separating a Residence A-2 District from an Agricultural District runs through a property not being used for agricultural purposes so that the future use of the whole property for agricultural purposes would be prohibited.

§ 180-24. Height regulations.

- A. A residence building shall not exceed 2 1/2 stories or more than 35 feet in height. Other buildings such as schools, telephone exchanges and community center buildings and other uses permitted in § 180-23E shall not exceed 50 feet in height. Chimneys, steeples and flag or radio poles are exempt from the height provision of this section.
- B. Accessory buildings or structures, including private garages, shall not exceed 17 feet in height for a one-story building. A one-and-one-half-story accessory building shall not exceed 25 feet in height.

§ 180-25. Setback requirements.

- A. No part of any building shall be placed within 30 feet of any street line.
- B. No part of any garage or other accessory building situated within 65 feet of any street line shall extend within 15 feet of any lot line intersecting such street which serves as a side lot line located in any residence district or within 15 feet of any street line.
- C. On a corner lot, no part of any building shall be erected or altered so as to be less than 25 feet from any street line.
- D. Open porches which are 20 feet or more from the street line may be enclosed on one or more sides with glass enclosures.

§ 180-26. Yards.**A. Side yards.**

- (1) There shall be a side yard between a principal building and any side lot line which shall be 15 feet wide in its least dimension.
- (2) Detached garages or accessory buildings shall be placed at least five feet from the side lot line if located more than 65 feet from a street line.

B. Rear yards.

- (1) There shall be a rear yard on every lot between the principal building and the rear lot line. It shall be 20 feet deep in its least dimension.
- (2) One-story accessory buildings shall be placed at least five feet from the rear lot line, and one-and-one-half-story accessory buildings shall be placed at least 10 feet from the rear lot line.

§ 180-27. Lot size.

No lot shall have a frontage of less than 110 feet nor an area of less than 15,000 square feet.

§ 180-28. Lot coverage.

No principal building shall be erected or altered so as to cover more than 40% of the area of the lot on which it is located.

ARTICLE IV
Residence A-3 Districts

§ 180-29. Use restrictions. [Amended 9-5-2023 by Ord. No. TOR-2023-5]

In a Residence A-3 District as indicated by the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except for apartment houses or garden-type apartments and accessory uses incident thereto and subject to the following restrictions:

- A. Subdivision control will not apply except insofar as it applies to road construction, surface drainage and utilities.
- B. The project shall be located on a lot containing not less than two acres and contain not more than eight family dwelling units per acre of lot area. The building coverage shall not exceed 40% of the lot area. The minimum lot frontage on a street shall be 150 feet.
- C. No building shall be located nearer than 40 feet to a street line or other property line.
- D. There shall be a landscaped strip of not less than 15 feet in width appropriately planted with lawn, trees and shrubs adjacent and parallel to all property lines of the site.
- E. There shall be a landscaped foundation strip of not less than 10 feet in width between each building and any roadway, drive or street. Such strip shall contain a six-foot-wide grassed and planted area and four-foot-wide sidewalk adjacent to any roadway, drive or street within the project.
- F. No building shall be more than two stories in height, exclusive of the basement. The basement shall not contain any bedrooms or kitchens.
- G. The minimum distance between any two buildings on the same lot shall in no case be less than 40 feet.
- H. Floor area.
 - (1) No building shall contain more than eight family dwelling units, and no dwelling unit shall contain less than the following minimum floor areas:
 - (a) One-bedroom units: 400 square feet.
 - (b) Two-bedroom units: 600 square feet.
 - (c) Each additional room: 120 square feet.
 - (2) In computing floor area, only the space within the dwelling unit used exclusively for living purposes shall be considered. Halls, closets, stairways, bathrooms and lavatories are expressly excluded from this computation.
- I. All stairways are to be contained within the building structure proper.
- J. Each dwelling unit shall have access to not fewer than two egresses remote from each other and so arranged that to reach one egress it will not be necessary to pass through a common corridor or hallway which serves the other egress. The term "egress" is as defined in § 101.0 of the Department of Public Safety, Board of Standards, Building Code.
- K. Parking space shall be provided at the rate of two spaces for each family dwelling unit. Each space shall contain a minimum of 200 square feet and shall be located at least 25 feet from any principal

building, except that if garage parking is to be located within the building, it must comply with the rules and regulations governing construction of garages contained in Form FPR-4 of the Massachusetts Department of Public Safety, Board of Fire Prevention Regulations.

- L. There shall be no provision for parking on roadways, drives or streets.
- M. The balance of the lot not used for buildings, roadways, streets or parking areas shall be suitably planted and landscaped and maintained.
- N. Space contained in apartment units or garden-type apartment units shall not be used, rented or leased for any commercial or business uses.
- O. The plans for any such apartment or garden-type apartment shall be submitted to the Planning Board for its approval as to site layout, provisions for handling vehicular traffic flow, parking area and landscaping before a building permit is issued.

ARTICLE V
Residence A-4 Districts

§ 180-30. Use restrictions.

In a Residence A-4 District as indicated by the Building Zone Map, no building or other structure shall be erected, altered or used, and no land shall be used or occupied for any purpose except for an elderly housing development, constructed by and under the jurisdiction of the Agawam Housing Authority, and the accessory uses incident thereto, including an administration and recreational building, and subject to the following restrictions:

- A. The development shall be located on a lot containing not less than seven acres and containing not more than 16 family dwelling units per acre of lot area. Not more than 12 dwelling units may be constructed in each building.
- B. Subdivision control will not apply except insofar as it applies to road construction, surface drainage and utilities.
- C. No building shall be located nearer than 40 feet to the property line. There shall be a landscaped strip of not less than 15 feet in width appropriately planted with lawn, trees and shrubs adjacent and parallel to all property lines of the site.
- D. No building shall be more than two stories in height, exclusive of the basement. The basement shall not contain any living quarters.
- E. All stairways are to be contained within the building structure proper.
- F. Each dwelling unit shall have access to not fewer than two egresses remote from each other and so arranged that to reach one egress it will not be necessary to pass through a common corridor or hallway which serves other egresses. The term "egress" is as defined in § 101.0 of the Department of Public Safety, Board of Standards, Building Code.
- G. Parking space shall be provided at the rate of one space for each family dwelling unit. Each space shall contain a minimum of 200 square feet. If garage parking is to be located within the building, it must comply with the rules and regulations concerning construction of garages contained in Form FPR-4 of the Massachusetts Department of Public Safety, Board of Fire Prevention Regulations.
- H. The balance of the lot not used for buildings, roadways, drives, streets or parking area shall be suitably planted and landscaped and maintained.
- I. The plans for any such development shall be submitted to the Planning Board for its approval as to site layout, provisions for handling vehicular traffic flow, parking area and landscaping before a building permit is issued.

ARTICLE VI
Residence B Districts

§ 180-31. Permitted uses.

In any Residence B District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any other purpose except one or more of the following:

- A. Any use permitted in a Residence A-1 or A-2 District.
- B. A two-family dwelling for two housekeeping units. A semidetached dwelling for two families, provided that there shall not be more than one family in each half of such dwelling.
- C. Notwithstanding any other provision in the above paragraph, no building or other structure shall be erected, altered or used for residential purposes which shall accommodate or house more than four families. All four-family buildings or structures used for residential purposes shall be erected on a parcel of land containing not less than one acre in area and having not less than 150 feet of frontage on a street.
- D. Lodging houses, provided that there is no display, sign or other advertising device visible from the street, whether illuminated or otherwise, other than a sign having an area of not more than 144 square inches. A public restaurant or dining room shall be permitted as an accessory use in any part of such building, provided that the dining room and kitchen facilities do not occupy more than 75% of the first-floor area of such building.
- E. Clubs, lodges and social center buildings, except those whose chief activity is a gainful service or activity usually conducted as a business, including in such excepted uses dancing or bowling and like activities, provided that there is no display or advertising visible from the street other than that permitted in Subsection D of this section.
- F. Hospitals, sanitariums or charitable institutions, except those for contagious diseases, for the care of epileptics or drug or liquor patients, for correctional purposes or for the care of the insane or feeble-minded.
- G. Private garages, provided that no business, service or industry is conducted therefrom or therein. Not more than one motor vehicle shall be kept for each 2,500 square feet of lot area, except that three vehicles may be kept, in any case, not more than one of which may be unregistered. Only one such vehicle may be a commercial vehicle of not more than 1 1/2 tons' weight of capacity. Space shall not be leased or rented for a commercial vehicle. No commercial vehicle shall be parked on a lot in the open. These space regulations shall apply to vehicles regularly left on the lot, whether housed or in the open.
- H. Not more than one house trailer for each resident family may be kept on the premises. The trailer shall not be used for living quarters while so located. Space shall not be rented or leased for trailers.

§ 180-32. Height regulations.

- A. A dwelling or lodging house shall not exceed 2 1/2 stories or 35 feet. Churches, schools, colleges, libraries, Town buildings, clubs, lodges, social center buildings, hospitals and such institutional buildings shall not exceed 50 feet in height. Chimneys, steeples and flag or radio poles are exempt from the height provisions.

- B. Accessory buildings or structures, including private garages, shall not exceed 17 feet in height for a one- or one-and-one-half-story building. A two-story accessory building shall not exceed 25 feet in height.

§ 180-33. Setback requirements.

- A. No part of any building or other structure shall be erected or altered so as to be nearer to the street line of any street on which it faces than the nearest building on either side thereof facing on the same street and within the same block and zoning district, but in no case need the required setback be greater than 30 feet.
- B. Where the alignment of a building is not controlled by the preceding subsection, no part of any building shall be placed within 20 feet of the street line.
- C. No part of any garage, stable or other accessory building situated within 65 feet of any street line shall extend within 15 feet of any lot line intersecting such street which serves as a side lot line located in any residence district or within 15 feet of any street line.
- D. On a corner lot, except as otherwise provided in this section, no part of any building shall be erected or altered so as to be less than 20 feet from any street line.
- E. Existing open porches which are 15 feet or more from the street line may be enclosed. **[Amended 11-19-2018 by TOR 2018-14]**

§ 180-34. Yards.

- A. Side yards. There shall be a side yard between a building and each side lot line. For a building of four stories or over 45 feet in height, it shall be not less than 25 feet in width in its least dimension; for a building of three stories or over 35 feet in height, it shall be not less than 20 feet wide in its least dimension; for one-, one-and-one-half-, two- or two-and-one-half-story buildings, the side yard shall be not less than 15 feet wide in its least dimension.
- B. Rear yards. There shall be a rear yard on every lot between the principal building and the rear lot line. It shall be 20 feet deep in its least dimension. One-story accessory buildings shall be placed at least five feet from the rear lot line, and one-and-one-half- or two-story accessory buildings shall be placed not less than 10 feet from the rear lot line.

§ 180-35. Lot size.

No lot shall have a frontage of less than 100 feet on a street or an area less than 12,000 square feet.

§ 180-36. Lot coverage.

No principal building shall be erected or altered so as to cover more than 40% of the area of the lot on which it is located.

ARTICLE VII
Agricultural Districts

§ 180-37. Permitted uses. [Amended 2-20-2001 by TOR-2001-1; 12-18-2023 by Ord. No. TOR-2023-10]

In any Agricultural District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for a purpose except one or more of the following:

- A. Any use permitted in a Residence A-1 or A-2 District.
- B. Farms, dairies, nurseries, truck gardens, greenhouses and natural ice-harvesting activities and buildings or structures accessory thereto on parcels of more than five acres of land. On parcels of less than five acres of land, the keeping and raising of poultry, livestock and pigeons, whether raised for the table or other purposes, or other like objectionable uses are prohibited. The keeping and raising of hens may be allowed by special permit under § 180-8.1
- C. Buildings or shelters for the sale of farm products, provided that a major portion of the products offered for sale at all times are raised on the premises and no advertising of products other than those raised on the premises shall be displayed.
- D. The processing of forests and wood lots by portable woodworking mills and machinery for processing wood cut on the premises, if approved by the Board of Appeals.
- E. Airports and landing strips and buildings or structures necessary thereto, if located west of Suffield Street.
- F. Off-street parking for 24 hours or less for motor vehicles when the use is an accessory to an existing conforming amusement park containing at least three acres of land adjacent to agriculturally zoned land and by special permit.

§ 180-38. Height regulations.

Buildings or structures permitted in this zone under § 180-37A shall not exceed the heights permitted in § 180-24 of this chapter. For other buildings permitted by this Article, the height limitation shall be 50 feet.

§ 180-39. Setback requirements.

- A. Buildings and shelters for the sale of farm products shall be at least 35 feet from the street line.
- B. Dwellings with or without attached garages shall be at least 35 feet from the street line. All other buildings of whatever description shall be at least 100 feet from the street line.

§ 180-40. Yards.

- A. Side yards. There shall be a side yard between any building and any side lot line. It shall comply with the side yard requirements of the nearest residence district measured in a direct or air line.
- B. Rear yards. For a residence, accessory building or other structure, the rear yard shall comply with the rear yard requirement of the nearest residence district measured in a direct or air line.

§ 180-41. Lot size.

No lot shall be used for residence purposes with a frontage of less than 120 feet on a street or an area of less than 20,000 square feet.

§ 180-42. Lot coverage.

There shall be no lot coverage regulations in this district.

§ 180-43. Special use requirements.

- A. Landscaped administrative offices, laboratories devoted to research, design or experimentation and processing and fabrication incidental thereto and appurtenant buildings consistent with and designed to promote and benefit the value and use of property in residential districts or in areas which are predominantly residential although partly lying in less restricted districts, provided that no materials or finished products shall be manufactured, processed or fabricated on such premises for sale except such as are incidental to such laboratory research, design or experimentation conducted on such premises.
- B. The special use established must be on plots having a minimum of 20 acres, must have a two-hundred-foot front yard and 100 yards along all other lot lines and must provide off-street parking for employees and visitors. If the front yard is on an interior lot line, 200 feet of setback shall apply to this lot line. The only sign permitted must be in front of the building and subject to Planning Board approval. Traffic directional and parking signs must be not more than four feet high from the ground level. Not over 25% of the land shall be used for building purposes. **[Amended 11-19-2018 by TOR 2018-14]**
- C. Landscaped rest homes or convalescent homes, except those for contagious diseases, for the care of drug or liquor patients, for correctional purposes or for the care of the insane or feeble-minded. Rest homes or convalescent homes must be on plots having a minimum of 10 acres, must have a one-hundred-foot front yard and fifty-foot yards along all other lot lines and must provide off-street parking for employees and visitors. Not over 25% of the land shall be used for building purposes.
- D. Nonprofit golf courses shall be permitted. Golf courses operated for profit shall be permitted with that portion of land covered by a clubhouse to be zoned Business A. All golf courses must be on plots having a minimum of 75 acres.
- E. To assure that special use structures shall be reasonably attractive in appearance, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned construction, including landscaping, prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for a building shall be issued, nor shall an occupancy permit be granted, unless and until the finished structure conforms to the drawing submitted.
- F. Not more than one motor vehicle per 5,000 square feet of lot up to a limit of five motor vehicles shall be kept in accordance with Chapter 91 of the General Laws, only one of which can be an unregistered vehicle, exclusive of farm equipment.

ARTICLE VIII
Business A Districts

§ 180-44. Permitted uses. [Amended 3-21-1994 by TOR-94-1; 9-20-1997 by TOR-97-8; 3-8-2000 by TOR-2000-1; 12-2-2002 by TR-2002-53; 9-7-2004 by TOR-2004-5; 11-15-2004 by TOR-2004-17; 6-18-2007 by TOR-2007-6; 4-4-2022 by Ord. No. TOR-2022-1; 4-3-2023 by Ord. No. TOR-2023-3; 4-16-2024 by Ord. No. TOR-2024-2]

In any Business A District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. Except as otherwise provided in this article, any use permitted in a residence district or an Agricultural District.
- B. The major use of a building or structure in this district shall be to store and display goods for sale at retail on the premises or to furnish a service intended for residents of the immediate vicinity. Banks, hotels, dining establishments, halls and office buildings shall be considered as complying with such requirements.
- C. No building, structure or land shall be used in whole or in part for any fabricating, manufacturing, converting, altering, finishing or assembling.
- D. One-story public garages for storage or repair of not more than 50 cars. Body and fender work and the painting of cars in or out of doors is prohibited. The storage of dismantled vehicles or vehicle parts out of doors is prohibited. The storage of complete units such as truck bodies, tailgates, road sanders, farm machinery, school buses and ambulances is permitted. An underground tank of not more than 1,000 gallons' capacity for drain oil is permitted. The selling of new or secondhand vehicles shall require a special permit in accordance with § 114-5.
- E. A gasoline filling station, which shall include self-service gasoline filling or service stations, provided that not more than 30,000 gallons of gasoline shall be stored on the premises. An enclosed lubritorium for not more than three motor vehicles shall be permitted. Only minor repairing of motor vehicles is permitted.
 - (1) For the public purpose to promote and protect the health, safety, and welfare of the residents of the Town of Agawam, to prevent and control fires, and to control traffic, it is deemed to be in the best interests of the Town of Agawam to regulate the number of gasoline filling stations within the Town of Agawam.
 - (2) For the purpose of licensing gasoline service stations under the provisions of Massachusetts General Laws Chapter 148, § 13, there shall be no more than 20 issued at any one time, and no license shall be issued for a gasoline filling station located within 200 feet of a residence, school or church.
- F. Residential buildings and appurtenant buildings such as garages, sheds, barns, etc., presently existing in Business A Districts may be added thereto, altered or rebuilt. No new building or other structure shall be erected for residential purposes, except for a one-family dwelling for one housekeeping unit only or, unless the land so located in the Business A District is part of a subdivision plan duly recorded prior to the enactment of this section or unless individual building lots have been similarly recorded.

- G. Cabins, if licensed under MGL c. 140, § 32A to 32E, inclusive.
- H. Drive-in restaurants and drive-through restaurants, after a special permit by the Board of Appeals in conformance with § 180-11. At no time shall fewer than 25 parking spaces be provided on site.
 - (1) The parking or loading requirements set forth in this subsection may be reduced as part of the special permit by the Board of Appeals if the Board of Appeals finds that the reduction is not inconsistent with the requirements of the Zoning Bylaws of the Town of Agawam.
 - (2) If a reduction is allowed, a reserve area, to be maintained indefinitely as landscaped open space, must be required sufficient to adequately accommodate the difference between the parking spaces required (i.e., the sum of the parking spaces required for the separate used individually) and the parking spaces provided. The parking/site plan shall show (in dotted outline) the reserve area laid out in full compliance with any parking or loading requirements as set forth in said Chapter 180, including the required number of spaces. In no event shall the Board of Appeals reduce the parking or loading requirement below 15 spaces.
- I. Drive-through service windows utilized by any business shall require a special permit from the Board of Appeals in conformance with § 180-11.
- J. No more than four automatic amusement devices duly licensed in accordance with § 75-1 of the Code of the Town of Agawam.

§ 180-45. Height regulations.

- A. A business building shall not exceed three stories or 45 feet in height. These provisions shall not apply to chimneys, flag or radio poles, water tanks or hose towers or required bulkheads or elevator penthouses. A residence building shall comply with the height requirements for Residence B Districts.
- B. Heights of other buildings and structures permitted in this zone under § 180-44A shall not exceed the height permitted in Residence B Districts.

§ 180-46. Setbacks; yards; loading areas.

- A. Setbacks shall be at least 35 feet.
- B. Side yards are not required for business buildings.
- C. Rear yards shall have a minimum of 25 feet.
- D. Space shall be provided for vehicle parking and for the loading and unloading of all materials, equipment and merchandise on the premises and entirely off the traveled way, with such additional space as may be necessary to provide free and easy access to that portion of the buildings so as not to interfere with traffic on the public way. Loading and unloading platforms and doorways especially designed for loading and unloading goods are prohibited on the front of any building.
- E. A building devoted in whole or in part to residence or other purposes permitted in § 180-44A shall comply with the requirements prescribed for Residence B Districts. **[Amended 4-7-1986 by TOR-86-6]**

§ 180-47. Lot coverage.

- A. No business building shall be erected or altered so as to cover more than 50% of the area of the lot upon which it is located. **[Amended 4-7-1986 by TOR-86-6]**
- B. Notwithstanding any other provision of this section, no building or other structure shall be erected, altered or used for residential purposes which shall accommodate or house more than four families. All four-family buildings or structures used for residential purposes shall be erected on a parcel of land containing not less than one acre in area and having not less than 150 feet of frontage on a street.
- C. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

ARTICLE IX
Business B Districts

§ 180-48. Permitted uses. [Amended 12-7-1981; 9-7-2004 by TOR-2004-7; 11-15-2004 by TOR-2004-17; 2-6-2006 by TOR-2005-12; 11-19-2018 by TOR 2018-14; 4-16-2024 by Ord. No. TOR-2024-2]

In any Business B District as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

- A. Except as otherwise provided in this article, any use permitted in a Residence, Agricultural or Business A District.
- B. Residential buildings and appurtenant buildings such as garages, sheds, barns, etc., presently existing in Business B Districts may be added thereto, altered or rebuilt.
- C. In any Business B Districts as indicated on the Building Zone Map, no new building or other structure shall be erected for residential purposes unless the land so located in the Business B District is part of a subdivision plan duly recorded prior to the enactment of this section or unless individual building lots have been similarly recorded.
- D. Body and fender work and the painting of cars out of doors is prohibited. The storage of dismantled vehicles or vehicle parts out of doors is prohibited. The storage of complete units such as truck bodies, tailgates, road sanders, farm machinery, school buses and ambulances is permitted. The selling of new or secondhand vehicles shall require a special permit in accordance with § 114-5.
- E. Amusement parks, bowling alleys and roller skating rinks, or arcades containing six or more pinball or electronic games and/or automatic amusement devices with a special permit issued by the Board of Appeals. No more than five automatic amusement devices duly licensed in accordance with § 75-1 of the Code of the Town of Agawam.
- F. Wholesale sales and warehousing.
- G. Converting, fabricating, manufacturing, altering, finishing or assembling, provided that in no case is a total of more than 20,000 square feet of floor space devoted to such use.
- H. Trucking terminals may be allowed only after a public hearing by the Board of Appeals.
- I. Retail shopping centers comprised of only one building, planned as a total entity with on-site common parking areas for customer and employee parking provided so as to comprise an efficient and architecturally integrated shopping area.

(1) Allowed uses.

- (a) Retail shopping centers may include department stores, variety stores, supermarkets, furniture stores, household appliance stores, home improvement stores, lawn equipment stores, gift shops, restaurants, including drive-in and drive-through restaurants, drugstores, barbershops, beauty shops, office supply stores, food stores, optical stores, clothing stores, financial institutions and banks (with or without drive-through windows), health clubs, movie theaters, doctors' offices, dentist offices and other professional offices open to the public, children's day-care and activity centers. Only one principal building per lot is allowed.

- (b) These uses will not include, as a principal or accessory use, motor vehicle services, such as new or used motor vehicle sales, freestanding tire, brake and muffler shops, automobile repair shops, and gasoline stations. No accessory use or building is permitted under this zoning.
 - (c) Unless by special permit of the Agawam Town Council, temporary outside uses upon the parcel are prohibited, including but not limited to, circuses, festivals, tent sales, sidewalk sales, retail displays, vehicle displays.
- (2) Retail shopping center requirements.
- (a) Application procedures.
 - [1] Site plan. Site plans for any such retail shopping center shall be submitted to the Planning Board for its approval as to site layout, provisions for handling traffic flow, parking area, landscaping, traffic, and architectural characteristics before a building permit is issued. To assure that retail shopping centers shall be reasonably attractive in appearance, the developer or its representative shall submit to the Planning Board, in addition to the requirements set forth in § 180-13, an architect's rendering or comparable illustration of the planned construction, including landscaping, prior to applying for a building permit. The architectural concept will be required to fit the character of the community and be at the approval of the Planning Board prior to issuing a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no building permit shall be issued, nor shall an occupancy permit be granted unless and until the finished construction reasonably conforms to the drawing submitted.
 - [2] Special permit.
 - [a] No building permit shall be issued for, and no person shall undertake, any use or improvement for a retail shopping center unless an application for a special permit has been prepared for the proposed development in accordance with the requirements and § 180-11. For the purpose of this section, the special permit granting authority shall be the Agawam Town Council.
 - [b] No building permit shall be granted by the Inspector of Buildings until the Agawam Town Council has given its final approval that the development or any phase thereof and any associated off-site improvements conform to the approved application for a special permit under this section, including any conditions imposed by the Agawam Town Council. No temporary occupancy permits shall be granted.
 - (b) Parking. No space within the required front setback area may be used for parking unless approved by the Planning Board. An overall shared parking scheme is preferred and developed in such a way that conforms to parking space requirements for retail shopping centers as specified herein. In the overall shared parking scheme, the applicant shall specify how shared parking areas are to be owned, constructed, operated and maintained and provide the Planning Board with the proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms for ensuring the same. All parking lots shall be designed according to the following standards:
 - [1] Minimum 4.5/1,000 overall parking ratio inclusive of all buildings (no unheated

garden shop or seasonal retail or wholesale sales);

- [2] Minimum size for parking spaces shall be nine feet by 18 feet unless when using angled parking as specified in the Institute of Transportation Engineers, Traffic Engineering Handbook, Parking Class A.
 - [3] Minimum width for drive aisles shall be:
 - [a] Twenty-four feet for two-way lanes with ninety-degree angle parking.
 - [b] Eighteen feet for one-way lanes with sixty-degree angle parking.
 - [c] Eighteen feet for one-way lanes with forty-five-degree angle parking.
 - [4] With the exception of parking for the disabled, all other parking spaces shall be located at least 50 feet or greater from any building.
 - [5] Pavement markings, signage and any other required traffic control devices within the site shall be specified according to the latest edition of the Manual on Uniform Traffic Control Devices (M.U.T.C.D.) standards. All roadway, stop line and traffic markings shall be of thermoplastic.
 - [6] Pedestrian and handicapped access from the parking areas to the site sidewalks and entrances to all buildings shall be specified to provide safe access and internal circulation within the site.
 - [7] No overnight parking of vehicles not related to the ongoing operation of the shopping center.
- (c) Traffic impact report. A traffic impact report, indicating projected traffic flows to and from the project at its build-out, projected traffic flows and levels of service on nearby roadways in five years and at build-out of the development, current traffic flows, levels of service and accident records for said roadways, projected capacity, service level and safety problems anticipated in five years and at project build-out, proposed mitigation measures and other relevant information shall be submitted as part of the site plan application and presented to the Planning Board at a public meeting by a professional traffic engineer or transportation planner. The area to be included in the traffic impact study shall be determined by the Planning Board. The Planning Board may require traffic signals, traffic or turn lanes, sidewalks, bikeways or any other mitigation measures that it believes necessary to protect public safety and maintain proper traffic flow on roadways within or impacted by the development.
- (d) Streets and drives. Streets and drives within the development shall be constructed in accordance with the Planning Board's subdivision regulations, except that the Planning Board may require additional sidewalks, traffic lanes, turn lanes, traffic signals, additional lane width based on truck traffic, additional pavement depth based on truck traffic or other items or increases in existing standards as needed or required. A minimum of two means of egress from a public way must be provided.
- (e) Buffers and greenspace. Retail shopping centers shall contain a minimum of 25% greenspace not including parking and/or interior roadways. A space of not less than 100 feet shall be maintained as an open space buffer with natural vegetation or landscaping along and adjacent to agriculturally and residentially zoned property lines. The buffer shall

not be built on, have no structures to include barrier fencing, be paved or used for parking, dumpsters and/or storage, but may be utilized for stormwater management and greenspace only. All buffer areas shall be maintained and kept free of litter. Additional area, plantings, decorative fencing or other items may also be required by the Planning Board to protect adjacent property owners from adverse impacts or to protect the character of the neighborhood, including landscaped berms and/or fences along and adjacent to residentially zoned property lines.

- (f) Parking lot interior landscaping. Fifteen percent of the interior space of all parking lots shall be landscaped areas. All parking lot islands, connecting walkways through parking lots and driveways through or to parking lots shall be landscaped according to the following standards:
 - [1] Visibility. To avoid landscape material blocking driver sight distance at driveway-street intersections, no plant material greater than 24 inches in height shall be located within 15 feet of a curb cut.
 - [2] Landscape islands. In addition to any pedestrian refuge areas, each landscaped island shall include two, minimum two-and-five-tenths-inch caliper canopy deciduous trees, be of length greater than eight feet in its smallest dimension, include at least 80 square feet of ground area per tree to allow for root aeration, and have raised concrete curbs.
 - [3] Walkways and driveways. Connecting walkways through parking lots shall have two, minimum two-and-five-tenths-inch caliper canopy deciduous trees per 60 linear feet of such walkway planted in landscape areas within five feet of such walkway. Driveways through or to parking lots shall have two minimum two-and-five-tenths-inch caliper canopy deciduous trees per 60 linear feet of and along each side of such driveway, in landscape areas within five feet of such driveway.
 - [4] Parking bays shall extend no more than 20 parking spaces without an intervening tree, landscape island or landscape peninsula where landscaped end islands are provided. Where landscaped end islands for parking bays are not provided, an equivalent landscaped area must be provided internally within the parking lot.
 - [5] Adhere to all existing engineering regulations and requirements.
- (g) Lighting. Parking lot lighting shall be as unobtrusive as possible to provide safe circulation and protect people and property. Light sources shall be concealed and fully shielded and shall feature sharp cutoff capability so as to minimize up-light, spill-light, glare and unnecessary diffusion on adjacent property. Unique areas or neighborhoods within the Town may have additional design guidelines for lighting as required by the Planning Board. Maximum on-site lighting levels shall not exceed 10 footcandles, except for loading and unloading platforms where the maximum lighting level shall be 20 footcandles. Lighting levels measured 20 feet beyond the property line of the development site (adjacent to residential uses or public rights-of-way) shall not exceed 0.1 footcandle as a direct result of the on-site lighting. Parking lots shall remain fully lit for one hour following the closing of the store or establishment for which the parking lot serves, and shall be lit by security lighting thereafter. All lighting level measurements shall be determined by mean footcandles over the designated lighted area. Maximum height on lot poles shall be 20 feet and the fixture shall be shielded to prevent excess spillage of light onto adjoining properties.

(h) Outdoor storage areas/mechanical equipment.

- [1] No areas for outdoor storage, trash collection or compaction, loading or other such uses shall be located within 100 feet of any public street, public sidewalk or internal pedestrian way, and in no event shall be visible from roadways (such areas will be screened from view, including the use of live plantings such as arborvitae). These enclosed areas for only the above purposes must be shielded by an opaque fence, or site-obscuring landscaping, either of which shall be not less than six feet.
- [2] Loading docks, truck parking, outdoor storage, utility meters, HVAC and other mechanical equipment, trash collection, trash compaction and other service functions shall be incorporated into the overall design theme of the building and the landscape so that the architectural design is continuous and uninterrupted by ladders, towers and equipment.
- [3] All rooftop mechanical equipment shall be screened.
- [4] No outside sales areas/yards are permitted at any time, which include any type of stationary or mobile vendor carts (i.e., food stands).
- [5] No temporary or fabric structures shall be used for outdoor storage.

(i) Building facade. All exterior building elevations that face public streets and/or customer parking areas shall be designed so that there are no large expanses of blank walls. This requirement can be met by employing the use of architectural features, including but not limited to the following, doors, windows, pilasters, columns, horizontal and vertical offsets, material and color variations, decorative cornices, awnings, dormers, pediments and canopies. Buildings are to have reasonably consistent architectural elements to provide continuity, while allowing individuality in architectural features to distinguish individual businesses. In order to assure conformance with this requirement, exterior building elevations must be reviewed and approved as a part of the overall final site plan process by the Planning Board.

