

# **TOWN OF HOPKINTON ZONING BYLAWS: CHAPTER 210**



**Printed September 2017**



## HOPKINTON ZONING BYLAWS: CHAPTER 210

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### **§ 210-1. Zoning districts. [Amended 3-3-1969 ATM, Article 38; 4-13-1978, Article 39, 5-4-2009 ATM, Article 25] Added 5-6-2014; ATM Article 31**

A. The Town is hereby divided into the following zoning districts as shown on the Official Zoning Map:

RA	Residence A
RB	Residence B
RLF	Residence Lake Front
A	Agriculture
B	Business
BD	Downtown Business [Added 5-7-2007 ATM, Article 25]
IA	Industrial A [Added 5-7-2007 ATM, Article 26]
IB	Industrial B [Added 5-7-2007 ATM, Article 26]
FP	Floodplain
BR	Rural Business [Added 10-10-1984 STM, Article 20]
P	Professional Office [Added 5-6-1996 ATM, Article 34]
OP	Office Park District [Added 5-4-2009 ATM, Article 23]
HOD	Hotel Overlay District [Added 5-4-2009 ATM, Article 24]
OSMUD	Open Space Mixed Use Development Overlay District [Added 5-4-2009, Article 25]
NMU	Neighborhood Mixed Use District [Added 5-5-2014, Article 34]

B. The Floodplain District and Water Resources Protection Overlay District overlie all other districts, and are shown on maps as referenced in this Chapter. All other zoning districts are shown on the Official Zoning Map. [Amended 5-4-2009 ATM, Article 25]

### **§ 210-2. Zoning Map.**

- A. The Zoning Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Chapter.
- B. The Official Zoning Map shall be located in the office of the Town Clerk, shall be identified by the signature and attestation of the Town Clerk, shall bear the Seal of the Town and shall contain the following legend: "This is to certify that this is the Official Zoning Map referred to in Article I of the Zoning Bylaw of the Town of Hopkinton, Massachusetts, duly adopted on (insert date of adoption)." [Amended 5-2-2000 ATM, Article 35]
- C. Changes in district boundaries or other matters portrayed on the Official Zoning Map shall be entered thereon within 10 days after the amendment affecting the change is voted, and a notation made as follows: "On (insert date), by official action of the Town, the following change(s) were made in the Official Zoning Map: (brief description of nature of changes)." Said notation shall be signed by and attested by the Town Clerk. [Amended 4-13-1978 ATM, Article 39; 5-2-2000 ATM, Article 35]
- D. No changes of any nature shall be made in the Official Zoning Map or matters shown thereon except in conformity with the procedures set forth in this Chapter. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Chapter and punishable under § 210-158 of this Chapter.

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- E. Regardless of the existence of purported copies of the Zoning Map which may be made or published from time to time, the Official Zoning Map located in the office of the Town Clerk shall be the final authority as to the current zoning status of all land, buildings and other structures in the town.

### **§ 210-3. General applicability.**

Except as may be otherwise provided herein, no building, structure or lot may be used, and no building structure or part thereof may be erected, reconstructed, extended, enlarged or altered, except in conformity with the regulations herein specified for the district in which it is located.

### **§ 210-4. Definitions. [Amended 2012 ATM, Article 46]**

As used in this Chapter, the following terms shall have the meanings indicated:

**ACCESSORY USE** -- A building, structure or use that is customarily incidental and subordinate to the lawful principal use of the lot and is located on the same lot as the principal use or building. An accessory use must not be the primary use of the property but rather one that is subordinate and minor in significance, has a reasonable relationship with the primary use and is one that is usual to maintain in connection with the primary use of the lot. **[Amended 5-3-1999 ATM, Art. 23]**

**AFFORDABLE HOUSING UNIT** – A dwelling unit that qualifies as a Local Initiative Unit under the Commonwealth’s Local Initiative Program (760 CMR 45.00) and meets the requirements of a subsidized housing unit for purposes of listing in the Subsidized Housing Inventory under GL. C.40B Sec. 20-23. **[Added 5-7-2007 ATM, Article 30]**

**ANIMAL SHELTER** - A domestic charitable corporation kennel, as defined by M.G.L. c.140 §136A, but excluding a veterinary hospital or clinic. Such a facility may provide mission-oriented programs such as educational outreach, medical care and on-site training programs. **[Added 5-2-2016, Article 40]**

**ATHLETIC CLUB/HEALTH AND FITNESS CLUB** - A facility, whether or not operated for profit, that offers athletic and physical fitness activities such as tennis, swimming, and exercise and weight rooms, and which may include exercise therapy, rehabilitation and health-related services, and which may charge a fee for use of such facility and its services. Such club may include accessory restaurant or retail uses.

**APPEAL** -- An appeal to the Board of Appeals by any person aggrieved by an order or decision of the Inspector of Buildings or other administrative official, pursuant to MGL c. 40A, § 8 or 10. **[Added 5-5-2014 ATM, Article 34]**

**BED-AND-BREAKFAST ESTABLISHMENT** -- Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation. **[Added 5-2-1994 ATM, Article 19]**

**BOARD OF APPEALS** -- The Board of Appeals of the Town of Hopkinton established by § 210-146 of this Chapter under the authority of MGL c.40A.

**BUILDING TRADE SHOP** -- An establishment for use by the practitioner of a building trade, such as a carpenter, welder, plumber, electrician, builder, mason, or similar occupation. **[Added 12-14-2009 STM, Article 4]**

**COMMERCIAL SOLAR PHOTOVOLTAIC INSTALLATION** -- A solar photovoltaic system which is not accessory to a permitted use. **[Amended 5-6-2013 ATM, Article 57]**

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**COMMON OWNERSHIP** - Common ownership shall mean ownership by the same person or persons or legal entities or ownership by any two or more persons or entities, when there is active or pervasive control of those legal persons or entities by the same controlling person and there is a confusing intermingling of activity among those persons while engaging in a common enterprise. **[Added 5-7-2007 ATM, Article 30]**

**CONFERENCE CENTER** -- A structure or series of structures for the purpose of providing conference, seminar or meeting facilities and/or recreation facilities, including but not limited to golf, tennis or dining. A residential dormitory component of a conference center shall be considered a separate use and is defined as providing living, sleeping and toilet facilities solely for the patrons of the conference center. **[Added 5-6-1996 ATM, Article 38]**

**CONTINUING CARE RETIREMENT COMMUNITY FACILITY / ASSISTED LIVING FACILITY / NURSING HOME FACILITY** – A facility providing living Accommodations for persons in need, generally those of advanced age or with sufficient mental and physical disabilities to require the level of medical care and services offered by such facility. These facilities generally provide or make available some combination of the following services and amenities: 1) residential units comprising one or more of the following: independent living units, assisted living unites, nursing home units, or other types of residences which are generally associated with medical care: 2) medical nursing and other health-care services, including rehabilitation and wellness centers; 3) personal care assistance, for example, bathing, grooming, dressing, and toileting; 4) emergency assistance; 5) 24 hour staffing; 6) meals, usually in a designated or community dining area or restaurant; 7) housekeeping and laundry; 8) recreational and social activities supporting the mental and physical well being of residents; 9) educational and other instructional services and activities; 10) transportation services; 11) building and grounds maintenance; and, 12) various accessory products and services which may be appropriately offered to residents of the facility. **[Added 5-3-2010, Article 46]**

**DOG DAY CARE FACILITY** - A commercial boarding or training kennel, as defined by M.G.L. c.410, § 136A, that is used for the day care of dogs. Such facilities shall not offer animal sales or boarding or overnight stays of animals that are not the property of the owner of the facility. **[Added 5-2-2016, Article 39]**

**DWELLING UNIT** -- A room or group of rooms forming a habitable unit for one family with the facilities which are used or intended to be used for living, sleeping, cooking and eating.

**EARTH REMOVAL** -- Stripping, digging, excavating or blasting soil, loam, sand or gravel from one lot and removing or carrying it away from said lot to other lots or places.

**EAVE** -- The projecting lower edges of a roof overhanging the wall of a building. **[Added 5-6-1996 ATM, Article 38]**

**GROSS FLOOR AREA** -- The sum of the gross horizontal areas of the several floors of a building excluding areas used for accessory garage purposes and such basement and cellar areas as are devoted exclusively to uses accessory to the operation of the building. All dimensions shall be taken from the exterior faces of walls, including the exterior faces of enclosed porches. **[Amended 5-1-2017 ATM, Article 37]**

**HEALTH SERVICES FACILITY** -- A building that contains establishments dispensing health services for health maintenance and the outpatient diagnosis and treatment of medical, dental and physical conditions, including outpatient surgery. The term health services facility shall not include hospitals, urgent medical care requiring emergency transportation, nursing homes or extended-care facilities, but may include establishments providing support to the medical profession and patients, such as medical and dental laboratories, blood banks and oxygen and other miscellaneous types of medical supplies and services **[Added 2012 ATM, Article 46]**

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**HISTORIC STRUCTURE --** Any structure which may be worthy of preservation by reason of the fact it may have been constructed, in whole or in part, 75 or more years prior to the application date, and it is determined by the Historical Commission to be either:

- (1) Associated in some material respect with a person or event which has contributed to the cultural, political, economic, social, or architectural history of the Town, the Commonwealth, or the United States of America; or
- (2) Historically or architecturally important (in terms of period, style, construction, or material association with an architect or builder), either by itself or in the context of a group of structures.  
**[Added 5-3-2010 ATM, Article 43]**

**HOME OCCUPATIONS -- [Added 4-13-1978 ATM, Article 39]**

A. The following limitations apply to all classes of home occupations as defined for the purposes of this Chapter, although the Board of Appeals may grant a special permit conditionally modifying such limitations:

- (1) The occupation is situated in the petitioner's dwelling.
- (2) There is no major structural change to the exterior nor any other external evidence of such home occupation, other than signage as permitted in Article XXVII, Signs. [Amended 5-4-2009 Article 18]
- (3) Not more than one person other than the resident shall be employed on the premises.
- (4) No more than four clients shall be scheduled in any one hour nor more than 16 in any one day and only between the hours of 8:00 a.m. and 8:00 p.m.
- (5) There shall be sufficient parking area on the lot to accommodate expected peak parking by the resident family, employees and clients.
- (6) No produce nor stock-in-trade shall be sold at retail except insofar as incidental to the home occupation (e.g. teaching supplies), or as specifically permitted in connection with farm uses or home retail occupations.

B. Home occupations are divided into the following classes:

- (1) Home professional office: office for the practice of a profession involving a high degree of training in the humanities, science or arts, such as medicine, law, engineering or fine arts.
- (2) Home personal service: personal services, such as insurance, notary public, real estate broker, dressmaking, beauty care, clerical services; studio for the teaching of fine or domestic arts and crafts; home care or therapy (for pay) for not more than three patients or children; home baker or caterer.
- (3) Home business workshop: the business or shop of a painter, carpenter, electrician or similar trade.
- (4) Home specialty retail: the sale of homemade products on the premises other than those permitted in connection with farm uses; or of collector's items, such as antiques, stamps, coins, etc.; provided that the Board of Appeals finds that the production or selection of the products depends

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on a special skill or knowledge of the resident and the access road and off-street parking are adequate and safe.

**HOTEL OR INN** – An establishment providing rooms for transient lodging accommodations where there is a central lobby and primary entrances to guest rooms off an interior corridor. **[Added 5-4-2009 ATM, Article 24]**

**INDOOR RECREATION** – A facility, within a permanent building or structure, designed and equipped for the conduct of sports, athletic and other leisure-time activities; provided that all activities are conducted entirely within the building and no noise generated within the facility may be heard at the property line. Such activities may include swimming, skating, indoor skydiving, soccer, bowling and other similar uses; but shall not include arcades and billiard halls unless accessory to another indoor recreation use. **[Added 5-4-2015 ATM, Article 32]**

**LAND USE** -- The purpose for which land or building is occupied or maintained, arranged, designed or intended.

**LAND USE REGULATIONS** -- The provisions of this Chapter governing the activities that may be conducted, whether unconditionally or upon grant of a special permit, in each of the various zoning districts. **[Amended 5-4-2009 ATM, Article 25]**

**LANDSCAPING BUSINESS AND STORAGE/STAGING FACILITY** -- A facility at which vehicles, trailers, equipment and supplies used in the landscape service business are stored. Such facility may constitute the location from which workers are dispatched to work on customer's property and at which their vehicles are stored while at work. Retail or wholesale sales shall not be conducted at the facility. Administrative functions associated with the landscape service business, such as scheduling, dispatching, and financial administration, may be conducted at the facility. **[Amended 5-1-2006 ATM, Article 34]**

**LOT** -- A single piece or parcel of land lying in a solid body under single, joint or several ownership and separated from contiguous land by property lines or street lines.

**LOT AREA** -- The area of a lot, not including any area in a public or private street nor any water area more than 10 feet from the shoreline.

**LOT COVERAGE** -- That percent or portion of the total lot area occupied by all buildings and structures thereon, including accessory buildings and structures.

**LOT FRONTAGE** -- **[Amended 4-15-1981 ATM, Article 33; 4-15-1988 ATM, Article 78; 5-1-1995 ATM, Article 34]**

- A. The linear extent of a lot measured along the street right-of-way from the intersection of one side lot line to the intersection of the other of the same lot. Frontage shall be measured in a continuous line along the street line between the points of intersection of the side lot lines with said street line. The frontage of a corner lot shall be measured along that side of the lot bordering the traveled way which is in front of and parallel to the front of the building or proposed building. Where a building has no front or is located diagonally, the owner may designate either street lot line as the frontage. The driveway providing the principal access to a lot shall be across the lot frontage as herein defined, subject to the provision, however, that if a lot has minimum lot frontage on more than one street, the driveway may enter the lot from any of such streets, subject to the approval of the Director of Municipal Inspections. The approval of the Director of Municipal Inspections shall be given only after issues concerning public safety, designated scenic roads and good planning principles have been considered.



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- B. Sixty percent of the lot frontage must have the following minimum depth measured at a ninety-degree angle from the front lot line. **[Amended 5-5-2003 ATM, Article 25, 5-7-2007 ATM, Article 26]**

District	Minimum Frontage Depth (feet)
Residence A	90
Residence B	100
Residence RLF	100
Agricultural	120
Rural Business	120
Industrial A and Industrial B	120

**MAXIMUM HEIGHT** -- Vertical distance measured from the mean finished grade of all sides of the building or structure to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. The mean finished grade shall not be raised or lowered more than five feet above the mean center-line grade of the frontage street for the proposed building unless the building will be located more than 50 feet from the front property line. **[Amended 5-2-1994 ATM, Article 21]**

**MEDICAL OFFICE** -- A medical, dental, or psychiatric practice offering medical services on an outpatient basis. A medical office may contain associated in-house ancillary services such as in-house diagnostic testing facilities, medical counseling services, and similar services. **[Added 5-7-2012 ATM, Article 47]**

**NONCONFORMING USE** -- A use of a building or land that does not conform to all the land use regulations of this Chapter for the district in which it is located, which use was in existence and lawful at the time said land use regulations became effective.

**OFFICIAL ZONING MAP** -- That copy of the Town Zoning Map located in the office of the Town Clerk, signed by the Selectmen, attested by the Town Clerk and bearing the Seal of the Town and a certification of its status as the Official Zoning Map.

**OFF-STREET PARKING** -- That portion of a lot set aside for purposes of parking, including any necessary aisle space in said facility, but not including roadways or drives connecting said off-street parking space or lot with a street or thoroughfare.

**QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER** -- An individual or family with a household income that does not exceed 80% of the Hopkinton area median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD). **[Added 5-7-2007 ATM, Article 30]**

**REAR YARD DEPTH** -- The minimum distance from the rear lot line to the nearest part of the structure nearest to said line. The term "structure," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that signs, retaining walls, fences, tents, poles, swing sets and the like are not to be considered structures. **[Amended 5-2-2000 ATM, Article 25]**

**RECYCLING CENTER** -- A parcel of land, with buildings, within which materials are stored, separated and processed for shipment and eventual reuse in new products. All storage, separation and processing for shipment shall be contained within enclosed buildings. No use which has outdoor storage, separation or



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processing for shipment shall be considered a recycling center. Recycling centers shall not include facilities where recyclables are processed and/or treated so as to be placed in a condition in which they may be used again in new products or establishments that store, process or treat hazardous wastes. This definition of recycling center shall not apply to a municipal facility for the collection of recyclable materials. **[Added 5-6-1996 ATM, Article 38]**

**REGISTERED MARIJUANA DISPENSARY (RMD); (ALSO KNOWN AS A MEDICAL MARIJUANA TREATMENT CENTER)** – A not-for-profit entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products, 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. Unless otherwise specified, RMD refers to the sites of dispensing, cultivation and preparation of marijuana. **[Added 5-6-2014; ATM Article 31]**

**RESTAURANT** -- A retail food service establishment having, as its principal business, the preparation and sale of food or beverages, whether for consumption on or off the premises, that includes counter or table service and may include indoor or outdoor seating areas on the premises. **[Added 5-1-2017; ATM Article 33]**

**SETBACK** -- Shortest line or distance from the street line to the nearest portion of the first adjacent structure measured at a right angle from the street line. The term "structure," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that signs, retaining walls, fences, tents, poles, swing sets and the like are not to be considered structures. **[Amended 5-2-2000 ATM, Article 25]**

**SIDE YARD WIDTH** -- The minimum distance from the side lot line to the nearest part of the structure nearest to said line. The term "structure," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that signs, retaining walls, fences, tents, poles, swing sets and the like are not to be considered structures. **[Amended 5-2-2000 ATM, Article 25]**

**SINGLE-FAMILY DWELLING** -- A detached dwelling unit, but not including a mobile home or trailer. **[Added 4-13-1978 ATM, Article 39, 5-4-2009 ATM, Article 25]**

**SPECIAL PERMIT** -- A right or permit granted by the Board of Appeals or Planning Board pursuant to the authority of MGL c. 40A, § 9, and of Article XXII of this Chapter, for a purpose specified in this Chapter as one subject to special permit, following upon review and conditions set by the Board. **[Amended 4-13-1978 ATM, Article 39; 4-15-1988 ATM, Article 80]**

**STORAGE SHED** – A one story structure, limited to not more than 120 sq. ft. of gross floor area and not exceeding 12 feet in height, for the storage of landscape materials, tools or other materials related to a residential use. Pool houses/cabanas, garages and barns or other structures housing animals shall not be considered storage sheds. **[Amended ATM 5-6-2013, Article 50; Amended 5-1-2017 ATM, Article 37]**

**STREET LINE** -- Common bound between street right-of-way, public or private, and abutting lot.

**TOWER** -- A monopole or lattice structure which is designed to serve as a mount for wireless communications facilities. **[Added 5-7-1998 ATM, Article 41]**

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**TRAILER** -- A mobile house or compartment constructed to be moved on two or more wheels and designed to be used for living purposes.

**TRAILER PARK OR CAMP** -- A lot used, designed or advertised as a parking space for two or more trailers used for living purposes. **[Amended 4-13-1978 ATM, Article 39]**

**USE, NONCONFORMING** -- See definition of "nonconforming use."

**VARIANCE** -- Relief from strict enforcement of one or more zoning bylaws granted by the Board of Appeals pursuant to authority under MGL c. 40A, §§ 10 and 14, and Article XXII of this Chapter. **[Amended 4-13-1978 ATM, Article 39; 5-3-1999 ATM, Article 24]**

**VETERINARY CLINIC** -- An establishment to provide medical care to animals of all types housed in a facility separate and apart from all other uses on that site. There shall be no outdoor facilities to house or exercise animals. **[Added 4-15-1988 ATM, Article 55]**

**WIRELESS COMMUNICATIONS FACILITY** -- A structure (with antennae, if any) designed to facilitate the following types of services: cellular telephone service, personal communications service and enhanced specialized mobile radio service. Types of structures facilitating these types of services include but are not limited to a tower, water storage tank, building and utility poles. **[Added 5-5-1997 ATM, Article 26; amended 5-7-1998 ATM, Article 41]**

**ZONING DISTRICT** -- One of the zones or districts into which the Town is divided for zoning purposes. See Article I, § 210-1. **[Amended 4-13-1978 ATM, Article 39]**

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### ARTICLE II Residence A (RA) District

**§ 210-5. Size and setback requirements.** [Amended 3-3-1965 ATM, Article 44; amended 3-12-1973 ATM, Article 26; 6-18-1973 STM, Article 12]

The following size and setback requirements shall apply:

- A. Minimum lot area: 15,000 square feet with Town water.
- B. Minimum lot area: 22,500 square feet without Town water.
- C. Maximum lot coverage: 25%, except that lots which did not conform to the minimum lot area requirement on January 1, 1997, may have a maximum lot coverage requirement of 35%. [Amended 5-5-1997 ATM, Article 23, 5-4-2009 ATM, Article 25]
- D. Minimum lot frontage: 100 feet. [Amended 5-2-2000 ATM, Article 26]
- E. Minimum setback from street line: 40 feet.
- F. Minimum side yard width: 10 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet [Amended 5-6-2013 ATM, Article 50]
- G. Minimum rear yard depth: 20 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet [Amended 5-6-2013 ATM, Article 50]

**§ 210-6. Permitted uses.** [Amended 4-14-1975 ATM, Article 38; 4-13-1978 ATM, Article 39; 4-14-1992 ATM, Article 33, 5-4-2009 ATM, Article 18, 5-4-2009 ATM, Article 25]

The following land uses and building uses shall be permitted in an RA District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Single-family dwellings.
- B. Places of worship and other religious uses.
- C. Public schools, public libraries and museums, private schools for scholastic subjects only, including nursery schools.
- D. Membership clubs, lodges, social recreational and community center buildings and grounds for games and sports, except those having as a principal purpose any activity which is usually carried on as a business (fairs and public benefits excluded).
- E. The renting of rooms or the furnishing of table board in an owner-occupied single family dwelling.
- F. Home professional office.
- G. Home personal service.