(j) Noise. No outside loudspeaker or audio sound systems shall be installed or used other than for drive-through uses.

(k) Maintenance. All properties developed for commercial purposes, whether they are occupied or not, shall be regularly maintained by the owner of the property to the reasonable satisfaction of the Zoning Enforcement Officer, so that they are not allowed to fall into a state of disrepair or neglect; and they shall consistently present a neat and orderly appearance to the general public as well as adjacent and nearby tenants and property owners. Regular maintenance shall include at a minimum, mowing of lawns, general maintenance of landscaping beds, landscaping irrigation, trash and litter removal, removal of signs, painting/maintenance of facades and signs, and proper snow removal.

(l) Other requirements.

- [1] Minimum size: five acres.
- [2] Maximum facility 100,000 square feet, overall single building size. The square footage of a mezzanine shall be included in the calculation of the total square footage.

- [3] Minimum frontage: 100 feet.
- [4] Front yard setback: 100 feet.
- [5] Rear yard setback: 100 feet.
- [6] Side yard setback: 100 feet.
- [7] Highway setback: 100 feet.
- [8] Maximum building coverage shall not exceed 35% of the lot area.
- [9] No building within the retail shopping center shall be greater than one story in height. Notwithstanding the foregoing, internal mezzanines (i.e., a low-ceilinged intermediate floor above the ground floor) shall be allowed.
- [10] Signage for individual businesses within retail shopping centers shall be allowed as provided by § 180-80. In addition to the signs permitted for the individual businesses, retail shopping centers are allowed one multifaced ground sign at each major street providing access to the property identifying the retail shopping center and any specific uses or occupancies within the shopping center. The maximum signage area for each individual business depicted on the retail shopping center ground sign shall not exceed 100 square feet per face for each individual business. The total maximum signage area for each face of the retail shopping center ground sign shall be limited as follows: a) If the sum of the building area for all individual businesses within the retail shopping center is less than 100,000 square feet, each face of the retail shopping center ground signage shall not exceed 200 square feet plus 20 square feet per each individual business listed; b) If the sum of the building area for all individual businesses within the retail shopping center exceeds 100,000 square feet, each face of the retail shopping center ground signage shall not exceed 350 square feet plus 35 square feet per each individual business listed. Ground signs shall not exceed 20 feet in height as measured from the top of the sign. Signage design shall fit the character of the community and be in communion with the architecture of the proposed retail complex as well the surrounding environment. Signage for this type of development requires the approval of the Planning Board. No scrolling, tethered or temporary signs are permitted. Signage per individual establishment shall not exceed 15% of the establishment's facade.

§ 180-49. Height regulations. [Amended 6-6-2005 by TOR-2005-8; 11-5-2008 by TOR-2008-2]

A business building or structure shall not be erected or altered to a height in excess of three stories or more than 45 feet except as expressly provided herein and in § 180-49.1. These provisions shall not apply to chimneys, flag or radio poles, water tanks, hose towers or required bulkheads or elevator penthouses. A residence building shall comply with the height provisions for Residence B Districts. Heights of other buildings or structures permitted in § 180-48A shall not exceed the heights permitted in Residence B Districts. Notwithstanding the foregoing, § 180-49.1 shall govern the height of amusement devices which constitute part of an amusement park.

§ 180-49.1. Amusement park height regulations. [Added 11-5-2008 by TOR-2008-2]

- A. An amusement device which constitutes part of an amusement park and which is situated more than 250 feet from the street line and any side lot line shall not be erected or altered to a height in excess

of 200 feet, except as expressly provided herein. An amusement device which constitutes part of an amusement park and which is situated within 250 feet from the street line or any side lot line shall not be erected or altered to a height in excess of 45 feet, except as expressly provided herein. Notwithstanding the foregoing, an amusement device which constitutes part of an amusement park may exceed the height limitations contained herein only after issuance of a special permit by the Board of Appeals.

- B. Notwithstanding the foregoing, any applicant seeking to erect or alter an amusement device to a height in excess of 45 feet shall be required to send notice by certified mail, postage prepaid, to the abutters and owners of land within 300 feet of the property lines as they appear on the most recent applicable tax list, including those in another city or town. Such notice shall inform such abutters and owners of land of the date, time and location of the Planning Board's public meeting as required under § 180-13C(4) hereof for the applicant's site plan for the proposed amusement device. Such notice shall be sent at least 10 days prior to the Planning Board's public meeting and such notice shall be prepared and mailed by the applicant.

§ 180-50. Setbacks; yards; loading areas.

- A. Setbacks and rear yards shall be at least 35 feet in their least dimension.
- B. Side yards requirements shall be a minimum of 10 feet, except adjacent to residential or agricultural zones, at which time it would be 15 feet. **[Amended 4-7-1986 by TOR-86-6]**
- C. Space shall be provided for vehicle parking and for the loading and unloading of all materials, equipment and merchandise on the premises and entirely off the traveled way, with such additional space as may be necessary to provide free and easy access to that portion of the building so as not to interfere with traffic on the public way. Loading and unloading are prohibited on the front of any building.
- D. A building devoted in whole or in part to residence uses shall comply with the requirements for setbacks, side yards and rear yards of the Resident B District.

§ 180-51. Lot coverage. [Amended 4-7-1986 by TOR-86-6]

No business building shall be erected or altered so as to cover more than 50% of the area of the lot on which it is located. A building devoted in whole or in part to residence or other permitted purposes in § 180-48A shall comply with the requirements of lot coverage in Residence B Districts.

§ 180-52. Lot frontage. [Amended 4-7-1986 by TOR-86-6]

No lot shall have a frontage of less than 100 feet on a street or an area less than 10,000 square feet.

§ 180-53. Landscaping.

To assure that structures in Business B Districts shall be reasonably attractive in appearances, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned construction, including landscaping, prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for a business building shall be issued, nor shall an occupancy permit be granted, unless and until the finished structure conforms in appearance to the drawing submitted.

§ 180-54. Lumberyards; residences; gasoline stations.

- A. Secondhand lumberyards and secondhand buildings material yards are prohibited.
- B. No building or other structure shall be erected, altered or used for residential purposes which shall accommodate or house more than four families. All four-family buildings or structures used for residential purposes shall be erected on a parcel of land containing not less than one acre in area and having not less than 150 feet of frontage on a street.
- C. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

ARTICLE X
Industrial District A

§ 180-55. Permitted uses. [Amended 11-9-1994 by TOR-94-7; 3-20-2006 by TOR-2006-1; 5-5-2014 by TOR-2014-1; 4-16-2024 by Ord. No. TOR-2024-2]

In any Industrial District A as indicated on the Building Zone Map, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one of the following:

- A. Any business or agricultural use permitted in an Agricultural, Business A or Business B District.
- B. Any industrial purpose, except those contained in the following list, which may be allowed, by special permit, only after a public hearing before the Board of Appeals:
 - (1) Acetylene gas, cyanide compound or oxygen manufacture.
 - (2) Asphalt manufacture or refining.
 - (3) Chlorine or bleaching powder manufacture.
 - (4) Creosote manufacture.
 - (5) Distillation of coal or wood.
 - (6) Drop forge shop.
 - (7) Explosives, fireworks or ammunition manufacture.
 - (8) Fertilizer manufacture.
 - (9) Fumigation plants.
 - (10) Glue or size manufacture from fish or animal offal.
 - (11) Gypsum, cement, plaster or plaster of paris manufacture.
 - (12) Incineration or reduction of or dumping of offal, garbage or refuse on a commercial basis, except where controlled by the Town.
 - (13) Junkyards, storage, scrapping of autos and parts and the salvage thereof.
 - (14) Linoleum manufacture.
 - (15) Match manufacture.
 - (16) Paint and lacquer manufacture.
 - (17) Petroleum refining and the bulk storage of petroleum products.
 - (18) Plastic manufacture.
 - (19) Rest homes.
 - (20) Rubber, natural or synthetic or gutta-percha manufactured from crude or scrap material.
 - (21) Secondhand lumberyards and secondhand material yards.

- (22) Sewage disposal plant, except where controlled by the Town.
- (23) Soap, tallow, grease or lard manufacture.
- (24) Slaughterhouse.
- (25) Sulfurous, sulfuric, nitric or hydrochloric acid manufacture.
- (26) Tannery.
- (27) Tar or asphalt roofing manufacture.
- (28) Tar products manufacture.
- (29) Tire recapping or retreading.
- (30) Trucking terminals.
- (31) All other enterprises or uses commonly regarded as hazardous or offensive.
- (32) Assisted living facilities as defined in MGL c. 19D.
- (33) Registered marijuana dispensary.
- (34) Off-site medical marijuana dispensary.
- (35) The selling of new or secondhand vehicles shall require a Special Permit in accordance with § 114-5.

§ 180-56. Height regulations.

Industrial buildings shall not exceed two stories or 40 feet in height, except with approval of the Board of Appeals after a public hearing. These provisions shall not apply to required equipment appurtenant to industrial buildings, except that smokestacks, water tanks, grain elevators and the like are not permissible except after approval of the Board of Appeals after a public hearing.

§ 180-57. Setbacks; yards. [Amended 4-7-1986 by TOR-86-6]

- A. Setbacks shall be at least 40 feet wide in their least dimension.
- B. Side yard and rear yard requirement shall be a minimum of 25 feet. However, there shall be a side yard and a rear yard between a street and the parts of a building nearest to such street to be no less than 40 feet, but facilities shall be provided for loading and unloading all materials, equipment and merchandise on the premises and entirely off the traveled way.

§ 180-58. Lot coverage. [Amended 4-7-1986 by TOR-86-6]

No business or industrial building shall be erected or altered so as to cover more than 50% of the area of the lot on which it is located.

§ 180-59. Lot size. [Added 4-7-1986 by TOR-86-6]

No lot shall have a frontage of less than 100 feet on a street or an area of less than 40,000 square feet.

§ 180-60. Landscaping; residences; gasoline stations.

- A. To assure that structures in industrial districts shall be reasonably attractive in appearance, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned constructions, including landscaping, prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for an industrial building shall be issued, nor shall an occupancy permit be granted unless and until the finished structure conforms in appearance to the drawing submitted.
- B. All residential development is prohibited, except that alteration, reconstruction, extension or structural change to any existing residential structure is permitted. **[Amended 11-9-1994 by TOR-94-7]**
- C. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

ARTICLE XI
Industrial District B

§ 180-61. Boundaries.

Industrial B Districts shall be that area bounded by Suffield Street, Silver Street and Shoemaker Lane zoned Industrial at the Town Meeting of December 10, 1957, and those areas zoned Industrial B on or after the Town Meeting of December 10, 1957.

§ 180-62. Permitted uses.

Permitted uses shall be all uses permitted in Industrial District A.

§ 180-63. Height regulations.

Industrial buildings shall not exceed two stories, 40 feet in height, except with approval of the Board of Appeals after a public hearing. These provisions shall not apply to required equipment appurtenant to industrial buildings, except that smokestacks, water tanks, grain elevators and the like are not permissible except after approval of the Board of Appeals after a public hearing.

§ 180-64. Yards; setbacks; loading areas.

- A. Back and side yards shall be a minimum of 25 feet.
- B. Front setback shall be a minimum of 75 feet.
- C. Loading platforms and employee parking areas shall be at the rear and side of all buildings.

§ 180-65. Lot size; lot coverage.

- A. No lot shall have an area less than 43,560 square feet, one acre, on which a building may be constructed for industrial use, except with approval of the Board of Appeals relative only to previously filed lots whose area is less than one acre; provided that the file lot does not abut an additional parcel owned by the same owner which if combined would meet with the one-acre requirement of this section.
- B. Except for office, professional or administrative buildings, no building shall be less than 5,000 square feet in area.
- C. No lot shall have frontage of less than 100 feet on a street line; however, this frontage requirement shall not apply to lots established by a deed or plan recorded in the Hampden County Registry of Deeds prior to the first notice of the public hearing on this subsection amendment (March 3, 1994) if, and only if, said parcel of land was not held in common ownership with sufficient adjoining parcels of land on the date of the first notice of public hearing on this subsection amendment (March 3, 1994) to satisfy, in combination, the required 100 feet of frontage on a street line. **[Added 5-2-1994 by TOR-94-5]**

§ 180-66. Landscaping; residences; gasoline stations.

- A. To assure that structures in industrial districts shall be reasonably attractive in appearance, the builder or his representative shall submit to the Planning Board, in addition to other requirements, an architect's rendering or comparable illustration of the planned construction, including landscaping,

prior to applying for a building permit. Unless such a drawing approved by the Planning Board is submitted to the Inspector of Buildings, no permit for an industrial building shall be issued, nor shall an occupancy permit be granted unless and until the finished structure conforms in appearance to the drawing submitted.

- B. (Reserved)⁷⁰
- C. All buildings in an industrial zone shall be appropriately landscaped with lawns, shrubs and trees.
- D. All residential development is prohibited, except that alteration, reconstruction, extension or structural change to any existing residential structure is permitted. **[Amended 11-9-1994 by TOR-94-7]**
- E. Not more than one unregistered motor vehicle shall be allowed on any parcel of land used as a gasoline filling station; provided, however, that any such gasoline filling station having an automobile dealer's permit shall be governed by the provisions of such permit.

70. Editor's Note: Former Subsection B, which provided that the front of the building must be faced with either brick masonry exterior walls, curtain walls of decorated colored aluminum, enameled colored steel, stainless steel walls or glass wall construction and have an attractive appearance, was repealed 11-19-2018 by TOR-2018-14.

ARTICLE XII

Floodplain Zone**[Added 1-30-1978; amended 6-18-2013 by TOR-2013-5]****§ 180-67. Purpose.**

The Floodplain Zone and the regulations herein have been established for the following purposes: to protect and preserve the watercourses and their adjoining floodplain; to reduce the hazards of floods upon the public health, safety and general welfare; to protect floodplain occupants from a flood that is or may be caused by their own land use and that is or may be undertaken without full realization of the dangers therein; to protect the public from the burden of extraordinary financial expenditures for flood control and relief; and to protect the capacity of the floodplain to absorb, transmit and store runoff to assure retention of sufficient floodway area to convey flows which can reasonably be expected to occur.

§ 180-68. Maps; use of other base flood elevation data.

- A. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Agawam designated as Zone A or AE on the Hampden County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Hampden County FIRM that are wholly or partially within the Town of Agawam are Panel Nos. 25013C0377E, 25013C0379E, 25013C0381E, 25013C0382E, 25013C0383E, 25013C0384E, 25013C0387E, 25013C0391E, 25013C0392E, 25013C0401E, 25013C0403E, 25013C0404E, 25013C0411E, and 25013C0413E, dated July 16, 2013. The exact boundaries of the district may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Hampden County Flood Insurance Study (FIS) report dated July 16, 2013. The FIRM and FIS report are incorporated herein by reference and are on file in the Building Department.
- B. In Zone A areas where base flood elevation data is not provided by the Flood Insurance Study, other available data from federal, state or other sources shall be utilized as a basis of determining the base flood level for purposes of enforcing the provisions of this article.

§ 180-69. Permitted uses.

In those portions of the Town so designated in § 180-68, the following uses of land shall be permitted, provided that all necessary state or federal permits are obtained:

- A. Conservation of water, plants and wildlife.
- B. Legally permitted outdoor recreation not requiring development or landscape alteration in conflict with the purpose of this zone.
- C. Grazing, forestry and other farms or agriculture consistent with the purposes of the zone.
- D. Dwellings lawfully existing prior to the adoption of these provisions; however, no building permits for substantial improvements or extensions shall be granted unless a special permit is granted by the Board of Appeals.
- E. Proper operation and maintenance of dams and other water control devices.
- F. Construction and maintenance of highways, streets, sidewalks, sewers, water mains, storm drains, utilities and related facilities by governmental agencies, provided that the water and sewer systems

and utilities be designed and constructed to minimize flood damage and to minimize or eliminate infiltration of floodwater into the systems and discharges from the systems into floodwaters.

- G. The following uses by special permit as provided by § 180-71, if determined to be consistent with the purpose of this zone, said determination to be made by the Board of Appeals following application for a special permit by the landowner or owner:
- (1) Developed recreation facilities, except buildings.
 - (2) Utility lines and facilities.
 - (3) Dams and other water control facilities, if in an authorized plan by a public agency or if built to create ponds for recreational or agricultural use.
 - (4) Minor buildings incidental to permitted flood control, recreation, agricultural, etc., uses, and not exceeding 200 square feet in ground coverage, if constructed so as to not obstruct natural hydrological features.
 - (5) In the floodway fringe, the Zone AE, Zone A, that portion of the Floodplain Zone outside the floodway, the development of structures for residential use only if the lowest floor (including the basement) is elevated to or above the level of the base flood (one-hundred-year flood) and the development of structures for nonresidential use only if the lowest floor (including the basement) is elevated to be above the level of the base flood (one-hundred-year flood) or, together with the attending utility and sanitary facilities, is floodproofed to or above the level of the base flood (one-hundred-year flood), provided that a special permit is issued by the Board of Appeals. The term "floodproofed" shall mean watertight, with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

§ 180-70. Prohibited uses.

- A. In those portions of the Town so specified in § 180-68 as "floodplain," the following uses of land shall be prohibited:
- (1) The bulk storage of buoyant, flammable, explosive or toxic materials.
 - (2) The addition, removal or transfer of such quantities of material, including trees, shrubs, and ground cover, that would reduce the water storage capacity of the floodplain, obstruct the flow of floodwaters in a floodway or otherwise adversely affect the natural hydrology of the area to the extent that the base flood elevation would be raised cumulatively more than one foot.
 - (3) The digging or drilling of a well intended as a source of domestic water.
 - (4) The installation of septic tank or leaching fields or on-site waste disposal systems.
 - (5) The placement or location of a mobile home or the creation of mobile home parks or subdivisions.
- B. In land within the floodway the following uses of land shall be prohibited, in addition to those listed above:
- (1) Any development within the portions of the Town so specified as "floodway" on the Flood Insurance Rate Map.

- (2) Erection, construction or other creation or installation of any building, dam or other structure.
- (3) Any use or structure which would result in any increase in flood levels during the base flood discharge. Encroachments, including structures, are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

§ 180-71. Special permit.

- A. The application for a special permit shall include a plan prepared and certified by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts. This plan will show all proposed and existing buildings, structures, roads, ways, drainage facilities and landscape features, including wetlands, trees and the like, and other engineering and hydrological data the Board finds necessary. The plan will show all existing and proposed finished ground contours at one-foot intervals.
- B. The application for a special permit shall also include an environmental impact statement prepared by an environmentally qualified registered professional engineer. This statement will describe the impact upon the physical environment of the proposed use.
- C. The Board of Appeals may waive the requirements of Subsection B if it determines that the probable impact upon the physical environment of the proposed use is to be minimal and that an environmental impact statement is not necessary to its consideration of the application and provided there is no direct conflict with the Laws of the United States and the Commonwealth of Massachusetts.
- D. The applicant shall provide the Board with an original and seven copies of the request and of any plan and/or environmental impact statement required under Subsections A and B above. The Board of Appeals shall within seven days forward one copy of each to the Inspector of Buildings, Planning Board, Board of Health and Conservation Commission. These agencies may file written recommendations with the Board of Appeals within 30 days of receipt of notification. The Board of Appeals shall not grant approval of an application for a special permit until these recommendations have been received or until expiration of said thirty-day period.
- E. In passing upon such request, the Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article and:
 - (1) The danger that materials may be swept onto other lands to the injury of others.
 - (2) The danger to life and property due to flooding or erosion damage.
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (4) The importance of the services provided by the proposed facilities to the community.
 - (5) The necessity to the facility of a waterfront location, where applicable.
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use to the Comprehensive Plan and Floodplain Management Program for that area.

- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.
- F. The Board of Appeals may issue a permit under this section if it finds that the proposed use of the premises will not endanger the health and safety of the occupants of land within the floodplain or the public, or it may issue a permit with such conditions as it deems necessary to protect the health and safety of the occupants and the public or provide proper flood control or protection, or it may deny the application. The burden of showing that the proposed development will not endanger health and safety and that it will be an appropriate use of the land shall rest upon the developer, who shall provide such additional engineering and hydrological data as the Board of Appeals deems necessary. The Board shall, as a condition of approval, require that effective notice be given to prospective purchasers or existing landowners, by signs, notation on plans and permits or otherwise, of past flooding of said premises and the steps undertaken by the petitioner or his successor in title to alleviate the effects of the same.
- G. Without limiting the generality of the foregoing, the Board shall ensure that:
- (1) New construction or substantial improvements of residential structures within the Floodplain Zone will have the lowest floor (including the basement) elevated to or above the level of the one-hundred-year flood.
 - (2) No use or structure shall be located in the designated floodway which would result in any increase in flood levels during the base flood discharge.
 - (3) No fill or encroachment within the designated floodway shall be permitted that would impair its ability to carry and discharge the waters resulting from the one-hundred-year flood, unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachments would not result in any increase in flood levels during the occurrence of the base flood discharge.
 - (4) All other necessary permits for the proposed development, as defined in § 180-2, have been received from those federal, state or local governmental agencies from which price approval is required.
 - (5) Adjacent communities and the Massachusetts Department of Conservation and Recreation, at 251 Causeway Street, Suite 600-700, Boston, Massachusetts 02114, are notified prior to any alteration or relocation of a watercourse, and that evidence of such notification is submitted to FEMA, at 99 High Street, 6th Floor, Boston, MA 02110, and that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
 - (6) New or replacement water supply systems and/or sanitary sewerage systems to be located in the Floodplain Zone shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - (7) All subdivision proposals must be designed to assure that:
 - (a) Such proposals minimize flood damage;

- (b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
- (c) Adequate drainage is provided to reduce exposure to flood hazards.
- (8) In a riverine situation, the Building Inspector shall notify the following of any alteration or relocation of a watercourse:
 - (a) Adjacent communities and bordering states;
 - (b) NFIP State Coordinator, Massachusetts Department of Conservation and Recreation, at 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104;
 - (c) NFIP Program Specialist, Federal Emergency Management Agency, Region I, at 99 High Street, 6th Floor, Boston, MA 02110.
- (9) Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A Zones.
- (10) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

§ 180-72. General stipulations.

- A. A subdivision filed with the Planning Board under Chapter 41 of the General Laws of Massachusetts shall meet the rules and regulations of the Planning Board as they apply to floodplain management.⁷¹ The subdivision as approved by the Planning Board may be considered a single application when submitted to the Board of Appeals under this article. The action of the Planning Board shall in no way limit the Board of Appeals in its decision and setting of conditions.
- B. Nothing contained in this article shall limit the authority of the Board of Health with respect to premises in the Floodplain Zone or affect the applicability of the Building Code⁷² to any building in the Floodplain Zone.
- C. A building permit issued by the Inspector of Buildings before the effective date of this article shall be deemed to be a permit hereunder.
- D. Any plans or applications submitted to any board, agent or authority of the Town which concerns land within the floodplain shall be noted: "This proposal is for land which lies in the floodplain and meets the requirements of the Floodplain Ordinance."
- E. Any existing nonconforming uses or structures in the designated floodway shall not be substantially improved but may be modified, altered, repaired or reconstructed, subject to regulations pertaining to nonconforming uses, to incorporate floodproofing measures, provided that such measures or such modification, alteration, repair or reconstruction do not raise the level of the one-hundred-year flood at any point.
- F. No new construction, alteration or extension of a structure for human occupancy as permitted under

71. Editor's Note: See Art. VII, Floodplains, of Ch. 159, Subdivision of Land.

72. Editor's Note: See Ch. 82, Building Construction.

§ 180-71 shall be allowed beyond the foundation stage until the elevation of the lowest floor (including the basement) has been checked and certified, in writing, to the Inspector of Buildings or as being the elevation as stated on the approved plans or higher. All final grades or any change in topography shall be checked and certified, in writing, as being according to the approved plans. Inspection and certification shall be made by a registered professional engineer or land surveyor. All costs incurred under this section shall be borne by the applicant. Records of these elevations and certifications shall be maintained in the office of the Inspector of Buildings and shall be open to public inspection.

- G. Where interpretation is needed as to the exact location of the boundaries the Floodplain Zone (for example, where there appears to be conflict between a mapped boundary and actual field conditions), the Building Inspector shall consult the NFIP Program Specialist, FEMA and/or the NFIP State Coordinator at the Massachusetts Department of Conservation and Recreation for the necessary interpretation.

§ 180-73. Securities or bond required.

The completion of all earth work not bonded or covenanted under Chapter 41 of the General Laws of Massachusetts shall be guaranteed with the Town of Agawam by securities or bond as required by the Town prior to commencement by any earth work.

§ 180-74. Severability.

The invalidity of any section or provision of this article for regulation of the floodplain shall not invalidate any other section or provision hereof.

ARTICLE XIII

Signs

[Added 9-12-1977; amended 4-1-1991 by TOR-91-1; 12-18-2006 by TOR-2006-11; 11-17-2008 by TOR-2008-4]

§ 180-75. Purpose. [Amended 11-7-2012 by TOR-2012-3]

The purpose of this section is to provide for the reasonable regulation and control of the erection and maintenance of signs and advertising devices within the Town, to the end that the appearance and amenities of the Town may be preserved and enhanced without unduly restricting the conduct of lawful enterprise.

§ 180-76. Administration and enforcement; violations and penalties.

- A. Enforcement. The Inspector of Buildings or his designee is hereby authorized to enforce this article. The Inspector of Buildings or his designee shall keep a current list of permitted signs as a public record. Annually, prior to April 15, the Inspector of Buildings or his designee shall submit to the Outdoor Advertising Board a list of any billboards which do not meet the specifications of this authority, together with a notation as to wherein each sign does not comply. The Inspector of Buildings or his designee is authorized to order the repair or removal of any sign and its supporting structure which in his judgment is dangerous or in disrepair or which is erected or maintained contrary to this article. Whenever there is a change in the position of Inspector of Buildings, the new person shall send his or her name and address to the Outdoor Advertising Board.
- B. Permits and fees.
- (1) Except as provided in § 180-78, no sign shall be erected, altered or affixed to any building or placed on any premises until a permit has been issued by the Inspector of Buildings or his designee. Such permit shall be issued only if the sign complies or will comply with all applicable provisions of this article. An application for a sign permit under this article shall include an accurate sketch or a photograph showing the true dimensions of the face and frame of the sign, the lettering, wording, designs and symbols on the face and as attached to any part of the frame, the location of the sign and such plans, drawings and specifications as the Inspector of Buildings or his designee may require for the structure.
 - (2) A schedule of fees for such permits shall be determined from time to time by the Town Council.
- C. Whoever violates any provisions of this article or any lawful order of the Inspector of Buildings or his designee shall be subject to enforcement and fines as set forth in §§ 180-15, 180-16 and 180-16.1. Each day that such violation continues shall constitute a separate offense. In addition, the Inspector of Buildings or his designee shall have the authority to remove any sign from municipal or public property with 24 hours' advance verbal notice to the owner of the sign. If the owner of the sign cannot be reasonably determined, the Inspector of Buildings or his designee may consider the sign abandoned and may remove the sign forthwith.

§ 180-77. General specifications.

- A. Energy shortages. In the event of any energy shortage, the Council is authorized in its discretion to order that all signs in the Town consuming electric, gas, oil or other forms of energy cease such consumption in whole or in part during such hours and for such period as the Council designates. Nonconformance with the Council's order would be sufficient evidence for the Inspector of Buildings or his designee to revoke the permit for said sign. Forty-eight hours' notice shall be given to the owner

of such sign prior to any action taken by the Inspector of Buildings or his designee.

- B. Illumination. Except as otherwise prohibited herein, signs may be illuminated by any fixed light source, of such nature and in such manner that the brightness of the sign face does not exceed 100 lumens per square foot. Except for neon-type signs, where permitted, such illumination shall be so arranged that its source is not directly visible from any way or occupied building, and no illumination shall be of any color that might be confusing to traffic. Christmas lights shall not be deemed as coming within the provisions of this subsection, but this subsection shall apply to window signs.
- C. Placement of signs. The Inspector of Buildings or his designee may impose reasonable stipulations concerning placement based upon the speed of travel and sight distance of the adjacent ways, the number and location of signs already existing in the area and the concept of the sign in relation to the purpose of this article.

§ 180-78. Residence districts.

In any area zoned as a residence district, the following are authorized by right without a permit:

- A. One sign displaying the street number and/or name of the occupant of the premises, not exceeding two square feet in area. Such signs may include identification of any accessory professional office or other accessory use permitted in a residence district. Of the signs allowed under Subsections A, D, E and H, the total number of signs per lot shall not exceed two.
- B. Real estate signs pertaining to the lease, sale or use of a lot or building, provided that such signs do not exceed a total of six square feet of area. Such signs shall be removed forthwith upon sale or rental of the premises advertised.
- C. One bulletin or announcement board, identification sign or entrance marker for each public entrance to the premises upon which a church, synagogue or educational institution or a governmental authority is located. Such signs shall not exceed 20 square feet in area, provided that there shall be no more than three signs for each church, synagogue or institutional building complex.
- D. Attached signs. A sign otherwise permitted in this section may be attached to a building if it complies with all requirements of § 180-77 and this section.
- E. Signs offering accommodations for guests, not to exceed two square feet in area.
- F. Signs prohibiting trespass, hunting and the like, not to exceed two square feet in area.
- G. Street name signs and signs erected by the Town, county or state for the direction and control of traffic.
- H. Window signs. For residential zones and their accessory use, window signs, as defined herein, provided that the aggregate area of such signs shall not exceed two square feet in area. The total of all such signs shall not exceed two square feet for each occupancy or establishment.
- I. A sign on or adjacent to the entry of a multiple-occupancy building listing the names and/or occupations of the occupants or establishments therein, provided that the size of such sign shall not exceed two square feet in area for each occupancy or establishment.
- J. Signs designating historical places or points of interest, erected by a governmental authority or by a duly chartered historical association or the like, not to exceed six square feet in area.

§ 180-79. Business and industrial districts.

In an area zoned as a business or industrial district, each place of business may be issued a permit for a sign or signs as follows:

- A. Wall signs not to exceed 25% of the area of the front and rear walls and 10% of each secondary side of a building are permitted.
- B. Standing signs are permitted, subject to the following conditions:
 - (1) Standing signs are not to exceed 25% of the front wall of the principal structure fronting on a street.
 - (2) Standing signs and V-shaped signs on roofs, marquees, cornices, awnings and projections are permitted. Signs mounted upon or part of ventilating equipment, shafts or towers projecting above the roofline of the building are prohibited.
 - (3) Signs located within the setback area shall not be located within 10 feet of grade, without advance written permission of the Inspector of Buildings or his designee, not including instructional signs.
 - (4) Window signs for permitted retail establishments in all districts. Window signs shall not exceed 50% of the area of the window glass.

§ 180-80. Agricultural districts.

In agricultural districts, a permit for two signs, not to exceed 32 square feet per sign in area, may be granted to identify an accessory use permitted. When the agricultural zone does not abut a street, the signs allowed under this section may be located on streetfront property contiguous to the agriculturally zoned land, provided that the land is under the same ownership. The sign shall conform to § 180-77 of this article. V-shaped signs or back signs are allowed. Freestanding signs shall be a minimum of 100 feet apart.

§ 180-81. Existing signs.

Any signs, except billboards, in existence at the time of the initial adoption of this article on September 12, 1977, shall not be subject to the provisions hereof except as to any provisions dealing with the structural integrity of the sign and § 180-85.

§ 180-82. Nonaccessory signs.

- A. The erection or continued maintenance of private nonaccessory signs is not permitted.
- B. The Town Council may authorize the erection of nonaccessory signs, kiosks or directories on public property for direction purposes. Following a public hearing, the Council shall stipulate specifications, conditions, locations and fees for the erection, use and maintenance of each nonaccessory sign, kiosk or directory. The Council may set the number of signs, kiosks or directories and the location thereof, but in no event shall the number of signs, kiosks or directories exceed six in number for any one entity, business, corporation or address.
- C. Indemnification and liability.
 - (1) The applicant-owner authorized by the Town Council to erect and/or retain a nonaccessory sign, kiosk or directory on public property of the Town of Agawam as authorized under Subsections

A and B of this section shall agree to save and hold harmless and indemnify the Town of Agawam, its officers, directors, employees, board members, elected and appointed officials and agents from and against all liability, claims, demands, damages, costs, expenses, attorney's fees, judgments, losses and all causes of action on account of personal injuries, property damage or loss, nuisance or damage of any kind and nature whatsoever, which arise out of or are in any manner connected with by reason of, pertaining to or relative to the authorization, erection, placement, construction, design, location, color, maintenance, repair, removal, destruction, vandalism, theft and accuracy of the signs, kiosks or directories under this section. The applicant-owner shall further agree to save and hold harmless and indemnify the Town of Agawam as aforesaid for any and all causes of action claimed to arise out of or which are in any manner connected with said signs, kiosks or directories, regardless of whether said injury, loss, damage, claim, costs, expenses, attorney's fees, judgments or losses shall have been caused by, or claimed to have been caused by, the negligence or fault of the Town of Agawam as aforesaid or the applicant-owner or by agents or employees of the foregoing or by accident or otherwise.

- (2) In the event any action is brought against the Town of Agawam as aforesaid, the applicant-owner authorized under this section shall assume full responsibility and liability for the defense thereof, the costs, expenses, attorney's fees, settlements and judgments therefrom, and, upon the failure to do so on notice from the Town of Agawam, the Town of Agawam reserves the right to defend such action or actions and to charge all costs, expenses, attorney's fees, settlements and judgments thereto to the applicant-owner, and the applicant-owner shall immediately pay and reimburse the Town. The applicant-owner shall take all precautions necessary to protect the public against injury and damage.
- (3) The applicant-owner shall be required to lawfully execute a hold-harmless indemnification agreement in compliance with this section prior to final authorization by the Town Council.

§ 180-83. Prohibitions.

- A. Overhanging signs. No overhanging signs shall be permitted unless part of a cantilever of a principal building; however, this provision shall not apply to street name signs or to signs or devices erected by the Town, county or commonwealth for the direction and control of traffic.
- B. Billboards as defined herein are prohibited.
- C. Private signs on Town property are prohibited unless a permit for such a sign is authorized by the Town Council. No such authorization shall be given until after a duly advertised public hearing in accordance with § 180-82; any such signs shall conform in all respects to all other provisions of this article. Permits for such signs may be revoked at any time by the Town Council.
- D. No signs shall contain, in the opinion of the Inspector of Buildings or his designee, a color or movement which is a violation of the purpose of this article.

§ 180-84. Temporary signs and political signs.

- A. Temporary signs which do not comply with this article may be allowed only after issuance of a permit in accordance with § 180-76. Temporary signs which do not comply with this article may be authorized by the Inspector of Buildings or his designee for public or nonprofit purposes without fee. Temporary signs shall not exceed 12 square feet in area, and may be maintained for a period not exceeding 180 days for agricultural purposes and 60 days for any other purpose. The Inspector of Buildings or his designee shall have the sole discretion in the issuance or denial of permits for

temporary signs. A property owner or business may receive only one permit for a temporary sign in any calendar year.

- B. Political signs may be erected only on private property and with the landowner's permission. Political signs shall not exceed six square feet in area, may be erected 15 days prior to a primary election and maintained, in good condition, continuously until 48 hours after the close of the polls of the final election. Candidates eliminated in the primary election shall have their signs removed within 48 hours after the close of the polls of the primary election. All such signs shall be removed within the forty-eight-hour limit as a responsibility of the property owner. A challenge to the official count shall not negate this provision.

§ 180-85. Maintenance.

All signs, whether a permit is required or not, shall be maintained in a safe and legible condition to the satisfaction of the Inspector of Buildings or his designee. Failure to correct violation of this provision within 30 days after notice thereof shall constitute grounds for revocation of the permit, or for removal of the sign if it was erected without the need for a permit. It shall be a duty of the owner and/or the lessee of any sign to maintain the immediate premises occupied by the sign in a clean, sanitary and healthful condition.

§ 180-86. Special cases.

Notwithstanding the foregoing provisions of this article, certain special types of activities or situations are recognized for which such provisions may be modified and permits issued as follows:

- A. Theaters. The marquee of a theater as defined in MGL c. 143 shall be considered as comprising part of the wall area in determining the total sign area to be permitted.
- B. Subdivisions. One permanent subdivision name sign, not to exceed 32 square feet in area, may be permitted for each entry to a subdivision from a public way. Such a sign may be erected only upon receiving approval of the definitive plan for the project.
- C. Contractors, developers. For each construction or development project, there may be issued a temporary permit for one standing sign, not to exceed 32 square feet in area, setting forth facts and names pertinent to the project. Such signs shall be erected only upon receiving approval by the Town for the project. Such signs shall be removed forthwith when the project is completed. Any project which is funded in whole or in part by federal, state or municipal funds may have such signs as the funding authority may require, regardless of the provisions of this article.
- D. Gasoline stations. Standard pump head signs of gasoline filling stations shall not be included in the total area of signs permitted, and no permit shall be required therefor, but they shall conform to the provisions of § 180-77B of this article.
- E. Where a building (or buildings in a common group such as a shopping center) contains three or more separate businesses (or professional offices) and it is desired to identify the building or group of buildings as such, in addition to the signs permitted for the individual businesses, there shall be permitted one standing sign displaying the name of the building or group of buildings and not to exceed 64 square feet plus 16 square feet for the listing of each occupant or business.

§ 180-87. Special permits.

The Board of Appeals is authorized to grant special permits for signs which would not otherwise comply

with this article. In granting any such permit, the Board shall comply with all procedural requirements of law pertaining to the issuance of special permits in general.

§ 180-88. Severability.

The invalidity of any section or provision of this article for the regulation of signs shall not invalidate any other section or provision hereof.

§ 180-89. (Reserved)

ARTICLE XIV
Personal Wireless Service Facilities and Towers
[Added 3-2-1998 by TOR-97-13]

§ 180-90. Purposes.

The purposes of this article are to:

- A. Preserve the character and appearance of the community while simultaneously allowing adequate personal wireless services to be developed;
- B. Protect the scenic, historic, environmental and natural or man-made resources of the community;
- C. Provide standards and requirements for the regulation, placement, construction,, monitoring, design, modification and removal of personal wireless service facilities and towers;
- D. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify personal wireless service facilities and towers;
- E. Preserve property values;
- F. Locate towers so that they do not have negative impacts, such as, but not limited to, visual blight, attractive nuisance, noise and falling objects, on the general safety, welfare and quality of life of the community;
- G. Require owners of personal wireless service facilities and towers to configure them so as to minimize and mitigate the adverse visual impact of the facilities and towers; and
- H. Require the clustering and camouflaging of personal wireless service facilities and towers.

§ 180-91. Consistency with federal law. [Amended 10-7-2019 by Ord. No. TOR-2019-6]

This article is intended to be consistent with the Telecommunications Act of 1996 and Section 6409 of the Federal Taxpayers Relief Act of 2012, in that:

- A. It does not prohibit or have the effect of prohibiting the provision of personal wireless services;
- B. It is not intended to be used to unreasonably discriminate among providers of functionally equivalent personal wireless services; and
- C. It does not regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.

§ 180-92. Definitions. [Amended 11-7-2012 by TOR-2012-3; 10-7-2019 by Ord. No. TOR-2019-6]

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

ACTS — The Telecommunications Act of 1996 and Section 6409 of the Federal Taxpayers Relief Act of 2012.

§ 180-93. Exempted wireless telecommunications uses.

- A. This article specifically exempts the following wireless telecommunications facilities:
- (1) Police;
 - (2) Fire;
 - (3) Ambulance and other emergency dispatch;
 - (4) Citizens band radio; and
 - (5) Amateur radio equipment and towers used in accordance with the terms of any amateur radio service license issued by the FCC, provided that the tower is not used or licensed for any commercial purpose and the tower shall be removed upon loss or termination of said FCC license.
- B. No personal wireless service facility shall be considered exempt from this article for any reason whether or not said facility is proposed to share a tower or other structure with such exempt uses.

§ 180-94. Wireless Telecommunications Overlay District (WTOD). [Amended 10-6-2014 by TOR-2014-6; 5-1-2023 by Ord. No. TOR-2023-4]

- A. Purpose. The Wireless Telecommunications Overlay District (WTOD) is intended to protect the scenic, historic, natural and other resources of the Town of Agawam while allowing adequate personal wireless telecommunications to be developed. Towers shall be located only within Wireless Telecommunications Overlay District(s) within the Town of Agawam by special permit. Wireless telecommunications facilities mounted on top of an existing building (roof-mounted), mounted adjacent to the side or rear of an existing building (side-mounted) or mounted to the facade of an existing building (facade-mounted) may be located within these district(s), but are also allowed in the rest of the Town by special permit.
- B. Description. This district includes the properties listed below. These properties are included by reason of their potential to provide technically feasible and accessible locations for the siting of facilities which can provide adequate personal wireless telecommunications services to the Town of Agawam. The Overlay District is defined, delineated and mapped on the map entitled "Wireless Telecommunications Overlay District Map, Town of Agawam MA," which is incorporated herein by reference.⁷³

Property Name	Assessor's Map, Block and Lot
Bondi's Island	N15-1-1
	N14-1-1
Riverside Park	K3-3-1
Crestview Country Club	H3-1-21
	H3-1-24
	H3-1-19
	H3-1-22

73. Editor's Note: A copy of said map is on file in the office of the Town Clerk and may be examined there during regular business hours.

Property Name	Assessor's Map, Block and Lot
	G2-1-1
Oak Ridge Country Club	E2-1-6
St. Anne Golf Course	F6-1-1
Agawam Municipal Golf Course	D10-1-6
Adams TV of Springfield	B14-1-4
	B14-1-3
	B14-1-5
Agawam Regional Industrial Park	G7-1-3
	G7-1-4
	G7-2-6
	G6-1-1
	F6-2-2
	G7-3-1
	G6-3-6
	G7-1-8
	H7-2-4
	G6-1-7
	H7-2-3
	G6-1-3
	G7-2-2
	G6-1-8
	G6-1-4
	G5-6-1
	H7-2-2
	F7-2-2
	G5-6-2
	G5-6-3
	G6-3-4
	H8-1-1
	G7-2-3
	G6-3-5
	H8-1-1

Property Name	Assessor's Map, Block and Lot
	G8-1-14
	G7-1-1
	G7-1-2
	G7-2-1
Western Massachusetts Electric	H5-1-5
	H5-1-6
	H5-1-1
	H6-1-1
	H6-1-17
	H6-1-18
	I4-1-9
	I5-1-11
	I5-1-12
Agawam Methodist Church	H10-2-17
Agawam Municipal Complex Annex, 1000 Suffield Street	I7 1 2
Agawam Police Station, 1070 Suffield Street	I6 1 9

- C. Relation to other districts. The WTOD is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of such other districts. Except as so modified or superseded, the regulations of the underlying districts remain in effect.
- D. Applicability. Any use of lands within the WTOD for purposes of placement, construction, modification or removal of personal wireless service facilities and/or towers shall be subject to the requirements of this article.

§ 180-95. Provision of independent consultants to review granting of special permit.

- A. Upon submission of an application for any special permit under this article, the applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of independent consultants. These consultants shall each be qualified professionals with a record of service to municipalities in one or more of the following:
- (1) Telecommunications engineering;
 - (2) Structural engineering;
 - (3) Monitoring of electromagnetic fields; and
 - (4) (If determined necessary by the SPGA) other relevant fields of experience as determined by the SPGA.

- B. The SPGA shall select the independent consultant(s) after consultation with the Board of Health and the Conservation Commission and the Department of Public Works, each of which shall propose a list of qualified candidates.

§ 180-95.1. Provision of independent consultants to evaluate zone change requests. [Added 11-5-2014 by TOR-2014-9; amended 3-16-2015 by TOR-2015-1]

- A. Upon submission of an application for a zone change to add a parcel to the Wireless Telecommunications Overlay District under this article, the applicant shall pay a review fee determined by the City Council, consisting of reasonable costs to be incurred by the City Council for the employment of independent consultants. These consultants shall each be qualified professionals with a record of service to municipalities in one or more of the following:
- (1) Telecommunications engineering;
 - (2) Structural engineering;
 - (3) Monitoring of electromagnetic fields; and
 - (4) (If determined necessary by the City Council) other relevant fields of experience as determined by the City Council.
- B. The independent consultant(s) shall assist the City Council in determining whether the subject parcel needs to be added to the Wireless Telecommunications Overlay District. Said analysis shall include, but not be limited to, determining whether adequate personal wireless services can be provided utilizing existing parcels in the Wireless Telecommunications Overlay District and/or existing structures, including but not limited to buildings, water towers, existing telecommunication facilities, utility poles and towers and related facilities, provided that such installation preserves the character and integrity of those structures.

§ 180-96. Application requirements.

No personal wireless service facility or tower shall be erected, constructed or installed or undergo Major Modification without first obtaining a special permit from the SPGA in accordance with the requirements set forth herein.

- A. Adequate coverage, adequate capacity and justification of need for personal wireless service facility and/or tower.
- (1) Sites in which applicant has legal or equitable interest.
 - (a) The applicant shall provide written documentation of any facility site(s) in Agawam and any sites in abutting towns located within eight miles of any boundary of the Town of Agawam in which it has any legal or equitable interest, whether by ownership, leasehold or otherwise. For each such facility site, it shall demonstrate with written documentation that this facility site is not already providing or does not have the potential by adjusting the site to provide adequate coverage and/or adequate capacity to the Town of Agawam. The documentation shall include, for each facility site listed:
 - [1] The exact tower location (in longitude and latitude, to degrees, minutes, seconds);
 - [2] Ground elevation above mean sea level at the tower location;

- [3] Height of tower or structure;
 - [4] Type, manufacturer and model number of antennas;
 - [5] Antenna gain;
 - [6] Height of antennas on tower or structure;
 - [7] Output frequency;
 - [8] Number of channels;
 - [9] Power input; and
 - [10] Maximum power output per channel.
- (b) Potential adjustments to these existing facility sites, including changes in antenna type, orientation, gain, height or power output shall be specified. Radial plots from each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.
- (2) Sites in which applicant has no legal or equitable interest.
- (a) The applicant shall demonstrate with written documentation that it has examined all existing facility sites located in Agawam and any sites in abutting towns located within eight miles of any boundary of the Town of Agawam in which the applicant has no legal or equitable interest, whether by ownership, leasehold or otherwise, to determine whether the existing facility sites can be used to provide adequate coverage and/or adequate capacity to the Town of Agawam. The documentation shall include, for each existing facility site examined:
- [1] The exact tower location (in longitude and latitude, to degrees, minutes, seconds);
 - [2] Ground elevation above mean sea level at the tower location;
 - [3] Height of tower or structure;
 - [4] Type, manufacturer and model number of proposed antennas;
 - [5] Proposed antenna gain;
 - [6] Height of proposed antennas on tower or structure;
 - [7] Proposed output frequency;
 - [8] Proposed number of channels;
 - [9] Proposed power input; and
 - [10] Proposed maximum power output per channel.
- (b) Radial plots from each of these existing facility sites, configured as documented above, shall be provided as part of the application.
- (3) The applicant shall demonstrate with written documentation that it has analyzed the feasibility of repeaters in conjunction with all existing facility sites listed in compliance with the sections

above to provide adequate coverage and/or adequate capacity to the Town of Agawam. Radial plots of all repeaters considered for use in conjunction with these facility sites shall be provided as part of the application.

B. Required documentation for personal wireless service facility and/or tower. The applicant shall include reports prepared by one or more professional engineers, which shall demonstrate that the personal wireless service facility and tower comply with all applicable standards of the federal and state governments, more specifically:

- (1) Copies of all submittals and showings pertaining to: FCC licensing, environmental impact statements, FAA notice of construction or alteration, aeronautical studies and all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from routine environmental evaluation under the FCC rules is claimed.
- (2) Copies of all information submitted in compliance with requirements of Massachusetts Department of Public Health, 105 CMR 122 Fixed Facilities Which Generate Electromagnetic Fields in the Frequency Range of 300 khz to 100 ghz and Microwave Ovens, or any revisions thereof as the Department of Public Health may, by written notice, create.
- (3) The exact legal name, address or principal place of business and phone number of the applicant. If any applicant is not a natural person, it shall also give the state under which it was created or organized.
- (4) The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.
- (5) Name, address, phone number and written consent to apply for this permit of the owner of the property on which the proposed personal wireless service facility and/or tower shall be located or of the owner(s) of the tower or structure on which the proposed personal wireless service facility shall be located.
- (6) Required plans and engineering plans, prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. (Note: Survey plans shall also be stamped and signed by a professional land surveyor registered in Massachusetts.) Plans shall be on sheets 24 inches x 36 inches, on as many sheets as necessary and at scales which are no smaller (i.e., no less precise) than listed below. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s) and original seal and signature of the professional engineer and other professionals who prepared the plan.
- (7) The applicant shall, as part of its application, provide the SPGA with the following plans and maps:
 - (a) Proposed site plans.
 - [1] Proposed facility site layout, grading and utilities at a scale no smaller than one inch = 40 feet (1:480 or metric equivalent 1:500) showing the entire vicinity within a radius of 400 feet of the tower site, with topography drawn with minimum of contour intervals of two feet (0.6 meter).
 - [2] Proposed tower location and any appurtenances and accessory buildings

(communication equipment shelter or other). Indicate property boundaries of the Overlay District and setback distances to the base(s) of the tower and to the nearest corners of each of the appurtenant structures to those boundaries and dimensions of all proposed improvements.

- [3] Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration.
 - [4] Plans of proposed access driveway or roadway and parking area at the facility site. Include grading, drainage, traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.
- (b) Proposed tower and appurtenances.
- [1] Plans, elevations, sections and details at appropriate scales but no smaller than one inch = 10 feet.
 - [2] Two cross-sections through proposed tower drawn at right angles to each other and showing the ground profile to at least 100 feet beyond the limit of clearing. Indicate proposed spot elevations at the base of the proposed tower. Dimension the proposed height of the tower above average grade at tower base. Indicate the maximum allowable structural height of the tower after addition of any modular sections. Show all proposed antennas, including their location on the tower.
 - [3] Details of typical tower foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.
 - [4] Detail proposed exterior finish and camouflage of the tower.
 - [5] Indicate relative height of the tower to the tops of surrounding trees as they presently exist.
- (c) Proposed communications equipment shelters.
- [1] Floor plans, elevations and cross sections at a scale of no smaller than 1/4 inch = one foot (1:48) of any proposed appurtenant structure.
 - [2] Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.
- (d) Proposed equipment plan.
- [1] Plans, elevations, sections and details at appropriate scales, but no smaller than one inch = ten feet.
 - [2] Number of antennas and repeaters (if any), as well as the exact locations of all repeaters (if any) located on a map, as well as by degrees, minutes and seconds of latitude and longitude.
 - [3] Mounting locations on tower or structure, including height above ground.
 - [4] Antenna type(s), manufacturer(s), model and number(s).
 - [5] For each antenna, the antenna gain and antenna radiation pattern.

- [6] Number of channels per antenna, projected and maximum.
 - [7] Power input to the antenna(s).
 - [8] Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.
 - [9] Output frequency of the transmitter(s).
- C. Application requirements for roof-mounted, side-mounted and facade-mounted personal wireless service facilities. The use of repeaters to assure adequate coverage or to fill holes within areas of otherwise adequate coverage, while minimizing the number of required towers is permitted and encouraged.
- (1) Applicants shall provide the following information:
 - (a) The exact location (in longitude and latitude, to degrees, minutes and seconds), as well as by street address or pole number (if applicable);
 - (b) Ground elevation;
 - (c) Proposed output frequency;
 - (d) Proposed number of channels;
 - (e) Proposed power input; and
 - (f) Proposed maximum power output per channel.
 - (2) Name, address, phone number and written consent to apply for this permit of the owner of the property on which the proposed facility shall be located.
 - (3) Proposed site layout, grading and utilities at a scale no smaller than one inch = 40 feet (1:480 or metric equivalent 1:500) showing the entire vicinity within a radius of 300 feet of the site with topography drawn with minimum contour intervals of two feet (0.6 meter).
 - (a) Proposed facility location and any appurtenances, if any, and any accessory building (communication equipment shelter or other). Indicate property boundaries of abutters within 300 feet of the facility, and dimensions of all proposed improvements;
 - (b) Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration; and
 - (c) Plans of any proposed access driveway or roadway and parking area at the site. Include grading, drainage, traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.
- D. A major modification is defined as a modification that substantially changes the physical dimensions of a tower or station by including one of the following conditions: **[Added 10-7-2019 by Ord. No. TOR-2019-6]**
- (1) An increase in the height of the tower by more than 10% or by the height of one additional antenna;
 - (2) A protrusion from the edge of the tower more than 20 feet, or more than the width of the tower

structure at the level of the appurtenance, whichever is greater;

- (3) An installation of more than the standard number of new equipment cabinets but not to exceed four cabinets;
 - (4) Any excavation or deployment outside the current site of the tower or wireless service facility;
 - (5) The change would defeat the existing concealment elements of the tower or wireless service facility; or
 - (6) The change does not comply with conditions associated with the prior approval of construction or modification of the tower or wireless service facility unless the noncompliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds identified.
- E. An eligible facilities request for modification of an existing wireless facility or tower that does not substantially change the physical dimensions of such facility or tower shall be required to apply for and receive any and all permits required by the Inspector of Buildings. An eligible facilities request shall involve the following on a preexisting wireless facility or tower: **[Added 10-7-2019 by Ord. No. TOR-2019-6]**
- (1) Collocation of new transmission equipment;
 - (2) Removal of transmission equipment; or
 - (3) Replacement of transmission equipment.

§ 180-97. General requirements.

- A. If feasible, personal wireless service facilities shall be located on existing structures, including, but not limited to, buildings, water towers, existing telecommunication facilities, utility poles and towers and related facilities, provided that such installation preserves the character and integrity of those structures.
- B. Only freestanding monopoles, with associated antenna and/or panels, shall be allowed as specified in this section. Lattice-style towers and facilities requiring guy wires and/or three or more legs for support are prohibited.
- C. If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless services facility shall be designed so as to be camouflaged to the greatest extent possible, including, but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees. One week prior to and one week following the public hearing, a balloon shall be put in place at the height of the proposed tower. The balloon shall be of a size and color that can be seen from every direction for a distance of one mile.
- D. A special permit shall not be granted for a tower to be built on speculation. If the applicant is not simultaneously installing a personal wireless service facility on the tower, it shall provide a copy of its existing lease/contract with a personal wireless service provider. Said provider shall provide all necessary data to comply with the terms of this article, as part of the applicant's application for a personal wireless service facility and/or tower or the special permit shall not be granted.
- E. Tower(s) shall minimize, to the extent feasible, adverse visual impacts on the environment. The SPGA may impose reasonable conditions to ensure this result, including, but not limited to, requiring

the use of camouflage, painting, lighting standards and screening.

- F. When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the buildings silhouette. Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and, if over five square feet, shall be painted or shielded with material which is consistent with the design features and materials of the building.
- G. A vegetated buffer strip of undisturbed trees of an adequate depth to screen the facility and no less than 20 feet shall be retained as close to the tower as possible.
- H. The tower and communication equipment shelter(s) shall be completely fenced for security within a gated area no greater than 10,000 square feet, with fence height limited to six feet. Use of razor wire is not permitted. **[Amended 3-18-2002 by TOR-2001-7]**
- I. There shall be no signs, except the following: a sign no greater than two square feet indicating the name of the personal wireless service facility's owner(s), and a twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, No Trespassing or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of this chapter.
- J. New towers shall be the lesser of 190 feet; or the minimum height determined by the independent consultant(s) to provide the applicant adequate coverage from the personal wireless service facility(s) proposed for use on the tower. Side- and roof-mounted personal wireless service facilities shall not project more than 10 feet above the height of an existing building nor project more than 10 feet above the height limit of the zoning district within which the facility is located. Personal wireless service facilities may be located on a building that is legally nonconforming with respect to height, provided that the facilities do not project above the existing building height. New antennas located on any of the following structures existing on the effective date of this article shall be exempt from the height restrictions of this article, provided that there is no increase in height of the existing structure as a result of the installation of a personal wireless service facility: water towers, guyed towers, lattice towers, fire towers and monopoles. New antennas located on any of the following existing structures shall be exempt from the height restriction of the article, provided that there is no more than a twenty-foot increase in the height of the existing structure as a result of the installation of a personal wireless service facility: electric transmission and distribution towers, telephone poles and similar existing utility structures.
- K. In order to ensure public safety, the minimum distance from the base of a telecommunications tower to any property line and/or street, and all buildings on the subject property occupied on a regular basis, shall be a minimum of 260 feet; or 1 1/2 times the height of the facility/mount, including any antennas or appurtenances, whichever is greater. Such minimum distance to all publicly owned parks and playgrounds shall be at least 375 feet. As used herein, "publicly owned parks" shall not include any golf courses. **[Amended 3-18-2002 by TOR-2001-7]**
- L. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of personal wireless service providers licensed to provide services to the Town of Agawam and surrounding areas.

- M. Unless required by the Federal Aviation Administration, no night lighting of towers, or the personal wireless service facility is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
- N. No tower or personal wireless service facility, with the exception of roof-mounted, side-mounted, facade-mounted or structure-mounted telecommunications facilities or repeaters, shall be located outside of the Wireless Telecommunications Overlay District(s). No tower or personal wireless service facility shall be located within any of the following prohibited areas:
 - (1) Massachusetts or federally-regulated wetland.
 - (2) Massachusetts certified vernal pool.
- O. A different existing structure or use on the same lot shall not preclude the construction and installation of a wireless telecommunications facility on such lot. If a tower and its equipment buildings are the sole use of the lot, the tower shall be deemed to be the principal use; otherwise, the use shall be considered accessory. **[Added 3-18-2002 by TOR-2001-7]**

§ 180-98. Evaluation by independent consultants.

- A. Upon submission of a complete application for any special permit(s) under this article, the SPGA shall provide its independent consultant(s) with the full application(s) for their analysis and review.
- B. Applicants for any special permit(s) under this article shall grant permission for the town's independent consultant(s) to conduct any necessary site visit(s).

§ 180-99. Approval criteria.

- A. In acting on any special permit application, the SPGA shall proceed in accordance with the procedures and timelines established for special permits in this chapter. The special permit granting authority may adopt and from time to time amend rules and regulations relative to the issuance of such permits and shall file a copy of said rules and regulations in the office of the Town Clerk.
- B. In addition to the findings required in this article, the SPGA shall, in consultation with the independent consultant(s), make all of the applicable findings before granting the special permit, as follows:
 - (1) That the applicant is proposing to locate its personal wireless service facility or tower within a Wireless Telecommunications Overlay District or other districts as provided by this article;
 - (2) That the applicant is not able to use existing towers/facility sites in or around the Town of Agawam, either with or without the use of repeaters, to provide adequate coverage and/or adequate capacity to the Town of Agawam;
 - (3) That the proposed personal wireless service facility/tower will not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources;
 - (4) That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the towers and facilities; and
 - (5) That the proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring

program is in place and shall be paid for by the applicant.

- (6) Any decision by the SPGA to deny an application for a special permit under this article shall be in conformance with SEC. 332(47 U.S.C. § 332) J(7)(B)(ii), (iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

§ 180-100. Removal requirements.

- A. Any personal wireless service facility (ground-mounted or otherwise) which ceases to operate for a period of one year shall be removed. "Cease to operate" is defined as not performing the normal functions associated with the personal wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all personal wireless service facility improvements which have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the facility or repeater site, including any access road(s) which lead to that facility site from the main access road, shall be revegetated. If all facility sites have ceased to operate, the owner of the last personal wireless service facility to leave the site shall revegetate the access road in its entirety. Existing trees shall only be removed with the written permission of the SPGA and only if the SPGA determines such removal of trees to be necessary to complete the required removal of personal wireless service facility(s).
- B. Removal performance guaranty. The applicant shall, as a condition of the special permit, post an initial cash bond in a reasonable amount determined and approved by the SPGA. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the site and to cover the cost of the removal of the tower or facility from the site and remediation of the landscape, should the facility cease to operate.

§ 180-101. Fees and insurance.

Towers and personal wireless service facilities shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a certificate of insurance to the Planning Board on an annual basis. For towers and facilities located on property owned by the Town of Agawam, the Town of Agawam shall be an additional named insured.

§ 180-102. Noncompliance; violations; enforcement; attorney's fees.

Upon determination that the applicant and/or owner has failed to comply with this article or is in violation of this article, and the Town of Agawam takes any action to enforce this article, bring the applicant and/or owner into compliance with this article, or to abate any violations under this article, the applicant and/or owner shall be liable and responsible to pay to the Town of Agawam all costs, expenses and reasonable attorney's fees for such action taken by the Town of Agawam. Failure to pay said costs, expenses and reasonable attorney's fees within 30 days of receipt of notice to pay the same shall be grounds for the revocation of any special permit issued in accordance with this article.

§ 180-103. Severability.

The invalidity of any section or provision of this article shall not invalidate any other section or provision hereof or to take any other action with respect thereto.

ARTICLE XV
Adult Entertainment Businesses
[Added 8-3-1998 by TOR-98-4]

§ 180-104. Statutory authority.

This article is enacted pursuant to MGL c. 40A, and pursuant to the Town of Agawam's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain adult entertainment uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

§ 180-105. Purpose.

It is the purpose of this adult entertainment article to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town of Agawam, adverse impacts on the property values of residential and commercial properties and adverse impacts on the quality of life in the town. All of said secondary impacts are adverse to the health, safety and general welfare of the Town of Agawam and its inhabitants. The provisions of this article have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this article to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitutions of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this article to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

§ 180-106. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADULT ENTERTAINMENT USES — Include the following uses:

- A. Adult bookstores, as defined in 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.

§ 180-107. Special permit required; criteria.

Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this article and may be permitted only upon the grant of a special permit by the Board of Appeals. An adult entertainment use special permit shall not be granted unless each of the following standards has been met.

- A. The application for a special permit for an adult entertainment use shall provide the name and address of the legal owner of the establishment, the legal owner of the property and the manager of the

proposed establishment. The owners and managers shall be considered coapplicants.