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- H. Municipal uses. **[5-7-2007 ATM, Article 27]**
- I. Agriculture, horticulture, floriculture or viticulture on any lot of 5 acres or more. Agriculture, horticulture, floriculture or viticulture on a lot of less than 5 acres, provided that: a) the sale of products or plants is confined primarily to those raised on the premises, b) the use is not noxious, injurious or offensive to the neighborhood, and c) farm animals are kept in an enclosure or building 50 feet or more from any street line and 30 feet or more from any side lot line. **[Amended 5-4-2009 ATM, Article 25]**
- J. Reserved **[5-4-2009 ATM, Article 18]**
- K. Accessory uses. **[5-4-2009 ATM, Article 25]**

### **§ 210-7. Uses allowed by special permit.**

The following uses shall be allowed in an RA District upon the granting of a special permit by the Board of Appeals. **[5-4-2009 ATM, Article 25]**

- A. Funeral homes. **[Added 4-11-1977 ATM, Article 41]**
- B. Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities and elderly housing. **[Added 4-14-1992 ATM, Article 33]**
- C. Above-ground structures or facilities related to the distribution, collection, transmission or disposal, for a fee, of water, sanitary sewage, gas, television services, data, telephone services or electric power; provided, however, that no special permit shall be required pursuant to this section for structures or facilities accessory to a residential use; for wireless communication facilities or the proposed extension in height, addition of cells, antenna or panels of a wireless communication facility, as defined in Section 210-4; for wind energy systems, meteorological towers or any part thereof, as defined in Section 210-197; or for commercial solar photovoltaic installations or any part thereof, as defined in Section 210-4. **[Added 5-1-2017 ATM, Article 32]**

### **ARTICLE III Residence B (RB) District**

#### **§ 210-8. Size and setback requirements. [Amended 3-3-1965 ATM, Article 44; 6-18-1973 STM, Article 13]**

The following size and setback requirements shall apply:

- A. Minimum lot area: 45,000 square feet. **[Amended 5-3-1999 ATM, Article 20]**
- B. (Reserved)
- C. Maximum lot coverage: 25%.
- D. Minimum lot frontage: 150 feet. **[Amended 5-2-2000 ATM, Article 26]**
- E. Minimum setback from street line: 50 feet.
- F. Minimum side yard width: 25 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet
- G. Minimum rear yard width: 20 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet

#### **§ 210-9. Permitted uses.**

The following land uses and building uses shall be permitted in an RB District. Any uses not so permitted are excluded unless otherwise permitted by law or by the terms hereof.

- A. All uses permitted in an RA District as set forth in § 210-6 above.

#### **§ 210-10. Uses allowed by special permit. [Amended 4-13-1978 ATM, Article 39]**

The following uses shall be allowed in an RB District upon the granting of a special permit by the Board of Appeals. **[Amended 5-4-2009 ATM, Article 25]**

- A. Funeral homes.
- B. Home specialty retail.
- C. Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities and elderly housing. **[Added 4-14-1992 ATM, Article 33]**
- D. Landscaping business and storage/staging facility. Such facility shall be an accessory use to the lawful principal use of the property and shall be located on the same property as the petitioner's dwelling. **[Amended 5-1-2006 ATM, Article 34]**
- E. Above-ground structures or facilities related to the distribution, collection, transmission or disposal, for a fee, of water, sanitary sewage, gas, television services, data, telephone services or electric power;

provided, however, that no special permit shall be required pursuant to this section for structures or facilities accessory to a residential use; for wireless communication facilities or the proposed extension in height, addition of cells, antenna or panels of a wireless communication facility, as defined in Section 210-4; for wind energy systems, meteorological towers or any part thereof, as defined in Section 210-197; or for commercial solar photovoltaic installations or any part thereof, as defined in Section 210-4. **[Added 5-1-2017 ATM, Article 32]**

### **ARTICLE IV Residence Lake Front (RLF) District**

#### **§ 210-11. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 45,000 square feet. **[Amended 3-12-1973 ATM, Article 26; 5-3-1994 ATM, Article 28]**
- B. Maximum lot coverage: 25%.
- C. Minimum lot frontage: 150 feet. **[Amended 5-2-2000 ATM, Article 26]**
- D. Minimum setback from street line: 30 feet.
- E. Minimum side yard width: 25 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet. **[Amended 5-6-2013 ATM, Article 50]**
- F. Minimum rear yard depth: 20 feet: with the exception of the following:
  - (1) Storage sheds: 6 feet. **[Amended 5-6-2013 ATM, Article 50]**

#### **§ 210-12. Permitted Uses.**

The following land uses and building uses shall be permitted in an RLF District. Any uses not so permitted are excluded unless otherwise permitted by law or by the terms hereof.

- A. All uses permitted in RA Districts as set forth in §210-6 above.
- B. All uses permitted in an RB District as set forth in § 210-9. **[Amended 4-13-1978 ATM, Article 39; 4-14-1992 ATM, Article 33; 5-1-2006 ATM Article 334; 5-4-2009 ATM, Article 25]**
- C. Private boat, canoe or motor boathouses
- D. Private bathhouses.
- E. Public recreational and educational uses.
- F. Accessory uses customarily incident to any permitted use of buildings, structures or land.

#### **§ 210-13. Uses allowed by special permit. [Amended 5-4-2009; ATM, Articles 18 and 25]**

The following uses shall be allowed in an RLF District upon the granting of a special permit by the Board of Appeals:

- A. Public boathouses for rental of boats and canoes.

- B. Public bathhouses.
- C. Commercial recreational uses of buildings, structures and land.
- D. Uses allowed by special permit in § 210-10, with the exception of § 210-10C and D.

**ARTICLE V**  
**Agricultural (A) District**  
**[Amended 3-3-1965 ATM, Article 44; 6-18-1973 STM, Article 14]**

**§ 210-14. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 60,000 square feet. **[Amended 5-3-1994 ATM, Article 29]**
- B. Minimum lot frontage: 200 feet. **[Amended 5-2-2000 ATM, Article 26]**
- C. Minimum setback from street line: 60 feet.
- D. Minimum side yard width: 30 feet, with the exception of the following:
  - (1) Storage sheds: 10 feet **[Amended 5-6-2013 ATM, Article 50]**
- E. Minimum rear yard depth: 30 feet with the exception of the following:
  - (1) Storage sheds: 10 feet **[Amended 5-6-2013 ATM, Article 50]**
- F. Maximum lot coverage: 25%. **[Added 5-4-1993 ATM, Article 18]**

**§ 210-15. Permitted uses. [Amended 4-13-1978 ATM, Article 39]**

The following land uses and building uses shall be permitted in an A District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Any use permitted in an RA District as set forth in §210-6 above.
- B. Any use permitted in an RB District as set forth in §§ 210-9 and 210-10 with the exception of §210-10C and D. **[5-1-06 ATM, Article 34, 5-4-2009 ATM, Article 25]**
- C. Any use permitted in an RLF District as set forth in §210-12. **[Amended 5-4-2009 ATM, Article 25]**
- D. Agriculture, horticulture, floriculture and viticulture. **[Amended 5-4-2009 ATM, Article 25]**
- E. Wood lots, portable wood working mills and machinery.
- F. Accessory uses. **[Amended 5-4-2009 ATM, Article 25]**
- G. Home business workshop.

**§ 210-16. Uses allowed by special permit.**

In addition to the foregoing permitted uses, the following uses shall be allowed in an A District upon the granting of a special permit by the Board of Appeals:

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- A. Commercial saddle horses or riding stables.
- B. Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities and elderly housing. [**Added 4-14-1992 ATM, Article 33**]
- C. Landscaping business and storage/staging facility. Such facility shall be an accessory use to the lawful principal use of the property and shall be located on the same property as the petitioner's dwelling. [**5-1-2006 ATM, Article 34**]
- D. Uses allowed by special permit in §210-13. [**Added 5-4-2009 ATM, Article 25**]

### **ARTICLE VI** **Business (B) District**

#### **§ 210-17. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 15,000 square feet.
- B. Maximum lot coverage: 60%.
- C. Minimum setback from street line: 20 feet.
- D. Minimum side yard width: 10 feet.
- E. Minimum rear yard depth: 40 feet.
- F. Maximum building height: 35 feet.

#### **§ 210-18. Permitted uses.**

The following land uses and building uses shall be permitted in a B District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Bed-and-breakfast establishments and inns with a maximum of 12 guest rooms.
- B. Retail stores and retail service shops.
- C. Business or professional offices, medical offices and banks.
- D. Municipal uses.
- E. Funeral homes and mortuaries.
- F. Restaurants. [**Amended 5-1-2017 ATM, Article 33**]
- G. Mixed use buildings comprised of retail space on the first floor, and office space or residential dwelling units on the second and third floors. The residential dwelling units shall have dedicated on-site parking spaces. No dwelling unit shall have less than 600 gross square feet.



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H. Accessory uses.

**§ 210-19. Uses allowed by special permit. [Amended 5-4-2009 ATM, Art. 25; 5-6-2015 ATM, Arc. 39]**

A. The following uses shall be allowed in a B District upon the granting of a Special Permit by the Board of Appeals:

- (1) Gasoline service stations and automobile repair garages operating in compliance with all federal, state, and municipal regulatory requirements, expressly including the accessory use of retail sale of propane; provided, however, that the maximum size of any propane storage tank authorized by Special Permit issued pursuant to this section shall not exceed 2,000 gallons.
- (2) Single and multifamily residences and buildings used for dwelling purposes; provided, however, that all residential uses shall comply with the dimensional requirements contained in Article II, Residence A (RA) District.
- (3) Live commercial entertainment.
- (4) Car wash facilities.
- (5) Theaters, halls and clubs.

B. The following uses shall be allowed in a B District upon the granting of a Special Permit by the Planning Board:

- (1) Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink; provided, however that:
  - a. An adequate dedicated area for at least four vehicles to queue shall be provided on the premises, and
  - b. Notification of the public hearing for such Special Permit shall be mailed to the owners of all properties within 1,000 feet of the premises.
- (2) Off-street parking facility.
- (3) Registered Marijuana Dispensary (RMD).

**210-20. (Reserved)**

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### **ARTICLE VIA Downtown Business (BD) District (Added 5-7-2007 ATM, Article 25)**

#### **§ 210-20.1. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 15,000 square feet.
- B. Maximum lot coverage: 60%.
- C. Minimum setback from street line: 5 feet.
- D. Minimum side yard width: 0 feet adjacent to property used solely for non-residential purposes at the time of application; 10 feet adjacent to property used partially or wholly for residential purposes at the time of application, or zoned for residential purposes.
- E. Minimum rear yard depth: 20 feet adjacent to property used solely for non-residential purposes at the time of application; 30 feet adjacent to property used partially or wholly for residential purposes at the time of application, or zoned for residential purposes.
- F. Maximum building height: 35 feet.

#### **§ 210-20.2. Permitted uses. [Amended 5-4-2009 ATM, Article 18]**

The following land uses and building uses shall be permitted in a BD District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Bed-and-breakfast establishments and inns with a maximum of 12 guest rooms.
- B. Retail stores and retail service shops.
- C. Business or professional offices, medical offices and banks.
- D. Municipal uses.
- E. Funeral homes and mortuaries.
- F. Restaurants. [Amended 5-1-2017 ATM, Article 33]
- G. Mixed use buildings comprised of retail space on the first floor, and office space or residential dwelling units on the second and third floors. The residential dwelling units shall have dedicated on-site parking spaces. No dwelling unit shall have less than 600 gross square feet.
- H. Accessory uses.

#### **§ 210-20.3. Uses allowed by special permit. [Amended 5-4-2009 ATM, Art. 25; 5-6-2015 ATM, Art. 39]**

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- A. The following uses shall be allowed in a BD District upon the granting of a Special Permit by the Board of Appeals:
- (1) Gasoline service stations and automobile repair garages operating in compliance with all federal, state, and municipal regulatory requirements, expressly including the accessory use of retail sale of propane; provided, however, that the maximum size of any propane storage tank authorized by Special Permit issued pursuant to this section shall not exceed 2,000 gallons.
  - (2) Single and multifamily residences and buildings used for dwelling purposes; provided, however, that all residential uses shall comply with the dimensional requirements contained in Article II, Residence A (RA) District.
  - (3) Live commercial entertainment.
  - (4) Car wash facilities.
  - (5) Theaters, halls and clubs.
- B. The following uses shall be allowed in a BD District upon the granting of a Special Permit by the Planning Board:
- (1) Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink; provided, however that:
    - a. An adequate dedicated area for at least four vehicles to queue shall be provided on the premises, and
    - b. Notification of the public hearing for such Special Permit shall be mailed to the owners of all properties within 1,000 feet of the premises.
  - (2) Off-street parking facility.

### **§ 210-20.4. Off-street parking. [Amended 5-6-2015 ATM, Art. 34]**

In addition to the provisions contained in § 210-124, Off-street parking, the following shall apply:

- A. No off-street parking shall be located between the principal building and Main Street. Off-street parking may be located between the principal building and other streets only upon the grant of a special permit by the Planning Board. The Planning Board may grant the special permit only if it finds that:
- (1) The proposed parking will not be detrimental to the surrounding neighborhood, and
  - (2) The proposed location and design of the parking will enhance the downtown streetscape.

For the purposes of this subsection, the term “streetscape” shall refer to all elements that constitute the physical makeup of a street, and that as a group, define its character, including building facades, frontage and placement; the paved street; street furniture; landscaping, including trees and other plantings; awnings; signs and lighting.

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### ARTICLE VII

#### Rural Business (BR) District

[Added 10-10-1984 STM, Art. 20; Amended 5-6-2014 ATM, Article 31]

#### § 210-21. Development and design objectives.

The purpose of the Rural Business (BR) District is to provide for appropriate development of commercial areas outside the center of town. Their location and design should be such that commercial activities can be performed without impeding local travel, disturbing residential neighborhoods or detracting from the appearance of the town, especially at any principal entrance thereto.

#### § 210-22. Dimensional requirements. [Amended 5-5-2003 ATM, Article 27]

The following size and setback requirements shall apply:

- A. Minimum lot area: 45,000 square feet.
- B. Maximum lot coverage: 25%.
- C. Minimum lot frontage: 200 feet.
- D. Minimum setback from street line: 50 feet.
- E. Minimum side yard width: 10 feet except that the side yard depth shall be 25 feet from abutting property used partially or wholly for residential purposes at the time of application. [Amended 5-2-2011 ATM, Article 47]
- F. Minimum rear yard depth: 20 feet except that the rear yard depth shall be 40 feet from residential district zoning boundaries. [Amended 5-4-2009 ATM, Article 25]
- G. Maximum building height: 35 feet. [Added 5-5-2003 ATM, Article 27]

#### § 210-23. Permitted uses. [Amended 5-4-2009 ATM, Article 18]

The following land uses and building uses shall be permitted in a BR District. Any uses not so permitted are excluded unless otherwise permitted by law or the terms hereof.

- A. Restaurants. [Amended 5-1-2017 ATM, Article 33]
- B. Retail stores, provided that not more than six employees are on the premises.
- C. Business, medical or professional offices and banks. [Amended 5-7-2012 ATM, Article 47]
- D. Retail business: retail service or public utility uses involving manufacturing, clearly incidental and accessory to a retail use, on the same premises, and the product is customarily sold on the premises, provided that not more than six operators are employed in such manufacturing. [Amended 4-8-1985 ATM, Article 15]
- E. On-site residence of owners or employees of a permitted use.
- F. Accessory uses. [Amended 5-4-2009 ATM, Article 25]
- G. Health services facility [Added 5-7-2012, Article 46]

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**§ 210-24. Uses allowed by special permit. [Amended 4-15-1988 ATM, Article 53 and Article 66; 5-2-1994 ATM, Article 18; 5-2-2005 ATM, Article 30; 5-4-2009 ATM, Article 25; 5-3-2010 ATM, Article 46; 5-6-2015 ATM, Article 39]**

- A. The following uses shall be allowed in the BR District upon the granting of a Special Permit by the Board of Appeals:
- (1) Filling station and routine automobile maintenance, but not including major repairs.
  - (2) Single-family residence.
  - (3) Live commercial entertainment and places of assembly.
  - (4) Veterinary clinic.
  - (5) Continuing Care Retirement Community Facilities/Assisted Living Facilities/Nursing Home Facilities.
- B. The following uses shall be allowed in a BR District upon the granting of a Special Permit by the Planning Board:
- (1) Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink; provided, however that:
    - a. An adequate dedicated area for at least four vehicles to queue shall be provided on the premises, and
    - b. Notification of the public hearing for such Special Permit shall be mailed to the owners of all properties within 1,000 feet of the premises.
  - (2) Registered Marijuana Dispensary (RMD).

**§ 210-25. Reserved. [Amended 5-6-1996 ATM, Article 37, 5-4-2009 ATM, Article 25]**

**§ 210-26. Design requirements. [Amended 5-6-1996 ATM, Article 37, 5-4-2009 ATM, Article 25, 5-2-2011 ATM, Article 47]**

- A. Loading zone: as for IA District, § 210-29.
- B. Outdoor storage or display of merchandise or equipment: as for IA District, § 210-30.
- C. Landscaping: A landscaped area 12 feet in depth shall be provided along the street frontage of a lot.
- D. Screening adjacent to residence districts. The minimum setback area adjacent to a lot in a Residence A, Residence B, Residence Lake Front or Agricultural district shall be maintained in a wooded state to provide effective year-round screening of abutting property. All outdoor activity in a BR District, including parking, shall be screened as viewed from the ground. Acceptable screening may be a band of dense natural woodland 20 or more feet wide, differences in elevation sufficient to shield the view as required, an opaque fence or wall or evergreens planted to form a dense hedge of the required height within three years.

### **ARTICLE VIII Industrial A (IA) District [Added 5-7-07 ATM, Art. 26]**

**History: Previous Article VIII, Industrial District deleted in its entirety and Industrial A (IA) District added 5-7-2007 ATM, Art. 26; amended 5-5-2014, ATM, Article 28(1)]**

#### **§ 210-27. Development and design objectives.**

The zoning standards and controls in the Industrial A District are established to promote and maintain an ecological balance between the undeveloped natural resources, watersheds and residential neighborhoods in the Town and the new industrial buildings and uses that will be present in the area. As new buildings are developed, they should complement and enhance the natural beauty of the town. New industrial uses must recognize that the land abutting major highways will have two visual "front doors": the highway itself and the local roads. Buildings on such sites must be sited, planned, developed and maintained to present an attractive appearance from both directions.

#### **§ 210-28. Size and setback requirements.**

A. The following size and setback requirements shall apply:

- (1) Minimum lot frontage: 200 feet.
- (2) Minimum lot area: 60,000 square feet.
- (3) Maximum lot coverage: 40%.
- (4) Maximum gross floor area: 50% of lot area. **[Amended 5-1-2017 ATM, Article 37]**
- (5) Minimum setback from a property line abutting a street: 60 feet, which area must remain undeveloped and landscaped, except as hereafter provided.
- (6) Minimum side yard: 30 feet.
- (7) Minimum rear yard depth: 40 feet.

B. Yard and setback exceptions: No building or structure shall be erected or altered to be within 60 feet of an RA, RB, RLF or A District line, or within 40 feet of the right-of-way line of Routes 90 and 495.

#### **§ 210-29. Loading zone.**

Adequate off-street loading shall be provided only at the side or rear of the building. Such loading space shall be provided on the lot to service all loading requirements of the industry or use conducted thereon without requiring use of adjacent public streets, ways or required setback area thereof.

#### **§ 210-30. Outdoor storage and/or display of merchandise or equipment.**

No open storage or display shall be permitted in any setback area. All storage or displays must be adequately screened by a fence or landscaping so as not to be visible from any road or highway. No materials or equipment stored on a lot shall project above the eave line of the tallest building on the lot.

### **§ 210-31. Landscaping and Screening.**

- A. All required setback areas shall be adequately and attractively landscaped with lawns and/or trees within one year of the completion of building construction on any lot and shall thereafter be maintained in an attractive manner.
- B. The minimum setback area to a residentially zoned district shall be maintained in a wooded state to provide effective year-round screening of abutting property.

### **§ 210-32. Height of buildings.**

No building or structure shall exceed 60 feet or four stories in height, whichever is less, unless such building or structure is within 400 feet of the right of way of the section of Hayward St. located to the west of South St. In such cases, no building or structure shall exceed 40 feet or three stories in height, whichever is less. This limitation of height shall apply at the curb grade of the principal front of the building.

### **§ 210-33. (Reserved)**

### **§ 210-34. Uses permitted by right.**

- A. The following land uses are permitted in an IA District.
  - (1) Research and development; Research centers and laboratories.
  - (2) Professional and medical offices. [**Amended 5-7-2012 ATM, Art. 47**]
  - (3) Manufacturing, assembly or processing plants for the following types of industries, provided that none of the activities in Subsection A(3)(a) through (k) will be offensive, injurious or noxious because of gas, dirt, sewage and refuse, vibration, smoke, fumes, dust, odors, discharge of harmful bacteria, radioactive material or chemicals into air, water or septic or site drainage systems, danger of fire or explosion, objectionable noise or other characteristics which are detrimental or offensive or which tend to reduce property values in the same or adjoining districts:
    - (a) Food and kindred products.
    - (b) Apparel and related products.
    - (c) Electronic and electrical products.
    - (d) Furniture and fixtures.
    - (e) Printing and publishing.
    - (f) Lumber and wood products.
    - (g) Paper converting products.
    - (h) Primary and fabricated metal industries.
    - (i) Machinery.

- (j) Transportation equipment.
- (k) Instruments and related products, or any other light manufacturing enterprise.
- (4) Warehousing for distribution.
- (5) Landscaping business and storage/staging facility.
- (6) Health club.
- (7) The preparation, packaging and warehousing for distribution of medical supplies for home intravenous therapy with accessory retail use, provided that the retail use occupies no more than 300 square feet of gross floor area in the aggregate on any one lot. **[Amended 5-1-2017 ATM, Article 37]**
- (8) Accessory uses, including but not limited to cafeterias.
- (9) Restaurants. **[Added 5-3-2010 ATM, Article 44; Amended 5-1-2017 ATM, Article 33]**
- (10) Health services facility. **[Added 5-7-2012 ATM, Article 46]**
- (11) Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream provided, however, that any such retail store may operate only between the hours of 6:00 A.M. and 10:00 P.M. **[Added 5-7-2012 ATM, Article 50]**
- (12) Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 1 (involving specific combinations of work, practices, safety equipment and facilities appropriate for infectious agents that do not ordinarily cause human disease) or Level 2 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that can cause human disease, but whose potential for transmission is limited), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control. **[Added 5-7-2012 ATM, Art. 53]**

B. Any uses not so permitted are excluded unless otherwise permitted by law or the terms of this article.

**§ 210-35. Uses allowed by special permit. [Amended 5-3-2010 ATM, Article 44; 2012 ATM, Article 46; 5-6-2015 ATM, Article 39]**

A. The following uses shall be allowed in an IA District upon the grant of a Special Permit by the Board of Appeals.

- (1) Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 3 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that may be transmitted by the respiratory route which can cause serious infection), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control.
- (2) Conference centers with or without a residential dormitory component.



- (3) Veterinary clinics.
- (4) Automobile and truck rental and repair, but not including automobile and truck sales.
- (5) As an accessory use, facilities for storage of gasoline, kerosene, fuel oil, volatile gases and other such substances, except as otherwise prohibited by this Chapter.
- (6) Recycling centers; provided, however, that recycling activities are not located within 100 feet of a residential zoning district, and provided further that a buffer area containing natural material and forming an effective year-round screen between the recycling activities and the residential zoning district shall be required.
- (7) Continuing care retirement community/assisted living facility/nursing home facility.