- B. No adult use special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28.
- C. Location.
 - (1) Adult entertainment uses shall not be located within:
 - (a) One thousand five hundred feet from any district designated by the Agawam Zoning Ordinance for residential use; or
 - (b) One thousand five hundred feet from the nearest church, school, park, playground, play field, youth center; or
 - (c) One thousand five hundred feet from the nearest adult entertainment use as defined herein; or
 - (d) One thousand five hundred feet from the nearest establishment licensed under MGL c. 138, § 12.
 - (2) The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest boundary line of a residential zoning district or to the nearest property line of any of the other designated uses set forth above.
- D. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public. In no way shall such screening prevent public safety personnel from entering the premises at any time without the use of special tools or equipment.
- E. No adult entertainment use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent material any sexually explicit figures or words as defined in MGL c. 272, § 31.
- F. No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises or enter into the premises.
- G. Off-street parking shall be provided in compliance with Town regulations and shall be designated so as not to obstruct police patrol views of the premises.
- H. No adult entertainment use shall have any flashing lights or neon or other fluorescent lights visible from outside the establishment.
- I. No adult entertainment use shall have a freestanding accessory sign.
- J. No adult entertainment use shall be established prior to submission and approval of a site plan by the Board of Appeals. The site plan shall depict all existing and proposed buildings, parking spaces, driveways, service areas and other open uses. The site plan shall show the distances between the proposed adult entertainment use and the boundary of the nearest residential zoning district and the property line of each use of the use set forth in Subsection C above.
- K. The owners and managers of an establishment granted an adult entertainment use special permit shall

not permit any obscene matter, material or conduct, as defined in MGL c. 272, § 31, on the premises.

- L. Special permits issued by the special permit granting authority shall require the unanimous vote of the three members of the special permit granting authority. If the special permit granting authority has more than three members, the vote shall be as provided for in MGL c. 40A.

§ 180-108. Conditions.

The special permit granting authority may impose reasonable conditions, safeguards and limitations on time or use of any special permit granted and shall require that any such special permit granted shall be personal to the applicant, shall not run with land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject property.

§ 180-109. Suspension and revocation of special permit.

The special permit granting authority may suspend or revoke a special permit granted hereunder for any violation of the special permit, for any violation of the Town of Agawam ordinances and/or for any violation of state or federal law.

§ 180-110. Expiration of special permit.

A special permit to conduct an adult entertainment use shall expire after a period of one calendar year from its date of issuance and shall automatically be renewable for a successive one-year period thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon the public safety factors applied at the time that the original special permit was granted.

§ 180-111. Severability.

The provisions of this article are severable, and, in the event that any provision of this article is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

ARTICLE XVI

**Open Space Residential Development; Age-Restricted Housing; Low-Density Multifamily
Community District
[Added 12-4-2006 by TOR-2006-9]**

§ 180-112. Open space residential development.

- A. Intent. Open space residential development (OSRD) in accordance with this article shall be allowed by right in the Residence A-1, Residence A-2, and Agricultural Districts. "Open space residential development" shall mean a residential development adjacent to permanently preserved open space. Open space residential development shall be encouraged within the Town, and shall be the preferred method of subdivision development wherever the following purposes would be served.
- B. Purposes. The purposes of open space residential development are:
- (1) To allow for greater flexibility and creativity in the design of residential developments, provided that the overall density of the development is no greater than what is normally allowed in the district.
 - (2) To encourage the permanent preservation of open space, agricultural lands, forest lands and other natural resources, including aquifers, water bodies and wetlands, and historical and archaeological resources.
 - (3) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features.
 - (4) To maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farmlands.
 - (5) To facilitate the construction of streets, utilities and public services in a more economical and efficient manner.
 - (6) To ensure that residential developments respect the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic views, and rural character.
 - (7) To promote alternatives to strip residential development lining roadsides in the Town.
 - (8) To provide wildlife corridors connecting open spaces needed by wildlife to ensure their survival.
- C. Applicability.
- (1) Five-acre minimum. In any residential development consisting of five contiguous acres or more and 100 feet of frontage in single or consolidated ownership, an applicant may apply for an OSRD under this article.
 - (2) Uses permitted. The permitted uses of the underlying district(s) shall continue to be in full force and effect.
 - (3) Special land features. The Planning Board may recommend that an applicant use an OSRD subdivision design if the property possesses one or more of the following special features:
 - (a) Unfragmented open land as identified as a priority for protection in the Town's Open Space and Recreation Plan, Master Plan or the Community Development Plan.

- (b) Agricultural land with soils designated as prime or of statewide significance by the U.S. Natural Resource Conservation Service soil surveys.
 - (c) Rare, threatened, or endangered species or exemplary natural communities according to the Massachusetts BioMap Project developed by the Massachusetts Natural Heritage and Endangered Species Program.
 - (d) Unique natural, cultural and/or historical features as identified in the Master Plan or Community Development Plan.
- D. Application requirements. Applicants for open space residential development projects shall follow all procedures specified in the Town of Agawam Subdivision Rules and Regulations.⁷⁴
- E. Design standards. No approval for an OSRD shall be given unless the application complies with the following standards:
 - (1) The compatibility of the proposal with respect to the objectives and policy recommendations of the Open Space and Recreation Plan and Community Development Plan or Master Plan.
 - (2) Consistency with the Town of Agawam's Zoning Ordinance.
 - (3) The portion of a parcel placed in open space shall, to the greatest extent possible, be that which is most valuable or productive as a natural resource, wildlife habitat, farmland, or forestry land.
 - (4) 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.
- F. Dimensional standards.
 - (1) Allowed density.
 - (a) The maximum number of dwelling units for an OSRD shall be determined by use of a yield plan, which is a conceptual plan showing how the parcel could be subdivided in a conventional manner. Determination of the possible number of conventional lots shall be determined by Title V regulations, 310 CMR 15.000, as well as the Agawam Board of Health regulations. For purposes of determining the number of OSRD dwelling units, each conceptual conventional lot must meet the requirements of a buildable lot for a single-family dwelling unit on one acre of land. In no case shall the number of OSRD dwelling units exceed the number of units that would be allowed under a conventional subdivision.
 - (b) There shall be no further subdivision of an approved OSRD.
 - (2) Flexible dimensional controls.
 - (a) Frontage.
 - [1] The minimum frontage for a tract on which an OSRD is proposed shall be a contiguous 100 feet and provide safe access for a right-of-way of at least 46 feet.
 - [2] In the interest of flexibility and creative site designs, there shall be a minimum frontage requirement of 60 contiguous feet for individual lots on new subdivision

74. Editor's Note: See Ch. 159, Subdivision of Land.

streets within an OSRD, with the exception described in Subsection F(2)(a)[3] below.

[3] For each lot developed along a public street existing at the time of the application, the minimum frontage, minimum lot size and all other dimensional controls shall be those which are required in the underlying zoning district in which the OSRD is located.

(b) Lot size. The minimum lot size for all lots in the open space residential development is one acre.

(c) Setbacks.

[1] There shall be a minimum setback of 50 feet along all property boundaries of the overall tract for all structures, including accessory structures, parking areas, driveways and internal streets. Entrance streets connecting the OSRD to the external street system may cross the setback area.

[2] Minimum front, side, and rear yard setbacks shall be the same as normally required in the district.

(d) Required open space. The minimum open space requirement for an OSRD within the Residence A-1 and Agricultural Districts shall be 50% of the total tract area. The minimum open space requirement for an OSRD within the Residence A-2 District shall be 35% of the total tract area.

(3) Landscaped buffers.

(a) A landscaped buffer no less than 30 feet deep shall be provided. Entrance streets connecting the OSRD to the external street system may cross the buffer area. The natural vegetation shall be retained within the buffer area. If the natural vegetation is not sufficient to serve as an effective visual screen, landscaping shall be required to provide such a screen. Landscaping may include berms and/or decorative fencing of an appropriate height. The Planning Board may waive this requirement in instances that it deems appropriate.

(b) This buffer area shall be part of the open space and shall be subject to the same restrictions that apply to that area.

G. Common open space.

(1) Common open space requirements.

(a) Within the Residence A-1 and Agricultural Districts, a minimum of 50% of the total development parcel must be permanently protected as common open space. Within the Residence A-2 District, a minimum of 35% of the total development parcel must be permanently protected as common open space. At least 70% of the common open space shall be retained in contiguous areas, unless approved by the Planning Board.

(b) Watercourses, lakes, ponds, wetlands and steep slopes over 25% may be included in common open space calculations, but shall not exceed 50% of the required open space.

(c) The Planning Board may permit up to 3% of the open space area to be paved or built upon for structures accessory to the dedicated use of open space (i.e., pedestrian walks, bicycle

paths, playgrounds, farm-related structures).

- (d) All recreational facilities, common areas, and common open space shall be reasonably accessible to all residents of the development.
- (2) Land protection methods for common open space.
- (a) All land not devoted to buildings, lots, roads and other development shall be permanently protected as common open space for recreation, conservation, forestry or agricultural uses which preserve the land in its natural condition.
 - (b) The land shall be owned by a nonprofit land trust or conservation organization, homeowners' association, or individual, and a permanent deed restriction must be conveyed to the Town, with Town approval, or to a nonprofit trust or conservation organization whose principal purpose is to conserve farmland or open space. The Town shall review and approve all language contained in the deed restriction prior to final approval of the open space residential development. The deed restriction shall run with the land in perpetuity.
 - (c) Further subdivision of common open land or its use other than recreation, conservation, forest or agriculture, except for easements for underground utilities or drinking water supply wells, shall be prohibited.

H. Additional requirements.

- (1) Trails. Where there is an existing local or regional trail network on land adjacent to a proposed OSRD, the developer of the OSRD may be required to connect to the existing trail network with trail corridors through the site, and shall grant the general public access to these trails in perpetuity. The trails shall be restricted to pedestrian access.
- (2) Open space. Where there is an existing network of open space or large tracts of unfragmented open space on land adjacent to a proposed OSRD, the developer of the OSRD may be required to connect to the existing open space where feasible with the required open space set-aside, and shall grant the general public access to this open space in perpetuity. Public access shall be restricted to pedestrian traffic.
- (3) Forest management. On sites where the open space to be preserved is mostly mature forest (70% or greater), the developer of an OSRD may be required to submit a forest management plan developed by a Massachusetts licensed forester and approved by the Planning Board.
- (4) Viewshed and viewpoints. The development may protect in perpetuity viewsheds and associated viewpoints, which are lands or corridors of land that contribute to the visual landscape of the Town, including items such as open fields containing stone walls. The Planning Board may make use of a site visit to determine potential viewsheds and viewpoints to be preserved.
- (5) Historic features. The development may protect in perpetuity historically significant buildings and landscapes, identified as such in the Community Development Plan, that include buildings and associated uses that are maintained and visually separated from the developed portion of the OSRD. Structures or landscapes not identified may be determined by sufficient evidence presented to the Planning Board during review of the development. Such evidence may include listing or eligibility for listing on the National Register of Historic Landmarks, or the Massachusetts Register of Historic Landmarks.

I. Homeowners' association.

- (1) In the event that ownership of the land will remain with the homeowners in the open space residential development, a nonprofit homeowners' association shall be established, requiring membership of each lot owner in the open space residential development.
- (2) The association shall be responsible for the permanent maintenance of all common lands, common open space, recreational and thoroughfare facilities, except where such responsibility is assumed by another owner of the common land (land trust or conservation organization).
- (3) A homeowners' association agreement or covenant that will guarantee continuing maintenance of such common utilities, land and facilities, and assessing each lot a share of maintenance expenses shall be submitted with the final subdivision application. Where no homeowners' association is proposed, an alternative plan shall be submitted with the final subdivision application.
- (4) Such agreement must be reviewed and approved by Agawam's legal counsel and the Planning Board, and shall be recorded in the Hampden County Registry of Deeds. Such agreements or covenants shall provide that in the event that the association fails to maintain the common open land in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed equally against each of the properties within the development.

§ 180-113. Residence A-6 Low-Density Multifamily Community District. [Added 8-12-2013 by TOR-2013-6]

- A. Purpose. It is the purpose of this district to allow for greater variety and flexibility in the development of housing types and to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner while at the same time conserving important natural site features and permanently preserving open space.
- B. Application.
 - (1) A site plan for a low-density multifamily community in conformance with § 180-13 shall be submitted to the Planning Board. The following additional information shall be required:
 - (a) A development statement listing the development team, setting forth the development concept, including in tabular form the number of units, type, size (number of bedrooms, amount of living space, gross floor area), ground coverage and summary showing the area of residential development and common open space as a percentage of the total area.
 - (b) A development site plan of the entire tract in accordance with the requirements of this section and meeting, to the extent applicable, the requirements set forth for a definitive plan in the Agawam Subdivision Rules and Regulations.⁷⁵
 - (c) Architectural rendering of the site plans and typical structures, including floor plans and elevations.

75. Editor's Note: See 159, Subdivision of Land.

- (d) A traffic study will be required. This study shall be performed by a professional engineer registered in the Commonwealth of Massachusetts. It may include, at the discretion of the Planning Board, analysis of existing and proposed traffic conditions, driveway design, traffic signal warrant analysis, parking lot size and layout recommendations, a description of impacts on local and regional traffic due to the development, including an area and for a build-out time period as prescribed by the Planning Board. Depending on the location of the proposed curb cut, existing traffic characteristics and the volume of traffic generated by the proposal, a traffic signal may be warranted at one or all points of access. Any traffic control devices to serve the development would be designed, funded, and constructed by the project proponent at the time of the initial development or by the homeowners' association in the future. If, as a result of the traffic study, off-site traffic remediation is determined to be warranted, it shall be the responsibility of the project proponent. If the number of parking stalls required in the parking analysis exceeds the number required in the Town Code, the larger number shall be required.
 - (e) An engineering report regarding the adequacy of sewage disposal, water supply and stormwater drainage, including the impact of the proposed design on the existing municipal utility infrastructure of the Town.
 - (f) Marketing and management information, including unit selling prices, construction schedule, and phasing schedule.
- (2) Said application shall contain sufficient information so that the Planning Board can determine the applicability of said application for the following items:
- (a) Is consistent with the Master Plan of the Town of Agawam;
 - (b) Preserves and protects the character of the Town and especially the immediate neighborhood, giving due consideration to such features as public safety, including traffic control and traffic impact upon surrounding roads; development of adequate facilities for the use of the residents of said proposal; adequate fire protection, public health, including sewage disposal, drainage and water supply; and the compatibility of the size, location, architecture and landscaping of said project with the adjacent neighborhood and the Town;
 - (c) Minimizes potential adverse environmental impacts upon the Town;
 - (d) Is likely to result in a financially stable, soundly and attractively constructed and well managed and maintained project; and
 - (e) Conforms to the specific provisions of this chapter, including the design guidelines of this section.
- (3) Said site plan approval shall not be issued unless the Planning Board affirmatively determines that each of the above-listed criteria is met by said applicant.
- C. Use regulations. The following uses shall be permitted in a low-density multifamily community:
- (1) One-family detached dwellings.
 - (2) Two-family detached dwellings.
 - (3) Recreational uses and community facilities, such as parks, gardens, swimming pools, tennis courts, clubhouses and community buildings.

- (4) Accessory uses customarily incidental and subordinate to the principal uses listed above, but expressly excluding any commercial or retail enterprises.
- D. Dimensional requirements. A low-density multifamily community shall comply with the following dimensional requirements:
 - (1) Minimum parcel size. The total parcel shall have a minimum area of not less than 10 acres.
 - (2) Minimum parcel frontage. The total parcel shall have a minimum frontage on a public way of at least 150 feet.
 - (3) Front, side and rear yards. The minimum front yard (setback) shall be 25 feet from the interior paved way. The minimum front yard (setback) shall be 50 feet where it abuts a public way only. The side yard and rear yard requirements shall be 50 feet, inclusive of a landscaped buffer strip of not less than 15 feet, and shall pertain only to the periphery of the development. Additional buffering may be required in sensitive areas at the discretion of the Planning Board. The Planning Board may modify or waive the buffering requirement where variations in topography, natural features and vegetation, or compatible land uses, obviate the need for such a buffer.
- E. Density regulations. The maximum number of dwelling units permitted within a low-density multifamily community shall be determined by the Planning Board to assure compliance with the purpose and intent of these regulations, and in any event shall not exceed an average of four units per acre of usable land area.
- F. Building requirements.
 - (1) Building character. The low-density multifamily community shall be an architecturally integrated development. An architectural theme shall be carried out by the use of common building materials, color, exterior detailing, bulk and/or rooflines. Design characteristics shall be stated in the development application and shall include, but not be limited to, building materials, architectural design, and street furniture, which shall require Planning Board approval.
 - (2) Building location. Building location and orientation shall reflect:
 - (a) The relationship to street line and to other buildings in the development if in close proximity, in order to protect privacy and create visual coherence.
 - (b) Views, solar access and access to common open space in order to enhance an occupant's interest.
 - (c) Organization of large developments into recognizable subareas in order to provide scale and identity.
 - (d) Avoidance of major topography changes and destruction of significant natural site features, including removal of native trees or vegetation, in order to preserve and protect the environment.
 - (e) Reduction of visual intrusion into abutting properties in order to protect existing character to the extent practicable.
 - (3) Community facility. Unless waived by the Planning Board, the development shall establish a community room or facility for use by the residents. Such facility may provide community space for mail, indoor recreation, meetings, and other functions held by the residents.

- G. Maximum building height. The maximum height of structures shall be two stories or 35 feet above the ground.
- H. Minimum setback distance between buildings. The minimum setback distance between buildings shall be 30 feet.
- I. Stairways. All egress stairways are to be contained within the building structure proper.
- J. Utilities.
- (1) Each dwelling in a low-density multifamily community shall be provided with access drainage and utilities that are functionally equivalent to that provided under the Planning Board's Subdivision Regulations.⁷⁶ All utilities shall be placed underground.
 - (2) All dwelling units shall be serviced by a public water supply deemed adequate for fire protection and domestic use.
 - (3) All dwelling units shall be connected to public sewers if available. If public sewers are not available, all dwelling units shall be serviced with on-site sewage disposal systems which shall be designed to meet the requirements of approval from the Agawam Board of Health and/or the Massachusetts Department of Environmental Protection as necessary.
 - (4) All outdoor lighting in the development shall be designed to improve visibility, safety and a sense of security while minimizing energy use, operating costs, glare and light pollution. Outdoor lighting shall be designed to prevent misdirected or excessive artificial light. Building areas shall not be floodlit. Roadways, parking areas, walkways and other public areas shall be illuminated only by properly positioned, high-efficiency, full-cutoff-shielded lighting fixtures not higher than 15 feet in height.
- K. Parking and circulation requirements.
- (1) There shall be an adequate, safe and convenient arrangement of pedestrian circulation, roadways, driveways and parking.
 - (2) Vehicular access to the low-density multifamily community shall be provided from an existing public way which, in the opinion of the Planning Board, is adequate to service the proposed development. As a matter of public safety, an additional access may be required.
 - (3) All roads within the low-density multifamily community shall be privately owned and maintained and shall be designed with sufficient width, suitable grade and adequate construction to safely provide for the needs of vehicular traffic generated by the development. Access roads shall be designed and constructed according to the requirements of the Agawam Subdivision Rules and Regulations⁷⁷ or as otherwise modified by the Planning Board.
 - (4) Garages or off-street parking spaces, or a combination thereof, shall be provided for all occupants, employees, and visitors, and shall be not less than two garage spaces per dwelling unit. Road widths and other factors will be evaluated when considering on-street parking.
 - (5) The development shall be served by sidewalks in accordance with the Planning Board Subdivision Rules and Regulations. The use of exterior stairs and raised curbing in areas where

76. Editor's Note: See 159, Subdivision of Land.

77. Editor's Note: See 159, Subdivision of Land.

there will be pedestrian activity shall be minimized.

L. Landscaping requirements.

- (1) A coordinated landscape design for the entire project area, including landscaping of structures, parking areas, driveways and walkways, and buffer strips shall be submitted for approval by the Planning Board.
- (2) Wherever possible, existing trees and vegetative cover shall be conserved and integrated into the landscape design.
- (3) Proper maintenance of the landscaping, including the buffer strip, shall be the responsibility of the owner and shall be a condition of conformance with the Zoning Bylaws.

M. Common open space requirements.

- (1) All land within the low-density multifamily community which is not covered by buildings, roads, driveways, parking areas or other development, or which is not set aside as private yards, patios or gardens for the residents, shall be common open space. The area of the common open space shall equal at least 30% of the total area of the active adult community tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by all the residents of the development.
- (2) Suitable and usable outdoor recreational area or areas shall be provided for the use of tenants. At least 1,000 square feet per dwelling unit must be usable open space for active and passive recreation. [This amount may be included in the 30% common open space requirement set forth in Subsection M(1) above.] Such space shall not include wetlands as determined by the Conservation Commission. Usable open space may be defined to include land for community gardens, hiking/jogging paths, tennis courts, swimming pools or similar facilities.
- (3) Further subdivision of common open land or its use for other than recreation, conservation, or agriculture, except for easements for underground utilities, shall be prohibited.
- (4) Provision shall be made so that the common open space shall be owned in common and readily accessible to the owners and residents of all units in the development or by a membership corporation, trust or association whose members are the owners and residents of the units. In all cases the common open space shall be subject to a perpetual restriction running to or enforceable by the Town which shall be recorded in respect to such land. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development as the Planning Board may deem appropriate.

N. Community association.

- (1) An owners' association shall be established requiring membership of each unit owner in the low-density multifamily community. The association shall be responsible for the permanent maintenance of communal water, sewage, and recreational and thoroughfare facilities. An association agreement or covenant shall be submitted with the application guaranteeing the continuing maintenance of such common utilities, land and facilities, assessing each unit a share of maintenance expenses. Such agreement shall be subject to the review and approval of Agawam legal counsel and the Planning Board and shall be recorded in the Hampden County Registry of Deeds.
- (2) Such agreements or covenants shall provide that in the event that the association fails to

maintain the common facilities in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve the taxable value of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development.

O. Project identification.

- (1) As a condition of its approval, the Planning Board may permit a sign showing the project name to be permanently affixed at each entrance to the development, which shall be designed to be compatible with the character of the development and the surrounding neighborhood. Each sign shall be of a size and design to be approved by the Planning Board, provided that no such sign shall exceed 32 square feet in size.
- (2) All streets shall be posted with standard street signs, and all street names shall be approved by the Planning Board. Dwelling units shall be assigned street numbers as assigned by the Assessor's office.

P. Enforcement.

- (1) As a condition of its approval, the Planning Board may establish time limits for any development or phases thereof.
- (2) Before any building permits are issued for buildings in a given phase, the developer may be required to provide the Town with performance security in a form and amount satisfactory to the Planning Board to guarantee the construction of required site improvements.

Q. Waivers. The Planning Board may waive or modify any requirement of this section for compelling reasons of safety, aesthetics or site design.

§ 180-114. (Reserved)

§ 180-115. Residence A-5 Age-Restricted Housing District. [Added 4-3-2006 by TR-2006-9⁷⁸]

- A. Purpose. It is the purpose of this district to allow for greater variety and flexibility in the development of housing types and to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner while at the same time conserving important natural site features and permanently preserving open space.
- B. Age-restricted occupancy. The active adult community shall provide age-restricted housing comprised of dwelling units limited to use and occupancy primarily by persons at least 55 years of age or older, who are able to maintain an active, independent lifestyle without the help of additional on-site support services.
 - (1) Not more than three residents shall occupy any dwelling unit.
 - (2) All occupants of a dwelling unit shall be age 55 or older except as follows:
 - (a) A spouse or cohabitating partner of an occupant age 55 or older;

78. This resolution inadvertently placed § 180-115 into Art. XV. The section was reassigned to Art. XVI 12-4-2006 by TOR-2006-12.

- (b) An occupant who survives his or her spouse or partner;
- (c) Not more than one child residing with his or her parent(s), provided that said child is 18 years of age or older.
- (3) The owner of the development shall publish and follow policies and procedures that demonstrate the intent to be housing for persons 55 and older, including federal Housing and Urban Development (HUD) rules for verification of occupancy.

C. Application.

- (1) A site plan for an active adult community in conformance with § 180-13 shall be submitted to the Planning Board. The following additional information shall be required:
 - (a) A development statement listing the development team, setting forth the development concept, including in tabular form the number of units, type, size (number of bedrooms, amount of living space, gross floor area), ground coverage and summary showing the area of residential development and common open space as a percentage of the total area.
 - (b) A development site plan of the entire tract in accordance with the requirements of this section and meeting, to the extent applicable, the requirements set forth for a definitive plan in the Agawam Subdivision Rules and Regulations.
 - (c) Architectural rendering of the site plans and typical structures, including floor plans and elevations.
 - (d) A traffic study will be required. This study shall be performed by a professional engineer registered in the Commonwealth of Massachusetts. It may include, at the discretion of the Planning Board, analysis of existing and proposed traffic conditions, driveway design, traffic signal warrant analysis, parking lot size and layout recommendations, a description of impacts on local and regional traffic due to the development, including an area and for a build-out time period as prescribed by the Planning Board. Depending on the location of the proposed curb cut, existing traffic characteristics and the volume of traffic generated by the proposal, a traffic signal may be warranted at one or all points of access. Any traffic control devices to serve the development would be designed, funded, and constructed by the project proponent at the time of the initial development or by the homeowners' association in the future. If, as a result of the traffic study, off-site traffic remediation is determined to be warranted, it shall be the responsibility of the project proponent. If the number of parking stalls required in the parking analysis exceed the number required in the Town Code, the larger number shall be required.
 - (e) An engineering report regarding the adequacy of sewage disposal, water supply and stormwater drainage, including the impact of the proposed design on the existing municipal utility infrastructure of the Town.
 - (f) Marketing and management information, including unit selling prices, construction schedule, phasing schedule, and drafts of policies and procedures that demonstrate the intent to be housing for persons 55 and older.
- (2) Said application shall contain sufficient information so that the Planning Board can determine the applicability of said application for the following items:
 - (a) Is consistent with the Master Plan of the Town of Agawam;

- (b) Preserves and protects the character of the Town and especially the immediate neighborhood, giving due consideration to such features as public safety, including traffic control and traffic impact upon surrounding roads; development of adequate facilities for the use of the residents of said proposal; adequate fire protection, public health including sewage disposal, drainage and water supply; and the compatibility of the size, location, architecture and landscaping of said project with the adjacent neighborhood and the Town;
 - (c) Minimizes potential adverse environmental impacts upon the Town;
 - (d) Is likely to result in a financially stable, soundly and attractively constructed and well managed and maintained project; and
 - (e) Conforms to the specific provisions of this chapter, including the design guidelines of this section.
- (3) Said site plan approval shall not be issued unless the Planning Board affirmatively determines that each of the above-listed criteria is met by said applicant.
- D. Use regulations. The following uses shall be permitted in an active adult community:
 - (1) One-family detached dwellings.
 - (2) Two-family detached dwellings.
 - (3) Recreational uses and community facilities, such as parks, gardens, swimming pools, tennis courts, clubhouses and community buildings.
 - (4) Accessory uses customarily incidental and subordinate to the principal uses listed above, but expressly excluding any commercial or retail enterprises.
- E. Dimensional requirements. An active adult community shall comply with the following dimensional requirements:
 - (1) Minimum parcel size. The total parcel shall have a minimum area of not less than 10 acres.
 - (2) Minimum parcel frontage. The total parcel shall have a minimum frontage on a public way of at least 150 feet.
 - (3) Front, side and rear yards. The minimum front yard (setback) shall be 25 feet from the interior paved way. The minimum front yard (setback) shall be 50 feet where it abuts a public way only. The side yard and rear yard requirements shall be 50 feet inclusive of a landscaped buffer strip of not less than 15 feet and shall pertain only to the periphery of the development. Additional buffering may be required in sensitive areas at the discretion of the Planning Board. The Planning Board may modify or waive the buffering requirement where variations in topography, natural features and vegetation, or compatible land uses obviate the need for such a buffer.
[Amended 12-4-2006 by TOR-2006-12]
- F. Density regulations. The maximum number of dwelling units permitted within an active adult community shall be determined by the Planning Board to assure compliance with the purpose and intent of these regulations, and in any event shall not exceed an average of four units per acre of usable land area.
- G. Building requirements.

- (1) Building character. The active adult community shall be an architecturally integrated development. An architectural theme shall be carried out by the use of common building materials, color, exterior detailing, bulk and/or rooflines. Design characteristics shall be stated in the development application and shall include, but not be limited to, building materials, architectural design, and street furniture, which shall require Planning Board approval.
 - (2) Building location. Building location and orientation shall reflect:
 - (a) The relationship to street line and to other buildings in the development if in close proximity, in order to protect privacy and create visual coherence.
 - (b) Views, solar access and access to common open space in order to enhance an occupant's interest.
 - (c) Organization of large developments into recognizable subareas in order to provide scale and identity.
 - (d) Avoidance of major topography changes and destruction of significant natural site features, including removal of native trees or vegetation, in order to preserve and protect the environment.
 - (e) Reduction of visual intrusion into abutting properties in order to protect existing character to the extent practicable.
 - (3) Community facility. Unless waived by the Planning Board, the development shall establish a community room or facility for use by the residents. Such facility may provide community space for mail, indoor recreation, meetings, and other functions held by the residents.
- H. Maximum building height. The maximum height of structures shall be two stories or 35 feet above the ground.
- I. Minimum setback distance between buildings. The minimum setback distance between buildings shall be 30 feet.
- J. Stairways. All egress stairways are to be contained within the building structure proper.
- K. Utilities.
- (1) Each dwelling in an active adult community shall be provided with access drainage and utilities that are functionally equivalent to that provided under the Planning Board's Subdivision Regulations. All utilities shall be placed underground.
 - (2) All dwelling units shall be serviced by a public water supply deemed adequate for fire protection and domestic use.
 - (3) All dwelling units shall be connected to public sewers if available. If public sewers are not available, all dwelling units shall be serviced with on-site sewage disposal systems which shall be designed to meet the requirements of approval from the Agawam Board of Health and/or the Massachusetts Department of Environmental Protection as necessary.
 - (4) All outdoor lighting in the development shall be designed to improve visibility, safety and a sense of security while minimizing energy use, operating costs, glare and light pollution. Outdoor lighting shall be designed to prevent misdirected or excessive artificial light. Building areas shall not be floodlit. Roadways, parking areas, walkways and other public areas shall be

illuminated only by properly positioned, high-efficiency, full-cutoff-shielded lighting fixtures not higher than 15 feet in height.

L. Parking and circulation requirements.

- (1) There shall be an adequate, safe and convenient arrangement of pedestrian circulation, roadways, driveways and parking.
- (2) Vehicular access to the active adult community shall be provided from an existing public way which, in the opinion of the Planning Board, is adequate to service the proposed development. As a matter of public safety, an additional access may be required.
- (3) All roads within the active adult community shall be privately owned and maintained and shall be designed with sufficient width, suitable grade and adequate construction to safely provide for the needs of vehicular traffic generated by the development. Access roads shall be designed and constructed according to the requirements of the Agawam Subdivision Rules and Regulations or as otherwise modified by the Planning Board.
- (4) Garages or off-street parking spaces, or a combination thereof, shall be provided for all occupants, employees, and visitors, and shall be not less than two garage spaces per dwelling unit. Road widths and other factors will be evaluated when considering on-street parking.
- (5) The development shall be served by sidewalks in accordance with the Planning Board Subdivision Rules and Regulations. The use of exterior stairs and raised curbing in areas where there will be pedestrian activity shall be minimized.

M. Landscaping requirements.

- (1) A coordinated landscape design for the entire project area, including landscaping of structures, parking areas, driveways and walkways, and buffer strips shall be submitted for approval by the Planning Board.
- (2) Wherever possible, existing trees and vegetative cover shall be conserved and integrated into the landscape design.
- (3) Proper maintenance of the landscaping, including the buffer strip, shall be the responsibility of the owner, and shall be a condition of conformance with the Zoning Bylaws.