B. The following uses shall be allowed in an IA District upon the grant of a Special Permit by the Planning Board:

- (1) Registered Marijuana Dispensary (RMD).

### **ARTICLE VIIIA**

#### **Industrial B (IB) District**

**[Added 5-7-2007ATM, Article 26, Amended 5-4-2009 ATM, Article 18; Amended 5-5-2014, ATM Article 28(2)]**

#### **§ 210-37.1. Development and design objectives.**

The zoning standards and controls in the Industrial B District are established to promote and maintain an ecological balance between the undeveloped natural resources, watersheds and residential neighborhoods in the Town and the new industrial buildings and uses that will be present in the area. As new buildings are developed, they should complement and enhance the natural beauty of the town. New industrial uses must recognize that the land abutting major highways will have two visual "front doors": the highway itself and the local roads. Buildings on such sites must be sited, planned, developed and maintained to present an attractive appearance from both directions.

#### **§ 210-37.2. Size and setback requirements.**

A. The following size and setback requirements shall apply:

- (1) Minimum lot frontage: 200 feet.
- (2) Minimum lot area: 60,000 square feet.
- (3) Maximum lot coverage: 40%.
- (4) Maximum gross floor area: 50% of lot area. **[Amended 5-1-2017 ATM, Article 37]**
- (5) Minimum setback from a property line abutting a street: 60 feet, which area must remain undeveloped and landscaped, except as hereafter provided.
- (6) Minimum side yard: 30 feet.

(7) Minimum rear yard depth: 40 feet.

- B. Yard and setback exceptions: No building or structure shall be erected or altered to be within 60 feet of an RA, RB, RLF or A District line, or within 40 feet of the right-of-way line of Routes 90 and 495.

### **§ 210-37.3. Loading zone.**

Adequate off-street loading shall be provided only at the side or rear of the building. Such loading space shall be provided on the lot to service all loading requirements of the industry or use conducted thereon without requiring use of adjacent public streets, ways or required setback area thereof.

### **§ 210-37.4. Outdoor storage and/or display of merchandise or equipment.**

No open storage or display shall be permitted in any setback area. All storage or displays must be adequately screened by a fence or landscaping so as not to be visible from any road or highway. No materials or equipment stored on a lot shall project above the eave line of the tallest building on the lot.

### **§ 210-37.5. Landscaping and Screening.**

- A. All required setback areas shall be adequately and attractively landscaped with lawns and/or trees within one year of the completion of building construction on any lot and shall thereafter be maintained in an attractive manner.
- B. The minimum setback area to a residentially zoned district shall be maintained in a wooded state to provide effective year-round screening of abutting property.

### **§ 210-37.6. Height of buildings.**

No building or structure shall exceed 45 feet or three stories in height, whichever is less. This limitation of height shall apply at the curb grade of the principal front of the building.

### **§ 210-37.7. [Reserved] [Amended 5-4-2009 ATM, Article 18]**

### **§ 210-37.8. Uses permitted by right.**

- A. The following land uses are permitted in an IB District.
- (1) Research and development; Research centers and laboratories.
  - (2) Professional and medical offices. **[Amended 2012 ATM, Article 47]**
  - (3) Manufacturing, assembly or processing plants for the following types of industries, provided that none of the above activities in Subsection A(3)(a) through (k) will be offensive, injurious or noxious because of gas, dirt, sewage and refuse, vibration, smoke, fumes, dust, odors, discharge of harmful bacteria, radioactive material or chemicals into air, water or septic or site drainage systems, danger of fire or explosion, objectionable noise or other characteristics which are detrimental or offensive or which tend to reduce property values in the same or adjoining districts.
    - (a) Food and kindred products.
    - (b) Apparel and related products.

- (c) Electronic and electrical products.
- (d) Furniture and fixtures.
- (e) Printing and publishing.
- (f) Lumber and wood products.
- (g) Paper converting products.
- (h) Primary and fabricated metal industries.
- (i) Machinery.
- (j) Transportation equipment.
- (k) Instruments and related products, or any other light manufacturing enterprise.
- (4) Warehousing for distribution.
- (5) Health club.
- (6) Landscaping business and storage/staging facility.
- (7) The preparation, packaging and warehousing for distribution of medical supplies for home intravenous therapy with accessory retail use, provided that the retail use occupies no more than 300 square feet of gross floor area in the aggregate on any one lot.
- (8) Accessory uses, including but not limited to cafeterias.
- (9) Building trade shop. **[Added 12-14-2009, STM Article 4]**
- (10) Health services facility. **[Added 5-7-2012 ATM, Article 46]**
- (11) Restaurants that contain no more than 100 seats and that are not open for business after 11:00 PM. **[Added 5-7-2012 ATM, Article 49; Amended 5-1-2017 ATM, Article 33]**
- (12) Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream provided, however, that any such retail store may operate only between the hours of 6:00 A.M. and 10:00 P.M. **[Added 5-7-2012 ATM, Article 50]**
- (13) Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 1 (involving specific combinations of work, practices, safety equipment and facilities appropriate for infectious agents that do not ordinarily cause human disease) or Level 2 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that can cause human disease, but whose potential for transmission is limited), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control. **[Added 5-7-2012 ATM, Article 53]**

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B. Any uses not so permitted are excluded unless otherwise permitted by law or the terms of this article.

### **§ 210-37.9. Uses allowed by special permit. [Amended 5-4-2015 ATM, Article 39]**

The following uses shall be allowed in an IB District upon the grant of a Special Permit by the Board of Appeals:

- A. Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 3 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that may be transmitted by the respiratory route which can cause serious infection), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control.[**Amended 5-7-2012 ATM, Article 53**]
- B. Conference centers with or without a residential dormitory component.
- C. Parking Facilities for Public School Buses Serving Hopkinton Residents. [**Amended 5-7-2012 ATM, Article 46, 5-6-2013, Article 52**]
- D. Restaurants that contain more than 100 seats or are open for business after 11:00 PM. [**Amended 5-7-2012 ATM, Article 49; Amended 5-1-2017 ATM, Article 33**]
- E. Veterinary clinics.
- F. Automobile and truck rental and repair, but not including automobile and truck sales.
- G. Facilities for storage as an accessory use of gasoline, kerosene, fuel oil, volatile gases and other such substances, unless prohibited elsewhere in this Chapter.
- H. Recycling centers, provided that such activities on the lot are not located within 100 feet of a residential zoning district, and a buffer area containing natural material will form an effective year-round screen between the industrial uses and the residential zone.
- I. Continuing care retirement community/assisted living facility/nursing home facility. [**Added 5-7-2012 ATM, Article 48**]
- J. Indoor recreation uses. [**Added 5-6-2015 ATM, Article 32**]

B. The following uses shall be allowed in an IA District upon the grant of a Special Permit by the Planning Board:

- (1) Registered Marijuana Dispensary (RMD). [**Added ATM 5-6-2014, Article 31**]

### ARTICLE IX

#### Professional Office (P) District

[Added 5-6-1996 ATM, Article 34, amended 5-4-2009 ATM, Article 18]

##### **§ 210-38. Development and design objectives.**

The Professional Office District is designed to accommodate the administrative, research and office uses which possess characteristics which are not detrimental to the owners and occupants of adjacent properties. The location and design of such professional office use should be such that it will not disturb residential neighborhoods or detract from the appearance of the Town and will result in the maintenance of an ecological balance between undeveloped natural resources and residential neighborhoods.

##### **§ 210-39. Permitted uses.**

No new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used in a Professional Office District for any purpose except one or more of the following:

- A. Professional offices, administrative offices, clerical offices, establishments for research and development or laboratories.
- B. Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices for the following types of industries: [Amended 5-3-1999 ATM, Article 18]
  - (2) Electronic and electrical products.
  - (3) Robotics and precision instruments.
  - (4) Computer related products.
  - (5) Printing and publishing.
  - (6) Medical equipment and devices.
  - (7) Telecommunications equipment and devices.
- C. Day-care center.
- D. Conference center.
- E. Agricultural and horticultural uses.
- F. Accessory uses customarily incidental to any use permitted herein, including but not limited to cafeterias, health clubs and automatic bank teller machines located within buildings on the site. Such accessory use shall not include restaurants open to the general public.

##### **§ 210-40. Uses allowed by special permit. [Amended 5-4-2009 ATM, Article 25]**

The following uses shall be allowed upon the grant of a special permit by the Board of Appeals:

- A. Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants.

- B. Health services facility. **[Amended 2012 ATM, Article 46]**
- C. Residential dormitory component of a conference center.

### **§ 210-41. Prohibited uses.**

Any uses not so permitted are excluded unless otherwise permitted by law or the terms of this Chapter.

### **§ 210-42. Dimensional requirements.**

The following size and setback requirements shall apply:

- A. Minimum development site area: five acres. The five acres may be comprised of individual lots of less than five acres which, when combined, will be considered to be one development site. Once the lots are combined to constitute a development site, there shall be no further subdivision of the site which would result in a development site of less than five acres.
- B. Minimum lot frontage for the development site on a public way: 50 feet.
- C. Minimum lot frontage within the development site: none, provided that the interior roads, which must provide adequate access for all buildings on the development site, shall not become public ways and are to be considered private access roads. Fifty feet of frontage is required for each lot if the roads are intended to be considered public ways.
- D. Minimum lot area for individual lots within the development site: none.
- E. Setback from development site property lines:
  - (1) Minimum setbacks of buildings and parking areas from development site property lines:
    - (a) One hundred feet from property line of property in a residentially zoned district.
    - (b) Fifty feet from property line of a commercial or industrially zoned property.
    - (c) Sixty feet from a street.
  - (2) The minimum setback area shall be landscaped and/or wooded so as to provide adequate year-round screening of the use from abutting property and streets. The minimum setback area required from a residentially zoned district shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped. Such area shall be wooded for the minimum required distance.
- F. Minimum setbacks of buildings from development site interior property lines and private access roads: none.
- G. Maximum building size: Total gross floor area of all buildings shall not exceed 60% of the total development site area.
- H. Maximum building height: No building or structure shall exceed 35 feet or three stories in height.
- I. A minimum of 40% of the development site shall remain undeveloped open land.

### **§ 210-43. Outdoor storage and/or display of merchandise or equipment.**

No open storage or display shall be permitted in any setback area. Storage or display areas shall be adequately screened by a fence or landscaping so as not to be visible from any road or highway. No materials or equipment stored on a lot shall project above the eave line of the tallest building on the lot.

### **§ 210-44. Off-street parking.**

The requirements of § 210-124, Off-street parking, shall apply. The Planning Board, in the site plan approval process, may, however, permit buildings within the development site to share parking areas and may permit a portion of the required spaces to be set aside as reserve or planned spaces to be constructed as future needs require.

### **§ 210-45. Open land.**

- A. Adequate pedestrian access shall be provided to the open land. The open land may remain as part of the overall development site and need not be a separate parcel, but there shall be deed restrictions stating that there shall be no further development of the open land. The open land may consist of a separate parcel and may be conveyed to a nonprofit organization, the purpose of which is the preservation of open space. If the open land is conveyed to another entity, it shall continue to be part of the development site for the purpose of calculating dimensional requirements.
- B. The open land shall consist primarily of undisturbed land which may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the open land may be used solely by occupants of the development site or may be available for use by Town residents. The decision as to whether to permit Town residents to use the open land shall be that of the property owner. The open land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for the above purposes.
- C. Setback areas from exterior development site property lines of 100 feet or more may be counted as part of the open land.
- D. If detention or retention ponds are necessary for the construction of the buildings on the development site, such ponds shall not be located within the required setback areas, unless specifically permitted by the site plan approval. Such detention or retention areas shall be designed to appear as natural landforms.
- E. Areas set aside for planned or reserve parking spaces or fire lanes may not be considered to be open land.

### **§ 210-46. [Reserved] [Amended 5-4-2009 ATM, Article 18]**

### **§ 210-47. Design.**

Curb cuts on streets shall be minimized, and to the greatest extent possible, buildings shall be located away from streets and surrounding noncommercial or industrial uses. Parking lots shall include islands with shade trees. Buildings, roadways and parking lots shall be designed to accommodate the landscape and natural site features, and disturbance to the site shall be minimized so that as many trees and natural features are retained as possible. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling onto adjacent lots and streets.

### **§ 210-48. Site plan review.**

The provisions of Article XX, Site Plan Review, shall apply. The site plan shall show the planned use of the entire development site. If development will be phased over time, a phasing plan shall be included.

### ARTICLE X

#### Floodplain District

[Added 11-22-1982 STM, Art. 20, ATM 5-3-2010, Art. 42; AMENDED 5/6/2014, Article 29 by amending in its entirety § 210-50 thru § 210-53]

#### **§ 210-49. Purpose.**

The purposes of the Floodplain District are to protect public health, safety and general welfare; to protect human life and property from the hazards of periodic flooding; to preserve natural flood control characteristics and the flood storage capacity of the floodplain; and to preserve and maintain the groundwater table and water recharge areas within the floodplain.

#### **§ 210-50. District delineation.**

The Floodplain District is hereby established as an overlay district to all other Zoning Districts. The Floodplain District includes all special flood hazard areas within the Town of Hopkinton designated as Zone A or AE on the Middlesex 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 Middlesex County FIRM that are wholly or partially within the Town of Hopkinton are panel numbers 25017C0489F, 25017C0493F, 25017C0494F, 25017C0513F, 25017C0602F, 25017C0605F, 25017C0606F, 25017C0610F, 25017C0626F, 25017C0627F, and 25017C0628F dated July 7, 2014; and 25017C0620E and 25017C0629E dated June 4, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and may be further defined by the July 2014 Middlesex County Flood Insurance Study (FIS) report. The FIRM and FIS report are incorporated herein by reference and shall be kept on file with the Town Clerk, the Planning Board, the Conservation Commission and the Director of Municipal Inspections.

#### **§ 210-51. Use regulations.**

Where there is a conflict between provisions of this article and other Zoning Bylaws, the more restrictive regulation shall be deemed to be applicable. All development in the Floodplain District, including structural and nonstructural activities, whether permitted by right or by Special Permit, shall be in compliance with those provisions of the Massachusetts State Building Code that address construction in floodplains and floodways; as well as regulations of the Department of Environmental Protection codified at 310 CMR 13.00, Inland Wetlands Restrictions, 310 CMR 10.00, Wetlands Protection, and 310 CMR 15.00, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage (Title 5), as such provisions and regulation may be amended from time to time.

#### **§ 210-52. Permitted uses.**

The following uses, which create a minimal risk of damage due to flooding and will not constitute obstructions to flood flow, shall be allowed by right in the Floodplain District if they are permitted in the underlying district and do not require structures, fill or storage of materials or equipment:

- A. Agricultural uses.
- B. Forestry and nursery uses.
- C. Outdoor recreational uses, including fishing, boating and play area.
- D. Conservation of water, plants and wildlife.



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- E. Wildlife management areas, foot, bicycle and horse paths.
- F. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage or sale of crops raised on the premises.
- G. Buildings lawfully existing prior to the adoption of these provisions.

### **§ 210-53. Special Permits.**

- A. In the Floodplain District, except as authorized by a Special Permit granted by the Board of Appeals, no building or structure shall be erected, constructed or moved; no building or structure shall be enlarged by more than 30% of its ground floor area; and no dumping, filling or earth removal or transfer shall be permitted.
- B. Within 10 days of receipt of an application for a Special Permit pursuant to this section, the Board of Appeals shall transmit one copy of the development plan to the Conservation Commission, the Planning Board, the Board of Health and the Director of Municipal Inspections. Final action shall not be taken until reports have been received from these officials or until 35 days after transmittal of the development plan pursuant to this section, whichever occurs first.
- C. The Board of Appeals may issue a Special Permit pursuant to this section in accordance with the following provisions:
  - (1) The proposed use shall comply in all respects with all requirements applicable in the underlying Zoning District.
  - (2) All encroachments into the floodway, including fill, new construction, substantial improvement to existing structures and other development, shall be prohibited unless the applicant provides certification by a registered professional engineer demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood. For watercourses that have not had a regulatory floodway designated, the Board of Appeals shall use the best available Federal, State, local or other floodway data to prohibit encroachments into floodways that would result in any increase in flood levels within the community during the occurrence of a base flood discharge.
  - (3) In granting a Special Permit pursuant to this section, the Board of Appeals may specify such requirements and conditions as it deems necessary to protect the health, safety and welfare of the public.

### **§ 210-54. Subdivision standards.**

All subdivision proposals and other proposed new development shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If any part of a subdivision proposal or other new development is located within the Floodplain District established under this Chapter, it shall be reviewed to assure that:

- A. The proposal is designed so as to minimize the risk of damage due to flooding.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, and constructed so as to minimize or eliminate the risk of damage due to flooding.

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- C. Adequate drainage systems are provided in order to reduce exposure to flood hazards.
- D. Base flood elevation data (the level of the one-hundred-year flood) is provided for all proposals for development within the Floodplain District.

### **§ 210-55. Health regulation.**

The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Floodplain District established under this Chapter, shall require that:

- A. New and replacement water supply systems be designed to minimize or eliminate infiltration of floodwaters into the systems; and
- B. New and replacement sanitary sewage systems be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

### **§ 210-56. Conservation Commission duties.**

The duties of the Conservation Commission shall be as follows:

- A. Notify, in riverine situations, adjacent communities, the NFIP State Coordinator, Massachusetts Department of Conservation and Recreation, and the NFIP Program Specialist, FEMA, Region 1, prior to any alteration or relocation of a watercourse where an order of conditions has been issued, and submit copies of such notification to the Federal Insurance Administration.[**Amended ATM 5-3-2010, Art. 42**]
- B. Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

## **ARTICLE XI**

### **Flexible Community Development Bylaw [Added 5-7-2007 ATM, Art. 30]**

### **§ 210-57. Purpose and Intent.**

The purpose of this Article is to increase the inventory of affordable housing in Hopkinton. It is intended that the affordable housing units that result from this Article be considered as Local Initiative Program (LIP) units, in compliance with the requirements for the same as specified by the Department of Housing and Community Development (DHCD) and that said units shall count toward the Town's requirements under G.L. c.40B sec. 20-23. Each affordable unit created in accordance with this Article shall have limitations governing its resale to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households.

### **§ 210-58. Applicability.**

- A. In all zoning districts, the inclusionary housing provisions of this section shall apply to the following uses, hereafter called the "development":
  - (1) Any project that results in a net increase of ten (10) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space, with the exception of Article XIII A, Village Housing Development projects; and

- (2) Any division and/or subdivision of land held in common ownership as of the effective date of this Article, or anytime thereafter, into ten (10) or more dwelling units.

### **§ 210-59. Administration. [Amended 5 -6-2015 ATM, Art. 39]**

A development shall require the grant of a Special Permit from the Planning Board. A Special Permit shall be granted if the proposal meets the requirements of this Chapter. If a development requires a Special Permit pursuant to any other provision of this Chapter, a separate Special Permit shall not be required. The Planning Board shall prepare and, after a public hearing, adopt and file regulations with the Town Clerk, which shall include submission requirements, timelines, procedures and provisions necessary to implement this Article.

### **§ 210-60. Mandatory Provision of Affordable Units.**

- A. In each applicable development, one dwelling unit shall be established as an affordable housing unit for every ten (10) dwelling units in the development, in any one or combination of methods provided for below. For example, in a development of 10 to 19 units, 1 unit shall be affordable; in developments of 20 to 29 units, 2 units shall be affordable; and so on. The use of a combination of methods shall be approved by the Planning Board.
- (1) Constructed or rehabilitated on the development locus; or
  - (2) Constructed or rehabilitated on a locus different than the development; or
  - (3) An equivalent fees-in-lieu of payment may be made.
- B. For every affordable unit required, one additional market rate dwelling unit may be added to the total number of dwelling units in the development. For example, in a development of 20 units, two affordable units are required and the number of market rate units may be increased by two, for a total of 22 units.
- C. The Planning Board may allow a reduction in the dimensional requirements, including minimum lot area, frontage or setback requirements, applicable to the proposed development in order to accommodate the additional units on the site and to locate them within the areas most suitable for development. Such authorization for reduction shall be included in the special permit.

### **§ 210-61. Provisions Applicable to Affordable Housing Units On- and Off-Site.**

- A. All affordable units created, constructed or rehabilitated under this Article shall be situated within the development so as not to be in less desirable locations than market rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.
- B. Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.
- C. Affordable housing units shall be provided coincident to the development of market-rate units.
- D. The deeds to the affordable housing units sold to income eligible buyers shall contain a restriction against renting or leasing of said unit(s) during the period for which the housing unit(s) contains a restriction on affordability.
- E. The applicant shall comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of an acceptable deed rider.

- F. The location of the off-site units to be provided shall be approved by the Planning Board, and shall be provided coincident to the development of the market-rate units or in accordance with an alternate schedule approved by the Planning Board. Exercise of this option shall not result in the destruction or demolition of existing structures, unless the Planning Board determines that: 1) such destruction or demolition is not detrimental to the neighborhood; and 2) where the proposed destruction or demolition of existing housing units is proposed, is consistent with the overall housing goals of the Town. When the Historic Preservation Bylaw (Chapter 125 of the Bylaws of the Town of Hopkinton) applies to the structure, the Planning Board shall consult with the Historical Commission before making a determination.

### **§ 210-62. Fees-in-Lieu-of Affordable Housing Unit Provision.**

- A. An applicant may contribute funds to the Town of Hopkinton Affordable Housing Trust Fund or Hopkinton Community Housing Task Force, Inc. (CHTF) to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.
- (1) Calculation of fee-in-lieu-of units. For each affordable unit not constructed or provided through one or a combination of the methods specified in this Article, the fee shall be an amount equal to the purchase price of a three-bedroom home that is affordable to a qualified affordable housing unit purchaser, as contained in the LIP guidelines regardless of what type of dwelling units are proposed, approved or constructed in the development. [Amended 5-1-2017, Article 34]
- (2) Schedule of fees-in-lieu-of-units payments. Fees-in-lieu-of-units payments shall be made according to a schedule agreed upon by the Planning Board and the applicant.

### **§ 210-63. Conflict with Other Bylaws.**

The provisions of this Article shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

### **§ 210-64. through § 210-66. (Reserved)**

## **ARTICLE XII**

### **Water Resources Protection Overlay District**

[Added 11-20-1989 STM, Art. 17; amended 5-7-1988 ATM, Art. 43;  
5-2-1994 ATM, Art. 22; 5-3-1999 ATM, Art. 25, 5-3-2004 ATM, Art. 31  
5-2-2005 ATM, Art. 28; 5-1-2006 ATM, Art. 16]

### **§ 210-67. Purpose.**

The purpose of the Water Resources Protection Overlay District (WRPOD) is to:

- A. Promote the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Hopkinton and surrounding communities.
- B. Preserve and protect existing and potential sources of drinking water supplies.
- C. Conserve the natural resources of the Town.
- D. Prevent temporary and permanent contamination of the environment.

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### § 210-68. Applicability and Establishment of Districts.

- A. The WRPOD is an overlay district superimposed on the zoning districts established by the Hopkinton Zoning Bylaws. The WRPOD shall apply to all construction, reconstruction, or expansion of existing buildings and new or expanded uses the building permit for which is applied for after the date of publication of notice of the adoption of this Bylaw. Activities and uses located in an underlying zoning district and which is also located within the WRPOD must comply with the requirements of both the underlying district and the WRPOD. Uses prohibited in the underlying zoning district are not permitted in the WRPOD.
- B. For the purpose of this article, there is hereby established within the Town of Hopkinton an overlay district referred to as the WRPOD consisting of certain aquifer protection and recharge areas which are delineated on a map entitled "Water Resources Protection Overlay District, Town of Hopkinton," dated March 2011". This map is hereby made part of the Town of Hopkinton Zoning Bylaw and is on file with the office of the Town Clerk. [Amended 5-7-2007 ATM, Art. 28, 5-2-2011 ATM, Art. 46]
- C. When a portion of a lot is in the WRPOD, only the portion of the lot in the WRPOD shall be governed by this article.

### § 210-69. Definitions.

As used in this article, the following terms shall have the meanings indicated:

**AQUIFER** -- A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

**DEP** -- Massachusetts Department of Environmental Protection

**DISPOSAL** -- The deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material into or on any land or water so that such hazardous material or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

**GROUNDWATER** -- All the water found beneath the surface of the ground. In this article, the term refers to the slowly moving subsurface water present in aquifers and recharge areas.

**HAZARDOUS MATERIAL** -- Any substance or mixture of physical, chemical, biological or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under M.G.L. c.21C and c. 21E and 310 CMR 30.00.

**HAZARDOUS WASTE** -- Any waste defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.010. This includes, but is not limited to, waste oil, waste solvents, waste oil-based paint and waste pesticides.

**IMPERVIOUS SURFACE** -- Material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

**MINING** -- The removal or relocation of geologic materials, such as topsoil, sand, gravel, metallic ores or bedrock.

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**NONSANITARY WASTEWATER** – Any water-carried or liquid waste resulting from any process or industry, manufacture, trade, business or activity listed in 310 CMR 15.004 (6).

**POTENTIAL DRINKING WATER SOURCES** -- Areas which could provide significant potable water in the future.

**RECHARGE AREAS** -- Areas that collect precipitation or surface water and carry it to an aquifer. Recharge areas include DEP approved Zone I, Zone II, Zone III, Zone A, Zone B, or Zone C areas.

**TREATMENT WORKS** – Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

**WATER RESOURCES PROTECTION OVERLAY DISTRICT** – Those land areas designated on a map adopted pursuant to this bylaw that provide recharge to an existing, planned or potential public drinking water supply well or public surface water supply. **[Amended 5-2-2011 ATM, Art. 46]**

**WRPOD-1** – Land areas not within DEP approved Zones I, II, A, B or C but which are contained within the WRPOD. **[Added 5-7-2007 ATM, Art. 28]**

**ZONE A** - Land areas within a DEP approved Zone A and which are contained within the WRPOD. **[Added 5-2-2011 ATM, Art. 46]**

### **§ 210-70. Use regulations.**

- A. The WRPOD is established as an overlay district to other districts. Where there is a conflict between provisions of this article and other provisions of these zoning bylaws, the more restrictive regulation shall take precedence. Uses otherwise not permitted in the underlying zoning district shall not be permitted in the WRPOD. It is not the purpose of this article to broaden the permitted uses in the underlying districts, but, rather, to limit or regulate certain activities which may occur in a district. If a use is not listed as permitted or allowed by special permit in the underlying district, it shall not be considered a permitted use by this article.
- B. Permitted Uses. The following uses are permitted in the WRPOD, provided that all necessary permits, orders or approvals required by local, state or federal law shall have been also obtained. All other uses are prohibited, unless expressly authorized by the special permit provisions of this article.
  - (1) Any use or structure or any use or structure accessory thereto permitted by right or by special permit in the underlying district unless specifically subject to additional special permit regulation under Sec.210-70C or prohibited under Sec.210-70D.
  - (2) Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.
  - (3) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to the provisions of Subsections C and D of this section.
  - (4) Conservation of soil, water, plants and wildlife.
  - (5) Foot, bicycle and/or horse paths and bridges.

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- (6) Normal operation and maintenance of existing water bodies and dams, splash ponds and other water control, supply and conservation devices.
  - (7) Maintenance, repair and enlargement of any existing structure, subject to the provisions of Subsections C and D of this section.
  - (8) Construction, maintenance, repair and enlargement of drinking water supply related facilities, such as but not limited to wells, pipelines, aqueducts and tunnels.
- C. Special permit uses. The following uses may be authorized by special permit upon the approval of the special permit granting authority and subject to such conditions as it may require, except that no special permit shall be required for items (2) and (4) within the WRPOD-1 area. **[Amended 5-7-2007 ATM, Art. 28]**
- (1) (Reserved)
  - (2) Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, groundwater recharge shall be by storm water infiltration basins, similar system or dry wells. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. Any and all groundwater recharge areas shall be permanently maintained in full working order by the owner.
  - (3) Enlargement or alteration of pre-existing uses that do not conform to these regulations.
  - (4) Activities involving the handling of hazardous materials in quantities greater than those associated with normal household use, so long as same are permitted in the underlying zoning district and not prohibited by Subsection D of this section. Such activities shall require a special permit to prevent contamination of groundwater.
- D. The following uses are specifically prohibited in the areas indicated on the map as WRPOD and WRPOD-1, except that items (6), (7) and (11) shall not be prohibited in the WRPOD-1 area. **[Amended 5-7-2007 ATM, Art. 28, 5-2-2011 ATM, Art. 46]**
- (1) Placement of contaminated fill.
  - (2) Storage of hazardous materials and/or liquid petroleum products, with the exception of liquid propane, unless such storage is:
    - (a) Above ground level and on an impervious surface; and
    - (b) Either in above ground tanks or above ground container(s) within a building or outdoors in covered container(s) or aboveground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater.
  - (c) Below ground related to a subsurface parking facility. **[Added 5-5-2008 ATM, Art. 29]**
  - (3) Landfills and open dumps as defined in 310 CMR 19.006, salvage yards and other solid or hazardous waste disposal or incineration.



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- (4) Discharge to the ground of nonsanitary wastewater, including industrial and commercial process wastewater, except:
  - (a) The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works.
  - (b) Treatment works approved by the DEP designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13).
  - (c) Publicly owned treatment works.
- (5) Earth removal consisting of the removal of soil, loam, sand, gravel or any other earth material, including mining activities, to within four feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, basements, roads or utility works.
- (6) Motor vehicle sales, lease, rental, service, washing and repair establishments and filling stations.
- (7) Truck terminal, which shall mean an area and building where trucks load and unload cargo and freight and where cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other modes of transportation, whether or not trucks and cargo are stored or parked overnight.
- (8) Metal plating or finishing.
- (9) Underground transmission lines for chemicals or liquid petroleum products. The provisions §210-70(D)(9) shall not apply to any existing facilities or any replacements of such existing facilities. **[Amended 5-5-2008 ATM, Art. 29]**
- (10) Automobile graveyards and junkyards as defined in MGL c. 140B, § 1.
- (11) Storage of more than one unregistered motor vehicle, with the exception of farm vehicles in accordance with MGL c. 90.
- (12) (Reserved)
- (13) Components of an individual sewage disposal system that are not located on the same property as the use that is served by the system.
- (14) Landfills receiving only wastewater and/or septage residuals, including those approved by the DEP pursuant to MGL c. 21, §§ 26 through 53, MGL c. 111, § 17, MGL c. 83, §§ 6 and 7, and regulations promulgated thereunder.
- (15) Facilities that generate, treat, store or dispose of hazardous waste that are subject to MGL c. 21C and 310 CMR 30.00, except for:
  - (a) Very small quantity generators as defined under 310 CMR 30.000.
  - (b) Household hazardous waste centers and events under 310 CMR 30.390.



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- (c) Waste oil retention facilities required by MGL c. 21, § 52A.
  - (d) Water remediation treatment works approved by DEP for the treatment of contaminated waters.
  - (16) Petroleum, fuel oils and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.
  - (17) Storage of sludge and septage.
  - (18) Storage of deicing chemicals and salt unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (19) Storage of animal manure unless covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (20) Storage of commercial fertilizers, as defined in MGL c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (21) The stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district.
- E. The following uses are specifically prohibited in the areas indicated on the map as Zone A: **[Added 5-2-2011 ATM, Art. 46]**
- (1) Solid waste combustion facilities or handling facilities.
  - (2) Junk and salvage operations.
  - (3) Stockpiling or disposal of snow removed from outside the district that contains deicing chemicals.
  - (4) Treatment or disposal works subject to 314 CMR 3.00 or 5.00, except for:
    - (a) The replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
    - (b) Treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in non-compliance with Title 5, 310 CMR 15.00, provided the facility owner demonstrates to the DEP's satisfaction that there are no feasible siting locations outside the Zone A. Any new facility shall be permitted in accordance with 314 CMR 5.00 and shall be required to disinfect the effluent.
    - (c) Treatment works approved by the DEP designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05(13); and
    - (d) Discharge by public water system of waters incidental to water treatment process.

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- (5) Facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste that are subject to MGL c.21C and 310 CMR 30.000, except for:
  - (a) Very small quantity generators as defined by 310 CMR 30.000;
  - (b) Treatment works approved by the DEP designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.
- (6) Human or animal cemeteries or mausoleums.
- (7) Storage of road or parking lot deicing and sanding materials unless covered or contained.
- (8) Storage of fertilizers unless covered or contained.
- (9) Storage of animal manures, unless covered or contained.
- (10) Underground storage tanks.
- (11) Sand and gravel operations.
- (12) Motor vehicle repair operations.
- (13) Commercial car washes; the outdoor washing of commercial vehicles.

### **§ 210-71. Special permits.**

- A. The special permit granting authority (SPGA) shall be the Board of Appeals. [**Amended 5-4-2009 ATM, Art. 25**]
- B. If the location of the boundary of the WPROD in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the SPGA. Any application for special permit for this purpose shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land to demonstrate that the location of the boundary of the WPROD with respect to a parcel(s) of land is uncertain. The SPGA may engage a professional engineer, hydrologist, geologist, soil scientist and/or other appropriate expert consultant to determine more accurately the boundaries of the WPROD with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation.
- C. Application.
  - (1) Any person who desires to obtain a special permit pursuant to the provisions of this article shall submit a written application to the SPGA. Each application, together with a filing fee, shall contain a plan of the affected premises and a complete description of the proposed use, together with any supporting information and plans which the SPGA may require. The applicant shall file 10 copies of the application with the SPGA. The SPGA may refer the application and materials submitted to a consultant for review, at the expense of the applicant. The SPGA may adopt regulations to govern design features and more detailed submission requirements for projects. Such regulations shall be filed in the office of the Town Clerk.
  - (2) The submitted plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a Massachusetts registered professional engineer. All additional submittals shall be prepared by

qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:

- (a) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
  - (b) For those activities using or storing such hazardous materials, a hazardous materials management plan prepared and filed with the Hazardous Materials Coordinator, Fire Chief and Board of Health. The plan shall include:
    - [1] Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and cleanup procedures.
    - [2] Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces and appropriate containment devices.
    - [3] Evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Regulations 310 CMR 30.00; and
    - [4] Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.
  - (c) Analysis by a Massachusetts registered professional engineer experienced in groundwater evaluation or by a qualified professional hydrogeologist, with an evaluation of the proposed use, including its probable effects or impact on surface and groundwater quality and quantity and natural flow patterns of watercourses.
  - (3) The SPGA shall provide copies of the application to the Board of Health, Planning Board, Conservation Commission, Hazardous Waste Coordinator, Director of Municipal Inspections, Director of Public Works, Fire Chief and Board of Selectmen, each of which shall review the application and submit recommendations to the SPGA within 35 days or 5 business days prior to the date of the public hearing, whichever shall later occur of the referral date. Failure to submit recommendations to the SPGA within such time shall be deemed lack of opposition or no desire to comment.
  - (4) The SPGA shall hold a public hearing in accordance with the provisions of this Chapter. **[Amended 5-6-2015 ATM, Article 39]**
- D. Findings by SPGA. The SPGA shall not issue a special permit unless it shall find that the proposed use meets the following standards, the purposes and standards specified in this article and any regulations or guidelines adopted by the SPGA. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards contained in this section. The proposed use must:
- (1) In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the WRPOD.

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- (2) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water-related natural characteristics of the site to be developed.
  - (3) Not be in conflict with the purpose and intent of this article.
  - (4) Be appropriate taking into consideration the natural topography, soils and other characteristics of the site, including existing contamination on or near the site, and such remedial action or contingencies which may be available for inclusion as conditions in a special permit granted under this article.
- E. Special permit conditions. The special permit shall include sufficient conditions to satisfy the purposes of this article. The conditions may include, but are not limited to, analysis or monitoring of ground- and surface waters, hydrogeologic evaluation, erosion or siltation control, compaction, sedimentation control, drainage and recharge provisions and any other limitations or standards deemed necessary or appropriate by the SPGA. In making a determination regarding the issuance of a special permit, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality and quantity which would result if the control measures were to fail. The SPGA may require a bond, a fee pursuant to MGL c.44 s.53G, or other appropriate financial assurance mechanism(s), to ensure that the conditions included in the special permit are fulfilled.
- F. Special permit time limitations. A special permit shall lapse if a substantial use thereof has not commenced except for good cause within two years from the effective date of the special permit.
- G. Effective date of special permit. No special permit shall take effect until a copy of the decision has been recorded in the Middlesex South Registry of Deeds or, for registered land, in the Land Registration Section of said Registry. Such decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal was filed, it has been dismissed or denied. A copy of the special permit with the appropriate recording information shall be provided to the SPGA forthwith after the recording of same.

### **§ 210-71A. Use variances.**

No variance shall be issued which would permit a use within the WRPOD which is expressly prohibited in subsection D of Section 210-70 of this article.

### **§ 210-71B. Enforcement.**

- A. Written notice of any violations of this bylaw shall be given by the Zoning Enforcement Officer to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance.
- B. A copy of such notice shall be submitted to the Planning Board, Board of Health, Conservation Commission, and Department of Public Works. The cost of containment, clean-up, and any and all other actions necessary or appropriate to insure compliance shall be borne by the owner and operator of the premises.

### ARTICLE XIII

#### Garden Apartments in Residential Districts

[Added 3-11-1970 ATM, Art. 53; amended 3-12-1973 ATM, Arts. 27, 28, 29, 30 and 34; 4-14-1975 ATM, Arts. 32, 33, 34 and 35; 4-13-1978 ATM, Art. 39; 4-14-1986 ATM, Art. 37; 5-5-1997 ATM, Art. 22; 5-5-2003 ATM, Art. 22]

#### **§ 210-72. Planning, design, conservation and development objectives. [Amended 5-1-2006, Art. 35]**

- A. General intent and purposes. It is the intent and purpose of this Article XIII to maintain a working balance in the Town of Hopkinton between the demand for new development and its rewards on the one hand, and the human need for our natural resources and their maintenance on the other. The Town of Hopkinton cannot and should not prevent its citizens from owning, selling and developing their land. But it is also a fundamental and important truth that with each new house and each cut tree, the environment and ecology of the Town changes. Therefore, the control and maintenance of a reasonable balance between new development and the preservation of the town's natural resources is a legitimate area for public concern and legislation. It is, therefore, the intent of the Town that this article shall provide for the reasonable protection of its natural resources by properly conserving its land as development takes place. This shall be accomplished by establishing a procedure whereby each proposal for apartment development will be reviewed separately and judged by standards designed to protect both the special quality of the site and its environs and the Town and its environment against misuse or overdevelopment of the land. In this article, the guiding principle in judging apartment proposals will be the variety and diversity in the proposed development and the care shown by the developer in conservation, site planning and building design as applied to the specific parcel of land proposed for development.
- B. General objectives. The following planning, design, conservation and development objectives will apply to all proposals for apartment construction in Hopkinton:
- (1) To provide new housing for all citizens regardless of income, race, color, creed or other like characteristics.
  - (2) To promote the beneficial use and conservation of land by relating proposed buildings to the unique features, conditions and natural quality of the site. Beneficial use shall be measured in terms of topography, surface and subsurface soil and drainage conditions, location with respect to adjacent or existing streets, buildings or other natural features, the type and size of trees to be retained or removed, the use and retention of natural ground cover, open space, water, swamp, other natural water source or feature, stone walls, ledge or any other feature of recognized conservation or historical significance.
  - (3) To facilitate sound and orderly public and private development in Hopkinton by relating an apartment proposal to any public Master Plan for land use, conservation, streets or public facilities.
  - (4) To recognize the importance of diversity and variety in the exterior quality, appearance and design of apartment structures by rejecting monotonous, look-alike designs and to encourage those designs that are specifically designed for and related to the special conditions and features of the proposed site.
  - (5) To conserve and preserve the significant and unique natural and historic features of the proposed site in their natural state and ensure or provide for their permanent protection from

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future encroachment or development. [Amended 5-1-2006 ATM, Art. 35; Amended 5-2-2016 ATM, Art. 33]

- (6) To give encouragement to owners and developers to produce the highest quality design in the apartment structures to be built by using visual space planning applied to other site development elements, such as parking areas, wooded or conservation areas, adjacent streets, accessory buildings, lighting and open areas.
- (7) To give fair and full consideration to the opinions and statements of abutting property owners at the public hearings required for each application.
- (8) To provide for design review of all proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.

### § 210-73. Definitions.

As used in this article, the following terms shall have the meanings indicated:

**BASEMENT** -- Any portion of a structure below the first story.

**CONDOMINIUM** -- A method of ownership whereby an individual may own separately one or more single dwelling units in an apartment building or project. Said individual and other owners of such apartment units may have an undivided interest in the common areas and facilities that serve the unit or project, such as land, roofs, floors, main walls, stairways, lobbies, halls, parking areas, driveways, recreation areas, open space areas and natural landscaped and/or conservation areas. Said individual may take title to his individual dwelling unit or units, vote on a proportional basis in all respects of his undivided interest in common areas, be taxed separately by the Town for the individual dwelling unit or units and may have a mortgage on the individual dwelling unit.

**FLOOR AREA** -- The sum of the horizontal area of the several floors of a dwelling unit measured from the outside, excluding cellar floor areas, basement rooms, garages, porches and open attics or unfinished rooms, and for which a certificate of occupancy has been issued as habitable living quarters. In split level houses, the first two levels may be counted as one floor, provided that the difference in floor levels is less than five feet.

**GARDEN APARTMENTS** -- A multifamily residential land use consisting of multiple dwelling units on one single contiguous parcel.

**HALF-STORY** -- Any place under the gable, hip or gambrel roof, the floor of which is not more than two feet below the plate.

**SCREENING** -- A suitable area that will serve as a buffer to adjacent properties, will reduce noise levels and partially obscure any structures.

**STORY** -- That portion of a building above the finished grade included between the floor and the ceiling or roof above it.

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USABLE LAND -- Usable land excludes wetland and floodplains as defined in MGL c. 131, § 40, and areas with slopes of more than 15%. For the purpose of calculating density, 20% of unusable land may be considered usable.

### **§ 210-74. Regulations and requirements [Amended 5-2-2016 ATM, Art. 33]**

- A. Use districts. Garden apartments, under single ownership or as condominiums, shall be allowed by special permit in all districts where residential uses are permitted by right in accordance with the requirements and regulations set forth in this article.
- B. Requirements. The following lot sizes, setbacks and regulations must be adhered to by each applicant[Amended 5-2-2016 ATM, Art. 33]:
  - (1) Anyone wishing to build garden apartments may do so only on a site containing an area of not less than 10 acres of usable land, but not more than 30 acres of usable land per apartment project and/or application. The minimum lot frontage shall be 200 feet on a public road.
  - (2) Density shall be a maximum average of eight bedrooms per acre of usable land.
  - (3) The total ground floor area of apartments, garages and accessory buildings shall not exceed 20% of the site area.
  - (4) Garden apartment units may contain one or two bedrooms. One-bedroom units shall contain a minimum of 600 square feet of floor area. Two-bedroom units shall contain a minimum of 800 square feet of floor area. [Amended 5-4-2009 ATM, Art. 25]
  - (5) Buildings shall not exceed 2 ½ stories in height and shall contain a maximum of 12 units. The number of detached single-family dwelling units shall not exceed 10% of the total number of dwelling units in the project.
  - (6) Parking spaces. There shall be provided two parking spaces per unit, at least one of which shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.
  - (7) Setbacks. All buildings must be located a minimum of 100 feet from any side or rear lot line and 100 feet from any established street layout or, where applicable, any defined street line of a public road, which street setback area shall be undeveloped and/or landscaped. Upon a finding by the Planning Board that a setback of lesser width would be sufficient to screen and/or separate the development from adjacent property, or would allow a historic structure to be preserved, the setback may be reduced. The Board may require no-cut easements, conservation restrictions, historic preservation restrictions or the like where the setback has been reduced. Buildings shall be located a minimum of 20 feet from interior roadways and driveways which are not considered streets or public roads. [Amended ATM 5-3-2010, Art. 43]
  - (8) Maintenance of roads. Maintenance of roads and driveways, including snowplowing within the project limits, is the responsibility of the project owner.
  - (9) Lighting. All lighting must be directed away from adjoining property.