N. Common open space requirements.

- (1) All land within the active adult community which is not covered by buildings, roads, driveways, parking areas or other development, or which is not set aside as private yards, patios or gardens for the residents, shall be common open space. The area of the common open space shall equal at least 30% of the total area of the active adult community tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by all the residents of the development.
- (2) Suitable and usable outdoor recreational area or areas shall be provided for the use of tenants. At least 1,000 square feet per dwelling unit must be usable open space for active and passive recreation. [This amount may be included in the thirty-percent common open space requirement set forth in Subsection N(1) above.] Such space shall not include wetlands as determined by the Conservation Commission. Usable open space may be defined to include land for community gardens, hiking/jogging paths, tennis courts, swimming pools or similar facilities.

- (3) Further subdivision of common open land or its use for other than recreation, conservation, or agriculture, except for easements for underground utilities shall be prohibited.
- (4) Provision shall be made so that the common open space shall be owned in common and readily accessible to the owners and residents of all units in the development or by a membership corporation, trust or association whose members are the owners and residents of the units. In all cases the common open space shall be subject to a perpetual restriction running to or enforceable by the Town which shall be recorded in respect to such land. Such restriction shall be in such form and substance as the Planning Board shall prescribe, and may contain such additional restrictions on development as the Planning Board may deem appropriate.

O. Community association.

- (1) An owners' association shall be established requiring membership of each unit owner in the active adult community. The association shall be responsible for the permanent maintenance of communal water, sewage, recreational and thoroughfare facilities. An association agreement or covenant shall be submitted with the application guaranteeing the continuing maintenance of such common utilities, land and facilities, assessing each unit a share of maintenance expenses. Such agreement shall be subject to the review and approval of Agawam legal counsel and the Planning Board and shall be recorded in the Hampden County Registry of Deeds.
- (2) Such agreements or covenants shall provide that in the event that the association fails to maintain the common facilities in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve the taxable value of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development.

P. Project identification.

- (1) As a condition of its approval, the Planning Board may permit a sign showing the project name to be permanently affixed at each entrance to the development, which shall be designed to be compatible with the character of the development and the surrounding neighborhood. Each sign shall be of a size and design to be approved by the Planning Board, provided that no such sign shall exceed 32 square feet in size.
- (2) All streets shall be posted with standard street signs, and all street names shall be approved by the Planning Board. Dwelling units shall be assigned street numbers as assigned by the Assessor's Office.

Q. Enforcement.

- (1) As a condition of its approval, the Planning Board may establish time limits for any development or phases thereof.
- (2) Before any building permits are issued for buildings in a given phase, the developer may be required to provide the Town with performance security in a form and amount satisfactory to the Planning Board to guarantee the construction of required site improvements.

R. Waivers. The Planning Board may waive or modify any requirement of this section for compelling reasons of safety, aesthetics or site design.

ARTICLE XVII
Historic Preservation Overlay District
[Added 3-19-2007 by TOR-2007-1⁷⁹]

§ 180-116. Purpose.

The purpose of this article is to create an overlay district to allow for the conversion of Agawam's historic structures while preserving the character of nearby residential neighborhoods; to encourage the preservation, reuse and renovation of historic properties; and to promote diversified housing opportunities.

§ 180-117. Application.

The Historic Preservation (HPOD) Overlay District shall be applied in all zoning districts. Within the HPOD all regulations of the underlying district(s) shall continue to be in full force and effect, except where these regulations supersede such underlying requirements or provide an alternative to such requirements.

§ 180-118. Historic eligibility.

An historic structure or historic place must meet one of the following criteria:

- A. Be included in the Agawam Inventory of Historic Structures prepared by the Agawam Historical Commission, as amended from time to time, including buildings listed for which complete surveys may be pending; or
- B. Be listed on or be within an area listed on the National Register of Historic Places or be subject of a pending application for listing on the National Register of Historic Places, or have been determined to be eligible by the Massachusetts Historical Commission for listing, either individually or within an historic district, on the National Register of Historic Places.

§ 180-119. Conditions for conversion of existing buildings.

- A. Existing buildings being converted under the terms of this article are not subject to the minimum lot area, minimum setbacks, maximum building height, or maximum number of stories requirements listed in the underlying district. Additions or alterations to the existing structures are subject to the height and setback requirements of the underlying district.
- B. Existing buildings on existing lots that are deficient in frontage may be converted under the terms of this section without a variance, but existing lots which meet or exceed the minimum required frontage may not be subdivided in such a manner as to leave the existing building on a lot that lacks the minimum required frontage.
- C. The exterior design of the structure shall be maintained to the greatest extent possible.
- D. The original building area is not to be increased more than 10% of its gross floor area. Additions and alterations made to comply with the requirements of the Americans with Disabilities Act are not subject to this limit.

79. Editor's Note: This ordinance adopted this material as Art. XVI, §§ 180-112 through 180-117. As the Code already contained an Art. XVI, and §§ 180-112 through 180-115, this material was renumbered as Art. XVII, §§ 180-116 through 180-122.

§ 180-120. Grant of special permit.

The Agawam City Council may grant a special permit to authorize actions upon and uses of historic structures and historic places that exceed those allowed in the underlying district, if such actions or uses comply with the requirements of this section, § 180-11, and are in the Town of Agawam's best interest to preserve and enhance historic structures and historic places.

§ 180-121. Review of special permit application.

Whenever an application for such a special permit is filed with the City Council, the applicant shall also file, within five working days of the filing of the completed application, copies of the application, accompanying site plan, and other documentation to the Agawam Historical Commission, the Agawam Planning Board, the Agawam Health Department, the Agawam Fire Department and the Agawam Safety Officer for their consideration, review and report. The copies necessary to fulfill this requirement shall be furnished by the applicant. Reports from other boards and officials shall be submitted to the City Council by the date of the public hearing, but in any case within 35 days of the receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto.

§ 180-122. Permitted uses.

Allowed uses, if found to be appropriate by the Agawam City Council, shall be limited to residential, and bed-and-breakfast homes allowing a maximum of one week's stay.⁸⁰

80. Editor's Note: Former Art. XVIII, Temporary Parking, added 6-18-2007 by TOR-2007-6, was repealed 11-19-2007.

ARTICLE XVIII

Medical Marijuana Facilities**[Added 9-16-2013 by TOR-2013-7; amended 5-5-2014 by TOR-2014-1]****§ 180-123. Purpose.**

- A. It is recognized that the nature of the substance cultivated, processed, and/or sold by medical marijuana treatment centers and off-site medical marijuana dispensaries may have objectionable operational characteristics and should be located in such a way as to ensure the health, safety, and general well-being of the public as well as patients seeking treatment. The specific and separate regulation of registered marijuana dispensaries ("RMD") as medical marijuana treatment centers and off-site medical marijuana dispensary ("OMMD") facilities is necessary to advance these purposes and ensure that such facilities are not located within close proximity of minors and do not become concentrated in any one area within the Town of Agawam.
- B. Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, and 105 CMR 725.000, registered marijuana dispensaries and off-site medical marijuana dispensaries will be permitted to provide medical support, security, and physician oversight that meet or exceed state regulations as established by the Massachusetts Department of Health ("MDPH").

§ 180-124. Additional requirements/conditions.

In addition to the standard requirements for uses requiring a special permit and site plan approval, the following shall also apply to all registered marijuana dispensaries and off-site medical marijuana dispensaries:

- A. Use.
- (1) RMD and OMMD facilities may only be involved in the uses permitted by its definition and may not include other businesses or services.
 - (2) No marijuana shall be smoked, eaten or otherwise consumed or ingested within the premises.
 - (3) The hours of operation shall be set by the special permit granting authority, but in no event shall an RMD or OMMD facility be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.
 - (4) RMD facilities that can demonstrate that they comply with the agricultural exemption under MGL c. 40A, § 3 must still apply for site plan approval.
- B. Physical requirements.
- (1) All aspects of the use/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.
 - (2) No outside storage is permitted.
 - (3) No OMMD facility shall have a gross floor area in excess of 2,500 square feet.
 - (4) Ventilation. All RMD and OMMD facilities shall be ventilated in such a manner that no:

- (a) Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere; and
- (b) No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.

C. Signage.

- (1) Signage shall be displayed on the exterior of the RMD and OMMD facility's entrance, in plain sight of clients, stating "Registration Card Issued by the Massachusetts Department of Public Health Required," in text two inches in height.
- (2) All signage must conform to the requirements of § 180-7 of these bylaws.
- (3) In addition, all signage must conform to the requirements of 105 CMR 725.105(L) as amended.

D. Location.

- (1) No RMD or OMMD facility shall be located on a parcel which is within 225 feet (to be measured in a straight line from the nearest points of the facility in question to the RMD or OMMD building) of a parcel occupied by: **[Amended 6-21-2021 by Ord. No. TOR-2021-3]**
 - (a) A public or private elementary, junior high, middle, vocational or high school, college, junior college, university or child-care facility or any other use in which children commonly congregate in an organized, ongoing, formal basis; or
 - (b) Another RMD or OMMD facility, except that this limitation shall not apply in Industrial Zones.
- (2) No RMD or OMMD facility shall be located on a lot which abuts a residential use (including commercial residential uses such as hotels, motels, lodging houses, etc.) or residential zoning district.
- (3) No RMD or OMMD facility shall be located inside a building containing residential units, including transient housing such as motels and dormitories.

E. Reporting requirements.

- (1) All special permit and site plan approval holders for an RMD or OMMD facility shall provide the Police Department, Fire Department, Building Inspector and the special permit granting authority with the names, phone numbers and e-mail addresses of all management staff and key holders, including a minimum of two operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the establishment. All such contact information shall be updated as needed to keep it current and accurate.
- (2) The local Building Inspector, Board of Health, Police Department, Fire Department and special permit granting authority (in cases where a special permit and site plan approval were granted) shall be notified, in writing, by an RMD or OMMD facility owner/operator/manager:
 - (a) A minimum of 30 days prior to any change in ownership or management of that facility.
 - (b) A minimum of 12 hours following a violation or potential violation of any law or any

criminal or potential criminal activities or attempts of violation of any law at the RMD or OMMD.

- (3) Permitted RMD and OMMD facilities shall file an annual report to and appear before the special permit granting authority no later than January 31, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrating continued compliance with the conditions of the special permit.
- (4) The owner or manager is required to respond by phone or e-mail within 24 hours of contact by a city official concerning his or her RMD or OMMD at the phone number or e-mail address provided to the city as the contact for the business.

F. Issuance/transfer/discontinuance of use.

- (1) Special permits/site plan approvals shall be issued to the RMD operator.
- (2) Special permits/site plan approvals shall be issued for a specific site/parcel.
- (3) Special permits/site plan approvals shall be nontransferable to either another RMD operator or site/parcel.
- (4) Special permits/site plan approvals shall have a term limited to the duration of the applicant's ownership/control of the premises as an RMD or OMMD, and shall lapse:
 - (a) If the permit holder ceases operation of the RMD; and/or
 - (b) The permit holder's registration by MDPH expires or is terminated.
- (5) The permit holder shall notify the Zoning Enforcement Officer and special permit granting authority, in writing, within 48 hours of such lapse, cessation, discontinuance or expiration.
- (6) An RMD or OMMD facility shall be required to remove all material, plants, equipment and other paraphernalia prior to surrendering its state registration or ceasing its operation.
 - (a) Prior to the issuance of a building permit for an RMD or OMMD, the applicant is required to post with the Town Treasurer a bond, or other form of financial security acceptable to said Treasurer, in an amount set by the Planning Board. The amount shall be sufficient to cover the costs of the Town removing all materials, plants, equipment and other paraphernalia if the applicant fails to do so. The Building Inspector shall give the applicant 45 days' written notice in advance of taking such action. Should the applicant remove all materials, plants, equipment and other paraphernalia to the satisfaction of the Building Inspector prior to the expiration of the 45 days' written notice, said bond shall be returned to the applicant.

§ 180-125. Application requirements.

In addition to the standard application requirements for special permits and site plan approvals, such applications for an RMD or OMMD facility shall include all of the following:

- A. The name and address of each owner of the RMD or OMMD facility/operation;
- B. A copy of its registration as an RMD from the Massachusetts Department of Public Health or documentation that demonstrates that said RMD or OMMD facility, and its owner/operators, qualifies and is eligible to receive a certificate of registration and meets all of the requirements of an RMD in

accordance with 105 CMR 725.000 of the Massachusetts Department of Public Health;

- C. Evidence that the applicant has site control and right to use the site for an RMD or OMMD facility, in the form of a deed or valid purchase and sales agreement or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
- D. A notarized statement signed by the RMD or OMMD organization's chief executive officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly situated individuals and entities and their addresses. If any of the above are entities rather than persons, the applicant must disclose the identity of all such responsible individual persons;
- E. In addition to what is normally required in a site plan, details showing all exterior proposed security measures for the RMD or OMMD, including lighting, fencing, gates and alarms, etc., ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity;
- F. A detailed floor plan identifying the areas available and functional uses (including square footage);
- G. All signage being proposed for the facility;
- H. A traffic study to establish the RMD or OMMD impacts at peak demand times; and
- I. A management plan including a description of all activities to occur on site, including all provisions for the delivery of medical marijuana and related products to OMMDs or off-site direct delivery to patients.

§ 180-126. Findings.

In addition to the standard findings for a special permit and site plan approval, the special permit granting authority must also find all the following:

- A. That the RMD or OMMD facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
- B. That the RMD or OMMD facility demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations;
- C. That the applicant has satisfied all of the conditions and requirements of this section and other applicable sections of this article.
- D. That the RMD or OMMD project meets a demonstrated need;
- E. That the RMD or OMMD facility provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation is adequately secured; and
- F. That the RMD or OMMD facility adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.

§ 180-127. through § 180-138. (Reserved)

ARTICLE XIX
Mixed-Use Business C District
[Added 6-2-2014 by TOR-2014-4]

§ 180-139. Scope.

The scope of this article is to regulate mixed-use development in appropriate areas of the Town and to protect the public health, safety, and general welfare in the Town of Agawam by establishing controls that will facilitate flexible development while protecting the public interest.

§ 180-140. Purpose; intent.

- A. The purpose of this article is to foster a greater opportunity for creative development by providing guidelines which encourage a mix of uses compatible with existing and neighboring properties, to provide housing and business uses in locations where a variety of Town services are available, to promote utilization of existing buildings and property, and to encourage the provision of open areas.
- B. The intent, furthermore, is to encourage interaction among activities located within a mixed-use development, to enhance business vitality, reduce vehicular traffic, provide employment opportunities for residents close to home, ensure the compatibility with each other of the commercial and residential uses, and ensure that the appearance and effects of buildings and uses are harmonious with the character of the area in which they are located by:
- (1) Allowing a diversity of uses in close proximity in the district within a limited area, including residential, commercial, and office;
 - (2) Accommodating mixed-use buildings with neighborhood-serving retail, service and other uses on the ground floor and residential units above;
 - (3) Encouraging development that exhibits the physical design characteristics of pedestrian-oriented storefront-style shopping streets;
 - (4) Promoting the opportunity for people to work, meet, shop and utilize services in the vicinity of their residences;
 - (5) Providing opportunities for the development of affordable housing;
 - (6) Providing opportunities for a mixture of uses in the same building;
 - (7) Promoting a positive pedestrian environment in the district;
 - (8) Facilitating integrated physical design;
 - (9) Promoting a high level of design quality;
 - (10) Encouraging the development of flexible space for small and emerging businesses;
 - (11) Facilitating development proposals responsive to current and future market conditions; and
 - (12) Encouraging the development of open spaces and parks within the district to accommodate workers, residents, pedestrians, and shoppers.

§ 180-141. Establishment and administration.

- A. The Agawam Mixed-Use Business C District shall include the properties listed below. These properties are included by reason of their potential to provide a flexible development area aligned with the purpose of this article.

Assessor's Map, Block and Lot

I14-5-34

I15-9-1

J15-1-1

J15-1-2

J15-1-3

J15-4-1

J15-4-2

J15-4-3

J15-4-4

J14-3-3

J14-3-4

J14-3-5

J14-3-7

J14-4-1

J14-4-2

J14-4-3

J14-4-5

J14-4-6

J14-4-7

J14-4-8

J14-4-9

J14-5-8

- B. The provisions of this § 180-141 shall be administered by the Planning Board, except as otherwise provided herein.
- C. The Planning Board may waive any information requirements it judges to be unnecessary to the review of a particular plan. Such waiver decisions must be documented in writing by the Planning Board.

§ 180-142. Definitions.

The following definitions shall apply to all mixed-use applications under these zoning ordinances:

ASSISTED LIVING — Housing for adults, with services provided, such as meals, laundry, and housekeeping.

BUSINESS SERVICES — Services used in the conducting of business and commerce, including only:

- A. Consumer and mercantile credit reporting;
- B. News services;
- C. Research, development and testing;
- D. Business management and consulting;
- E. Insurance company service offices;
- F. Real estate offices.

CAFE — A coffee house or small restaurant, often with an enclosed or outdoor section extending onto the sidewalk.

DRIVEWAY — A space, located on a lot, built for access to a garage or off-street parking or loading space.

FAST-FOOD RESTAURANT — An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off the premises. Orders are not generally taken at the customer's table, and food is generally served in disposable wrapping or containers.

LIVE/WORK UNIT — A single unit (e.g., studio, loft, or one-bedroom) consisting of both a commercial/office and a residential component that is occupied by the same resident. The live/work unit shall be the primary dwelling of the occupant.

LOT COVERAGE — The area of a lot covered by the footprint of all structures, as well as decks, balconies, porches, and similar architectural features and driveway areas, expressed as a percentage of the total lot area.

MIXED-USE DEVELOPMENT — The development of a tract of land, building, or structure with two or more different uses, such as, but not limited to, residential, office, commercial, institutional, or entertainment, in a compact village form, with vehicular access to an accepted public way. A proposed mixed-use development shall demonstrate that the project shall be served by Town water and sewer service upon completion of the proposed development.

ODOR — A strong and unpleasant smell, for example, a garbage or chemical smell.

PERSONAL SERVICES — Establishments primarily engaged in providing services involving the care of a person or his/her apparel, including but not limited to:

- A. Laundering, dry cleaning and garment services not exceeding 5,000 square feet of floor area per establishment;
- B. Coin-operated laundries;
- C. Shoe repair;
- D. Photographic services;
- E. Beauty and barber shops;
- F. Apparel repair and alteration;
- G. Funeral services;

H. Health clubs;

I. Clothing rental.

PROFESSIONAL SERVICES — Services performed by professional persons for business and personal use, including but not limited to:

A. Medical and health offices and clinics;

B. Planning;

C. Engineering and architectural;

D. Accounting;

E. Auditing and bookkeeping;

F. Educational and scientific.

SENIOR AND/OR HANDICAPPED HOUSING or SENIOR APARTMENTS — Age-restricted multi-unit housing for adults 55 and older, or handicapped persons, with self-contained living units for older adults who are able to care for themselves. Usually no additional services such as meals or transportation are provided.

SIT-DOWN RESTAURANT — An eating establishment with turnover rates generally of at least one hour or longer, serving food intended for consumption on the premises.

TREEBELT — Can consist of tree planters, brick pavers, and benches with a minimum width of five feet.

§ 180-143. Use regulations.

A. Uses allowed by right with site plan review in a mixed-use development.

(1) Mixed-use developments may be constructed in the Mixed-Use Development Overlay District with site plan review by the Planning Board in accordance with § 180-13. The following uses may be included by right with site plan review within a mixed-use structure in a mixed-use development:

(a) Retail uses;

(b) Sit-down restaurants;

(c) Cafes and outdoor dining areas;

(d) Multifamily residential uses;

(e) Home occupations;

(f) Professional service offices;

(g) Personal service establishments;

(h) Municipal uses;

(i) Banks or financial institutions, automated teller machines (ATMs);

(j) Health club;

- (k) Townhouses (single-family dwellings connected by one or more walls);
 - (l) Cinema, theater, or auditorium;
 - (m) Park, recreation or playground;
 - (n) Artist studio/residence;
 - (o) Assisted-living residential uses, senior apartments and senior housing;
 - (p) Artisan manufacturing or production (hand tools only, e.g., jewelry or ceramics);
 - (q) Civic uses;
 - (r) Live/work units;
 - (s) Multiple uses in the same structure;
 - (t) Bars and cocktail lounges.
- (2) The above uses are not allowed as stand-alone structures in this district.
- B. Special permit uses in a mixed-use development.
- (1) The following uses may be included within a mixed-use development with the approval of a special permit from the Board of Appeals in accordance with §§ 180-11 and 180-12:
- (a) Hotel/motel not exceeding 10 guest rooms per establishment;
 - (b) Dry cleaning, linen cleaning, or diaper services which clean clothing articles on site;
 - (c) Animal hospitals;
 - (d) Drive-up service windows associated with banks, pharmacies or cafes;
 - (e) Fast-food restaurants.
- (2) Within a mixed-use development, the above-listed uses shall not be allowed as freestanding buildings.
- C. Prohibited uses in a mixed-use development.
- (1) The following uses shall not be included within a mixed-use development:
- (a) Industrial uses;
 - (b) Motor vehicle sales, maintenance and repair facilities;
 - (c) Gasoline filling stations;
 - (d) Adult entertainment uses;
 - (e) Automobile or truck sales;
 - (f) Junkyards.
- D. Same-structure/on-site mixed-uses.

- (1) Within an approved mixed-use development, there shall be no restriction on combining different categories of use within the same building except any imposed by the State Building Code or other federal, state, or local regulations.
- (2) No mixed-use development shall have more than 75% of the total square footage in the development used for residential uses, including multifamily uses, assisted living and senior housing.

E. Special permit criteria for all mixed-use developments.

- (1) All mixed-use developments requiring a special permit in § 180-143B above must meet the special permit requirements in § 180-11 and the site plan approval requirements in § 180-13.
- (2) All mixed-use developments requiring a special permit must also meet the following additional special permit criteria:
 - (a) The project complies with the additional performance standards for mixed-use developments in § 180-144 below.
 - (b) The project is consistent with the purposes of this article, as stated in § 180-140.

F. Dimensional requirements. The dimensional requirements applicable to the Mixed-Use Overlay District are shown in the Table of Dimensional and Density Regulations below:

Table of Dimensional and Density Regulations for the Mixed-Use Business C District

Minimum Lot Area	Minimum Frontage	Minimum Front Yard	Minimum Side Yard	Minimum Rear Yard	Maximum Height	Maximum Lot Coverage	Maximum Setback
0 square feet	25 feet	10 feet	0 feet	20 feet	45 feet/3 stories	75%	15 feet

§ 180-144. Performance standards for mixed-use developments.

To the extent feasible, all mixed-use developments must meet the performance standards in § 180-144 A through O below. No use shall be permitted that causes or results in dissemination of dust, smoke, gas or fumes, excessive odor, noise, vibration or excessive light violating the standards set forth in the performance criteria in this § 180-144 A through Q. Any other performance standards of the Town shall also apply to uses conducted under this § 180-144 of the Agawam Zoning Ordinance.

A. Access and traffic impacts:

- (1) Traffic and safety impacts to the existing and proposed roads shall be minimized.
- (2) Access provided via shared curb cuts shall be encouraged. Curb cuts shall be as narrow as is feasible, without resulting in traffic safety issues.
- (3) Pedestrian and vehicular traffic shall be separated, and walkways shall be provided for access to adjacent properties and between businesses.
- (4) Plans must illustrate provisions for safe automobile, pedestrian and bicycle circulation. Provisions must be made for motor vehicle, bicycle, and pedestrian circulation connections to adjacent lots.

- (5) The Planning Board shall require a detailed traffic study for the following uses:
- (a) High-volume-traffic-generating uses with a trip generation rate over 700 vehicles/day (based on Institute of Transportation Engineers rates found in trip generation);
 - (b) The construction of a new mixed-use development structure of more than 25,000 square feet in gross floor area; and
 - (c) Any external enlargement that brings the mixed-use development total to 25,000 square feet gross floor area for all structures.
- (6) The Planning Board may waive any or all requirements for a traffic study for external enlargements of less than 2,000 square feet of gross floor area in excess of the 25,000 square feet gross floor area threshold. The traffic impact statement shall contain:
- (a) The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak-hour traffic levels;
 - (b) The proposed traffic flow pattern for both vehicles and pedestrian access shall be described and related to the site plan, including vehicular movements at all major intersections likely to be affected by the proposed use of the site;
 - (c) Traffic flow patterns at the site, including entrances and egresses, loading and unloading areas, and curb cuts on site and within 100 feet of the site;
 - (d) A detailed assessment of the traffic safety impacts of the proposed project or use on the carrying capacity of any adjacent highway or road, including the projected number of motor vehicle trips to enter or depart from the site estimated for daily hour and peak-hour traffic levels, road capacities and impacts on intersection. Existing daily and peak-hour traffic levels and road capacities shall also be given;
 - (e) A parking lot vehicle traffic and pedestrian circulation plan shall be designed to minimize conflicts and safety problems.

B. Noise:

- (1) In order to protect, preserve, and promote the health, safety, welfare, and peace and quiet of the inhabitants of Agawam through the reduction, control, and prevention of such loud or raucous noise that unreasonably disturbs, injures, or endangers the comfort, privacy, repose, health, peace or safety of reasonable persons, all noise levels, measured at a height of four feet above the ground surface at all property lines, using a sound meter which meets the most current American National Standards Institute's Specification for Type II Sound Level Meters, must not exceed the following standards:

Time of Day	Maximum Sound Level (dBA)
7:00 a.m. to 7:00 p.m.	65*
7:00 p.m. to 11:00 p.m.	50
11:00 p.m. to 7:00 a.m.	45

* Note:

65 dba = normal conversation

50 dba = noise level of a
normal working refrigerator

45 dba = a quiet library

- (2) These standards shall not apply to power tools and equipment (i.e., lawn mowers, leaf blowers, sweepers, etc.) used in the normal maintenance of the site's outdoor areas (i.e., lawn, garden, parking, etc.). Such outdoor maintenance shall be limited to between the hours of 8:00 a.m. and 7:00 p.m.

C. Emissions and odors:

- (1) Emissions and odors shall be completely and effectively confined within the building or so regulated as to prevent any nuisance, hazard, or other disturbance from being perceptible (without the use of instruments) at any lot line of the premises on which the use is located. No emissions are permitted which can:
 - (a) Cause any damage to health of humans, animals or vegetation;
 - (b) Cause excessive soiling;
 - (c) Result in odorous gases or odoriferous matter in such quantities as to be offensive.
- (2) The determination of what emissions are in violation of this provision shall be made by the Zoning Enforcement Officer or his/her designee, taking into consideration all of the following:
 - (a) The level of the odor;
 - (b) The nature of the odor is usual or unusual;
 - (c) The origin of the odor is natural or unnatural;
 - (d) The level of the ambient odor;
 - (e) The proximity of the odor to living/sleeping facilities;
 - (f) The nature and zoning of the area from which the odor emanates and the area where it is received;
 - (g) The duration of the odor; and whether the odor is recurrent, intermittent, or constant.

D. Lighting:

- (1) Lighting systems should be designed, constructed, and installed in a manner that controls glare and light trespass, minimizes obtrusive light, conserves energy and resources while maintaining safety, visibility, security of individuals and property and curtailing the degradation of the nighttime visual environment. Evenly distributed lighting throughout a site will minimize impacts on surrounding neighborhoods and increase efficiency. By directing light where it is needed and only the intensity necessary to serve the intended purpose, these standards will prevent glare and its harsh shadows and blind spots.
- (2) All lighting shall comply with the following:

- (a) Except for approved exterior lighting, operations producing glare shall be conducted entirely within an enclosed building. No direct or sky-reflected glare, whether from floodlights or from high temperature processes such as welding shall be permitted beyond its lot lines onto neighboring properties, or onto any street.
- (b) Exterior lighting, including but not necessarily limited to lighting of exterior walls of buildings from an external light source, lighting of parking areas, and lighting of walks and drives, shall be done in such a manner as to direct light away from adjacent lots and public ways.
- (c) All outdoor light fixtures and illuminated signs shall be designed, located, installed and directed in such a manner as to prevent light trespass beyond the property line and light above a ninety-degree horizontal plane. If necessary, an applicant may need to provide photometric plans and/or manufacturing specification sheets to show conformance with these standards.
- (d) All nonessential lighting, including display, parking, and sign lighting, shall be turned off after business hours, leaving only the lighting necessary for site and pedestrian security, crime prevention and streetlighting.
- (e) All lighting shall be recessed and shielded to prevent off-site glare.
- (f) Site lighting shall conform to the following output standards:

Maximum (footcandle)	Site Average (footcandle)	Footcandle at Property Line
5	2.5	0

E. Storage:

- (1) All materials, supplies and equipment shall be stored in accordance with Fire Prevention Standards of the National Board of Fire Underwriters and shall be screened from view from public ways and abutting properties.

F. Waste disposal:

- (1) Waste disposal shall follow state and Town Board of Health regulations.
- (2) Storage of waste and waste facilities shall be screened from view from public ways and neighboring properties.
- (3) Appropriate provisions shall be made for the disposal of trash, which may include, but shall not be limited to, the provision of trash compactors within the building or on site, as well as a signed annual contract for rubbish removal.
- (4) Dumping of dumpsters shall be limited to weekdays between the hours of 7:00 a.m. and 11:00 p.m. only. Dumpsters must be fenced, gated and screened from view.

G. Loading/unloading:

- (1) The Planning Board may require that operations, including loading and unloading, shall be limited to weekdays between the hours of 7:00 a.m. and 11:00 p.m. only.

- (2) Loading and unloading platforms and doorways specially designed for loading/unloading are prohibited on the front side of any building.

H. Walkways:

- (1) For public convenience, a pedestrian and/or bicycle way or sidewalk system shall connect all uses on the site and otherwise provide appropriate circulation or continuity to an existing pedestrian or bicycle circulation system. These uses include, but are not limited to, residential, parking, transit, bicycling, recreation, and commercial uses.
- (2) Walkways and sidewalks must conform to requirements of the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (MAAB).
- (3) Sidewalks are required along all Town streets. A treebelt is required adjacent to sidewalk areas. The Planning Board can waive treebelt requirements in situations where they determine that local conditions warrant.
- (4) The development should provide internal and/or public pedestrian connections that are direct, convenient and pleasant with appropriate amenities (e.g., attractive sidewalks and benches).

I. Vehicular access, parking and loading, and shared parking requirements:

- (1) Parking shall be located to the side or rear of buildings. In no case shall parking be allowed in the treebelt adjacent to the sidewalk or within the front setback of any lot.
- (2) Parking spaces may be located either on or off the lot. Applicant must show proof of space, dedicated to the use, its location relative to the building, and must indicate if the space is owned or leased.
- (3) Buildings that do not have frontage on a street must provide access for emergency and service vehicles through the layout and design of driveways, interior service roads, or pedestrian and bicycle circulation corridors.
- (4) The Planning Board may allow shared parking in a mixed-use development.
- (5) A parking study shall be required for all new structures within the district. A parking study is not required for reuse of existing structures. A formal parking study may be waived for small developments where there is established experience with the land use mix and its impact is expected to be minimal. If standard rates are not available or limited, the applicant may collect data at similar sites to establish local parking demand rates.

J. Alleys:

- (1) Alleys are permitted to access parking in the rear of structures, with Planning Board review.
- (2) Alleys must be safe, secure and well lit.
- (3) Alleys must be paved, with a minimum width of 10 feet.

K. Development and design standards:

- (1) Existing buildings shall be reused for mixed-use developments, where feasible, as a priority over new construction.
- (2) Buildings or structures that are listed or eligible for inclusion on the National Register of

Historic Places and/or the Massachusetts Register of Historic Places shall be converted, constructed, reconstructed, restored or altered to maintain or promote the status of the building or structure on, or eligibility for inclusion on, the State or National Register of Historic Places.