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- (10) Signs. Signs are subject to such limitations of size and usage as may be imposed by the Planning Board.
- (11) Rubbish disposal. Rubbish disposal shall be provided for by the owner and not by the town. **[Amended 5-2-2016 ATM, Art. 33]**
- (12) Underground utilities. Underground utilities are mandatory and shall be installed in accordance with the standards contained in the subdivision rules and regulations of the Town of Hopkinton.
- (13) Recreation area. Suitable recreation space of at least 600 square feet per dwelling unit shall be provided for both adults and children. Such areas shall be suitable for the siting of active recreational facilities and shall be in addition to the open space required for the project. Such recreation areas may be contiguous to the open space or may be separately located.
- (14) Landscaping. Suitable landscaping materials no less than 15 feet in width must be placed along property lines to provide screening if there is no suitable natural growth in these areas. The screened area may be included in the required setback distances. The Planning Board may require suitable landscaping materials up to 50 feet in width if it determines that the additional width and screening is necessary in any location along the property lines. **[Amended 5-7-2007 ATM, Art. 29; Amended 5-2-2016 ATM, Art. 33]**
- (15) Suitability of land area. Natural watercourses and ponds may not be altered, filled, drained or relocated. Any pond that has been in existence for over 25 years shall be deemed to be a natural pond. Floodplain or marshes may be included as part of a lot, but may not be altered, filled, drained or relocated and may not be used for building sites, sewage disposal areas or ways.
- (16) Distance between structures. The distance between structures shall be no less than the average height of the two structures or 35 feet, whichever is greater. Such distance shall include any garages or other accessory structures.
- (17) Road Construction. Roads are to be constructed in accordance with the Design Standards and Construction Requirements of the Subdivision Rules and Regulations of the Town of Hopkinton with the exception of width and length, which shall be determined by the Planning Board based on the specific characteristics of each plan submittal. The Planning Board may grant waivers from the Design Standards and Construction Requirements if the Board determines that such waiver will not result in any substantial detriment to the public good or substantially derogate from the intent or purpose of such Standards or Requirements or of this Chapter. All requests for waivers must be in writing and must be submitted to the Board at the time of plan submittal. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the then applicable Subdivision Rules and Regulations. **[Amended 5-5-2003 ATM, Art. 22]**
- (18) Open space, as described in § 210-72B(5), shall consist of a minimum of 30% of the development site and shall be clearly delineated and defined on the site plan of each application. It is the intention of this article that the open space shall generally occur as a single contiguous area of open space which shall retain those natural features of the site most worthy of preservation in their natural state. The open space area as delineated and defined on the approved site plan shall not be developed or used for any purpose other than that depicted on the site plan. **[Amended 5-2-2016 ATM, Art. 33]**
- (19) Historic buildings and structures shall be retained and preserved to the extent feasible. Where the Planning Board has issued a special permit pursuant to § 210-117.2, Lots with Historic Structures, for any of the land subject to a Garden Apartment special permit or site plan



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application, the Board may authorize the reduction of any of the dimensional requirements of this Article in order to facilitate the preservation of an Historic Structure. **[Added 5-2-2011 ATM, Art. 44; Amended 5-2-2016 ATM, Art. 33]**

### **§ 210-75. Administration. [Amended 5-4-2009 ATM, Art. 25]**

A. Application procedure. The application procedure consists of two steps: application for garden apartment concept plan special permit approval to the Planning Board and application for garden apartment site plan approval to the Planning Board. A garden apartment site plan shall be considered neither a definitive subdivision plan under the provisions of the Subdivision Control Law, nor a site plan under the provisions of Article XX of this Chapter. A garden apartment site plan shall be considered a technical administrative review of an approved concept plan. The garden apartment concept plan special permit is the special permit referred to in § 210-74A of this article.

(1) Concept plan special permit.

- (a) A record owner desiring to use land for garden apartments shall file with the Planning Board an application for a garden apartment concept plan special permit to use the land for garden apartments, together with such plans, drawings, specifications and additional information as set forth in the Garden Apartment Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this article, the Planning Board shall vote to adopt the Garden Apartment Submission Requirements and Procedures Manual after holding a public hearing.
- (b) Within seven days of receipt of the application for the garden apartment concept plan special permit, the Planning Board shall transmit copies of the application and plan to the Director of Public Works, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted. Consultant review fees shall be governed and set by the Planning Board and shall be assessed to the record owner and applicant. **[Amended 5-4-2009 ATM, Art. 25]**
- (c) The Planning Board shall hold a public hearing and file its decision in accordance with the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- (d) Approval criteria. Before the Planning Board may issue the special permit, it shall determine each of the following:
  - [1] That the proposed development constitutes a desirable development in the neighborhood and in the town.
  - [2] That the proposed development will not be detrimental to the neighborhood or the town.
  - [3] That the plans generally provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements, with the understanding that review of such items will be more detailed at the site plan stage.
  - [4] That the plans appear to provide adequate methods of disposal of sewerage, refuse and other wastes, adequate methods for drainage for surface water and seasonal flooding, if any, and adequate provision of water for domestic

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purposes, with the understanding that review of such items will be more detailed at the site plan stage.

[5] That the plan complies with the Master Plan.

[6] That the provisions of § 210-72A and B of this article have been met.

[7] That the Town of Hopkinton has not met the statutory goal to provide 10% of its housing stock as affordable housing pursuant to Sections 20 through 23 of Chapter 40B of the Massachusetts General laws. **[Amended 5-2-2016 ATM, Art. 33]**

- (e) Approval of the garden apartment concept plan special permit application shall not be considered approval of any construction. This approval is a preliminary approval intended to give guidance to the applicant for the development of the site plan and to determine whether the proposed concept meets the objectives of the bylaw and the town.
  - (f) After a garden apartment concept plan special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application has been reviewed and approved as provided by these regulations.
- (2) Garden apartment site plan. After approval of the concept plan special permit, the applicant may submit an application for approval of a garden apartment site plan to the Planning Board. No garden apartment site plan application may be submitted unless a concept plan has been approved and is currently in effect. The garden apartment site plan shall be designed to be in conformance with the approved concept plan special permit. If the Planning Board determines that there is a substantial variation between the concept plan special permit and the site plan, it shall hold a public hearing on the modifications of the concept plan special permit.
- (a) Within five days after receipt of the complete application, the Planning Board shall distribute copies of the application and plans to the Director of Public Works, Conservation Commission and Board of Health. These departments shall transmit recommendations, if any, to the Board within 35 days of receipt of the plans.
  - (b) The Board shall hold a public hearing within 45 days of the receipt of the complete application. Notice of the time, place and subject matter of the public hearing shall be given by the Planning Board at the expense of the applicant by advertisement in a newspaper of general circulation in the town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting the land included in such plan as appearing on the most recent tax list.
  - (c) The Board shall file its decision with the Town Clerk within 90 days from the date of submission. This time may be extended by mutual agreement between the applicant and the Planning Board.
  - (d) Approval criteria.

[1] Before the Planning Board may approve the site plan, it shall determine each of the following:

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- [a] That the plans provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements.
    - [b] That the plans assure the adequacy of the methods of disposal of sewerage, refuse and other wastes and the methods of drainage for surface water and seasonal flooding, if any.
    - [c] All of the provisions of this Chapter, including § 210-72A and B, have been complied with and all necessary special permits and variances have been granted from the Board of Appeals.
  - [2] If the Planning Board does not make all of the above determinations, it shall deny the application stating its reasons for such denial.
- (e) The Board may approve the site plan with conditions. Those conditions may include, but shall not be limited to, the following:
  - [1] Phasing of the garden apartment site plan construction.
  - [2] Performance guarantee. As a condition of plan approval, the Planning Board may require that a performance bond, secured by deposit of money or negotiable securities in the form selected by the Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any. The term "improvements" shall not include the construction of buildings. **[Amended 5-4-2009 ATM, Art. 25]**
  - [3] Off-site improvements to correct conditions directly caused by the garden apartment development.
  - [4] The duration of the Board's approval and a specified date of completion.
- B. Modifications to approved plan. The approved garden apartment site plan may be modified or amended by the Planning Board on its own motion or upon application by the developer. If the Board determines that such modifications are significant, it shall hold a public hearing in accordance with the provisions of Subsection A(2) above.
- C. Completion.
  - (1) Upon completion of construction of all site work and building construction, the applicant shall file a completion certificate with the Director of Municipal Inspections, such certificate to state that the site development, conservation and building construction has been completed in conformity with the approved plans.
  - (2) The applicant shall submit two as-built plans showing the entire site and including, but not limited to, the following: utilities, structures, roadways, open space and recreation areas.

- (3) After submission of the completion certificate and as-built plans, the Board shall review such information and if such as-built plans conform to the site plan as approved and modified or amended, release the remaining performance guarantee, if any. **[Amended 5-2-2016 ATM, Art. 33]**

D. Appeal. Appeals of decisions made under this article shall be pursuant to MGL c. 40A, § 17.

### **ARTICLE XIII Village Housing in Residential Districts [Added 5-3-2004 ATM, Art. 36]**

#### **§ 210-75.1. Planning, design, conservation and development objectives.**

- A. General intent and purposes. It is the intent and purpose of this Village Housing in Residential Districts Article to maintain a working balance in the Town of Hopkinton between the demand for new development and the provision of affordable housing and its rewards on the one hand, and the human need for our natural resources and their maintenance on the other. The Town of Hopkinton cannot and should not prevent its citizens from owning, selling and developing their land. The Town also understands the importance of providing for a variety of housing that meets the needs of all of its citizens, regardless of income. But it is also a fundamental and important truth that with each new house and each cut tree, the environment and ecology of the Town change. Therefore, the control and maintenance of a reasonable balance between new development and the preservation of the Town's natural resources is a legitimate area for public concern and legislation. It is, therefore, the intent of the Town that this Article shall provide for the provision of affordable housing under the state guidelines for the creation of such units while providing for the reasonable protection of its natural resources by properly conserving its land as development takes place. This shall be accomplished by establishing a procedure whereby each proposal for village housing will be reviewed separately and judged by standards designed to protect both the special quality of the site and its environs and the Town and its environment against misuse or overdevelopment of the land. In this Article, the guiding principle in judging village housing proposals will be the variety and diversity of the proposed development of affordable housing units and the care shown by the developer in conservation, site planning and building design as applied to the specific parcel of land proposed for development.
- B. General objectives. The following planning, design, conservation and development objectives will apply to all proposals for village housing construction in Hopkinton:
  - (1) To provide affordable housing for all citizens regardless of income, race, color, creed or other like characteristics.
  - (2) To promote the beneficial use and conservation of land by relating proposed buildings to the unique features, conditions and natural quality of the site. Beneficial use shall be measured in terms of topography, surface and subsurface soil and drainage conditions, location with respect to adjacent or existing streets, buildings or other natural features, the type and size of trees to be retained or removed, the use and retention of natural ground cover, open space, water, swamp, other natural water source or feature, stone walls, ledge or any other feature of recognized conservation or historical significance.
  - (3) To facilitate sound and orderly public and private development in Hopkinton by relating a village housing proposal to any public Master Plan for land use, conservation, streets or public facilities.

- (4) To recognize the importance of diversity and variety in the exterior quality, appearance and design of housing structures by rejecting monotonous, look-alike designs and to encourage those designs that are specifically designed for and related to the special conditions and features of the proposed site.
  - (5) To conserve and preserve the significant and unique natural features of the proposed site in their natural state and ensure or provide for their permanent protection from future encroachment or development. **[Amended 5-2-2016 ATM, Art. 33]**
  - (6) To give encouragement to owners and developers to produce the highest quality design in the housing structures to be built by using visual space planning applied to other site development elements, such as parking areas, wooded or conservation areas, adjacent streets, accessory buildings, lighting and open areas.
  - (7) To give fair and full consideration to the opinions and statements of abutting property owners at the public hearings required for each application.
  - (8) To provide for design review of all proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.
- C. Criteria. Before the Planning Board may issue the special permit referred to in this Article, it shall determine each of the following:
- (1) That the proposed development constitutes a desirable development in the neighborhood and in the Town.
  - (2) That the proposed development will not be detrimental to the neighborhood or the Town.
  - (3) That the plans generally provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements, with the understanding that review of such items will be more detailed at the site plan review stage.
  - (4) That the plans appear to provide adequate methods of disposal of sewerage, refuse and other wastes, adequate methods for drainage of surface water and seasonal flooding, if any, and adequate provision of water for domestic purposes, with the understanding that review of such items will be more detailed at the site plan review stage.
  - (5) That the plan complies with the Master Plan.
  - (6) That all of the provisions of § 210-75.1 A and B of this Article have been met.
  - (7) That the Town of Hopkinton has not met the statutory goal to provide 10% of its housing stock as affordable housing pursuant to Sections 20 through 23 of Chapter 40B of the Massachusetts General Laws, as amended. **[Amended 5-2-2016 ATM, Art. 33]**

### **§ 210-75.2. Definitions. [Amended 5-4-2009 ATM, Art. 25]**

As used in this Article, the following terms shall have the meanings indicated:

**BASEMENT** -- Any portion of a structure below the first story.

**CONDOMINIUM** -- A method of ownership whereby an individual may own separately one or more single dwelling units in a building or project. Said individual and other owners of such dwelling units may have an undivided interest in the common areas and facilities that serve the unit or project, such as land, roofs, floors, main walls, stairways, lobbies, halls, parking areas, driveways, recreation areas, open space areas and natural landscaped and/or conservation areas. Said individual may take title to the individual dwelling unit or units, vote on a proportional basis in all respects based on the undivided interest in common areas, be taxed separately by the Town for the individual dwelling unit or units and may have a mortgage on the individual dwelling unit.

**FLOOR AREA** -- The sum of the horizontal area of the several floors of a dwelling unit measured from the outside of the building, excluding cellar floor areas, basement rooms, garages, porches and open attics or unfinished rooms, and for which a certificate of occupancy has been issued as habitable living quarters. In split level houses, the first two levels may be counted as one floor, provided that the difference in floor levels is less than five feet.

**HALF-STORY** -- Any space under the gable, hip or gambrel roof, the floor of which is not more than two feet below the plate.

**LOW OR MODERATE INCOME** -- A household with income at or below 80% of the area median income that applies to Hopkinton, as determined from time to time by the Department of Housing and Urban Development (HUD).

**SCREENING** -- A suitable area that will serve as a buffer to adjacent properties, will reduce noise levels and partially obscure any structures.

**STORY** -- That portion of a building above the finished grade included between the floor and the ceiling or roof above it.

**USABLE LAND** -- Usable land excludes wetland and floodplains as defined in MGL c. 131, § 40, and areas with slopes of more than 15%. For the purpose of calculating density, 20% of unusable land may be considered usable.

**VILLAGE HOUSING** -- A residential land use consisting of Affordable Housing Units on one single contiguous parcel.

### **§ 210-75.3. Regulations and requirements. [Amended 5-2-2016 ATM, Art. 33]**

- A. Use districts. Village Housing, under single ownership or as condominiums, shall be allowed by special permit in all districts where residential uses are permitted by right in accordance with the requirements and regulations set forth in this Article.
- B. Requirements. The following lot sizes, setbacks and regulations must be adhered to by each applicant:
  - (1) Anyone wishing to build village housing may do so only on a site containing an area of not less than 5 acres of usable land, but not more than 20 acres of usable land per village housing project and/or application. The minimum lot frontage shall be 50 feet on a public road.
  - (2) Density shall be a maximum ten units per acre of usable land.
  - (3) The total ground floor area of housing units, garages and accessory buildings shall not exceed 25% of the site area.



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- (4) One-bedroom units shall contain a minimum of 700 square feet of floor area. Two-bedroom units shall contain a minimum of 900 square feet of floor area. Three-bedroom units shall contain a minimum of 1200 square feet of floor area.
- (5) Buildings shall not exceed 2 ½ stories in height and shall contain a maximum of 12 units. The number of detached single-family dwelling units may vary and may comprise all of the dwelling units in the project.
- (6) Parking spaces. There shall be provided two parking spaces per unit, at least one of which shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.
- (7) Setbacks. All buildings must comply with the setback requirements of the underlying zoning district. The street setback area shall be undeveloped and/or landscaped. Upon a finding by the Planning Board that a setback of greater width would be necessary to screen and/or separate the development from adjacent property, the setback may be increased to a width of 100 feet. Upon a finding by the Planning Board that a setback of lesser width would allow a historic structure to be preserved, the setback may be reduced. The Board may require no-cut easements, conservation restrictions or the like in any setback area, and may require a historic preservation restriction where appropriate. Buildings shall be located a minimum of 20 feet from interior roadways which are not considered streets or public roads. **[Amended 5-3-2010 ATM, Art. 43]**
- (8) Maintenance of roads. Maintenance of roads and driveways, including snowplowing within the project limits, is the responsibility of the project owner and not the Town.
- (9) Lighting. All lighting must be shielded and/or directed away from adjoining property.
- (10) Signs. Signs are subject to such limitations of size and usage as may be imposed by the Planning Board.
- (11) Rubbish disposal. Rubbish disposal shall be provided for by the owner and not by the Town. **[Amended 5-2-2016 ATM, Art. 33]**
- (12) Underground utilities. Underground utilities are mandatory and shall be installed in accordance with the standards contained in the Subdivision Rules and Regulations of the Town of Hopkinton.
- (13) Recreation area. In developments of ten or more units, suitable recreation spaces each of at least 600 square feet per dwelling unit shall be provided for both adults and children. Such areas shall be suitable for the siting of active recreational facilities and shall be in addition to the open space required for the project. Such recreation areas may be contiguous to the open space or may be separately located. The Planning Board may waive this requirement if the development is within one half mile of an existing active recreational facility which is open to the public free of charge.
- (14) Landscaping. Suitable landscaping materials no less than 15 feet in width must be placed along property lines to provide screening if there is no suitable natural growth in these areas. Fencing may be allowed at the discretion of the Planning Board. The screened area may be included in the required setback distances.
- (15) Suitability of land area. Natural watercourses and ponds may not be altered, filled, drained or relocated. Any pond that has been in existence for over 25 years shall be deemed to be a natural pond. Floodplain or marshes may be included as part of a lot, but may not be altered, filled, drained or relocated and may not be used for building sites, sewage disposal areas or ways.

- (16) Distance between structures. The distance between structures shall be no less than the average height of the two structures or 35 feet, whichever is greater. This requirement may be waived by the Planning Board upon the recommendation of the Fire Chief.
- (17) Road Construction. Roads are to be constructed in accordance with the Design Standards and Construction Requirements of the Subdivision Rules and Regulations of the Town of Hopkinton with the exception of width and length, which shall be determined by the Planning Board based on the specific characteristics of each plan submittal. The Planning Board may grant waivers from the Design Standards and Construction Requirements if the Board determines that such waiver will not result in any substantial detriment to the public good or substantially derogate from the intent or purpose of such Standards or Requirements or of this Article. All requests for waivers must be in writing and must be submitted to the Board at the time of plan submittal. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the then applicable Subdivision Rules and Regulations.
- (18) Open space, as described in § 210-75.1 B (5), shall consist of a minimum of 15% of the development site and shall be clearly delineated and defined on the site plan of each application. It is the intention of this Article that the open space shall generally occur as a single contiguous area of open space which shall retain those natural features of the site most worthy of preservation in their natural state. The open space area as delineated and defined on the approved site plan shall not be developed or used for any purpose other than that depicted on the site plan. **[Amended 5-2-2016 ATM, Art. 33]**
- (19) Affordable Units. All of the Village Housing affordable housing units shall be restricted by deed which requires that they remain affordable, as defined by this Article, in perpetuity. 100% of the housing units in any Village Housing development shall be affordable housing units, as defined in this Article.
- (20) Historic buildings and structures shall be retained and preserved to the extent feasible. **[Amended 5-2-2016 ATM, Art. 33]**

### **§ 210-75.4. Administration.**

- A. Application procedure. The application procedure consists of two steps: application for village housing concept plan special permit approval to the Planning Board and application for village housing site plan approval to the Planning Board. A village housing site plan shall be considered neither a definitive subdivision plan under the provisions of the Subdivision Control Law, nor a site plan under the provisions of Article XX of this Chapter. A village housing site plan shall be considered a technical administrative review of an approved concept plan. The village housing concept plan special permit is the special permit referred to in § 210-75.3(A) of this Article.

- (1) Concept plan special permit.

- (a) A record owner desiring to use land for village housing shall file with the Planning Board an application for a village housing concept plan special permit to use the land for village housing, together with such plans, drawings, specifications and additional information as set forth in the Village Housing Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this Article, the Planning Board shall vote to adopt the Village Housing Submission Requirements and Procedures Manual after holding a public hearing.



- (b) Within seven days of receipt of the application for the village housing concept plan special permit, the Planning Board shall transmit copies of the application and plan to the Director of Public Works, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted. Consultant review fees shall be governed and set by the Planning Board and shall be assessed to the record owner and applicant. [Amended 5-4-2009 ATM, Art. 25]
  - (c) The Planning Board shall hold a public hearing and file its decision in accordance with the provisions of this Chapter. **[Amended 5-4-2015 ATM, Art. 39]**
  - (d) Approval of the village housing concept plan special permit application shall not be considered approval of any construction. This approval is a preliminary approval intended to give guidance to the applicant for the development of the site plan and to determine whether the proposed concept meets the objectives of the bylaw and the Town.
  - (e) After a village housing concept plan special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application has been reviewed and approved as provided by these regulations.
  - (f) A village housing concept plan special permit shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17. If any construction work contemplated by such special permit shall have commenced and proceeded in good faith continuously, except for good cause, but notwithstanding, the project shall not have been completed within such two-year period, the applicant must request extension of the special permit from the Board, in which case the Board shall extend the special permit for such period of time as it deems appropriate.
- (2) Village housing site plan. After approval of the concept plan special permit, the applicant may submit an application for approval of a village housing site plan to the Planning Board. No village housing site plan application may be submitted unless a concept plan has been approved and is currently in effect. The village housing site plan shall be designed to be in conformance with the approved concept plan special permit. If the Planning Board determines that there is a substantial variation between the concept plan special permit and the site plan, it shall hold a public hearing on the modifications of the concept plan special permit.
- (a) Within five days after receipt of the complete application, the Planning Board shall distribute copies of the application and plans to the Director of Public Works, Conservation Commission and Board of Health. These departments shall transmit recommendations, if any, to the Board within 35 days of receipt of the plans.
  - (b) The Board shall hold a public hearing within 45 days of the receipt of the complete application. Notice of the time, place and subject matter of the public hearing shall be given by the Planning Board at the expense of the applicant by advertisement in a newspaper of general circulation in the Town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting the land included in such plan as appearing on the most recent tax list.

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- (c) The Board shall file its decision with the Town Clerk within 90 days from the date of submission. This time may be extended by mutual agreement between the applicant and the Planning Board.
- (d) Approval criteria.
  - [1] Before the Planning Board may approve the site plan, it shall determine each of the following:
    - [a] That the plans provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements.
    - [b] That the plans assure the adequacy of the methods of disposal of sewerage, refuse and other wastes and the methods of drainage for surface water and seasonal flooding, if any.
    - [c] All of the provisions of this Article, including § 210-75.1A and B, have been complied with and all necessary special permits and variances have been granted from the Board of Appeals.
    - [d] A Host Community Agreement with the Town of Hopkinton has been negotiated. **[Amended 5-2-2016 ATM, Art. 33]**
  - [2] If the Planning Board does not make all of the above determinations, it shall deny the application stating its reasons for such denial.
- (e) The Board may approve the site plan with conditions. Those conditions may include, but shall not be limited to, the following:
  - [1] Phasing of the village housing site plan construction so that no more than forty (40) units per year of affordable housing will be constructed utilizing a three year average as a standard until that point at which the percentage of affordable housing units referred to in 760 CMR 31.00, the Housing Appeals Committee Criteria for Decisions under M.G.L.c. 40B, §§ 20-23, has been achieved.
  - [2] Performance guarantee. As a condition of plan approval, the Planning Board may require that a performance bond, secured by deposit of money or negotiable securities in the form selected by the Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any. The term "improvements" shall not include the construction of buildings.
  - [3] Off-site improvements to correct conditions directly caused by the village housing development.
  - [4] The duration of the Board's approval and a specified date of completion.

- B. Modifications to approved plan. The approved village housing site plan may be modified or amended by the Planning Board on its own motion or upon application by the developer. If the Board determines that such modifications are significant, it shall hold a public hearing in accordance with the provisions of Subsection A(2) above.
- C. Completion.
- (1) Upon completion of construction of all site work and building construction, the applicant shall file a completion certificate with the Director of Municipal Inspections, such certificate to state that the site development, conservation and building construction has been completed in conformity with the approved plans.
  - (2) The applicant shall submit two as-built plans showing the entire site and including, but not limited to, the following: utilities, structures, roadways, open space and recreation areas.
  - (3) After submission of the completion certificate and as-built plans, the Board shall review such information and if such as-built plans conform to the site plan as approved and modified or amended, release the remaining performance guarantee, if any.
- D. Appeal. Appeals of decisions made under this Article shall be pursuant to MGL c. 40A, § 17.

### **ARTICLE XIV** **Campus Style Development (CSD) District** **[Added 5-6-1996 ATM, Art. 36]**

#### **§ 210-76. Development and design objectives.**

The purposes of the Campus Style Development (CSD) District are to permit the clustering of industrial and commercial uses upon a development site in those areas most suited for development, to avoid strip development, to mitigate the impacts of industrial and commercial development and to preserve open land. The open land set aside pursuant to this article may buffer adjacent uses or residential zoning districts or provide recreational amenities for the occupants of the parcel or residents of the town. The clustering of the uses on the development site shall be designed to be consistent with landscapes which are traditional to New England and Hopkinton. It is the intent of this article that the development site will be designed to preserve the existing streetscape by clustering the uses away from public ways and providing a visual buffer from streets. It is the further intent that the uses on the development site will be clustered away from residential uses and will not be within view from lakes and other long views.

#### **§ 210-77. Applicability.**

Campus style development shall be allowed only upon the issuance of a special permit by the Planning Board, only within Rural Business, Industrial A and Industrial B Districts, subject to the requirements of this Chapter for those districts, and in accordance with the additional requirements specified herein. **[Amended 5-7-2007 ATM, Art. 26, 5-4-2009 ATM, Art. 25]**

#### **§ 210-78. General requirements.**

Any parcel of land located within a zone permitting campus style development containing not less than five acres may be considered for a campus style development. The five acres may be comprised of individual lots of less than five acres which, when combined, will be considered to be one development site. Once the

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lots are combined to constitute a development site, there shall be no further subdivision of the site which would result in a development site of less than five acres.

### **§ 210-79. Dimensional requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot frontage for the development site on a public way: 50 feet.
- B. Minimum lot frontage within the development site: none, provided that the interior roads which must provide adequate access to all buildings on the development site shall not become public ways and are to be considered private access roads. If the roads are intended to be considered as public ways, the Planning Board shall determine the amount of frontage appropriate for each lot, based on a consideration of public safety and adequacy of access.
- C. Minimum lot area for individual lots within the development site: none.
- D. Minimum setbacks of buildings and parking areas from development site property lines:
  - (1) One hundred feet from property line of property in a residentially zoned district.
  - (2) Fifty feet from property line of a commercial or industrially zoned property.
  - (3) Sixty feet from a street.
- E. The minimum setback area shall be landscaped or wooded so as to provide adequate year-round screening of the use from abutting property and streets. The minimum setback area required from a residentially zoned district shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped. Such area shall be wooded for the minimum required distance.
- F. Minimum setbacks of buildings from development site interior lot property lines and private access roads: none.
- G. Maximum building size: Total gross floor area of all buildings shall not exceed 60% of the total development site area.
- H. Maximum building height: No building or structure shall exceed 40 feet or three stories in height, whichever is less. If buildings are located between South Street and Route 495, they may, however, be 45 feet or four stories in height, whichever is less.

### **§ 210-80. Off-street parking.**

The requirements of § 210-124, Off-street parking, shall apply. The Planning Board, in the site plan approval process, may, however, permit buildings within the development site to share parking areas, and may permit a portion of the required spaces to be set aside as reserve or planned spaces to be constructed as future needs require.

### **§ 210-81. Permitted uses.**

Uses permitted within the underlying zoning district shall be permitted on the development site.

### **§ 210-82. [Reserved]**

### **§ 210-83. Open land.**

- A. A minimum of 40% of the development site shall be set aside as open land. Adequate pedestrian access shall be provided to the open land.
- B. The open land may remain as part of the overall development site and need not be a separate parcel, but there shall be deed restrictions stating that there shall be no further development of the open land. The open land may consist of a separate parcel and may be conveyed to a nonprofit organization the purpose of which is the preservation of open space. If the open land is conveyed to another entity, it shall continue to be part of the development site for the purpose of calculating dimensional requirements.
- C. The open land shall consist of undisturbed land which may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the open land may be used solely by occupants of the development site or may be available for use by Town residents. The open land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for the above purposes.
- D. Setback areas from exterior development site property lines of 100 feet or more may be counted as part of the open land.
- E. If detention or retention ponds are necessary for the construction of the buildings on the development site, such ponds shall not be located within the required setback areas, unless specifically permitted by the site plan approval. Such detention or retention areas shall be designed to appear as natural landforms.
- F. Areas set aside for planned or reserve parking spaces or fire lanes shall not be considered to be open land.

### **§ 210-84. Design.**

Buildings shall be designed to possess a harmony of appearance and scale with each other. Curb cuts on Town roads shall be minimized, and to the greatest extent possible, buildings shall be clustered away from streets and surrounding residential or open space uses. Parking lots shall include islands with shade trees. Buildings, roadways and parking lots shall be designed to accommodate the landscape and natural site features, and disturbance to the site shall be minimized, so that as many trees and natural features are retained as possible. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling onto adjacent lots and streets.

### **§ 210-85. Application and review process.**

- A. The provisions of Article XX, Site Plan Review, shall apply. If the development constitutes a subdivision pursuant to MGL c. 41, approval shall be required from the Planning Board. The Planning Board may hold one hearing which shall constitute the public hearings required by the Subdivision Control Law, site plan review and the campus style development special permit.
- B. The application shall show the planned use of the entire development site and whether development will occur at one time or in phases. After approval of the site plan, no land may be removed from the development site, and there may be no material deviation from the site plan, without review and approval of the Planning Board.

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### **§ 210-86. Special permit criteria.**

The Planning Board may grant the campus style development special permit only if it finds each of the following:

- A. The development meets the development and design objectives of a campus style development contained in this article.
- B. The development standards contained in this article have been met.
- C. The site development is consistent with the Master Plan.
- D. The Planning Board has determined that due regard has been given to the preservation and attractive utilization of the natural features of the development site, including trees, woods, streams and ponds.

### **§ 210-87. Fees.**

Submission fees shall be governed and set by the Planning Board and shall be assessed to the owner and/or the applicant. Such fees may include a deposit for engineering review by a consultant selected by the town.

## **ARTICLE XV**

### **Adult Uses**

**[Added 5-6-1996 ATM, Art. 45]**

### **§ 210-89. Preamble and purpose. [Amended 5-6-2008 STM, Art. 7]**

- A. Whereas, there is documented experience in many other cities including Boston, Massachusetts; Seattle, Washington; Tacoma, Washington; Detroit, Michigan; Minneapolis, Minnesota; and St. Paul, Minnesota among other cities, showing that adult uses are distinguishable from other business uses and that the location of adult uses may degrade or adversely affect the quality of life in the areas of a community where they are located, often with impacts, including but not limited to increased levels of crime, blight, depreciation of property values and late hours of operation resulting in noise and traffic late into the night; and
- B. Whereas, it is the intention of the Town of Hopkinton to rely upon and reference the findings of the above municipalities and various detailed studies they have conducted that empirically document the adverse influences and effects of adult uses on surrounding properties; and
- C. Whereas, the Town of Hopkinton is predominantly residential in its character and development pattern and, although primarily residential, is composed of a mixture of residential, business, commercial, religious, school, park and open space uses, and such areas of use are, in many instances, located in close proximity to one another with the resulting conflicts in land use; and
- D. Whereas, the Town of Hopkinton desires to protect its residential lands from encroachment by commercial adult uses and to ensure and promote the town's image as a safe, pleasant and attractive place of residence for families with children, and to preserve and promote the peace and quiet enjoyment of these areas for all persons; and
- E. Whereas, it is a desire of the Town of Hopkinton to preserve and protect the safety of children and young people in the vicinity of schools and public parks where they may be expected to walk, congregate and

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play, and furthermore that children and young people not be subjected to confrontation with the existence of adult uses in the vicinity of schools and parks, or in commercial areas where there is significant patronage and presence of children and young people; and

- F. Whereas, the commercial areas of the Town of Hopkinton reflect greatly on its image in the region, and it is the desire of the Town of Hopkinton to promote a positive business community image, retain and promote safe and attractive business areas, and retain its rural character, free of crime and nuisance; and
- G. Whereas, the Town of Hopkinton as an aid to mitigating the above impacts of adult uses desires to physically separate commercial adult uses from residential, religious, school, park and open space uses, so that residents not be subjected to confrontation with the existence of adult uses in the vicinity of their residences, schools, parks and playgrounds and churches and chosen places of worship; and
- H. Whereas, adult uses engaging in the sale, rental or display of sexually explicit materials, including books, magazines, periodicals, pictures, photographs, slides, movies, videos, adult entertainment and live nudity, may legitimately be controlled by a municipality, either through concentrating in certain locations or separating from other uses which will be inordinately impacted by the sale, rental or display of sexually explicit materials, and furthermore MGL c. 40A, § 9A, specifically provides for municipal regulation of adult uses through special permits and standards related to location and separation of such uses; and **[Amended 5-6-2008 STM, Art. 7]**
- I. Whereas, the Town of Hopkinton does not desire to suppress any speech activities protected by the First Amendment, but rather to enact a content-neutral ordinance concerned with the secondary effects of adult uses on the surrounding community, especially crime and effects upon children and family life, and therefore desires reasonable regulation of the location of adult uses in order to provide for the protection of the image of the community, its property values, and to protect the residents of the community from any adverse effects of such adult land uses, while providing to those who desire to patronize adult uses such an opportunity in areas within the Town which are appropriate for location of such uses; and
- J. Whereas, it is the intention of the Town of Hopkinton by the adoption of this Chapter to rely upon the decisions of the Supreme Court of the United States and the Supreme Judicial Court of the Commonwealth of Massachusetts pertaining to this subject matter, to regulate and limit the location of adult uses and to promote the Town of Hopkinton's great interest in protecting and preserving the quality of its neighborhoods, commercial districts and the quality of life through effective land use planning;

Now, therefore, pursuant to MGL c. 40A, § 9A, and MGL c. 272, § 31, the following is hereby established as the Adult Uses Bylaw of the Town of Hopkinton.

### **§ 210-90. Definitions.**

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

**ADULT BOOKSTORE** -- An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**ADULT MOTION-PICTURE THEATER** -- An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.



**ADULT PARAPHERNALIA STORE** -- An establishment having as a substantial or significant portion of its stock-in-trade devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**ADULT VIDEO STORE** -- An establishment having as a substantial or significant portion of its stock-in-trade videos, movies or other film material which is distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**ESTABLISHMENT WHICH DISPLAYS LIVE NUDITY** – Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL c.272, §31.

### **§ 210-91. Uses allowed by special permit.**

A. Pursuant to the procedures of MGL c. 40A, § 9A, the following uses shall be allowed only upon the grant of a special permit by the Zoning Board of Appeals:

- (1) Adult bookstores.
- (2) Adult motion-picture theaters.
- (3) Adult paraphernalia stores.
- (4) Adult video stores.
- (5) Establishment which displays live nudity for its patrons. **[Added 5-6-2008 STM, Art. 7]**

B. Requests may be made for permits for more than one of the above uses in one location.

### **§ 210-92. Applicability. [Amended 5-7-2007 ATM, Art. 25]**

The uses permitted by this article may be allowed only upon the issuance of a special permit by the Zoning Board of Appeals, only within the Business, Downtown Business and the Rural Business zoning districts. Such uses shall be subject to all of the requirements of this article for those districts and shall be in accordance with the additional requirements specified herein.

### **§ 210-93. General requirements.**

The uses referred to in this article may be permitted within the above districts, provided that they meet the following requirements:

- A. Such use shall not be conducted within a building in which other uses are located which admit persons under the age of 18.
- B. Such use shall be permitted only when located outside the area circumscribed by a circle which has a radius of 400 feet from the following specified uses or zoning districts:
  - (1) Any residence zoning district (RA, RB, RLF or A).
  - (2) Any church or other religious facility or institution.



- (3) Any public or private school or a public or private child day-care facility.
- (4) A youth center.
- (5) An arena or any other building or facility of a similar nature which admits persons under the age of 18.
- (6) Any library.
- (7) Any public park.
- (8) Any establishment which must obtain a special permit pursuant to this article.
- (9) Any establishment which has received a license under the provisions of MGL c. 138, § 12.

The radius distance shall be measured by following a straight line, without regard to intervening buildings or structures, from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property or the land use district boundary line from which the proposed adult use is to be separated.

- C. The premises and all buildings thereon in which such use occurs must comply in all respects with the requirements of the Hopkinton Zoning Bylaw which pertain to the district in which the said premises are located. In addition, the provisions of Article XX, Site Plan Review, as well as any design review requirements, shall apply to the premises.
- D. Signs shall be permitted subject to the provisions of Article XXVII, Signs. **[Amended 5-7-2007 ATM, Art. 25, 5-4-2009 ATM, Art. 18]**

### **§ 210-94. Application information.**

- A. The application for any such special permit in accordance with this article must include the following items:
  - (1) The name, address, business address, social security numbers and telephone numbers and telephone numbers of the owner or owners of the business which has made the application for such special permit. **[Amended 5-6-2008, STM, Art. 7]**
  - (2) The name, address, business address, social security numbers and telephone numbers of all persons having any equity or other interest, including but not limited to security interest, liens, mortgages or other interest in the said business, as well as the name, address, business address and telephone number of all officers, directors, shareholders and trustees of all persons or entities having any interest in the said business. **[Amended 5-6-2008, STM, Art. 7]**
  - (3) The name, address, business address and telephone numbers of all managers and all other employees that will work in the premises.
  - (4) The name, address, business address and telephone number of the owner of the property upon which the business is situated and the name and address of any and all lessees and sublessees of the said premises.

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- (5) Such actions and precautions concerning the security of the premises as the applicant intends to take with respect to the premises.
  - (6) The site plan referred to in Article XX, Site Plan Review, of this Chapter.
  - (7) A list of any and all merchandise which is to be offered for sale or distribution, either as salable merchandise or as samples or for other distribution at no cost or in any other manner by the business.
- B. Should any change in any of the above items in Subsection A (1) through (7) occur at any time during the period of possession of a special permit hereunder, the permit holder shall forthwith provide the Zoning Board of Appeals with such new information.

### **§ 210-95. Hours of operation.**

The hours of operation of the business upon the premises shall be as determined by the Zoning Board of Appeals in the special permit.

### **§ 210-96. Special permits.**

- A. The Zoning Board of Appeals may, in its discretion, issue a special permit for such use in accordance with the procedures of Article XXII of this Chapter and the conditions, provisions and requirements of said article.
- B. No person who has been convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28, shall be granted a special permit pursuant to this article.
- C. Special permits to be issued hereunder shall only be issued following public hearings which shall be held within 65 days after the filing of an application with the Zoning Board of Appeals, a copy of which shall be given forthwith to the Town Clerk by the applicant at the time of filing with the Zoning Board of Appeals.
- D. Any special permit granted under this article shall lapse within one year from the date of issue, which period shall not include the time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17, if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within such period except for good cause.

### **§ 210-97. Use violative of other laws prohibited.**

Nothing in this article is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any other Town bylaw or statute of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter, or the exhibition or public display thereof.

### **§ 210-98. Severability.**

If any section, subsection, sentence, clause, phrase or any portion of this article is for any reason held to be invalid, unenforceable or unconstitutional by any reviewing agency or by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. It is the intention of the Town of Hopkinton that it would have adopted this article and each section, subsection,

sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid, unenforceable or unconstitutional.

**ARTICLE XVI**  
**Wireless Communications Facilities**  
**[Added 5-5-1997 ATM, Art. 26;**  
**amended 5-7-1998 ATM, Art. 41]**

**§ 210-99. Purpose.**

The purpose of this article is to minimize the adverse impacts of wireless communications facilities on adjacent properties and residential neighborhoods, to minimize the overall number and height of such facilities to only that which is essential and to promote the shared use of existing facilities to reduce the need for new facilities.

**§ 210-100. General requirements.**

- A. No wireless communications facility shall be erected or installed except in compliance with the provisions of this article. Wireless communications facilities are allowed in all zoning districts. A special permit is required from the Board of Appeals to erect or install a wireless communications facility. Any proposed extension in the height, addition of cells, antenna or panels, or construction of a new or replacement facility, shall require the submission of a new application for a special permit.
- B. Whenever possible, wireless communications facilities shall be housed in nonresidential zoning districts. Ground support facilities and fencing shall be suitably screened from view.
- C. Structures shall be removed within one year of cessation of use. If applicable, annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission (FCC), Federal Aviation Administration (FAA) and the American National Standards Institute and required maintenance shall be filed with the Director of Municipal Inspections by the special permit holder.

**§ 210-101. Regulations.**

- A. To the extent feasible, all service providers shall collocate on a single facility. To the extent technologically practicable, towers shall be designed to structurally accommodate the maximum number of users. The intent of this requirement is to reduce the number of towers which will be required to be located within the community.
- B. New towers shall be considered by the Board of Appeals only after a determination by the Board that existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower.
- C. In no event shall any tower be located closer than two miles to any other tower, except after presentation of evidence of need therefor to the Board of Appeals and the grant of a variance by it.
- D. Tower height shall not be more than 100 feet above the existing grade, except after presentation of evidence of need therefor to the Board of Appeals and the grant of a variance by it.
- E. A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base. This setback requirement shall not apply to a property line of Interstate Routes 495 and 90.
- F. To the extent feasible, all network interconnections from the communications site shall be via land lines.

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- G. Existing on-site vegetation shall be preserved to the maximum extent practicable.
- H. The tower shall minimize, to the extent feasible, adverse visual effects on the environment. The Board of Appeals may impose reasonable conditions to ensure this result, including painting and lighting standards.
- I. Traffic associated with the tower and accessory facilities and structures shall not adversely affect adjacent ways.
- J. Applicants proposing to erect wireless communications towers, accessory facilities and structures on municipally owned land or structures shall provide evidence of contractual authorization from the Town of Hopkinton to conduct wireless communications services on municipally owned property.
- K. The height of antennas located on residential buildings or in the yards of residential structures shall not exceed the tree line on the lot upon which the building or yard is located.
- L. Facilities located on nonresidential structures shall not exceed 10 feet in height above the roofline of the structure. This regulation shall not apply to facilities located within structures.
- M. An applicant proposing a wireless communications facility in a residential zoning district must demonstrate to the satisfaction of the Board of Appeals that the visual, economic and aesthetic impacts of the facility on residential abutters will be minimal. The applicant must also demonstrate that the facility must be located at the proposed site due to technical, topographical or other unique circumstances. Further, the tower must be located no less than 500 feet from the nearest existing residential structure.

### **§ 210-102. Design guidelines.**

- A. All wireless communications facilities shall be sited in such a manner that the view of the facility from adjacent abutters, residential neighbors and other areas of Town shall be as unobtrusive and limited as possible. All facilities shall be painted or otherwise colored so they will blend in with the landscape or the tower on which they are located. A different color scheme shall be used to blend the structure with the landscape below and above the tree or building line, if so required by the Board of Appeals.
- B. Antennas shall be situated on or attached to a structure so as to be screened and to be not visible from abutting streets. Freestanding antennas shall be located on the landscape so as to minimize the visibility from abutting streets and residences and to limit the need to remove existing vegetation. All equipment shall be colored, molded and/or installed to blend into the structure and/or the landscape.
- C. Fencing shall be provided to control access to wireless communications facilities and shall be compatible with the rural and scenic character of the area and of the Town and shall not be constructed of razor wire.
- D. Night lighting of towers shall be prohibited unless required by the FAA or the Board of Appeals. Lighting shall be limited to that needed for emergencies and/or as required by the FAA or the Board of Appeals. If necessary, ground lighting for the equipment sheds shall be of minimum standards to satisfy security and safety requirements and shall not spill off the site in any direction.
- E. There shall be a minimum of one parking space for each facility, to be used only in connection with the maintenance of the site and not for the permanent storage of vehicles or other equipment.

### **§ 210-103. Application procedure.**

- A. All applications for wireless communications facilities shall be made and filed on the applicable application form in compliance with Board of Appeals requirements. The Board of Appeals may

develop and adopt a list of required submission materials in addition to those contained in this Chapter. The following information must be submitted:

- (1) A locus plan at a scale of one inch equals 1,000 feet which shall show all property lines, the exact location of the proposed structure(s), streets, landscape features, residential dwellings and neighborhoods and all buildings within 500 feet of the facility.
  - (2) A color photograph or rendition of the proposed tower with its antenna and/or panels. A rendition shall also be prepared illustrating a view of the tower from the nearest street or streets.
  - (3) The following information prepared by a registered professional engineer:
    - (a) A description of the tower and the technical, economic and other reasons for the proposed location, height and design.
    - (b) Confirmation that the facility complies with all applicable federal and state standards.
    - (c) A description of the capacity of the facility, including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.
  - (4) If applicable, a written statement that the proposed facility complies with, or is exempt from, applicable regulations administered by the FAA, FCC, Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
  - (5) Applicable fees as established by the Board of Appeals.
- B. After an application is submitted, the Board of Appeals may require that the applicant perform a balloon test or other test in the field sufficient for it to comprehend the proposed height and location of the facility in relation to the surrounding area.

### **§ 210-104. Special permit criteria.**

Applications for a special permit shall be approved or approved with conditions if the petitioner can fulfill the requirements of these regulations to the satisfaction of the Board of Appeals. Applications for a special permit may be denied if the petitioner cannot fulfill or address the requirements of these regulations to the satisfaction of the Board of Appeals. The Board shall consider the following factors:

- A. The applicant shall have complied with all of the requirements and demonstrated to the Board all of the factors set forth in all of the sections of this article.
- B. When considering an application for a wireless communications facility, the Board shall strongly consider the proximity of the facility to and its impact upon residential dwellings.
- C. When considering an application to place an antenna on a structure, the Board shall strongly consider the visual impact of the unit from the abutting neighborhoods and street(s).