L. Signs:

- (1) Signs shall conform to the existing ordinances of the Town of Agawam in §§ 180-75 through 180-89.
- (2) Permitted signs include signs located within the sign band on building facades; awning signs; hanging signs projecting from building facades; window signs and unmovable freestanding signs.
- (3) Temporary signs permitted include political signs; special events signs; and for-sale or for-lease signs.
- (4) Prohibited signs include flashing signs; roof signs; movable signs; internally lit plastic signs.
- (5) Each business may display not more than two permanent signs.
- (6) Sign materials should be durable and easy to maintain. Signs may be constructed of wood, metal, stone, gold leaf, glass, canvas or stained glass or encased in a wooden frame.
- (7) Sign illumination may include external white light illumination, provided it is shaded from view off the premises, and neon.
- (8) Sign size. Signs may not exceed 16 square feet in area.
- (9) Sign height. Freestanding pole signs shall have a maximum height of 10 feet; other freestanding signs shall have a maximum height of four feet.

M. Landscaping requirements:

- (1) Screening of mechanical equipment, trash, and loading areas shall be provided through the use of walls, fences, and/or dense, evergreen plant materials.
- (2) The landscaped perimeter area shall have a minimum width of at least five feet and can consist of tree planters, brick pavers, and benches.
- (3) Landscaping shall be provided for driveways and other vehicular use areas to provide visual and climatic relief from broad expanses of pavement and to channelize and define logical areas for pedestrian and vehicular traffic.
- (4) Interior parking areas shall be landscaped with sufficient shade trees to provide 50% shade within 15 years of installation.
- (5) Completion of the landscaping requirements may be postponed due to seasonal weather conditions for a period not to exceed six months from the time of project completion.

N. Green infrastructure and stormwater runoff:

- (1) To the extent feasible, mixed-use development projects shall recharge all stormwater on site. The use of green infrastructure strategies for stormwater recharge, such as permeable pavements, tree box filters, green streets, rain gardens, stormwater infiltration basins and green roofs, are strongly encouraged.

- (2) Applicants' site plans shall indicate how the proposed development addresses green infrastructure and stormwater recharge.

O. Maintenance of landscaping and screening:

- (1) All landscaping and screening shall be maintained by the property owner.
- (2) Landscaping and screening plant materials shall not encroach on the public walkways or roadways in a way that impedes pedestrian or vehicular traffic or visibility.
- (3) Shrubs or trees that die shall be replaced within one growing season.

P. Appearance/architectural design:

- (1) Architectural design shall be compatible with the historic character and scale of buildings in the neighborhood and the Town of Agawam through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques.
- (2) In making its decision, the Planning Board may consider whether the building design is compatible with the following design guidelines:
 - (a) Exterior facades are faced with stone or brick, or clapboards of wood, aluminum or vinyl;
 - (b) Exterior facade treatment is compatible on all sides visible from a public way or parking lot;
 - (c) Facades facing Town streets have windows facing the street.
- (3) Variations in architectural detail, form and siting shall be used to provide visual interest and avoid monotony.
- (4) Existing buildings subject to reconstruction or rehabilitation and proposed buildings shall be compatible with the historic character and scale of contiguous buildings within the immediate neighborhood vicinity.
- (5) Proposed buildings should relate harmoniously to each other.
- (6) Buildings shall be designed so that retail, restaurant, and personal-service establishments are strongly encouraged to be located on the ground or below-grade building levels.
- (7) The entire building facade must be oriented to front and side street property lines and must be located within 15 feet of such property lines, with sidewalks in front of buildings.
- (8) Public open spaces, such as plazas and pocket parks, are encouraged within the development.

Q. Outdoor dining:

- (1) Outdoor dining shall be permitted by right, as an accessory use for any restaurant use, and must comply with the following standards:
 - (a) Alcohol may be served to and consumed by patrons in outdoor dining areas, provided that all necessary licenses are acquired. These licenses are to be gathered through the Liquor Commission, the Building Department and the Board of Health.
 - (b) The hours of operation of outdoor dining areas may be equal to or less than the hours of operation of the main restaurant. Dining areas which abut residential areas must end

outdoor dining and seating by 11:00 p.m.

- (c) Litter must be cleaned up regularly.

§ 180-145. Optional affordable housing bonus.

- A. A density bonus may be provided by the Planning Board, in return for provision of affordable housing, if the following criteria are met:
- (1) At least 10% of the total dwelling units in a mixed-use development may be designated as affordable housing. Affordable housing will be defined as those residential units affordable to a household earning up to 80% of the median income in Agawam's statistical area.
 - (2) The affordable housing units shall include resale, lease or rental controls that will ensure continued affordability by future low- and moderate-income households. Deed restrictions or similar devices shall be used to limit future sale or rental prices for these purposes.
 - (3) The affordable units may be located in an existing structure if their construction constitutes a net increase in the number of dwelling units in the development.
- B. The Planning Board shall determine the density bonus, which may consist of both of the following:
- (1) An increase in building height to a maximum of four stories;
 - (2) An increase in lot coverage to a maximum of 95%.

ARTICLE XX
Recreational Marijuana Establishments
[Added 9-18-2017 by TOR-2017-9]

§ 180-146. (Reserved)

§ 180-147. Definition; prohibition. [Amended 12-16-2019 by Ord. No. TOR-2019-12; 6-21-2021 by Ord. No. TOR-2021-2]

A. Definition.

RECREATIONAL MARIJUANA ESTABLISHMENT — A use operated by an entity licensed by the Cannabis Control Commission, and pursuant to all other applicable state laws and regulations, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), packages, delivers, obtains, manufactures, purchases, transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, or related supplies for nonmedical, or recreational use excluding a licensed Marijuana Product Manufacturer establishment as defined by 935 CMR 500.002 and regulated under 935 CMR 500.130 and a licensed Indoor Marijuana Cultivator as defined by 935 CMR 500.002 and regulated under 935 CMR 500.000 through 500.120, inclusive.

B. Prohibition. Notwithstanding any other provision of the Zoning Ordinance to the contrary, the use of any land or structures as a recreational marijuana establishment within the Town of Agawam is prohibited except that Marijuana Product Manufacturers and Indoor Marijuana Cultivators shall be exempt from this prohibition and shall be permitted pursuant to the Code of the Town of Agawam § 180-124 through § 180-126 inclusive.

ARTICLE XXI
Solar Energy Systems
[Added 4-2-2018 by TOR 2017-13]

§ 180-148. Purpose.

The purpose of this article is to promote the reasonable regulation of solar energy systems, including commercial ground-mounted solar energy installations, by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public health, safety, and welfare and minimize impacts on scenic, natural and historic resources and provide adequate financial assurance for the eventual decommissioning of such installations.

§ 180-149. Definitions.

PHOTOVOLTAIC SYSTEM — An active solar energy system that converts solar energy directly into electricity.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the photovoltaic system in watts of direct current (DC).

SOLAR ENERGY — Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

SOLAR ENERGY SYSTEM — A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

SOLAR ENERGY SYSTEM BUILDING-INTEGRATED — A solar energy system that is directly incorporated into the building by replacing typical building materials.

SOLAR ENERGY SYSTEM, GROUND-MOUNTED — An active solar energy system that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

SOLAR ENERGY SYSTEM, LARGE-SCALE — An active solar energy system that occupies more than one acre of surface area (equivalent to a rated nameplate capacity of about 250 kW DC or greater).

SOLAR ENERGY SYSTEM, MEDIUM-SCALE — An active solar energy system that occupies more than 1,750 square feet of surface area but less than one acre of surface area (equivalent to a rated nameplate capacity of about 10 to 250 kW DC).

SOLAR ENERGY SYSTEM, OFF-GRID — A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

SOLAR ENERGY SYSTEM, ROOF-MOUNTED — An active solar energy system that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).

SOLAR ENERGY SYSTEM, SMALL-SCALE — An active solar energy system that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of about 10 kW DC or less).

SOLAR THERMAL SYSTEM — An active solar energy system that uses collectors to convert the sun's rays into useful forms of energy for water heating, space heating, or space cooling.

§ 180-150. Solar energy systems.

See the Table of Use Regulations for allowed principal and accessory uses in all zoning districts.⁸¹

§ 180-151. Solar energy systems, building-integrated, roof-mounted and small scale.

Building-integrated solar energy systems, roof-mounted solar energy systems and small-scale solar energy systems are allowable as an accessory use in all zoning districts, subject to the following requirements:

- A. Height. Roof-mounted solar energy systems shall not project beyond three feet above the peak of the roof and shall not be more than three feet above the roof surface to which they are attached. The height of a small-scale solar energy system shall not exceed 15 feet.
- B. Setback. Roof-mounted solar energy systems shall comply with all building setbacks in the applicable zoning district and shall not extend beyond the exterior perimeter of the building on which the system is mounted.
- C. Coverage. Roof-mounted solar energy systems shall not cover more than 90% of the total area of the roof.
- D. Exempt. Building-integrated solar energy systems are exempt from the requirements of this section and shall be regulated as any other building element.
- E. Certifications. Roof-mounted and building-integrated solar energy system components shall be certified by Underwriters' Laboratories, Inc., and the Solar Rating and Certification Corporation. The Town reserves the right to deny a building permit for proposed solar energy systems deemed to have inadequate certification.
- F. Aesthetics. All roof-mounted and building-integrated solar energy systems shall use colors that blend with the color of the roof or other structures. Reflection angles from collector surfaces shall be oriented so as not to interfere with the use and enjoyment of other properties. Where necessary, screening shall be required to address glare.
- G. Small-scale solar energy systems shall be located in the rear or side yard areas only.

§ 180-152. Solar energy systems, medium-scale.

All medium-scale solar energy system installations shall undergo site plan review as outlined in § 180-13 of the Code of the Town of Agawam prior to construction, installation or modification of the facility. The total area of medium-scale solar energy structures shall include the total of all areas where the solar panels are installed, all appurtenant and accessory buildings, access roads, landscaping, fencing and visual screening elements. The height of a medium-scale solar energy system shall not exceed 15 feet.

§ 180-153. Solar energy systems, large-scale.

The balance of this article shall apply to large-scale solar energy system installations which measure one acre and larger. The area included for determining whether a proposed installation is a large-scale solar energy system is contained in § 180-155 below. The provisions of this article shall not apply to land owned by the Town of Agawam.

§ 180-154. General requirements for large-scale solar energy system installations.

- A. Compliance with laws, ordinances and regulations. The construction and operation of all large-scale solar energy installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications

81. Editor's Note: The Table of Use Regulations is included as an attachment to this chapter.

requirements. All buildings and fixtures forming part of a large-scale solar energy system installation shall be constructed in accordance with the state building code and any other applicable state and federal laws.

- B. Location. Large-scale solar energy system installations shall be allowed as a matter of right in any industrial zone, and shall be allowed by special permit only in the Agricultural Zone. No large-scale solar energy system installations shall be constructed or installed in any residential or business zone.
- C. Special permit. Large-scale solar energy system installations shall be allowed by special permit only in the Agricultural Zone. The City Council shall be the special permit granting authority and shall include as part of its special permit review and proceedings all the provisions and requirements of the site plan review. The City Council shall consider the following criteria in determining whether to grant a special permit:
 - (1) That the use is in harmony with the general purpose and intent of the zoning ordinances of the Town of Agawam;
 - (2) That the use is in an appropriate location and is not significantly detrimental to the neighborhood and does not significantly alter the character of the neighborhood;
 - (3) Adequate and appropriate facilities will be provided for the proper operation of the proposed use; and
 - (4) That the proposed use would not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials and/or other visual nuisances.
- D. Building permit. No large-scale solar energy system installation shall be constructed, installed or modified as provided in this article without first obtaining site plan approval by the Planning Board and then a special permit from the City Council (if necessary) and finally a building permit.

§ 180-155. Site plan review.

- A. All large-scale solar energy system installations shall undergo site plan review as outlined in § 180-13 of the Code of the Town of Agawam prior to construction, installation or modification of the facility as provided in this article. The total area of large-scale solar energy systems shall include the total of all areas where the solar panels are installed, all appurtenant and accessory buildings, access roads, landscaping, fencing and visual screening elements.
- B. Required documents. In addition to the required site plan content described in § 180-13 of the Code of the Town of Agawam, the project proponent shall provide the following additional documents and information to the Planning Board. The Planning Board may waive any of these requirements as it deems appropriate.
 - (1) A site plan showing:
 - (a) Property lines and physical features, including roads for the project site, wetlands, wildlife corridors and other relevant features;
 - (b) Location and approximate height of existing and proposed tree cover, including any trees on public property that are approximated to be 72 years and older or with a diameter of 36 inches or greater;

- (c) Proposed changes to the site, including proposed roads, grading, vegetation clearing and planting, parking areas, exterior lighting, screening vegetation, stormwater controls, and all structures;
 - (d) Elevations of the solar energy system installation, including the proposed layout of the system and any potential shading from structures and vegetation, including those on abutting properties;
 - (e) A three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - (f) Documentation of the major system components to be used, including the photovoltaic panels, mounting system and inverter;
 - (g) Name, address, and contact information for the proposed system installer;
 - (h) Name, address, and contact information for the project proponent, as well as all co-proponents and property owners, if any;
 - (i) The name and contact information of any agents representing the project proponent;
 - (j) Documentation of actual or proposed access and control of the project site;
 - (k) An operation and maintenance plan for the proposed project;
 - (l) The location of active farmland and prime farmland soils, wetlands, permanently protected open space, priority habitat areas and critical natural landscape core habitat areas as set forth by the Natural Heritage and Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the Massachusetts DEP; and
 - (m) Locations of any local or national historic districts.
- (2) Proof of property and liability insurance consistent with industry standards for the proposed facility;
 - (3) Description of financial surety consistent with this article; and
 - (4) A public outreach plan, including a project development timeline, which indicates how the project proponent will inform and educate abutters and the community about the project.
- C. All plans shall be prepared, stamped and signed by a professional engineer licensed in the Commonwealth of Massachusetts.

§ 180-156. Site control, operation and maintenance plan, and utility notification.

- A. The project proponent shall submit documentation of actual or proposed access and control of the project site sufficient to allow for the construction and operation of the proposed large-scale solar energy system installation.
- B. The project proponent shall submit a plan for the operation and maintenance of the large-scale solar energy system installation, which shall include measures for maintaining safe access to the installation and stormwater controls, as well as general procedures for operational maintenance of the installation.

- C. The project proponent shall submit evidence that the utility company that operates the electrical distribution system grid where the installation is to be located has been informed of the proposed large-scale solar energy system installation. Off-grid large-scale solar energy system installations shall be exempt from this requirement.

§ 180-157. Dimension and density requirements.

- A. Setback and height requirements. The setbacks for large-scale solar energy system installations, including appurtenant structures and parking areas, shall be at least 75 feet from any property boundary. The setback areas shall not be included in the calculation of the size of the large-scale solar energy system installations. The height of any large-scale solar energy system installation or any appurtenant structure shall not exceed 15 feet.
- B. Lot coverage. The lot coverage requirements of § 180-58 of the Code of the Town of Agawam shall not apply to large-scale solar energy system installations.
- C. Appurtenant structures. All appurtenant structures to large-scale solar energy system installations shall comply with the requirements of the Code of the Town of Agawam. All such appurtenant structures include, but are not limited to, equipment shelters, storage facilities, transformers, fencing and substations.

§ 180-158. Design, safety, and environmental standards.

- A. Lighting. Lighting of large-scale solar energy system 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 large-scale solar energy system installations shall be directed downward and shall incorporate all feasible measures to reduce light pollution.
- B. Signage. Any signs on large-scale solar energy system installations and property shall comply with Article XIII of the Code of the Town of Agawam. A sign shall be required which shall identify the owner and provide a twenty-four-hour emergency contact phone number. Large-scale solar energy system installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the large-scale solar energy system installation.
- C. Utility connections. Reasonable efforts, as determined by the Planning Board during the site plan review, shall be made to place all utility connections from the large-scale solar energy system 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.
- D. Landscaping. All land associated with the large-scale solar energy system installations shall be covered and grown in natural vegetation. All ground surface areas beneath solar arrays and setback areas shall be pervious to maximize on-site infiltration of stormwater. Impervious paving of areas beneath solar arrays is prohibited. To the greatest extent feasible, a diversity of plant species, including both deciduous and coniferous plantings, shall be used, with preference given to species that are native to New England. All original plantings shall be at least six feet high. Reasonable efforts shall be taken to minimize the establishment of invasive species. All plantings shall be maintained annually, and herbicides shall be applied only by properly licensed personnel in conformance with all applicable state and federal laws.
- E. Parking and access. Reasonable on-site parking is required for vehicles that will service the

installation only.

- F. Visual impact mitigation. The plan for a large-scale solar energy system installation shall be designed to maximize the preservation of on-site and abutting natural and developed features. In undeveloped areas, existing vegetation shall be retained to the greatest extent feasible, especially where such vegetation provides a benefit to the natural environment. In developed areas, the design of the large-scale solar energy system installation shall consider and incorporate contextual landscaping and landscape amenities that complement the physical features of the site and abutting properties. To the greatest extent feasible, structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts and be architecturally compatible with each other. Vegetation shall be of varieties native to New England. Vegetative screening shall reach a mature form to effectively screen the installation within five years of installation. The mature height of the vegetated screening shall be such that the installation's structures are not apparent to a person upon any public road and viewing the installation from a height of eight feet. Planting of the vegetative screening shall be completed prior to final approval of the large-scale solar energy system installation by the Building Inspector.
- G. Emergency services. The owner or operator of the large-scale solar energy system installation shall provide a copy of the project summary, electrical schematic, and site plan to the Agawam Fire Department. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of disconnecting the large-scale solar energy system installation shall be clearly marked. The owner or operator shall identify and provide contact information for a person who is responsible for responding to all public and emergency inquiries related to the installation. This information shall be updated as needed, and at least on an annual basis.
- H. 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 large-scale solar energy system installation or otherwise prescribed by applicable laws, regulations, and ordinances. Sufficient vegetation shall be maintained to minimize soil erosion. Large-scale solar energy system installations shall be installed only upon water-permeable surfaces as approved during site plan review.
- I. Preservation of trees. Large-scale solar energy system installations shall be designed and constructed to preserve and maintain the health and root systems of significant trees on public property that are approximated to be 75 years and older or with a diameter of 36 inches or greater.
- J. Wildlife corridors. Large-scale solar energy system installations shall be designed and constructed to minimize the impacts on wildlife corridors.
- K. Sound levels. Sound levels under normal operating conditions of the large-scale solar energy system installation measured at the boundary of the lot on which the installation is sited shall not be more than 10 decibels greater than would otherwise exist in the absence of the facility.
- L. Hazardous materials. Hazardous materials that are stored, used, or generated on site shall not exceed the amount for a very small quantity generator of hazardous waste as defined by Massachusetts DEP and shall meet all applicable requirements, including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outside environment. If hazardous materials are utilized within the solar electric equipment, then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required.
- M. Independent engineer. Upon request of the Planning Board, the proponent shall pay for a licensed third-party independent engineer selected by the Planning Board to assist the Planning Board in its

review of submitted materials.

§ 180-159. Monitoring and maintenance.

- A. Solar photovoltaic installation conditions. The owner or operator of a large-scale solar energy system installation shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, landscaping and integrity of security measures. Site access shall be maintained to a level acceptable to the Agawam Fire Chief, Building Inspector and Town's Electrical Inspector. The owner or operator shall be responsible for the cost of maintaining the installation and any access road, unless accepted as a public way.
- B. Modifications. All material modifications to a large-scale solar energy system installation made after issuance of the required building permit shall require site plan approval by the Planning Board.
- C. Removal requirements and abandonment.
 - (1) Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, a large-scale solar energy system installation shall be considered abandoned when it fails to operate for more than one year without a written waiver by the Planning Board. If the owner or operator of a large-scale solar energy system 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 or its agents may enter the property and physically remove the installation, the full cost of which shall be the responsibility of the owner or operator.
 - (2) Removal requirements. Any large-scale solar energy system installation which has reached the end of its useful life or has been deemed abandoned consistent with this article 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:
 - (a) Physical removal of all solar photovoltaic installations, structures, equipment, security barriers and electrical lines from the site;
 - (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
 - (c) Stabilization and revegetation of the site as necessary to minimize erosion; and
 - (d) The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations to minimize erosion and disruption to vegetation.

§ 180-160. Financial surety.

The project proponent of large-scale solar energy system installations shall provide a form of surety, either through escrow account, bond or line of credit from a creditable financial institution, in an amount sufficient to cover the cost of removal in the event the Town of Agawam deems the large-scale solar energy system installation to be abandoned and must remove the installation and remediate the landscape. The amount and form of the surety shall be determined to be reasonable by the Planning Board, but in no event should exceed more than 110% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety is not required for municipally owned 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.

ARTICLE XXII
Tables of Uses and Dimensions
[Added 11-19-2018 by TOR 2018-13]

§ 180-161. Abbreviations.

For the purposes of this article, certain abbreviations shall have the following meanings:

Y - Use Permitted

N - Use Not Permitted

SP - Use Permitted by Special Permit from the Zoning Board of Appeals

V - Variance from the Zoning Board of Appeals

NA - Not Applicable

RA1 - Residence A-1 Districts

RA2 - Residence A-2 Districts

RA3 - Residence A-3 Districts

RA4 - Residence A-4 Districts

RA5 - Residence A-5 Age-Restricted Housing District

RA6 - Residence A-6 Low-Density Multifamily Community District

RB - Residence B Districts

AG - Agriculture Districts

BA - Business A Districts

BB - Business B Districts

IA - Industrial District A

IB - Industrial District B

O - Overlay

§ 180-162. Table of uses.

See the attachment marked as "Appendix A, Table of Use Regulations," with accompanying footnotes for a catalog of uses permitted, uses not permitted, and uses that require a special permit in all districts.

§ 180-163. Table of dimensions.

See the attachment marked as "Appendix B, Table of Dimension Regulations," with accompanying footnotes for a catalog of dimension requirements.

Appendix

Chapter A184**COUNCIL RULES AND REGULATIONS**

[HISTORY: Adopted by the Town Council of the Town of Agawam 4-21-2015 by TR-2015-16.⁸²

Amendments noted where applicable.]

§ A184-1. Rule 1: Authority.

Pursuant to Section 2-7(c) of the Charter in the Code of the Town of Agawam, the City Council may determine its own rules of procedure for meetings. The following set of rules shall be in effect upon their adoption by the City Council and until such time as they are amended or new rules are adopted.

§ A184-2. Rule 2: Regular meetings.

- A. All regular meetings of the City Council shall be held on the first and third Mondays of the month except for the months of July and August where it shall be held only on the first Monday of those months. If the regularly scheduled City Council meeting falls on a holiday, the Council shall meet on the following day. In October and November, the City Council shall have its meeting the day immediately following any local, state or federal election day.
- B. The regular City Council meetings shall commence at 7:00 p.m. and not adjourn until such time as the business of the Town of Agawam is completed.
- C. The regular City Council meetings shall be held in the Auditorium of the Roberta G. Doering School located at 68 Main Street, Agawam, Massachusetts, unless otherwise noted and properly posted.
- D. Except for executive sessions as permitted by state law, all regular meetings of the City Council and its committees shall be open to the public, subject to recording by various means by prior arrangement with the Council President, provided that such arrangements do not interfere with the orderly conduct of the meetings and are done under such rules as the Council may prescribe.

§ A184-3. Rule 3: Special meetings.

- A. As stated in the Charter, the Council President, or the Mayor, or any five members of the Council may call special meetings of the Council whenever, in their opinion, the public business may require it.
- B. Whenever a special meeting shall be called, a notice in writing, signed by the Council President or presiding officer, shall be posted in the City Clerk's office and served upon each member of the Council stating the date and hour of the meeting and the purpose for which such meeting is called, and no business shall be transacted at the meeting except such as is stated in the notice.
- C. No special meeting, except an emergency meeting as determined by the Council President, shall be held until notice complying with the Open Meeting Law⁸³ has been given by the Council Administrative Assistant at least 48 hours after the call is issued.
- D. Executive sessions shall be held in accordance with the provisions of the Open Meeting Law.

82. Editor's Note: This resolution also superseded former Ch. A184, Council Rules and Regulations, adopted 12-20-1999 by TR-99-28, as amended.

83. Editor's Note: See MGL c. 30A, § 18 et seq.

§ A184-4. Rule 4: Election and duties of the presiding officer.

- A. After a new City Council has been sworn in, a new Council President and Vice President shall be elected during the first meeting in January. The President and Vice President shall serve a one-year term.
- B. The first meeting in January after a new Council has been sworn in shall be known as the organizational meeting, where the only business conducted shall be the election of President and Vice President. The position of President and Vice President shall be listed individually on the Council agenda and require a majority vote of the full Council for election. On the off year, the first meeting in January shall include regular Council business along with the elections for President, Vice President, Auditor and Administrative Assistant, which shall require a majority vote of the full Council for election.
- C. The Councilor with the most seniority on the City Council shall sit to the left of the President. The senior Councilor shall also chair the organizational meeting prior to the election of the President and Vice President. After election of officers, the Vice President shall sit to the right of the newly elected Council President and the senior Councilor shall sit to his/her left.
- D. The seats of the City Council shall be numbered and determined by lot at the organizational meeting and at the first meeting in January thereafter. No member shall change his/her seat except by permission of the President.
- E. The duties of the presiding officer where applicable shall be in accordance with Robert's Rules of Order.
- F. During the absence or disability of the President, the Vice President shall discharge the duties and exercise the powers and authority of the President. In the absence of both the President and Vice President, the senior Councilor shall preside. Said Council member shall discharge the duties and exercise the powers and authority of the President.
- G. In the event the President or Vice President of the City Council resigns or is called upon to act as Mayor in a permanent fashion, the City Council will hold elections to determine a new President and/or Vice President.
- H. The President shall preserve order and decorum at all regular and special meetings of the City Council and confine members in debates pertaining to the question under discussion.
- I. The President shall sign all ordinances, resolutions and measures adopted by the Council during his/her presence. In the event of the absence of the President, the presiding officer shall sign ordinances, resolutions and measures as then adopted.
- J. When the President wishes to participate in a debate, he/she may call upon the Vice President or, in his/her absence, the senior Councilor to temporarily chair the meeting in order to take part in the debate. After expressing his/her opinion on the issue, he/she may return to the chair if not objected to by the majority of the Council present.
- K. All rules and regulations of the City Council shall be given to every newly elected City Councilor within two weeks of the date of his/her election.
- L. The President shall be classified as the department head of the Legislative Branch and is responsible for any and all administrative decisions and actions with respect to the City Council and its personnel. Those administrative duties and responsibilities shall include the approval of all payroll warrants, and

the approval of accounts payable warrants and requests for payment in amounts less than \$200. Any accounts payable warrant or request for payment in excess of \$200 shall require approval by vote of the Council.

§ A184-5. Rule 5: Call to order.

- A. The presiding officer shall take the chair at the hour appointed for the meeting and shall immediately call the Council to order.
- B. In the absence of the President and the Vice President, the senior Councilor is to preside as temporary Chair; and upon the arrival of the President or Vice President, the temporary Chair shall immediately relinquish the position of the presiding officer upon the conclusion of the business item immediately before the Council.

§ A184-6. Rule 6: Rules of order.

The City Council rules and regulations shall govern the proceedings of the Council in all cases, unless they are in conflict with the Town Charter or Massachusetts General Laws, in which case the Charter and/or Massachusetts General Law shall have precedence.

§ A184-7. Agenda review.

Prior to any regular or special City Council meeting, the Mayor may conduct an agenda review meeting to review the Council agenda with the Council President and/or Council Vice President. No more than three other City Council members may also attend said agenda review meeting, on an alternative rotating basis. Attendance at any one agenda review meeting shall not exceed five City Council members, including the Council President and Council Vice President.

§ A184-8. Rule 8: Quorum.

A majority of the members of the City Council shall constitute a quorum and be necessary for the transaction of business. If, at the time any meeting is called to order, a quorum is not present and if, after a recess of not more than 30 minutes, a quorum is still not present, the President shall declare the meeting adjourned to a later time and those in attendance shall be named.

§ A184-9. Rule 9: Committee appointments.

After the organizational meeting and annually thereafter, all subcommittees shall be appointed and announced by the President unless otherwise provided for or specifically directed by the City Council. Any member shall have the right to appear before any subcommittee of the City Council and be heard. The Chairperson of any subcommittee may cancel a scheduled meeting for cause; otherwise, the senior member by length of service shall preside at the scheduled subcommittee meeting. The Chairperson shall assign the task of secretary to a subcommittee member to take minutes at any such subcommittee meeting.

§ A184-10. Rule 10: Standing subcommittees.

- A. The members of the standing subcommittees listed below shall serve annually, and each subcommittee shall be charged with the mission statement enumerated below. The Council President or presiding officer shall refer agenda items to the appropriate subcommittee for review. (See Rule 22.) The subcommittee shall provide verbal reports to the Council as a whole and keep written minutes of its meetings. These minutes shall be submitted to the Council Administrative Assistant in

a timely manner. (See Rule 20B.)

- B. The Council President and Council Vice President shall be ex-officio members of all standing subcommittees for purposes of establishing a quorum at any subcommittee meeting.
- C. The Council shall have the following five-member standing subcommittees:
 - (1) Finance Subcommittee: This subcommittee would be charged with reviewing financial and budget requests submitted to the Council, including funding requests pursuant to the Community Preservation Act.⁸⁴ In addition, the subcommittee would be responsible for submitting Council requests for inclusion in the Town's operating and capital improvement budgets, and for review of the capital improvement budget presented by the Mayor to the Council.
 - (2) Legislative Subcommittee: This subcommittee would be charged with reviewing and initiating ordinances and legislation to be considered by the Council, including zoning ordinances.
 - (3) Community Relations Subcommittee: This subcommittee would be charged with handling internal relations between the Council and the other Town departments, and external relations with the business community and the citizenry as a whole.
 - (4) Administrative Subcommittee: This subcommittee would be charged with Council administrative duties such as review of license applications, street acceptance and sewer expansion. In addition, the subcommittee would be responsible for initiating and reviewing any reorganization efforts.

§ A184-11. Rule 11: Decorum.

- A. While the Council is in session, the members must preserve order and decorum, and no member shall, neither by conversation nor otherwise, delay or interrupt the proceedings or the peace of the Council or disturb any member while speaking or refuse to obey the orders of the Council or its presiding officer, except as otherwise herein provided.
- B. Any person making personal, impertinent, or slanderous remarks or who shall become boisterous while addressing the Council shall be asked to remove himself or herself from Council Chambers, forthwith, by the presiding officer.

§ A184-12. Rule 12: Enforcement of decorum.

- A. At the will of the presiding officer, the Chief of Police, or such member or members of the Police Department as he may designate, shall be Sergeant-at-Arms of the City Council meetings. He/she or they shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the City Council meeting.
- B. Upon instructions of the presiding officer, it shall be the duty of the Sergeant-at-Arms to remove any person(s) who violates the order and decorum of the meeting.

§ A184-13. Rule 13: Rights and duties of Council members.

- A. The members' right to speak shall be in accordance with Roberts' Rules of Order. Any Council member shall have the right to have the reasons for his/her dissent from, or protest against, any action

84. Editor's Note: See MGL c. 44B.

of the Council entered into the minutes.

- B. In the event the President wishes to speak on the subject matter of an issue or article of legislation before the full Council, the President shall turn such Council meeting over to the Council Vice President while the President is so addressing the Council. The President shall resume the Chair after his/her presentation.

§ A184-14. Rule 14: Policies related to City Council personnel.