### **§ 210-105. Exemptions.**

- A. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC is exempt from the provisions of this article, provided that the tower is not used or licensed for any commercial purpose.
- B. Towers used for agriculture, horticulture, floriculture or viticulture or for religious or educational purposes to the extent as set forth in MGL c. 40A, § 3. For the purposes of this Chapter, the providers of wireless communications facilities shall not be considered public service corporations or public utilities. No wireless communications facility shall be erected or constructed unless an application has

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first been submitted to the Board of Appeals and the special permit referred to herein has been obtained.

- C. The provisions of Article XX, Site Plan Review, shall not apply to wireless communications facilities.

### ARTICLE XVIA

#### Senior Housing Development

[Added 5-3-1999 ATM, Article 21; amended 5-5-2003 ATM, Article 23; deleted 5-2-2016 ATM, Art. 34]

### ARTICLE XVII

#### Open Space and Landscape Preservation Development

[Added 4-15-1988 ATM, Art. 48; amended 4-11-1989 ATM, Art. 19; 6-11-1990 ATM, Art. 23; 5-4-1993 ATM, Art. 21; 5-3-1994 ATM, Art. 25; 5-1-1995 ATM, Arts. 32 and 33; 5-2-2000 ATM, Art. 34; 5-5-2003 ATM, Art. 24; 5-2-2005 ATM, Art. 27; 5-1-2006 ATM, Art. 35; 5-7-2007 ATM, Arts. 25 and 26, 5-3-2010 ATM, Art. 43]

#### § 210-106. Purpose. [Amended 5-1-2006 ATM, Art. 35]

As an alternative to a conventional subdivision and in order to provide for the public interest by the preservation of open space and natural and historic landscape features in perpetuity and to promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics, such as topography, vegetation, water bodies, wetlands, open spaces, such as farmlands and meadows, historic resources major scenic views and wildlife habitats, the following regulations are established. It is not the intent of this article to make undevelopable land developable or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan but rather to encourage the preservation of important site features.

#### § 210-107. Applicability. [Amended 5-3-1994 ATM, Art. 25]

Open space and landscape preservation development shall be allowed within Residence B, Residence Lake Front and Agricultural A zoning districts, subject to the requirements of this Chapter for those districts, and in accordance with the additional requirements specified herein.

#### § 210-108. General requirements.

- A. Any parcel of land that is located within a Residence B, Residence Lake Front or Agricultural zoning district and that may be developed as a conventional subdivision may be considered for an open space and landscape preservation development subject to a special permit issued by the Planning Board. [Amended 5-2-2000 ATM, Art. 34; 5-6-2015 ATM, Art. 35]
- B. After an open space and landscape preservation development application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and approved as provided by these regulations.

#### § 210-109. Permitted uses.

Permitted uses shall be as follows:

- A. Detached single-family dwellings, as defined, including all accessory uses as permitted in this Chapter for the district in which the land lies.

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- B. Uses permitted within the common open space as described in these regulations.
- C. Recreational facilities consistent with open space and landscape preservation development purposes.

### § 210-110. Minimum requirements.

- A. Size: The total area of the tract proposed for open space and landscape preservation development shall be at least 10 acres or 5 acres if located adjacent to open space that will be expanded by the proposed plan if such open space is already protected by an existing conservation restriction or similar deed restriction, or will be protected by such a restriction in accordance with a pending application to the Planning Board or a condition of a Planning Board approval. [Amended 5-6-2015 ATM, Art. 35]
- B. Density: The total number of building lots on the tract proposed for open space and landscape preservation development shall be calculated using the following equations. The resulting number of lots shall be a guide, and the total number of lots shall be determined by the Board using the following as guidelines:
  - (1) Conventional subdivision plan submitted by the applicant.
  - (2) Information provided by the applicant indicating the development potential of the land.
  - (3) The following equation. The variables for total parcel area and wetlands shall be entered in square feet. When the total number of lots calculated by the equation results in a fraction, the total number of lots shall be rounded down. [Amended 5-3-1994 ATM, Art. 25; 5-2-2000 ATM, Art. 34]

- (a) In Residence B and Residence-Lake Front Districts:

$$\text{Total Number of Lots} = \frac{\text{Total Parcel Area} - (.5X \text{ Wetlands}) - (.1X \text{ Total Parcel Area})}{45,000}$$

- (b) In the Agricultural District:

$$\text{Total Number of Lots} = \frac{\text{Total Parcel Area} - (.5X \text{ Wetlands}) - (.1X \text{ Total Parcel Area})}{60,000}$$

### § 210-111. Intensity regulations. [Amended 5-3-1994 ATM, Art. 25; 5-2-2000 ATM, Art. 34; 5-5-2003 ATM, Art. 24, 5-4-2005 ATM, Art. 27; 5-1-2006 ATM, Art. 35, 5-3-2010 ATM, Art. 43]

The Planning Board may grant a reduction of all intensity regulations of the underlying zoning regulations for all portions of an open space and landscape preservation development if the Planning Board finds that such reduction will result in better design, improved protection of historic, natural and scenic resources and will otherwise comply with these regulations, provided that in no instance shall any lot deviate from the following Table of Minimum Requirements unless a further reduction is necessary in order to preserve a historic structure.[Amended 5-3-2010 ATM, Art. 43]

#### TABLE OF MINIMUM REQUIREMENTS

Zoning Districts			
District	Residence B	Agricultural	Residence-Lake Front
Minimum area (square feet)	25,000	30,000	30,000



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Minimum frontage (feet)	75	100	100
Minimum front yard setback (feet)	40	50	30
Minimum side yard setback (feet)	20	20	20
Minimum rear yard setback (feet)	20	20	20

- A. The lot frontage depth requirement contained in this Chapter, Article I, § 210-4, Definitions, definition of "lot frontage," may be waived by the Planning Board in order to achieve the purposes of this article.
- B. Dead-end streets may be permitted in an open space and landscape preservation development but shall not exceed 1,000 feet in length. No dead-end street shall provide access to more than 10 building lots.
- C. Common driveways may be permitted in an open space and landscape preservation development, provided that each common drive serves no more than two lots. The requirement in this Zoning Bylaw that a driveway providing the principal access to a lot be across the designated frontage of the lot shall not apply when a common driveway is to be utilized in an open space and landscape preservation development; provided, however, that the common driveway must cross the designated frontage of one of the lots it serves.

### § 210-112. Development standards.

- A. Concept plan standards. Prior to the issuance of a special permit for an open space and landscape preservation development, the applicant shall submit the information necessary to demonstrate that the following standards have been met:
  - (1) The development will not cause unreasonable traffic congestion or unsafe conditions both within and outside of the development.
  - (2) The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.
  - (3) The site design shall preserve and, where possible, enhance the historic and natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.
  - (4) The site design shall identify and ensure preservation of significant and special historic and natural features, and use of § 210-117.2, Lots with Historic Structures, shall be considered as a mechanism to do so, where appropriate. **[Amended 5-1-2006 ATM, Art. 35; Amended 5-2-2016 ATM, Art. 35]**
- B. Definitive plan standards. Prior to the approval of a definitive plan based upon the open space and landscape preservation concept plan, the applicant shall submit the information necessary to demonstrate that the following standards have been met. These standards are in addition to the requirements of the Hopkinton Subdivision Rules and Regulations and are in no way intended to replace any portion of those regulations.
  - (1) The nature of the soils and subsoils shall be suited for the intended purposes based upon the Soil Conservation Guidelines. This determination shall focus upon but shall not be limited to the locations, design and construction of roadways, buildings and surface water drainage systems. Soil borings or test pits may be made to provide information on soil texture, color, percolation rates and depth to the groundwater table at its maximum elevation.



- (2) Anticipated storm water runoff from the site shall not exceed peak runoff from the site prior to development. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.
- (3) Proper soil erosion and sedimentation control measures shall be employed to prevent sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward toward any surface water body or fresh water wetland, proposed filling, cutting, clearing or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural vegetation and topography wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

### **§ 210-113. Open space use and design standards.**

- A. Within an open space and landscape preservation development, no less than 50% of the land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. The Planning Board may reduce the common open space requirement to 30%, if it is demonstrated that a minimum lot area of 45,000 square feet is required because of soils and topographical conditions, or if it would facilitate the preservation of a historic structure. No more than 50% of the common open space shall contain wetlands as defined by MGL c. 131, § 40. **[Amended 5-3-2010 ATM, Art. 43]**
- B. The common open space shall be designed and maintained in accordance with the following standards:
  - (1) Areas to remain as naturally existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.
  - (2) Common open space shall be planned as large, contiguous units wherever possible. Strips of narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.
  - (3) Common open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.
  - (4) No more than 20% of the common open space shall be covered by man-made impervious surfaces.
  - (5) Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board.
  - (6) If detention and/or retention ponds are necessary for the construction of the improvements shown on the subdivision plan, such detention and/or retention ponds shall not be located within the common open space shown on such plan. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the open space and the benefit of the open space to the Town are not compromised, and that the open space created conforms with the intent and purpose of this article. In no case, however, shall permanent clearing for drainage improvements or utilities, including detention and/or retention ponds, exceed 5% of any common open space parcel. **[Added 5-1-1995, ATM, Art. 32]**

C. Buffer areas.

- (1) There shall be a buffer at the perimeter of the site consisting of trees, shrubs, vegetation and topographic features sufficient to separate and/or screen the development from abutting properties. This buffer shall be no less than 100 feet in width. The buffer shall be considered common open space. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the development from adjacent property, or would allow a historic structure to be preserved the buffer may be reduced. If, however, the perimeter of the site abuts a Business (B), Downtown Business (BD), Rural Business (BR) or Industrial A (IA) or Industrial B (IB) zoning district, the Planning Board may require the buffer area abutting a B, BR, IA or IB District to be greater than 100 feet in order to ensure adequate separation and/or screening from the abutting commercial zoning districts. **[Amended 5-7-2007 ATM, Art. 25 and Art. 26, 5-4-2009 ATM, Art. 25, 5-3-2010 ATM, Art. 43]**
- (2) The Board may require no-cut easements, conservation restrictions or the like where the buffer requirement has been reduced. These easements and restrictions shall be on private property, shall not be considered a buffer and shall not be included in common open space calculations.
- (3) Retention and/or detention ponds may be permitted in the buffer area upon approval of the Planning Board. Structures shall not be permitted in the buffer area. **[Amended 5-1-1995, ATM, Art. 32]**
- (4) Buffer areas shall remain substantially in their current natural state; provided, however, that such areas may include new trails and trailhead parking areas as may be approved by the Planning Board. **[Amended 5-6-2015 ATM, Art. 35]**

**§ 210-114. Common open space ownership and management.**

- A. Common open space in any open space and landscape preservation development shall be conveyed a) to the Town and may be accepted by it for park or open space use; b) a nonprofit corporation, the principal purpose of which is the conservation of open space; or c) a corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case where such land is not conveyed to the town, a conservation restriction enforceable by the Town shall be recorded, which shall provide that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses, such as parking or roadway. **[5-2-2000 ATM, Art. 34]**
- B. If the common open space is not to be conveyed to the town, then the applicant shall include, as part of the covenant, a provision that the common open space will be deeded as approved by the Planning Board. In addition, the covenant shall not be released until proof of ownership has been provided to the Planning Board.
- C. If the common open space is not to be conveyed to the town, the applicant for an open space and landscape preservation development special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence, provided that, if the Town is required to perform any maintenance work, the owners of lots within the open space and landscape preservation development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.

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- D. The Planning Board may require that all or such part of the common open space as the Planning Board deems appropriate shall be clearly identified and marked on the ground prior to the commencement of any construction activity. **[Amended 5-1-1995 ATM, Art. 33]**
- E. The common open space shall be conveyed prior to the issuance of the first building permit in an open space and landscape preservation development. The Planning Board may grant an extension of time to convey any portion of the common open space, but only if the entity or agency to whom the open space will be conveyed concurs with the request, or in the case of a homeowners association still under the control of the applicant, the intended recipient of the conservation restriction shall concur with the request. **[Amended 5-1-2017 ATM, Art. 35]**

### **§ 210-115. Application and review process.**

The application process for an open space and landscape preservation development is comprised of two steps. In the first step, the applicant submits a concept plan, as outlined below, which describes the overall development plan. The Planning Board shall grant or deny a special permit based upon the information contained in the concept plan. If the special permit is granted, the applicant then submits a definitive plan, as described below, based upon the concept plan. The Planning Board then reviews the plan as a definitive subdivision plan. Two separate public hearings, one for the special permit and one for the definitive plan, must be held.

#### **A. Concept plan.**

- (1) The applicant for an open space and landscape preservation development special permit shall first submit 10 copies of a concept plan as outlined below. The applicant shall also submit a sketch plan at the same scale showing how development of the parcel would be achieved by a conventional subdivision plan, in accordance with all applicable land use regulations. All applications for a special permit under this section shall be referred by the Planning Board to the Board of Health, Conservation Commission and other board/agency/department for its review and comments within 14 days of its submission to the Planning Board. Any such board or agency to which applications are referred for comment shall make its recommendations and send copies thereof to the Planning Board and the applicant within 35 days of receipt of the referral request from the Planning Board or there shall be deemed to be no opposition or desire to comment. The Planning Board shall not act upon said special permit until either comments from referred boards or agencies have been received or said 35 days from the date of the referral request have elapsed, whichever is sooner. A public hearing shall be held in conformance with MGL, c. 40A, § 9.
- (2) Concept plan. All applicants for open space and landscape preservation development special permits shall submit a concept plan prepared by a professional landscape architect registered in Massachusetts. The concept plan shall contain the following information, in addition to the requirements of a preliminary plan as specified in the Hopkinton Subdivision Rules and Regulations, Section 5.2, and information sufficient to illustrate and establish that the concept plan standards and special permit criteria of this section have been met: **[Amended 5-5-2003 ATM, Art. 24; Amended 5-4-2009 ATM, Art. 25]**
  - (a) Existing landscape features, such as steep topography, including a delineation of areas with slopes over 25%, wetlands, springs, lakes and ponds, streams, rock outcrops, boulder fields, stone walls, cliffs, forest glades, drumlins, high points, hilltops and ridges.
  - (b) Existing open areas, such as forests, farm fields, meadows and major long views.

- (c) In the event the parcel includes previously disturbed land, the applicant shall include a reclamation plan.
- (3) Special permit criteria. The special permit shall be granted only if the Planning Board finds each of the following:
  - (a) The development meets the purpose of an open space and landscape preservation development as described in § 210-106.
  - (b) The development standards contained in § 210-112A(1) through (4) have been met.
  - (c) The common open space is designed in accordance with the standards set forth in § 210-113B.
  - (d) The common open space is designed in accordance with the standards set forth in § 210-113C.
  - (e) The parcel could be developed as a conventional subdivision under existing local, state and federal land use regulations.
  - (f) The open space and landscape preservation development provides for efficient use and delivery of municipal and other services and infrastructure.

**B. Definitive plan.**

- (1) If the open space and landscape preservation development special permit is granted, the applicant shall submit a plan in conformity with the requirements and procedures for definitive plan submission and review under the Subdivision Rules and Regulations of the Planning Board. In accordance with MGL c. 41, § 81R, the applicant may request a waiver from the Subdivision Rules and Regulations if such action is in the public interest and consistent with the intent and purposes of this article, the Subdivision Control Law, and the special permit. The Planning Board then shall review the aspects of the open space and landscape preservation development with regard to its compliance to the Subdivision Control Law, and hold a public hearing as required by MGL c. 41, § 81T. The overall concept shall only be reconsidered if there is substantial variation between the definitive plan and the concept plan. A substantial variation shall be defined as an increase in the number of lots, a decrease in the open space acreage, a change in the layout which causes dwelling units or roadways to be placed closer to a dwelling unit within 500 feet of the project and/or a change in the development pattern which adversely affects natural landscape features and open space. If the Planning Board finds that a substantial variation exists, it must hold a public hearing on the modifications of the concept plan.
- (2) The concept design review fee will be calculated as the preliminary plan design review fee in the Hopkinton Subdivision Rules and Regulations. The definitive plan design review fee will be calculated as the definitive design review fee in the Hopkinton Subdivision Rules and Regulations.

**§ 210-116. [Removed 5-6-2015 ATM, Art. 39]**

### ARTICLE XVIII Supplementary Regulations

#### **§ 210-117. Minimum lot frontage and area. [Amended 5-2-2011 ATM, Art. 43]**

- A. A lot in common ownership which conforms with the minimum lot area and minimum lot frontage required in this Chapter shall not be reduced so as to become nonconforming.
- B. Lot area and width requirements shall not apply to a lot which at the time of the adoption or amendment of this Chapter cannot be made to conform to the requirements for the district in which it is located, provided that said lot has been duly recorded by plan or deed or assessed as a separate parcel before the adoption or amendment of this Chapter. **[Amended 5-4-2009 ATM, Art. 25]**

#### **§ 210-117.1. Lots in two or more residence [Amended 5-6-2015 ATM, Art. 33]**

- A. If a lot is located in two or more residence districts, all of the lot shall be considered as lying entirely within the district having the largest area and frontage requirements.

#### **§ 210-117.2. Lots with Historic Structures [Added 5-2-2011 ATM, Art. 44]**

- A. A lot may be created which does not meet the size and setback requirements of this Chapter upon the issuance of a special permit by the Planning Board, if the following criteria are met:
  - (1) The lot to be created will contain an Historic Structure;
  - (2) The Historic Structure which will be located on the lot is either:
    - (a) Presently situated on a lot for which an application has been submitted to the Town for approval of any single or multi-family residential development, an approval-not-required plan pursuant to MGL c.41 § 81P, or a construction project subject to Article XX, Site Plan Review, and the Historic Structure will remain in its present location; or
    - (b) Planned to be moved from a lot or within a lot for which an application has been submitted to the Town for approval of any single or multi-family residential development, an approval-not-required plan pursuant to MGL c.41 § 81P, or a construction project subject to Article XX, Site Plan Review.
  - (3) The Planning Board finds that the proposed lot is in harmony with the general purpose and intent of this Chapter.
- B. The special permit shall be subject to such conditions and safeguards as the Planning Board may prescribe, including the recording of an historic preservation restriction. **[Amended ATM 5-6-2015, Article 39]**
- C. Administration. Within seven days of receipt of the special permit application, the Planning Board shall transmit a copy of the application to the Historical Commission for comment and recommendations.

#### **§ 210-118. Setbacks.**

- A. No building need provide a greater setback or front yard than the average provided by the nearest principal buildings on the adjoining side lots. In determining such an average, a vacant lot shall be considered as though it had a building meeting the minimum setback requirements from the street line.

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- B. All structures must meet the minimum setback requirements from the street line as required in this Chapter for each street abutting the lot. **[Added 5-1-1995 ATM, Article 35]**

### **§ 210-119. Yards.**

Required side yard and rear yard areas may be varied in the case of an irregular, narrow or shallow lot, or a lot unusual in shape or topography, upon the granting of a special permit by the Board of Appeals.

#### **§ 210-119.1. Driveways. [Added 5-2-2000 ATM, Article 30]**

- A. A driveway within a wetland resource area shall be a minimum of 12 feet in width for the traveled way. The definition of "wetland resource area" shall be that contained in the Wetlands Protection Act and/or the Hopkinton Wetlands Protection Bylaw

#### **§ 210-119.2. Highway buffer. [Added 5-2-2000 ATM, Article 31, Amended 5-7-2007 ATM, Article 26]**

On all lots which abut Interstate Routes 495 and/or 90, in every zoning district with the exception of the Rural Business and Industrial A and Industrial B Districts, there shall be a buffer adjacent to Interstate Routes 495 and 90 a minimum of 50 feet wide, measured from the edge of the highway right-of-way/property line. Buffer areas shall remain wooded, and no clearing of trees or other vegetation or the alteration of other landscape features shall be permitted. No buildings, sewage disposal systems, paved areas, athletic fields, active recreation areas or any other use which requires the clearing of trees or other vegetation or the alteration of other landscape features, with the exception of wireless communication facilities, will be permitted within the buffer area.

### **§ 210-120. Common Driveways [Added 5-4-2009 ATM, Article 26]**

#### **A. Purpose**

The purpose of this Section is to promote public safety, provide for adequate sight distance, avoid site disturbance, minimize the alteration of topographical characteristics and natural resource areas, which include wetlands and historic resources, minimize stormwater runoff and retain a rural residential character. It is not the intent to make undevelopable land developable.

#### **B. Applicability**

With the exception of common driveways within Open Space and Landscape Preservation Development subdivisions (Article XVII), construction of common driveways shall require a special permit from the Planning Board. The term common driveway shall mean a single private way providing vehicular access to 2 single family dwellings (the "benefitted parcels").

Common driveways must be privately owned and maintained, shall not be considered streets or public ways, and shall not constitute a part of the designated or legal frontage for any lot.

#### **C. Design Requirements**

All common driveways must comply with the following design requirements:

- (1) A common driveway must extend from the benefitted parcels to a public or private street right of way. A common driveway, as well as the individual driveways beyond the common portion of the



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driveway, must be located entirely within the benefitted parcels. A common driveway must intersect the street right of way within the legal frontage of one of the benefitted parcels.

- (2) The benefitted parcels must have permanent access to the common driveway by easements recorded in the South Middlesex Registry of Deeds.
- (3) The deeds to the benefitted parcels shall require that the owners thereof must establish a maintenance association, the purpose of which is to provide for the maintenance and repair of the common driveway, or otherwise adequately provide for the maintenance and repair of the common driveway. The term “maintenance” shall include, but not be limited to, snow plowing, maintaining design specifications, and repair and maintenance of surfaces and stormwater management facilities. All property contiguous to the common driveway must be a part of the benefitted parcels which must be included within the maintenance association. The easement containing the common driveway shall be a minimum of 20 feet in width.
- (4) Minimum Construction Standards.
  - (a) The radius of the common driveway intersection with the street right of way must be sufficient to enable emergency vehicles to exit and enter the common driveway without leaving the surface of the common driveway. Common driveways shall accommodate the Single-Unit Truck (SU-30) vehicle turning radius at all curve radii, in accordance with the January, 2006 MassHighway Project Development and Design Guide.
  - (b) A minimum depth of 8 inches of gravel must be installed the full width of the entire common driveway traveled way.
  - (c) The maximum grade of the common driveway shall be no greater than 5% within 40 feet of the street right of way. The maximum grade of a common driveway for its full length beyond the initial 40 feet is 15%.
- (5) House numbers of sufficient visibility shall be provided at the entry point onto the street right of way and at each individual driveway along the common driveway, so that emergency vehicles can locate each dwelling.
- (6) Adequate sight line distance must be provided for vehicles exiting the common driveway.
- (7) The minimum width of the traveled way of a common driveway must be no less than 12 feet.
- (8) Passing turnouts shall be provided which provide a total width of at least 18 feet for a distance of 25 feet, where needed for safe sight lines of passage.
- (9) Provisions to permit the turn around of a SU-30 vehicle shall be provided at the terminus of all common driveways longer than 500 feet.