- A. The City Auditor and Council Administrative Assistant.
- (1) The salary and benefits for the City Auditor and Administrative Assistant are set forth in the Code of the Town of Agawam.
 - (2) The City Auditor and the Administrative Assistant to the City Council shall have their performance evaluated annually by the City Council.
 - (3) The City Council shall elect the City Auditor and Administrative Assistant to the City Council as set forth in Rule 4 above. This will allow the Council to have one year's worth of experience to adequately evaluate said employees' performance.
- B. The Zoning Board of Appeals and the Community Preservation Act Committee are also elected by the City Council.

§ A184-15. Rule 15: Filing deadline.

No new item may be included on a regular City Council agenda unless said item is submitted to the Administrative Assistant to the City Council in writing by Thursday, 12:00 noon, prior to the next regularly scheduled meeting of the City Council. At the time of submission of any item of business for the Council agenda, the person or persons proposing the measure shall submit supporting information or documentation sufficient to specify the nature of the business to be considered by the City Council. Without such backup information, the item may not be allowed on the City Council agenda. In the event a City Councilor is unable to submit a proposed item personally, he or she can authorize the Administrative Assistant to the City Council to submit the item by telephone message or e-mail. The Administrative Assistant to the City Council shall compile an agenda of all such proposed resolutions, orders, ordinances and other new business along with the agenda of the old business items remaining before the City Council and shall see that a copy of the completed agenda is delivered to each member of the City Council. The Administrative Assistant to the City Council shall include the name of the member or members proposing an item of agenda. Any orders, resolutions and ordinances shall reflect their origin and may be sponsored by the Mayor or by any member of the City Council.

§ A184-16. Rule 16: Form of reports.

All reports and other papers submitted to the City Council shall be in writing, properly endorsed, and all the appropriate supplemental information attached thereto. If such reports, documents or papers submitted shall be solely for the City Council, they should be clearly labeled "Council Only."

§ A184-17. Rule 17: Order of business.

- A. At every regular City Council meeting, unless otherwise determined by a majority of the members present, the order of business shall be as follows:

Item 1	Roll call
Item 2	Moment of silence and the Pledge of Allegiance
Item 3	Citizen's speak time
Item 4	Approval of minutes
Item 5	Declaration from Council President
Item 6	Presentation of petitions and memorials
Item 7	Reports of Council committees
Item 8	Elections
Item 9	Public hearings
Item 10	Old business
Item 11	New business
Item 12	Any other matter that may legally come before the City Council

- B. No person shall address a public meeting of the City Council without permission of the presiding officer after having signed up for Citizen's Speak Time prior to the meeting, and all persons shall, at the request of the presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly or disruptive behavior, said officer may order him/her to withdraw from the meeting and, if he/she does not withdraw, may order a police officer or any other person to remove him/her to some convenient place until the meeting is adjourned.

§ A184-18. Rule 18: Roll call; order of vote.

The order of voting shall be by roll call in alphabetical order. The first to vote shall be determined by alphabetical order rotation at the beginning of each regular or special meeting. This order shall start from the beginning alphabetical order at the first meeting in January. If a Councilor is not present during the City Council meeting at which his/her position is the first to vote, then said Councilor shall forgo his/her opportunity to vote in the first position. The next meeting's voting order will begin with the next Councilor following the alphabetical order.

§ A184-19. Rule 19: Citizen's speak time.

The Agawam City Council shall provide a citizen's speak time during each regular City Council meeting. Citizen's speak time is subject to the following conditions:

- A. After being recognized by the Council President or presiding officer, the person shall state his/her name, address and subject he/she wishes to speak on for the record.
- B. Speak time shall be only at the regular meetings of the City Council.
- C. Each speaker shall have up to five minutes, if needed, to present the subject of his or her concern, unless otherwise permitted by the Council President and/or a majority of the Council members

present.

- D. The time shall be kept by the Council Administrative Assistant.
- E. No speaker will be allowed to bequeath time to another or for another speaker.
- F. Prior to the meeting, each speaker must show his or her desire to speak by giving name, address and the subject to be presented on a signup sheet which is provided for this and is placed upon the podium where the person shall speak. At two minutes prior to the beginning of the Council meeting, the Council Administrative Assistant shall bring this list to the President or presiding officer. Once the meeting has commenced, no person shall be able to speak during citizen's speak time unless his/her name is on the signup sheet.
- G. There shall be no dialogue exchanged between the citizen and any City Council member. This is for citizen input only.
- H. The City Council President or presiding officer of the meeting shall maintain order and decorum.
- I. Any person making personal, impertinent, or slanderous remarks or who shall become boisterous while addressing the Council shall be asked to remove himself or herself from Council Chambers, forthwith, by the presiding officer.
- J. If a speaker wishes to speak on an item of agenda where a public hearing is scheduled during the Council meeting, his/her remarks shall be made during the public hearing and not during citizen's speak time.

§ A184-20. Rule 20: Minutes.

- A. All regular City Council meetings are recorded by both video and audio means, and the City Council Administrative Assistant shall prepare written minutes that reflect the date, time and place of the meeting, a list of the members present or absent, and the decisions made and actions taken including a record of all votes. Said written minutes shall also include a summary of the discussions on each subject and include a list of the documents and other exhibits used at the meeting. These minutes shall be distributed to the City Council to be approved at the next regularly scheduled Council meeting. After approval, said minutes shall be posted on the Town of Agawam website as well as posted in the office of the City Clerk in compliance with Massachusetts General Laws governing public meetings.
- B. Minutes of all special meetings and subcommittee meetings shall be maintained in written form. The subcommittee Chairperson shall designate a recording secretary from its committee members. The minutes shall be submitted to the City Council Administrative Assistant in a timely manner prior to the next regularly scheduled City Council meeting. The minutes shall reflect:
 - (1) The date, time and place of the meeting;
 - (2) The members recorded as either present or absent;
 - (3) A general description of all matters proposed, discussed or decided; and
 - (4) A record of any votes or recommendations taken. (See Rule 22.)
- C. Minutes of all executive session meetings shall not be available to the public until such time as the City Council determines that it is no longer necessary to protect the public interest or the privacy of the matter on which it met or such matter has been released by the courts.

- D. Copies of all minutes shall be kept in the office of the City Council, and any video/audio recordings shall also remain in the Council office for public review. A copy of the video may be requested in writing, and there may be a fee for costs associated with the copying of said video assessed to the person(s) requesting it.

§ A184-21. Rule 21: Presentation of petitions and memorials.

- A. Resolutions, petitions, etc., or subjects requiring action by the Council under this agenda item may be introduced and sponsored by a member of the Council or the Mayor.
- B. All resolutions shall be presented to the Council in typewritten form.
- C. All resolutions shall first appear under new business and at the next regularly scheduled meeting of the City Council shall be moved to old business upon which a discussion will be had and action of the City Council shall be taken.

§ A184-22. Rule 22: Referral to subcommittees.

- A. When an order, resolution or ordinance relates to a subject which should properly be examined and reported upon by a standing subcommittee of the City Council, such order, resolution or ordinance shall, upon presentation, be referred by the Council President to such committee and must be reported back by the committee. All petitions, memorials, communications or any other matter before the City Council may be referred as follows:
- (1) To a standing subcommittee of the City Council.
 - (2) To a special committee of the City Council.
 - (3) To the Mayor.
 - (4) To boards or commissions.
- B. Any matter may be referred to an ad hoc committee, advisory committee or Board for advice sought by the City Council.
- C. Should a matter be referred to more than one subcommittee, it is recommended that those committees have one or more joint meetings of the Chairpersons or the full committee to assure the information brought before the full Council is unified or any discrepancies between subcommittees clearly noted, all following the guidelines of the Open Meeting Laws.⁸⁵
- D. After referral, it is the discretion of the subcommittee Chairperson to determine if a meeting of the subcommittee is necessary. If a subcommittee meeting is held, the subcommittee may take a vote for a recommendation to the full Council on each item on the agenda.
- E. The Chairperson of the subcommittee is responsible for notifying the City Council Administrative Assistant to schedule the subcommittee meeting and specify any department heads and/or other persons of interest to be invited to the meeting.

§ A184-23. Rule 23: Elections.

The City Council appoints vacancies on the Zoning Board of Appeals as well as the Community

⁸⁵. Editor's Note: See MGL c. 30A, § 18 et seq.

Preservation Act Committee. When a vacancy arises or a term expires, the Council Administrative Assistant is responsible for contacting, in writing, the person(s) and getting a letter of intent on whether he/she wishes to be reappointed to that position. If a person wishes to resign from the position, notification must be submitted in writing to the City Council office. Vacancies shall be advertised in the local newspaper. An election shall take place in a timely fashion with the item(s) being placed on the Council agenda for a vote of the Council.

§ A184-24. Rule 24: Public hearings.

- A. A legal notice of public hearing must be advertised in a local newspaper no less than 14 days prior to the suggested date of the public hearing [as stated in Section 5-2(a) of the Town Charter]; and, if necessary, abutters shall also be notified with a legal notice of public hearing. Proponents and opponents shall be allowed time for the presentation of their respective cases to the City Council during all public hearings before the City Council.
- B. All public hearings will be subject to the following conditions:
 - (1) Each speaker has up to 10 minutes, total, if needed, to present the subject of his or her concern, both for and against the subject matter on hand.
 - (2) Time limits may be shortened and/or extended by a majority vote of Council members present at the meeting.
 - (3) Questions by members of the City Council shall be allowed after the speaker has completed his/her presentation.
 - (4) No speaker will be allowed to bequeath time to another or for another speaker.
 - (5) Any person shall have the right to be recorded for or against the subject being heard.
 - (6) After close of all hearings, no further evidence, oral or written, may be presented.
 - (7) The City Council President or presiding officer of a hearing shall preserve order and decorum.
 - (8) Any person shall be allowed to address the City Council only once on any given subject or topic being heard unless the City Council has a question of that person and he/she may be asked to return to the podium.
- C. No person shall address a public meeting of the City Council without permission of the presiding officer or having signed up for citizen's speak time prior to the meeting, and all persons shall, at the request of the presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly or disruptive behavior, said officer may order him/her to withdraw from the meeting and, if he/she does not withdraw, may order a police officer or any other person to remove him/her to some convenient place until the meeting is adjourned.

§ A184-25. Rule 25: Old business.

Old business first appears as new business and then is moved to old business. Any resolutions or petitions will appear under Item 6 of the Council agenda, "Presentation of Petitions and Memorials." Any public hearing items will appear under Item 9, "public hearing," and any ordinances or Town orders (such as financial transfers) shall appear under Item 10, "Old Business." All items can be acted on in one meeting, except ordinances, which shall require two readings, therefore requiring the item to appear at least twice under old business.

§ A184-26. Rule 26: New business.

- A. New business is classified as any resolution, ordinance, petition, public hearing notice, Town order, etc., which must be submitted to the City Council office by 12:00 noon on the Thursday prior to the next regularly scheduled City Council meeting. Any letters or written explanation providing backup to the agenda item must be included. These must also have an originally signed copy by the Mayor, Auditor or City Solicitor, depending on the type of item.
- B. If the item appears as new business suggesting a public hearing date, the presiding officer will declare the suggested date to ensure availability of the Council.

§ A184-27. Rule 27: Ordinances.

- A. All ordinances shall require two separate readings by the Council after first appearing under new business, and the second shall never be had on the same day as the first.
- B. Ordinances shall require a minimum of eight votes of the City Council for passage.
- C. All ordinances shall be referred to the City Council Ordinance Subcommittee, and the Subcommittee shall report said ordinance to the City Council at the subsequent meeting. The ordinance shall stand for final action in accordance with the report of the Subcommittee.
- D. When passed by the City Council, an ordinance shall be signed by the presiding officer and then submitted to the Mayor, after which said ordinance shall be filed and preserved in the office of the City Clerk.

§ A184-28. Rule 28: Motions out of order.

The presiding officer may at any time, by a majority vote of the Council, permit a member to move an agenda item out of regular order.

§ A184-29. Rule 29: Any item that may legally come before the City Council.

The presiding officer shall go in whatever order he/she so chooses and provides each Councilor the opportunity to speak upon any such matter that was not included in the agenda. This item should pertain only to matters concerning the City Council, such as setting meetings, supplying information concerning the City Council and the like.

§ A184-30. Rule 30: Votes required.

Please see the attached Schedule A (voting schedule).⁸⁶

- A. The votes shall be taken upon the passage of all ordinances, resolutions, appropriations, transfers and Town orders by roll call and entered upon the official record of the Council.
- B. When the City Council is in doubt as to the number of votes required to pass a measure or if the measure contains a tax or fee to be assessed to the residents of the City of Agawam, the Council President, as the Parliamentarian, has the right to determine the number of votes required to pass the measure.
- C. All matters incurring debts shall comply with Massachusetts General Law, Chapter 44, Section 2.

86. Editor's Note: Schedule A is included as an attachment to this chapter.

§ A184-31. Rule 31: Request for legal opinions.

Any member of the City Council may request, in writing, written legal opinions relating to Town business and involving matters within the authority of the City Council and, for purposes of inquiry, request an opinion or advice on Town legal matters from the City Solicitor.

§ A184-32. Rule 32: Budget review.

- A. The entire Council shall review the proposed annual operating budget and capital improvement budget for the Town.
- B. The Council President shall name the five members of the School Budget Committee to assist the Council in reviewing the proposed School Department budget.

Committee Name	Items Reviewed
School Budget Committee (Five Council members)	School budget

- C. The School Budget Subcommittee shall issue a report to the full Council within 30 days of the completion of the School Committee budget hearing, and copies of the proposed school budget will be submitted to all Council members. After submission of the annual operating budget by the Mayor to the Council, a workshop shall be conducted in order to review the proposed school budget with the School Department staff in attendance.
- D. In the event that the Commonwealth of Massachusetts delays the issuance of Cherry Sheets and this delay prohibits the Mayor from presenting the operating budget to the Council with enough time to follow the above-described budget review process before the Council's approval deadline (in accordance with Massachusetts General Laws), this rule shall become subject to the discretion of the Council President, who then shall, as he/she sees fit, schedule a workshop with the Mayor to review the operating budget in as many meetings as it takes for the Council to fully gather the information it deems necessary to grant final approval of the operating budget.

§ A184-33. Rule 33: Inquiries and investigations.

- A. The City Council shall, with an affirmative majority vote of the full Council, conduct an inquiry, hearing or investigation of any department, department head, and/or employees and City officials.
- B. The procedure to be taken by the City Council shall be as follows:
 - (1) The City Solicitor and Associate Solicitor shall be excluded as legal counsel from all hearings and executive sessions held by the City Council for purposes of investigation of any City official or department.
 - (2) If requested by the City Council, any attorney whose services shall be employed for purposes of inquiry or investigation shall be subject to approval by the majority of the full Council.
 - (3) Funds shall be used from the account entitled "City Council Professional Consultant Services" to pay for services rendered by the attorney employed by the City Council for said inquiry or investigation.
 - (4) All subpoenas and letter of notices to witnesses and/or subjects of discussion shall be included in the duties of the legal counsel employed by the City Council. It is understood that the

witnesses may waive the subpoena and voluntarily come forward.

- (5) All written notices requiring 48 hours' notice prior to any hearings shall be hand-delivered to persons by the Police Department, as authorized by the Administrative Assistant to the City Council.
- (6) The City Council may, by an affirmative vote of the majority of the full Council, establish a three-person committee appointed by the Council President to hear testimony, collect evidence and present facts to the full Council in executive session.
- (7) The meetings of the City Council and/or subcommittee, unless otherwise requested by the individual or department involved, may be held in executive session. They shall also be conducted in accordance with the Open Meeting Law, Massachusetts General Laws Chapter 30A, § 11A1/2.
- (8) The proceedings of the meetings shall be recorded and transcribed verbatim and provided to the full Council along with a copy of the subcommittee findings.
- (9) The subcommittee will report its findings and recommendations to the full Council.
- (10) The full Council will make the final determination and shall take any action it deems necessary.

§ A184-34. Rule 34: Suspension and amendment of these rules.

- A. Any provision of these rules not governed by the Town Charter may be temporarily suspended by a vote of a majority of the City Council. The vote on any such suspension shall be taken by roll call and entered upon the record.
- B. These rules may be amended, or new rules adopted, by a majority vote of all members of the City Council, provided that the proposed amendments or new rules shall have been introduced into the record as required herein.

§ A184-35. Rule 35: Special permits. [Added 4-2-2018 by TR-2018-16]

- A. Pursuant to § 180-154 of the Code of the Town of Agawam and MGL c. 40A, the City Council shall hear and decide applications for special permits for solar energy systems. All applications shall be on the form approved by the City Council, a copy of which is attached hereto and incorporated herein by reference.⁸⁷ Any application that the City Council deems to be not complete and accurate shall not start the administrative clock under MGL c. 40A, § 9, as the document filed shall not be considered an application. The City Council may deny any incomplete and inaccurate application and shall notify the applicant of such denial. All applications for a special permit from the City Council must receive site plan review from the Planning Board prior to submitting the special permit application with the City Council.
- B. All applicants must submit three sets of plans and other supporting materials to the City Council along with their application. All plans and other supporting materials shall also be submitted to the City Council in digital PDF format. All plans shall be drawn to scale, shall show the north arrow as well as the dimensions of the lot to be built upon, the exact size and location of all buildings, accessory buildings and solar energy systems on the lot or to be erected on the lot, the distance of same to the nearest existing building located on abutting properties, and such other information and plans as may

87. Editor's Note: Said form is included as an attachment to this chapter.

be necessary to determine the merits of the application. The City Council reserves the right to change the requirements for plans submitted. A copy of the deed showing ownership of the property must be submitted with the application. An application fee, as set forth in the Code of the Town of Agawam, shall be submitted with each application. In addition to the application fee, each applicant shall be responsible for payment of all costs of notice publication.

- C. The City Council shall send notices by registered or certified mail, postage prepaid, to all "parties in interest" as defined in MGL c. 40A, § 9. "Parties in interest" shall include the petitioner, abutters, owners of land directly opposite on any public or private street or way, abutters to abutters within 300 feet of the property line of the petitioner, the Planning Board and the Planning Board of every abutting city or town. In addition, the following boards and departments shall be notified: Inspection Services, Assessor, Department of Public Works, Engineering Department, Conservation Commission, Fire Department, Police Department, and Board of Health. The City Council shall be responsible for determining the parties in interest who are required to receive notice. The Assessor's Office, which maintains the applicable tax records, shall certify to the City Council the names and addresses of the abutters and abutters to abutters within 300 feet of the property line of the petitioner, and such certification shall be conclusive for all purposes. The City Council may accept a waiver of notice from any party in interest or any successor owner of record who may not have received a notice by mail.
- D. The City Council shall cause the notice of the time and place of the public hearing to be published in accordance with MGL c. 40A, once in each of two successive weeks, the first publication to be not less than 14 days before the day of the public hearing. The City Council shall also post such notice in a conspicuous place in the City Hall for a period of not less than 14 days before the public hearing.
- E. The City Council shall set the time and date its public hearing within 65 days from the date of the filing of the application with the City Council and the City Clerk. A decision shall be made within 90 days from the date of the close of the public hearing.
- F. The public hearing shall be held at the call of the President of the City Council, who shall convey the rules of procedure for the public hearing and then read or direct the reading of the public hearing notice before the public hearing. After the President opens the public hearing, the order of business shall generally proceed as follows:
 - (1) The applicant and/or their representative shall be given a reasonable time period to present the merit of the application.
 - (2) The City Council may question the applicant and/or their representative on matters concerning the application.
 - (3) The City Council shall hear next from people in favor of the request of the applicant.
 - (4) The City Council shall allow people to be recorded in name only in favor of the request of the applicant.
 - (5) The City Council shall hear next from people in opposition to the request of the applicant.
 - (6) The City Council shall allow people to be recorded in name only in opposition to the request of the applicant.
 - (7) The City Council shall give the applicant a reasonable opportunity to answer any questions raised regarding the merit of the application.

- (8) The President will close the public hearing and announce the right of appeal pursuant to MGL c. 40A, § 17, within 20 days after the decision of the City Council has been filed with the City Clerk.
- G. The City Council may impose conditions, safeguards and limitations, both of time and use in the issuance of a special permit. The approval of a special permit shall require a 2/3 vote by the City Council.
- H. The City Council shall cause to be made a detailed record of its proceedings, showing the motions properly before the City Council and the vote of each member on each motion, and setting forth clearly the reason or reasons for its decision. A draft of the decision by the City Council shall be written by the President or, in his/her absence, by the Vice President, except when the President shall designate another member of the City Council to write the draft of the decision.
- I. An applicant may withdraw their application from further consideration by the City Council at any time after the filing of the application and prior to the publication of the notice of a public hearing. Applications withdrawn in this time period will be withdrawn without prejudice or time penalty. Any application withdrawn after the publication of the public hearing notice may be granted without prejudice only with the approval of 2/3 vote of the City Council.
- J. If this rule is inconsistent with the zoning provisions of the Code of the Town of Agawam or MGL c. 40A, the zoning provisions of the Code of the Town of Agawam and/or MGL c. 40A shall take precedence.

Chapter A185**LOCAL OPTION STATUTES**

[The following is a list of the local option statutes accepted or rejected by the Town of Agawam.]

§ A185-1. List of local option statutes.

**Local Option Statutes Accepted or Rejected
by the
Town of Agawam**

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
	382	1871	8-29-1874	Accepted	Betterments
	386	1890	4-6-1891	Accepted	Ballots
	431	1888	4-7-1890	Accepted	Superintendent of Schools
	347	1890	4-6-1891	Accepted	To have public libraries
	417	1893	4-2-1894	Accepted	Precinct voting
	353	1905	7-28-1905	Accepted	Providing a water supply
	560	1907	4-4-1910	Accepted	Town election date
	560, § 381	1907	10-25-1910	Accepted	Precinct voting
	503	1912	11-5-1912	Accepted	Pensioning laborers
	807	1913	11-4-1913	Accepted	Workmen's compensation
	807	1913	3-2-1914	Accepted	Workmen's compensation
	487	1913	1914	No action taken	Promotion of call men
	494	1911	3-2-1914	Accepted	8-hour day
	217	1914	11-3-1914	Accepted	Vacations for workers
	688	1914	11-3-1914	Accepted	Saturday half holiday
	790	1914	11-3-1914	Accepted	Abolition — party enrollment — primaries

MGL Chapter	Amended by Chapter	Of the Acts of 1916, c. 104	Date of Action	Result of Action	Topic
			11-7-1916	Accepted	New Year's Day a legal holiday
41, § 25A			11-7-1916	Accepted	Appointment of Assistant Assessors
	311G	1919	11-4-1919	Accepted	Continuation schools
32, Art. 16			3-7-1917	Accepted	Fire Department of towns
§§ 33, 34 and 35	516	1922	3-5-1923	Accepted	Accounting system
94, § 120			3-7-1923	Accepted	Licensing slaughterhouses
41, §§ 73-81	371	1926	12-3-1926	Accepted	Railroad securities
			3-9-1929	Accepted	Adopt a Board of Survey
	118	1938	5-9-1938	Accepted	Payment of certain bills on account of deaths and injuries suffered by certain town officers
54, § 103A	227	1938	5-9-1938	Accepted Rejected	Payment of annuities to the widows of Rocco Cascella and C.B. Jones Absentee voting
32, § 1-28			11-5-1946	Accepted	Contributory retirement system

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
	632	1955	11-8-1955	Accepted	Establish representative town government by limiting town meetings
33, § 59			10-22-1956	Accepted	Town employees shall not lose pay or vacation State Militia or during an annual tour of duty not exceeding 15 days as a member of the reserve component of the Armed Forces of the United States
48, § 58B			2-18-1957	Accepted	48-hour week for permanent fire fighters
41, § 19B			2-18-1957	Accepted	Tenure of office of Town Clerk
32B	730	1956	2-17-1958	Accepted	Group insurance
31, § 47			2-17-1958	Accepted	Provisions regarding civil service
	93, § 3	1957	2-17-1958	Accepted	Board of Selectmen constitute Sewer Commission
	93	1957	3-17-1958	Accepted	Operating and establishing a system of sewerage and sewage disposal

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
	332	1958	3-7-1959	Accepted	Supervision of plumbing
	241	1960	11-8-1960	Accepted	Chief of Fire Department under Civil Service Laws
	297	1960	11-8-1960	Accepted	Holding of town elections
	56	1961	3-4-1961	Accepted	Veterans Agent in Western Hampden Veterans Service District
	286	1967	3-16-1968	Accepted	Time off or pay for police officers in certain criminal cases
78, § 19A			3-8-1969		Library appropriation
41, § 108			3-8-1969	Accepted	Fixing compensation for town elected offices
44, § 65			3-8-1969	Accepted	Vacation pay, advances to employees
90, § 20C			3-8-1969	Accepted	Parking of motor vehicles
32, § 58C	400	1967	3-8-1969	Rejected	Retirement allowances for police and fire

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
41, § 108I			3-13-1971	Accepted	A member of the Police Department assigned to photo or fingerprint identification work shall, after 1 year's service in such assignment, receive, in addition to his annual salary, \$600. per year
41, § 108L			3-13-1971	Accepted	Establishing a career incentive pay program for the Police Department
	486	1971	11-16-1971	Accepted	Licensing Beano
41, § 100B		1971	3-11-1972	Accepted	Indemnification of retired police officers and fire fighters
		1974, C. 729	9-3-1974	Accepted	Recreation Department establish Revolving Fund
40, § 21			11-10-1975	Accepted	No parking in fire lanes of private ways
140, §§ 58 and 59			11-10-1975	Accepted	Fines for license holders
40, § 21 § 21			11-10-1975	Accepted	
		Special Act	11-8-1976	Accepted	Remove Police Chief from civil service

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
83, as amended 40, § 22D			9-13-1978 11-20-1978	Accepted Accepted	Sewers, drains and sidewalks Removal of vehicles parked in violation of law
	377	1978	1-16-1979	Rejected	Granting of seasonal licenses for sale of alcoholic beverages to be drunk on the premises
148, § 26C			6-4-1979	Accepted	Requiring installation of automatic smoke or heat detectors
40, § 8D			7-2-1979	Accepted	Establishing Historical Commission
32B, § 9A	870	1977	9-4-1979	Accepted	
138, § 17A			6-2-1980	Rejected (referred to Ordinance Committee)	
40, § 81			9-17-1980	Accepted	Energy Resource Commission
		1980, C. 416, § 2	1-7-1981	Accepted	Qualifications of certain Assessors
		1974, C. 729	11-4-1981	Accepted	Park and Recreation revolving fund (\$4,000.)
90, § 20A1/2			12-21-1981	Accepted	Certain changes in the laws relative to parking of motor vehicles

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
		1981, C. 339	4-20-1982	Adopted	Authorizing cities and towns to allocate certain anticipated receipts
		1981, C. 743	6-21-1982	Accepted	Exemption for surviving spouse and minor child, persons over 70
138, § 12B			9-7-1982	Accepted	Nudity in premises licensed to sell alcoholic beverages
		1982, C. 296	2-22-1983	Accepted	Authorize cities and towns to compensate School Committee members
40, § 56			5-2-1983	Adopted	Residential factor of 1 for fiscal year 1983
40, § 56			1-17-1984	Accepted	Adopt residential factor open space property
		1983, C. 348	4-2-1984	Accepted	Licensing and keeping of dogs
60A, § 1			5-21-1984	Accepted	Motor vehicle excise tax exemption for former POW's
40, § 56			11-6-1985	Accepted	Residential factor property taxed at same rate

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
188, § 13		1985	1-21-1986	Accepted	Accept professional development grants
71, § 52			8-4-1986	Accepted	Compensation to School Committee members
		1986, C. 73	9-17-1986	Accepted	Enabling the town to provide relief from the impact of revaluation to persons 70 years old
32B, § 10A			9-17-1986	Accepted	Extending dental insurance benefits to employees and retirees
32B, § 11A			9-17-1986	Accepted	Extending optional life insurance to active employees
32B, § 16			9-17-1986	Accepted	Health insurance
44, § 53D	63	1986	12-15-1986	Accepted	Increase Park and Recreation revolving fund to \$10,000
		1986, C. 194	6-15-1987	Accepted	Authorizing a city or town to establish a scholarship fund

MGL Chapter	Amended by Chapter	Of the Acts of 1986, C. 705	Date of Action	Result of Action	Topic
			12-21-1987	Accepted	Life insurance coverage for town employees and retired employees; increase limit to \$5,000
40, § 56			8-1-1988	Adopted	Residential factor of 1 and all property be taxed at same rate
40, § 56			11-21-1988	Adopted	Residential factor of 1 and all property be taxed at same rate for FY 1989
41, § 91			1-17-1989	Accepted	Constables
140, § 147A			8-7-1989	Accepted	Empowered to enact bylaws and ordinances relative to the regulation of dogs
40, § 56			8-7-1989	Adopted	Residential factor of 82.6951 be utilized for FY 1990
		1989, C. 213	10-16-1989	Accepted	Authorizing cities and towns to penalize those who abandon motor vehicles

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
148, § 26G			4-17-1990	Accepted	Install automatic sprinklers in new buildings of more than 7,500 gross square feet in nonresidential buildings
148, § 26I			4-17-1990	Accepted	Installation of automatic sprinklers in buildings hereafter constructed or rehabilitated for residence and containing not fewer than 4 dwelling units
		C. 653, § 40, of Acts of 1989	6-4-1990	Accepted	Concerning assessment of buildings erected during the period of January 2 through June 30

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
32, § 22D			12-3-1990	Accepted	Wellness program, entrance and in-service physical fitness standards for applicable police and fire personnel, and the repeal of the CAP of \$30,000 in conjunction with the Hampden County Retirement Board
40, § 39J1/2			12-17-1990	Accepted or town shall charge for	As of 1-1-1991, no city water on a descending unit rate basis
30B, § 12(b)			2-19-1991	Accepted	Authorizing the chief procurement officer to solicit and award any and all contracts for any term not to exceed 5 years
		1990, C. 291	4-1-1991	Accepted	Participation in enhanced 911 emergency telephone system
71, § 20A			2-18-1992	Accepted	Creation of an instructional trust fund account

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
40, § 56			9-21-1992	Accepted	Adopting a residential factor of .941375
59, § 5			5-3-1993	Accepted	Raising tax exemption for veteran service organizations
59, § 5			5-3-1993	Accepted	Allowing tax exemption for veteran service organizations
41, § 108L			12-20-1993	Accepted	"Quinn Bill" entitling members of the bargaining unit to receive police career incentive pay benefits
44, § 53F1/2			2-7-1994		Establishing an enterprise fund for operation of golf course
138, § 12	C. 481	1993	6-6-1994	Accepted	Allowing common victualers licensed to sell wine and malt beverages to also sell liqueurs and cordials
40, §§ 13A and 13C			10-3-1994	Accepted	Allowing the town to establish funds to pay workers' compensation claims
41, § 19J			4-6-1998	Approved	Increase annual stipend for the Clerk of the Board of Registrars

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
32, § 9D			6-1-1998	Approved	Pay one-half the amount of the premium to be paid by the surviving spouse of an insured or retired employee for health insurance
32, § 103H			12-6-1999	Accepted	Granting noncontributing retirees cost of living adjustments in the same amount and at the same time that such adjustments are granted to contributory retirees
170		1999	3-8-2000	Accepted	Allowing additional compensation of a town clerk or municipal collector or treasurer upon certification
32B, § 7A; 32B, § 9E			6-18-2001	Accepted	Authorizing the Town to pay more than 50% of an active or retired insured employee's total monthly cost for health insurance

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
44B, §§ 3 through 7			9-4-2001	Accepted	To establish a Community Preservation Fund
40, § 8J			4-20-2004	Accepted	Establish a Commission on Disability
39, § 23D			11-8-2006	Accepted	Attendance requirements for members of municipal boards
43D			3-24-2008	Accepted	Expediting permitting process (Priority Development Sites)
32B, § 20			8-6-2012	Accepted	Other Post Employment Benefits Liability Trust Fund
40, § 5B, paragraph 4			2-20-2018	Accepted	Dedication of energy revenues to the Energy Management Project Stabilization Fund
44, § 53F3/4			6-18-2018	Accepted	Establish a PEG Access and Cable Related Fund
41, § 110A			3-4-2019	Accepted	Permit the closure of Town Offices on any Saturday to the same extent as if such Saturday were a legal holiday

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
61L § 2			6-3-2019	Accepted	Allowing imposition of local sales tax on the sale of restaurant meals originating within Agawam
59, § 5, clause 22G			3-4-2020	Accepted	Enables real estate owned by a trustee, conservator or other fiduciary for a veteran's benefit and is the domicile of the veteran to be eligible for real estate tax exemptions
59, § 5, clause 22H			3-4-2020	Accepted	Exempts surviving parents or guardians of active military personnel who have died while on active duty or who went missing in action from taxation on their domiciles

MGL Chapter	Amended by Chapter	Of the Acts of	Date of Action	Result of Action	Topic
200A, § 9A			5-17-2021	Accepted	Provides the Treasurer/Collector's Office the option of turning unclaimed funds over to the Town after ample notice is published and provided to the public
60, § 15B			2-7-2022	Accepted	Permits the establishment of a revolving fund to account for total costs associated with the tax title collection process
59, § 5K			10-2-2023	Accepted	Property tax work-off program for taxpayers over the age of 60
59, § 5N			10-2-2023	Accepted	Property tax work-off program for veterans
64G, § 3A			12-16-2024	Accepted	Imposing a 6% local room occupancy excise

Chapter A186

OVERFLOW TRASH BAG REVOLVING FUND

[HISTORY: Adopted by the Town Council of the Town of Agawam 4-18-2017 by TOR-2017-5. Amendments noted where applicable.]

GENERAL REFERENCES

Departmental revolving funds — See Ch. 33.

§ A186-1. Fund name; authorized use.

There shall be a separate fund called the "Overflow Trash Bag Revolving Fund" authorized for use by the Department of Public Works.

§ A186-2. Revenues.

The Town Auditor shall establish the Overflow Trash Bag Revolving Fund as a separate account and credit to the fund all of the receipts from the purchase of the overflow trash bags charged and received by the Department of Public Works in connection with the Department of Public Works' system of collecting and disposing of trash.

§ A186-3. Purposes and expenditures.

During each fiscal year, the Department of Public Works may incur liabilities against and spend monies from the Overflow Trash Bag Revolving Fund for the manufacturing, collection, disposal, and reordering cost of overflow trash bags in connection with the Department of Public Works' system of collecting and disposing of trash.

§ A186-4. When effective.

The Overflow Trash Bag Revolving Fund shall operate for fiscal years that begin on or after July 1, 2017, and thereafter.

Disposition List

Chapter DL**DISPOSITION LIST**

The following is a chronological listing of legislation of the Town of Agawam adopted since the 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).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Town Clerk. The last legislation reviewed for the original publication of the Code was No. 91-1, adopted 4-1-1991. A complete listing, including disposition, of all legislation reviewed in conjunction with the original publication of the Code is on file in the office of the Town Clerk.

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
TR-91-2	2-4-1991	Veterans Council	Ch. 61
TR-91-19	4-16-1991	Council rules and regulations amendment	Ch. A184
TOR-91-8	9-3-1991	Fees amendment	Ch. 103
TOR-91-12	10-21-1991	Burglar alarms	Ch. 69, Art. II
TO-91-21	11-5-1991	Charter amendment	§ 4-1, § 4-2, § 4-5
TOR-91-11	11-6-1991	Water and sewers amendment	Ch. 175
TR-91-50	12-16-1991	Vehicles and traffic	NCM
TR-92-5	2-18-1992	Accepting General Law	Ch. A185
TOR-92-1	3-2-1992	Personnel amendment	Ch. 49
TOR-92-3	3-2-1992	Cable Television Advisory Commission amendment	Repealed by Ord. No. TOR-2018-12
TOR-92-5	3-2-1992	Dogs and other animals amendment	Repealed by Ord. No. TOR-2011-2
	3-19-1992	Subdivision of land amendment	Ch. 159
TOR-92-6	4-21-1992	Water and sewers amendment	Ch. 175
TR-92-7	4-21-1992	Council rules and regulations amendment	Ch. A184
TOR-92-9	5-4-1992	Streets and sidewalks amendment	Ch. 155
TOR-92-7	6-1-1992	Tag sales	Ch. 161

Enactment	Adoption Date	Subject	Disposition
TOR-92-12	6-15-1992	Funds amendment	Superseded by TOR-92-16
TR-92-30	6-15-1992	Enabling amendment	NCM
	6-18-1992	Subdivision of land amendment	Ch. 159
TR-92-37	7-6-1992	Council rules and regulations amendment	Ch. A184
TR-92-53	9-21-1992	Accepting General Law	Ch. A185
TR-92-48	10-5-1992	Council rules and regulations amendment	Ch. A184
TR-92-61	11-4-1992	Support of State Bill No. 5610	NCM
TOR-92-16	11-16-1992	Funds amendment	Ch. 32
TOR-92-17	1-19-1993	Zoning amendment	Ch. 180
TOR-93-1	5-3-1993	Dogs and other animals amendment	Repealed by Ord. No. TOR-2011-2
TR-93-13	5-3-1993	Sewer connection fees	NCM
TR-93-15	5-3-1993	Accepting General Law	Ch. A185
TR-93-20	5-17-1993	Enabling legislation	NCM
TR-93-15	5-3-1993	Accepting General Law	Ch. A185
TOR-93-2	8-9-1993	Personnel amendment	Ch. 49
	11-10-1993	Council rules and regulations amendment	Ch. A184
TR-93-55	12-20-1993	Accepting General Law	Ch. A185
TOR-93-6	2-7-1994	Municipal Golf Commission	Ch. 3, Art. III, § 3-8.1
TOR-94-1	3-21-1994	Zoning amendment	Ch. 180
TOR-94-2	3-7-1994	Personnel amendment	Ch. 49
TOR-94-3	3-7-1994	Personnel amendment	Ch. 49
TOR-94-4	3-21-1994	Town officers amendment	Ch. 3, Art. IV
TOR-94-5	5-2-1994	Zoning amendment	Ch. 180
TR-93-52	5-2-1994	Council rules and regulations amendment	Ch. A184
TR-94-16	6-6-1994	Accepting General Law	Ch. A185
TOR-94-6	8-1-1994	Personnel amendment	Ch. 49

Enactment	Adoption Date	Subject	Disposition
TOR-94-6(A)(B)	7-5-1994	Personnel amendment	Ch. 49
TOR-94-6(C)	7-5-1994	Personnel amendment	Ch. 49
TR-94-24	9-21-1994	Council rules and regulations amendment	Ch. A184
TR-94-22	10-3-1994	Accepting General Law	Ch. A185
TOR-94-7	11-9-1994	Zoning amendment	Ch. 180
TOR-94-8	11-9-1994	Trespassing and loitering in schools	Ch. 140
TOR-94-9	1-3-1995	Personnel amendment	Ch. 49
TOR-94-11	1-3-1995	Council on Aging amendment	Ch. 3, Art. III, § 3-4
TOR-95-3	3-20-1995	Personnel amendment	Ch. 49
TR-95-13	4-18-1995	Council rules and regulations amendment	Ch. A184
TOR-95-5	8-7-1995	Dogs and other animals amendment	Repealed by Ord. No. TOR-2011-2
TOR-95-7	7-24-1995	Personnel amendment	Ch. 49
TOR-95-8	8-7-1995	Personnel amendment	Ch. 49
TOR-95-10	3-6-1996	Streets and sidewalks amendment	Ch. 155
TOR-96-2	5-6-1996	Fees amendment; personnel amendment	Ch. 103; Ch. 49
TOR-96-4	6-3-1996	Fees amendment; personnel amendment	Ch. 103; Ch. 49
TR-96-16	6-3-1996	Council rules and regulations amendment	Ch. A184
TOR-96-5	6-17-1996	Personnel amendment	Ch. 49
TOR-96-7	11-6-1996	Personnel amendment	Ch. 49
	12-5-1996	Subdivision of land amendment	Ch. 159
TR-97-1	1-21-1997	Amusement devices permits	Ch. 75, Editor's Note only
TOR-96-9	2-3-1997	Streets and sidewalks amendment	Ch. 155
TOR-97-2	5-2-1997	Amusements amendment	Ch. 75
TOR-97-3	4-28-1997	Mayor's salary	NCM

Enactment	Adoption Date	Subject	Disposition
TOR-97-7	5-2-1997	City Councillors' salary	NCM
TR-97-22	6-16-1997	Authorization of salary increase for School Committee	NCM
TOR-97-8	9-20-1997	Zoning amendment	Ch. 180
TOR-97-9	9-2-1997	Town Council Clerk's salary	NCM
	9-18-1997	Subdivision of land amendment	Ch. 159
TOR-97-10	10-20-1997	Zoning amendment	Ch. 180
TOR-97-12	12-1-1997	Personnel amendment	Ch. 49
TOR-97-13	3-2-1998	Zoning amendment	Ch. 180
TR-98-7	3-16-1998	Approval of sewer and water connection fees	NCM
TR-98-10	4-6-1998	Acceptance of General Law	Ch. A185
TOR-98-2	5-4-1998	Personnel amendment	Ch. 49
TOR-983	5-18-1998	Secondhand motor vehicles amendment	Ch. 114, Art. II
TR-98-20	6-1-1998	Acceptance of General Law	Ch. A185
TOR-98-4	8-3-1998	Zoning amendment	Ch. 180
TOR-98-5	1-21-1999	Secondhand motor vehicles amendment	Ch. 114, Art. II
TOR-98-6	9-21-1998	Veterans Council amendment	Ch. 61
TOR-98-7	10-5-1998	Personnel amendment	Ch. 49
TR-98-37	12-21-1998	Town Council regulation amendment	NCM
TOR-98-8	1-19-1999	Street acceptance amendment	Ch. 155, Art. III
TOR-99-1	5-17-1999	Building construction amendment	Ch. 82
TR-99-13	5-17-1999	Authorization of salary increase for School Committee	NCM
TOR-99-2	6-21-1999	Personnel amendment	Ch. 49
TOR-99-3	6-21-1999	Personnel amendment	Ch. 49

Enactment	Adoption Date	Subject	Disposition
TR-99-18	6-21-1999	Vehicles and traffic amendment	NCM
TOR-99-4	9-7-1999	Water and sewers amendment	Ch. 175
TOR-99-5	10-6-1999	Board of Health amendment	Ch. 35
TR-99-30	10-6-1999	Vehicles and traffic amendment	NCM
TOR-99-6	11-15-1999	Smoking in public places	Repealed by Ord. No. TOR-2018-6
TR-99-33	12-6-1999	Accepting General Law	Ch. A185
TOR-99-7	12-20-1999	Municipal Golf Commission amendment	Ch. 3, Art. III, § 3-8.1
TR-99-28	12-20-1999	Council rules and regulations	Ch. A184
TOR-99-9	1-18-2000	Personnel amendment	Ch. 49
TOR-99-10	2-7-2000	Fees amendment	Ch. 103
TOR-2000-1	3-8-2000	Zoning amendment	Ch. 180
TR-2000-13	3-8-2000	Acceptance of MGL c. 190; additional compensation to Clerk for certification	Ch. A185
TOR-2000-3	3-20-2000	Sister City Commission	Ch. 3, Art. III, § 3-8.2
TR-2000-12	3-20-2000	City Council rules and regulations amendment	Ch. A184
TOR-2000-5	7-5-2000	Smoking in public places amendment	Repealed by Ord. No. TOR-2018-6
TOR-2000-6	6-5-2000	Smoking in public places amendment	Repealed by Ord. No. TOR-2018-6
TOR-2000-7	10-2-2000	Building construction amendment	Ch. 82
TOR-2000-9	9-20-2000	Personnel amendment	Ch. 49
TOR-2000-10	9-20-2000	Fees amendment	Ch. 103
TR-2000-58	2-14-2001	Charter amendment	§ 2-6
TOR-2001-1	2-20-2001	Zoning amendment	Ch. 180
	3-15-2001	Subdivision of land amendment	Ch. 159

Enactment	Adoption Date	Subject	Disposition
TR-2001-24	6-18-2001	Acceptance of General Law	Ch. A185
TR-2001-28	6-18-2001	Elections and precincts amendment	Ch. 3, Art. I
TR-2001-36	9-4-2001	Acceptance of General Law	Ch. A185
TOR-2001-3	9-17-2001	Personnel amendment	Ch. 49
TOR-2001-5	11-7-1001	Fees amendment	Ch. 103
TOR-2001-6	12-17-2001	Fees amendment	Ch. 103
TOR-2001-7	3-18-2002	Zoning amendment	Ch. 180
TR-2002-15	5-20-2002	Zoning amendment	Ch. 180
TR-2002-18	7-1-2002	Fees amendment	Ch. 103
TOR-2002-2	9-3-2002	Parking amendment	Ch. 169
TR-2002-19	9-18-2002	Sewer use rates	Ch. 175
TOR-2002-4	11-6-2002	Personnel amendment	Ch. 49
TOR-2002-5	12-2-2002	General provisions amendment	Ch. 1
TR-2002-53	12-2-2002	Zoning amendment	Ch. 180
TOR-2002-8	1-21-2003	Zoning amendment	Ch. 180
TOR-2002-9	1-6-2003	Community Preservation Act Committee	Ch. 3, Art. III, § 3-8.3
TR-2003-9	3-17-2003	Dedication of land	NCM
TOR-2003-2	5-5-2003	Gasoline service stations	Ch. 111
TOR-2003-3	4-14-2003	Fees amendment	Ch. 103
TOR-2003-4	4-14-2003	Fees amendment	Ch. 103
TR-2003-33	10-20-2003	Fund established	NCM
	3-4-2004	Subdivision of land amendment	Ch. 159
TOR-2004-1	4-5-2004	Personnel amendment	Ch. 49
TOR-2004-2	2-17-2004	Parks and Recreation Department amendment	Ch. 45
TOR-2004-3	8-2-2004	Secondhand motor vehicles amendment	Ch. 114, Art. II
TOR-2004-4	7-6-2004	Secondhand motor vehicles amendment	Ch. 114, Art. II
TOR-2004-5	9-7-2004	Zoning amendment	Ch. 180

Enactment	Adoption Date	Subject	Disposition
TOR-2004-7	9-7-2004	Zoning amendment	Ch. 180
TOR-2004-8	7-6-2004	Vehicles and traffic amendment	Ch. 169
TOR-2004-9	9-7-2004	Personnel amendment	Ch. 49
TOR-2004-10	9-7-2004	Fees amendment	Ch. 103
TOR-2004-11	9-7-2004	Fees amendment	Ch. 103
TOR-2004-13	10-18-2004	Fees amendment	Ch. 103
	10-28-2004	Subdivision of land amendment	Ch. 159
TOR-2004-15	11-3-2004	Fees amendment	Ch. 103
TOR-2004-17	11-15-2004	Zoning amendment	Ch. 180
TOR-2004-18	1-18-2005	Personnel amendment	Ch. 49
TR-2004-9	4-20-2004	Acceptance of General Laws	Ch. A185
TR-2004-32	9-20-2004	Initiation of zoning amendment	NCM
TOR-2005-1	6-6-2005	Unregistered vehicles amendment	Ch. 172
TOR-2005-2	11-21-2005	Zoning amendment	Ch. 180
TOR-2005-3	6-6-2005	Streets and sidewalks amendment	Ch. 155
TOR-2005-4	6-6-2005	Weights and measures: noncriminal disposition of violations	Ch. 177, Art. I
TOR-2005-6	6-6-2005	Dumping amendment	Ch. 109, Art. II
TOR-2005-8	6-6-2005	Zoning amendment	Ch. 180
TOR-2005-11	12-5-2005	Personnel amendment	Ch. 49
	1-16-2006	Subdivision of land amendment	Ch. 159
TOR-2005-12	2-6-2006	Zoning amendment	Ch. 180
TOR-2006-1	3-20-2006	Zoning amendment	Ch. 180
TR-2006-10	3-20-2006	Restrictions on certain property acquired by Town	NCM
TR-2006-9	4-3-2006	Zoning amendment	Ch. 180
TOR-2006-2	5-15-2006	Water and sewers amendment	Ch. 175

Enactment	Adoption Date	Subject	Disposition
TR-2006-19	5-15-2006	Adoption of Community Preservation Plan	NCM
TR-2006-22	6-5-2006	Approval of water use rates	See Ch. 175
TR-2006-23	6-5-2006	Approval of water connection and service charges	See Ch. 175
TOR-2006-6	10-5-2006	Personnel amendment	Ch. 49
TOR-2006-8	10-5-2006	Personnel amendment	Ch. 49
TR-2006-37	11-8-2006	Acceptance of General Law	Ch. A185
TOR-2006-9	12-4-2006	Zoning amendment	Ch. 180
TR-2006-46	12-4-2006	Establishment of revolving fund for noncriminal Fire Code violation revenues	NCM
TOR-2006-10	12-18-2006	Zoning amendment	Ch. 180
TOR-2006-11	12-18-2006	Zoning amendment	Ch. 180
TOR-2006-12	12-4-2006	Zoning amendment	Ch. 180
TOR-2006-14	11-20-2006	Personnel amendment	Ch. 49
TOR-2006-15	12-18-2006	Fees amendment	Ch. 103
TOR-2006-16	12-18-2006	Fees amendment	Ch. 103
TOR-2007-1	3-19-2007	Zoning amendment	Ch. 180
TOR-2007-2	3-19-2007	Personnel amendment	Ch. 49
TOR-2007-3	6-18-2007	Personnel amendment	Ch. 49
TOR-2007-4	5-21-2007	Zoning amendment	Ch. 180
TOR-2007-6	6-18-2007	Zoning amendment	Ch. 180
	11-19-2007	Zoning amendment	Ch. 180
TOR-2007-7	10-1-2007	Personnel amendment	Ch. 49
TOR-2007-9	10-1-2007	Sale or gifts of tobacco products	Repealed by Ord. No. TOR-2018-6
TOR-2007-10	11-19-2007	Fees amendment	Ch. 103
TR-2008-5	3-24-2008	Acceptance of General Law	Ch. A185
TR-2008-29	6-16-2008	Approval of sewer use rates	See Ch. 175

Enactment	Adoption Date	Subject	Disposition
TR-2008-50	9-17-2008	Approval of sewer connection and service charges	See Ch. 175
	9-18-2008	Subdivision of land amendment	Ch. 159
TR-2008-2	11-5-2008	Zoning amendment	Ch. 180
TOR-2008-4	11-17-2008	Zoning amendment	Ch. 180
TOR-2008-5	12-1-2008	Streets and sidewalks amendment	Ch. 155
TR-2009-12	5-12-2009	Approval of water use rates	See Ch. 175
TR-2009-13	5-4-2009	Approval of water connection and service charges	See Ch. 175
TOR-2008-6	6-15-2009	Zoning amendment	Ch. 180
TOR-2009-2	5-4-2009	Agawam Agricultural Commission	Ch. 3, Art. III, § 3-8.4
TOR-2009-3	6-1-2009	Veterans Council amendment	Ch. 61
TR-2009-22	7-27-2009	Town Council rules and regulations amendment	NCM
TOR-2009-4	9-8-2009	Agawam Energy Commission	Ch. 3, Art. III, § 3-8.5
TOR-2009-5	9-8-2009	Town officers amendment	Ch. 3, Art. IV
TOR-2009-6	12-9-2009	Fees amendment	Ch. 103
TOR-2009-7	12-21-2009	Fees amendment	Ch. 103
TOR-2010-1	6-7-2010	Petition to the General Court to adopt legislation regarding drag racing	NCM
TR-2010-32	6-21-2010	Intermunicipal agreement	NCM
TOR-2010-5	9-20-2010	Water and sewers amendment	Ch. 175
TOR-2010-6	10-4-2010	Fees amendment	Ch. 103
TOR-2010-7	10-4-2010	Fees amendment	Ch. 103

Enactment	Adoption Date	Subject	Disposition
TR-2011-22	4-19-2011	Approval of conservation restrictions	NCM
TOR-2011-2	6-4-2011	Dogs and other animals	Repealed by Ord. No. TOR-2016-5
TR-2011-62	12-5-2011	Approval of sewer use rates	See Ch. 175
TR-2012-38	8-6-2012	Acceptance of General Law	Ch. A185
TOR-2012-3	11-7-2012	Zoning amendment	Ch. 180
TR-2013-27	5-6-2013	Council rules and regulations amendment	Superseded by TR-2015-16
TOR-2013-2	5-20-2013	Personnel amendment	Ch. 49
TOR-2013-4	6-3-2013	Personnel amendment	Ch. 49
TOR-2013-5	6-18-2013	Zoning amendment	Ch. 180
TOR-2013-6	8-12-2013	Zoning amendment	Ch. 180
TOR-2013-7	9-16-2013	Zoning amendment	Ch. 180
	9-19-2013	Subdivision of land amendment	Ch. 159
TR-2014-16	4-22-2014	Council rules and regulations amendment	Superseded by TR-2015-16
TOR-2014-1	5-5-2014	Zoning amendment	Ch. 180
TOR-2014-2	5-5-2014	Agawam Housing Committee	Ch. 3, Art. III, § 3-8.6
TOR-2014-3	9-2-2014	Pawnbrokers, junk dealers and secondhand dealers	Ch. 114, Art. I
TOR-2014-4	6-2-2014	Zoning amendment	Ch. 180
TOR 2014-6	10-6-2014	Zoning amendment	Ch. 180
TOR-2014-7	10-20-2014	Fees amendment	Ch. 103
TOR-2014-8	10-20-2014	Fees amendment	Ch. 103
TOR-2014-9	11-5-2014	Zoning amendment	Ch. 180
TOR-2015-1	3-16-2015	Zoning amendment	Ch. 180
TOR-2015-3	4-6-2015	Fire alarm equipment amendment; fees amendment	Ch. 69, Art. I; Ch. 103
TOR-2015-4	4-21-2015	Criminal record background checks	Ch. 91

Enactment	Adoption Date	Subject	Disposition
TR-2015-16	4-21-2015	Council rules and regulations amendment	Ch. A184
TOR-2015-6	6-15-2015	Blighted properties	Ch. 78
TOR-2015-8	10-5-2015	Personnel amendment	Ch. 49
TOR-2015-9	3-7-2016	Zoning amendment	Ch. 180
TOR-2016-1	3-21-2016	Personnel amendment	Ch. 49
TOR-2016-2	5-16-2016	Agawam Housing Committee amendment	Ch. 3, Art. III, § 3-8.6
TR-2016-26	5-16-2016	Petition to General Court to enact special legislation changing process to fill vacancies on the School Committee	NCM
TOR-2016-3	11-9-2016	Personnel amendment	Ch. 49
TOR-2016-4	11-9-2016	Fees amendment	Ch. 103
TOR-2016-5	11-21-2016	Dogs and other animals	Ch. 96
TR-2016-64	12-5-2016	Adoption of Stretch Energy Code	See Ch. 82, Art. II
TOR-2017-2	3-6-2017	Personnel amendment	Ch. 49
TOR-2017-4	4-3-2017	Fees	Ch. 103
TOR-2017-5	4-18-2017	Overflow Trash Bag Revolving Fund	Ch. A186
TOR-2017-6	6-19-2017	Departmental revolving funds	Ch. 33
TOR-2017-8	8-7-2017	Personnel amendment	Ch. 49
TOR-2017-9	9-18-2017	Zoning amendment	Ch. 180
Referendum	11-7-2017	Charter amendment	§ 4-6
TOR-2017-12	12-4-2017	Personnel amendment	Ch. 49
TR-2018-11	2-20-2018	Acceptance of General Law	Ch. A185
TOR-2017-13	4-2-2018	Zoning Amendment	Ch. 180
TOR-2018-1	3-19-2018	Personnel Amendment	Ch. 49
TOR-2018-2	4-2-2018	Fees Amendment	Ch. 103
TR-2018-16	4-2-2018	Council Rules and Regulations Amendment	Ch. A184
TOR-2018-3	5-7-2018	Personnel Amendment	Ch. 49

Enactment	Adoption Date	Subject	Disposition
TOR-2018-4	5-7-2018	Departmental Revolving Funds Amendment	Ch. 33
TOR-2018-6	7-9-2018	Smoking and Tobacco Products	Ch. 149
TOR-2018-7	6-4-2018	Fees Amendment	Ch. 103
TOR-2018-8	6-18-2018	Personnel Amendment	Ch. 49
TR-2018-47	6-18-2018	Acceptance of General Law	Ch. A185
TOR-2018-9	7-9-2018	Departmental Revolving Funds Amendment	Ch. 33
TOR-2018-11	9-5-2018	Zoning Amendment	Ch. 180
TOR-2018-12	9-17-2018	Cable Television Advisory Commission	Ch. 12
TOR-2018-13	11-19-2018	Zoning Amendment	Ch. 180
TOR-2018-14	11-19-2018	Zoning Amendment	Ch. 180
TOR-2018-15	11-19-2018	Zoning Amendment	Ch. 180
TOR-2018-16	11-19-2018	Zoning Amendment	Ch. 180
	1-17-2019	Subdivision of Land Amendment	Ch. 159
TOR-2018-17	1-22-2019	Personnel Amendment	Ch. 49

Enactment	Adoption Date	Subject	Disposition	Supp No.
TOR-2019-1	2-19-2019	Administration of Government: Appointed Bodies Amendment	Ch. 3, Art. III	14
TR-2019-17	3-4-2019	Local Option Statutes Amendment	Ch. A185	14
TOR-2019-5	5-20-2019	Departmental Revolving Funds Amendment	Ch. 33	14
TR-2019-42	6-3-2019	Local Option Statutes Amendment	Ch. A185	14
TOR-2019-2	3-18-2019	Personnel Amendment	Ch. 49	14

Enactment	Adoption Date	Subject	Disposition	Supp No.
TOR-2019-6	10-7-2019	Zoning Amendment	Ch. 180	14
TOR-2019-9	10-7-2019	Zoning Amendment	Ch. 180	14
TOR-2019-10	10-21-2019	Departmental Revolving Funds Amendment	Ch. 33	14
TOR-2019-13	12-2-2019	Fees Amendment	Ch. 103	14
TOR-2019-12	12-16-2019	Zoning Amendment	Ch. 180	14
TOR-2020-9	2-16-2020	Zoning Amendment	Ch. 180	14
TR-2020-21	3-4-2020	Local Option Statutes Amendment	Ch. A185	14
TR-2020-22	3-4-2020	Local Option Statutes Amendment	Ch. A185	14
TOR-2020-1	3-23-2020	Personnel Amendment	Ch. 49	14
TOR-2020-2	5-8-2020	Blighted Properties	Ch. 78	14
TOR-2020-4	9-8-2020	Personnel Amendment	Ch. 49	14
TOR-2020-6	12-21-2020	Zoning Amendment	Ch. 180	14
TOR-2020-7	12-21-2020	Smoking and Tobacco Products Amendment	Ch. 149	14
TOR-2020-8	1-11-2021	Personnel Amendment	Ch. 49	14
TOR-2021-1	4-5-2021	Fees Amendment	Ch. 103	15
TR-2021-32	5-17-2021	Local Option Statutes Amendment	Ch. A185	15
TOR-2021-2	6-21-2021	Zoning Amendment	Ch. 180	15
TOR-2021-3	6-21-2021	Zoning Amendment	Ch. 180	15

Enactment	Adoption Date	Subject	Disposition	Supp No.
TOR-2021-4	12-6-2021	Zoning Amendment	Ch. 180	15
TR-2022-10	2-7-2022	Local Option Statutes Amendment	Ch. A185	15
TOR-2022-1	4-4-2022	Zoning Amendment	Ch. 180	15
TOR-2022-2	2-22-2022	Departmental Revolving Funds Amendment	Ch. 33	15
TOR-2022-3	3-7-2022	Personnel Amendment	Ch. 49	15
TOR-2022-4	4-4-2022	Fees Amendment	Ch. 103	15
TOR-2022-6	4-19-2022	Personnel Amendment	Ch. 49	15
TOR-2022-7	5-2-2022	Personnel Amendment	Ch. 49	15
TOR-2022-9	6-21-2022	Water and Sewers Amendment	Ch. 175	15
TOR-2022-10	10-17-2022	Personnel Amendment	Ch. 49	15
TOR-2023-1	2-21-2023	Personnel Amendment	Ch. 49	15
TOR-2023-2	2-21-2023	Fees Amendment	Ch. 103	15
TOR-2023-3	4-3-2023	Zoning Amendment	Ch. 180	16
TOR-2023-4	5-1-2023	Zoning Amendment	Ch. 180	16
TOR-2023-5	9-5-2023	Zoning Amendment	Ch. 180	16

Enactment	Adoption Date	Subject	Disposition	Supp No.
TOR-2023-6	9-5-2023	Alcoholic Beverages Amendment; Amusements Amendment; Coal, Coke and Fuel-Oil Dealers Amendment; Fees Amendment; Junk and Secondhand Dealers: Pawnbrokers, Junk Dealers and Secondhand Dealers Amendment; Secondhand Motor Vehicles Amendment; Picnic Groves Amendment	Ch. 72; Ch. 75; Ch. 89; Ch. 103; Ch. 114, Art. I; Ch. 114, Art. II; Ch. 131	16
TOR-2023-7	9-18-2023	Administration of Government: Appointed Bodies Amendment	Ch. 3, Art. III	16
TR-2023-73	10-2-2023	Local Option Statutes	Ch. A185	16
TR-2023-74	10-2-2023	Local Option Statutes	Ch. A185	16
TOR-2023-8			Not Adopted	
TOR-2023-9	12-18-2023	Vehicles and Traffic Amendment	Ch. 169	16
TOR-2023-10	12-18-2023	Zoning Amendment	Ch. 180	16
TOR-2024-1	3-6-2024	Personnel Amendment	Ch. 49	16

Enactment	Adoption Date	Subject	Disposition	Supp No.
TOR-2024-2	4-16-2024	Junk and Secondhand Dealers: Secondhand Motor Vehicles Amendment; Zoning Amendment	Ch. 114, Art. II; Ch. 180	16
TOR-2024-3	5-20-2024	Personnel Amendment	Ch. 49	16
TOR-2024-4	6-3-2024	Personnel Amendment	Ch. 49	16
TOR-2024-5	6-3-2024	Personnel Amendment	Ch. 49	16
TOR-2024-6	6-3-2024	Stormwater Management	Ch. 176	16
TOR-2024-7	9-16-2024	Peddling and Soliciting Amendment; Solicitors and Canvassers	Ch. 128; Ch. 129	16
TOR-2024-8	10-21-2024	Zoning Amendment	Ch. 180	16
TOR-2024-9	10-21-2024	Personnel Amendment	Ch. 49	16
TOR-2024-10	10-21-2024	Personnel Amendment	Ch. 49	16
TOR-2024-11	12-16-2024	Human Resources Amendment	Ch. 49	16
TR-2024-68	12-16-2024	Local Option Statutes	Ch. A185	16
TOR-2024-12	1-6-2025	Human Resources Amendment	Ch. 49	16