### D. Administration

- (1) A special permit is required from the Planning Board to construct a common driveway. A record owner desiring to construct a common driveway shall file with the Planning Board an application, together with such plans, drawings, specifications, fees and additional information as required by the Planning Board.

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- (2) The Planning Board shall conduct its review, hold a public hearing and file its decision with the Town Clerk as required by the provisions of this Chapter. [Amended 5-6-2015 ATM, Art. 39]
- (3) An Applicant must provide documentation and plans which are sufficient, in the opinion of the Planning Board, for it to determine that the requirements, provisions and Approval Criteria of this Section are met. Such documentation shall include, but shall not be limited to, information on impacts to the environment, public safety, scenic roads and scenic views, and lot development.
- (4) Approval Criteria. Before the Planning Board may issue the special permit, it shall determine each of the following:
  - (a) The common driveway will provide safe and reasonable access for fire, police and emergency vehicles.
  - (b) The common driveway meets the purpose and requirements of this Section.
  - (c) The common driveway will minimize the environmental impacts.
  - (d) The common driveway will not serve more than two single family dwellings.
- (5) The Planning Board may approve the special permit with conditions, which may include, but shall not be limited to: a) a performance bond, secured by deposit of money or negotiable securities, is posted with the Town to guarantee proper construction; and b) construction standards for the common driveway.

**§ 210-121. Maximum heights.** [Amended 5-4-1993 ATM, Art. 19; 5-5-1997 ATM, Art. 26; 5-5-2003 ATM, Art. 27]

In the RA, RB, RLF and A Districts, no structure used for residential purposes shall be erected to a height greater than 40 feet. Structures used for nonresidential purposes in said Districts shall not be erected to a height greater than 35 feet. Chimneys, spikes, towers and other projections not used for human occupancy may be constructed above the foregoing height limitations upon the grant of a special permit by the Board of Appeals; provided, however, that no wireless communications facility shall be erected except in compliance with Article XVI, Wireless Communications Facilities.

**§ 210-121.1. Buffers around nonresidential uses in residential districts.** [Added 5-3-1999 ATM, Art. 22]

- A. A lot which contains a nonresidential use in a Residence A, Residence B, Residence Lake Front or Agricultural District shall contain a buffer area at the perimeter of the lot. The buffer area shall consist of trees, shrubs, vegetation and topographic features sufficient to separate and/or visually screen the use from abutting properties in a residential district and shall be located on the same lot as the nonresidential use. For the purposes of this section, the following shall not be considered nonresidential uses:
  - (1) Lawful and permitted accessory uses to a residential use.
  - (2) Home occupation.
  - (3) Home professional office.



- (4) Home personal service.
  - (5) Home business workshop.
  - (6) Home specialty retail.
  - (7) Agriculture, horticulture, floriculture and viticulture.
  - (8) Utilities.
  - (9) Permanently restricted open space for passive recreation.
  - (10) Undeveloped open land.
- B. The buffer shall be no less than 25 feet wide in a Residence A District; 50 feet wide in a Residence B and Residence Lake Front District; and 75 feet wide in an Agricultural District. The buffer requirement shall not apply with regard to the area adjacent to the street providing the legal frontage for the lot. The buffer requirement shall not apply to nonresidential uses which are located on a lot which abuts a residential district but, rather, shall apply only to nonresidential uses which are upon premises located within a residential district.
- C. Buffer areas shall remain in their natural state. If, in the opinion of the Planning Board, the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs, plantings or fencing may be required.
- D. Activities and structures not permitted within the buffer areas include, but are not limited to: light poles and/or fixtures; parking lots; driveways; buildings; athletic playing fields; playgrounds. Pedestrian and bicycle trails may be located within buffer areas.
- E. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the use from adjacent property, the width of the buffer may be reduced. The buffer width requirement may also be reduced in the event that the lot was previously developed and used for a permitted use within the district and permanent structures were erected within the buffer area. In those circumstances, it is the intent of the Board not to waive the buffer requirement, but, rather, to provide alternative screening arrangements, such as fencing and planting where possible.

### **§ 210-122. Earth removal.**

Earth removal shall be permitted only in accordance with Chapter 96, Earth Removal, of the Bylaws of the Town of Hopkinton, regardless of zoning district.

### **§ 210-123. Trailers. [Amended 3-7-1963 ATM, Art. 35]**

- A. No trailer park or trailer camp shall be allowed within the borders of the town.
- B. A trailer shall not be used for dwelling purposes on any land, regardless of zoning, except as hereinafter provided: not more than one trailer may be used for dwelling purposes upon a lot of land at any one time and then only for a period not to exceed 14 days and for such further time as the Director of Municipal Inspections shall allow, not to exceed 30 days. **[Amended 3-7-1963 ATM, Art. 35]**

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**§ 210-124. Off-street parking.** [Amended 4-14-1975 ATM, Article 30; 4-13-1978 ATM, Article 39; 10-10-1984 STM, Article 20; 4-9-1985 ATM, Art. 36; 6-11-1990 ATM, Article 28; 5-5-1997 ATM, Article 25; 5-5-2008 ATM, Article 27 & Art 29; ATM 5-3-2010, Article 39; 5-7-2012 ATM, Article 52; 5-2-2016 ATM, Article 39]

A. Parking lots shall be designed and located to provide screening from abutting properties, buildings and streets, visual relief and sun and wind interruption within the parking area and to assure safe patterns of internal circulation. Landscaping requirements shall, wherever possible, be met by the retention of existing plants and natural landforms.

B. Parking requirements.

(1) The following off-street parking requirements shall apply to the uses listed below:

<b>Type of Use</b>	<b>Number of Spaces</b>
Animal Shelter [5-2-2016 ATM, Article 40]	3 spaces per 1,000 square feet of gross floor area
Bed & breakfast [5-5-2008 ATM, Article 29]	1 space for each unit available for occupancy
Child care facility [5-3-2004 ATM, Article 29]	1 for every 10 children of rated capacity of the facility plus 1 for each staff person on the largest shift
Conference center [5-5-2008 ATM, Article 29]	2 spaces for every 3 seats
Continuing Care Retirement Facility/Assisted Living/Nursing Home Facilities [5-3-2010 ATM, Article 47]	1 for every 3 beds, plus 1 for each employee on the largest shift
Dog Day Care Facility [5-2-2016 ATM, Article 39]	1 per 3 dogs
General office, medical and dental office, research and development and industrial uses [5-3-2004 ATM, Article 29. Amended 5-7-2012 ATM, Article 52]	3 per 1,000 square feet of gross floor area
Health services facility [5-5-2008 ATM, Article 29 Amended 5-7-2012 ATM, Article 46]	3 spaces per 1,000 square feet of gross floor area
Hotel, motel, inn [Added 5-1-2017 ATM, Article 36]	1.2 spaces for each unit available for occupancy

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Museums <b>[5-5-2008 ATM, Article 29]</b>	2 spaces per 1,000 square feet of gross floor area of public floor area, not including corridors and other service areas
Nursing home <b>[5-3-2004 ATM, Article 29, 5-7-2012 ATM, Article 52]</b>	1 for every 3 beds plus 1 for each employee on the largest shift
Places of assembly <b>[5-3-2010 ATM, Article 39]</b>	1 for every 2 seats plus 1 for each employee on the largest shift
Recreational uses <b>[5-3-2004 ATM, Article 29]</b>	1 for every 5 occupants as permitted by State Building Code
Residential component of mixed use buildings <b>[5-3-2004 ATM, Article 29]</b>	1 for every bedroom
Restaurant with customer seats <b>[5-1-2017 ATM, Article 33]</b>	1 space for every 3 seats plus 1 space for every 2 employees on the largest shift. The term “seats” shall include all customer seats, indoor and outdoor, seasonal and year-round, on the premises.
Restaurant without customer seats <b>[5-1-2017 ATM, Article 33]</b>	3 spaces, or 1 space for every 300 square feet of gross floor area plus 1 space for every 2 employees on the largest shift, whichever is greater. The term “seats” shall include all customer seats, indoor and outdoor, seasonal and year-round, on the premises.
Retail uses	4 per 1,000 square feet of gross floor area
Warehouse uses	1 per 1,000 square feet of gross floor area

(a) Where a use is not specifically referred to in this paragraph, the requirements for the most nearly comparable use specified above shall apply. In the case of mixed uses on a single lot, the parking requirement shall be the sum of the requirements calculated separately for each area of use, unless a special permit has been issued by the Planning Board pursuant to Section C. **[Amended 5-4-2004 ATM, Article 29, 5-5-2008 ATM, Article 27]**

(b) In the Downtown Business district, the number of parking spaces required shall equal 50% of the amount required in subsection (1) for each non-residential use. The spaces shall be provided using one or more of the methods listed below:

- On the same lot as the use;
- Marked spaces on the street directly adjacent to the use, between the side lot lines of the lot containing the use, and on the same side of the street as the use;
- As provided for in a shared or off-site parking special permit issued by the Planning Board pursuant to Section C. **[Amended 5-3-2010 ATM, Article 39]**

(2) Each parking space shall consist of a rectangle of following minimum dimensions:

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### **[5-3-1999 ATM, Art. 19, 5-7-2012 ATM, Article 52]**

Small car/compact spaces	8 feet by 16 feet
Parallel/curbside parking spaces	8 feet by 22 feet
All other spaces	9 feet by 18 feet

In parking lots containing up to 50 parking spaces, 20% of such parking spaces may be for small car use. In parking lots of 50 spaces or more, up to 40% of such parking spaces may be for small car use. Said small-car spaces shall be grouped in one or more contiguous areas and shall be identified by signs.

- (3) Maneuvering aisles within parking lots and access driveways from the street to parking lots shall not be less than 24 feet in width. If the maneuvering aisle or access driveway will be one-way, a narrower dimension may be proposed, subject to approval of the Planning Board. **[Amended 5-7-2012 ATM, Article 52]**
- (4) As part of the site plan approval process, the Planning Board may allow fewer parking spaces than are required by this Chapter for a use to be constructed, provided that the spaces to be unconstructed shall be delineated on the site plan and indicated as future parking spaces. All or part of said spaces shall be constructed if so required by the Board at a future date or may be constructed by the property owner/tenant at any time without prior Board approval.

### **C. Shared and Off-Site Parking [Added 5-5-2008 ATM, Article 27]**

- (1) The parking required by the uses located on a lot shall be provided on that lot, unless a special permit has been issued by the Planning Board. The Planning Board may issue a special permit to:
  - (a) Reduce the required number of parking spaces when there will be mixed uses on a lot by activities having clearly different peak demand times;
  - (b) Locate some required parking spaces on a separate lot under an agreement between property owners; and
  - (c) Locate some required parking spaces in a separate shared parking lot under an agreement between property owners, when the parking lot is shared by mixed uses having clearly different peak demand times.
- (2) Before granting the Special Permit, the Planning Board shall determine that all parking spaces associated with a use are within practical walking distance. **[Amended 5-6-2015 ATM, Art. 39]** The Planning Board may issue the special permit with conditions, which may include, but not be limited to, the following:
  - (a) A requirement that shared and off-site parking arrangements between property owners be formalized in an instrument that runs with the land and is recorded at the Registry of Deeds;
  - (b) That adequate space is set aside on the lot to construct additional parking spaces in the future should the mix of uses and peak demand times change and require additional parking.

D. Parking space reduction.

A special permit may be issued to reduce the number of parking spaces required for any use. The Planning Board shall be authorized to issue such special permits for uses that are allowed by right or by special permit from the Planning Board; the Board of Appeals shall be authorized to issue such special permits for uses that are allowed by special permit from the Board of Appeals. Before granting the Special Permit, the SPGA shall determine that the provision of parking spaces proposed will be adequate for all parking needs. **[Amended 5-6-2015 ATM, Art. 39]** The special permit may be issued with appropriate conditions, which may include, but not be limited to, provisions for additional parking should uses change over time. **[ATM 5-3-2010, Article 39]**

E. Landscaping and screening requirements. **[Amended 5-5-2008 ATM, Article 27, ATM 5-3- 2010, Article 39]**

- (1) Parking lots shall contain a planting area a minimum of five feet wide around the entire perimeter of the lot. Exceptions may be made in cases where the perimeter of the lot does not abut adjacent property, subject to the approval of the Planning Board.
- (2) Parking lots shall contain around the perimeter and in the interior at least one tree per eight parking spaces.
- (3) Trees shall be planted around the entire perimeter of the parking lot where appropriate, such as adjacent to abutting property and streets.
- (4) Trees to be planted shall be a minimum of 2 1/2 inches in caliper six feet above grade, be of a species common in the area, tolerant of future site conditions and reach an ultimate height of at least 30 feet.
- (5) At least 10% of the interior of any parking lot having 25 or more spaces shall be maintained with landscaping, including trees, in planting areas of at least four feet in width. **[5-7-2012 ATM, Article 52]**
- (6) The portion of any parking lot which abuts a residential district or use shall be screened from such residential district or use by plant materials characterized by dense growth, or a combination of such plant materials, natural landforms and trees, which will form an effective year-round screen. Screening shall be at least five feet in height. Plant materials when planted may be less than five feet in height but not less than three feet in height if of a species or variety which shall attain the required height and width within three years of planting.
- (7) The portion of any parking lot which abuts a public way shall be adequately buffered from such public way by plant materials characterized by dense growth or a combination of such plant materials, trees, natural landforms and other landscape features, such as stone walls. Plant materials may be required to be at least five feet in height. Plant materials when planted may be less than five feet in height but not less than three feet in height if of a species or variety which shall attain the required height and width within three years of planting.

**§ 210-125. Conversions of residential property. [Amended 4-9-1991 ATM, Article 25, 5-7-2007 ATM, Article 26, 5-4-2009 ATM, Article 25]**

The conversion of any house for rental purposes to accommodate not more than four dwelling units may be undertaken in any zoning district except an Industrial A (IA) or Industrial B (IB) District upon grant of a special permit by the Board of Appeals, provided that the exterior is not materially altered and provided that

each dwelling unit so created contains a floor area of at least 600 square feet. Two parking spaces shall be provided on the site for each dwelling unit.

**§ 210-126. Accessory family dwelling unit. [Added 5-4-1993 ATM, Article 20, 5-4-2009 ATM, Article 25]**

- A. The intent and the purpose of this section is to permit accessory dwelling units in single-family residential districts subject to the standards and procedures hereinafter set forth. It is also the intent to assure that the single-family character of the neighborhood will be maintained and that the accessory unit remains subordinate to the principal living quarters.
- B. Restrictions. A special permit may be granted by the Board of Appeals for the conversion of an existing or new single-family dwelling to accommodate an additional family living unit by the installation of a common wall or the partitioning of or extension of existing living space.
- C. Use limitations. Such additional family living unit shall at the discretion of the Board of Appeals accommodate up to a maximum of three persons, provided that the owner of record of the structure is a resident of the structure which includes the accessory family dwelling unit. The existing unit shall accommodate an additional family unit only if a) a member of the additional family is related by blood, marriage or adoption to the owner of the premises; or b) a member of the additional family is 60 years of age or older. There shall be no other living unit on the lot upon which such accessory unit is to be located.
- D. Disposal of sewage. Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of such accessory unit in accordance with the requirements of the Board of Health. Such determination shall be made prior to the application for a special permit, and evidence of same shall be included with such application.
- E. Ingress, egress, access. Adequate provision, as determined by the Director of Municipal Inspections, shall be provided for separate ingress and egress to the outside of each unit. To the extent possible, exterior passageways and accessways shall not detract from the single-family appearance of the dwelling. An interior doorway shall be provided between each dwelling unit as a means of access for purposes of supervision and emergency response. All stairways to additional stories shall be enclosed within the exterior walls of the structure.
- F. Documentation. The Board of Appeals must determine that such conversion, new construction and occupancy of each unit shall meet the requirements of § 210-152 of this Chapter.
- G. Area limitation. Such accessory unit shall be limited to a maximum of 800 square feet in floor area. **[Amended 5-2-2000 ATM, Article 28]**
- H. Plans. Floor plans of the accessory unit and principal residence and a certified site plan showing the dwelling unit on the lot and its relationship to other structures and premises within 200 feet of the lot shall be filed with the application for a special permit.
- I. Parking. Provisions for off-street parking of residents and guests of both units shall be provided in such a fashion as is consistent with the character of the neighborhood, as determined by the Board of Appeals, which shall seek advice from the Director of Municipal Inspections.
- J. Special permit. No building permit shall be issued in accordance with the special permit issued under this section until the special permit has been recorded in the Registry of Deeds by the applicant and evidence of such recording has been submitted to the Director of Municipal Inspections.

- K. Occupancy permit; control. No occupancy of the additional dwelling unit shall take place without an occupancy permit issued by the Director of Municipal Inspections. The initial occupancy permit shall remain in force for a period of two years from the date of issue, provided that ownership of the premises is not changed. Thereafter, permits may be issued by the Director of Municipal Inspections for succeeding two-year periods, provided that the structure and use continue to comply with the relevant provisions of the State Building Code, this Chapter and the special permit. Occupancy permits shall not be transferable upon change in ownership or change in occupancy. In such event, an affidavit shall be presented to the Director of Municipal Inspections attesting to the fact that the circumstances under which an occupancy permit was granted will in the future continue to exist. The owner of record is responsible for initiating each application to the Director of Municipal Inspections. Appropriate fees, as established and recorded, may be assessed for each such renewal review, investigation and processing. All documentation presented hereunder must be in form and content satisfactory to the Director of Municipal Inspections.
- L. Definition. Accessory family dwelling unit shall mean a dwelling unit contained within or being an extension of a single-family structure to accommodate an additional family only if a member of the additional family is related by blood, marriage or adoption to the owner of the premises, or a member of the additional family is 60 years of age or older. **[Amended 5-5-2003 ATM, Article 26]**

### **§ 210-126.1. Residential subdivisions of 10 acres or more. [Added 5-2-2000 ATM, Article 33]**

- A. Purpose. The purpose of this section is to preserve the natural and cultural resources of the Town by insuring that development of land for residential use does not consume all or a significant portion of the town's woodlands, fields, farmlands, historic structures and landscapes, cart paths, stone walls, geologic formations, watercourses, wetlands, riparian zones, groundwater recharge areas, hilltops, scenic vistas, areas of critical environmental concern, vernal pools and other significant open spaces, and that such development is undertaken with respect for the land and the town's natural resources. It is the intent of the Town to encourage that residential development be undertaken in accordance with the provisions of the open space and landscape preservation development section of this Chapter when residential development is to occur.
- B. Applicability. Any parcel or parcels of land which, individually, or, if in common ownership with a contiguous parcel or parcels on the effective date of this section, together contain 10 acres or more, shall be subject to the provisions of this section. The development for residential purposes by the subdivision of land as defined in MGL c. 41, § 81L, of any parcel or parcels of land owned individually or under common ownership which comprises 10 acres or more and the development of which occurs within any five-year period shall be considered a residential subdivision of 10 acres or more. For purposes of calculating the size of the parcel or parcels, the area comprising new lots and road rights-of-way shall be included. **[Amended 5-7-2007, Article 30]**
- C. Regulations.
- (1) No residential subdivision of 10 acres or more shall be permitted except after application and approval pursuant to Article XVII, Open Space and Landscape Preservation Development (OSLPD) of this Chapter.
  - (2) After application for approval of a residential subdivision of 10 acres or more pursuant to the OSLPD, the Planning Board shall determine whether the proposal complies with the requirements and criteria of that article. If the Board issues a special permit for an OSLPD concept plan, any subsequent subdivision of the affected parcel shall be conducted in accordance with Article XVII, OSLPD. If the Board does not find that the plan meets the requirements and criteria of Article XVII, OSLPD, the applicant may in that event determine



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whether to pursue development under the OSLPD by revising the plan to meet the requirements and criteria of the OSLPD or by proposing a conventional subdivision.

- (3) In making the determination as to whether development must proceed pursuant to Article XVII, OSLPD, or pursuant to the procedures governing conventional subdivisions, the Planning Board shall evaluate both plans and proposals and select the development method which most closely incorporates the purpose, criteria and requirements of Article XVII, OSLPD, and satisfies, to the greatest extent possible, the purpose of this section.

### **§ 210-126.2. Duplexes. [Added 5-6-2002 ATM, Art. 34, 5-4-2009 ATM, Article 25]**

- A. The intent and purpose of this section is to permit duplexes in the Residence A, Residence B, and Agricultural Zoning Districts subject to the standards and procedures hereinafter set forth, in order that a range of housing options affordable to all citizens be available in the Town. It is also the intent to assure that the single-family character of the neighborhood will be maintained and that the duplex is designed to enhance and not detract from the appearance and amenities in the surrounding neighborhood.
- B. Restrictions.
  - (1) A special permit may be granted by the Board of Appeals for the construction of a new duplex.
  - (2) The Board of Appeals shall not grant a special permit if, at the time of application, the number of two-family dwelling units, including, without limitation, duplexes, two-family houses, and buildings containing accessory family dwelling units in Hopkinton is equal to or more than 5% of the total number of dwelling units in Hopkinton.
  - (3) There shall be no more than one duplex per lot.
  - (4) At least one of the duplex units on a lot shall be set aside as permanently affordable and will count toward the 10% statutory goal (c. 40B, § 20) for affordable housing.
- C. Use limitations. There shall be no other living units on the lot upon which a duplex is to be located.
- D. Disposal of sewage. Adequate provision shall be made for the disposal of sewage and waste generated by the duplex in accordance with the requirements of the Board of Health and/or the Department of Public Works. Such determination shall be made prior to the application for a special permit, and evidence of same shall be included with such application.
- E. Storm water management. Adequate provision shall be made for the proper management of storm water runoff from the lot. Evidence of same shall be included with the above application.
- F. Dimensional requirements. Each lot on which a duplex is proposed shall comply with the following dimensional requirements:

Residence A District: All requirements set forth in § 210-8, Residence B (RB) District.

Residence B District: All requirements set forth in § 210-8, Residence B (RB) District.

Agricultural District: All requirements set forth in § 210-14, Agricultural (A) District.
- G. Ingress, egress, access. Adequate provision, as determined by the Director of Municipal Inspections, shall be provided for separate ingress from and egress to the outside of each unit.

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- H. Documentation. The Board of Appeals must determine that the construction and occupancy of each duplex unit shall meet the requirements of § 210-152 of this chapter.
- I. Area limitation. No duplex unit shall exceed a maximum of 1,800 square feet in floor area. Such area shall not include attached or detached garages, attics, or basements. After construction of an approved duplex: in the event that any proposed addition or alteration to any building on the lot will result in any change to the exterior of the building which will be visible from other lots or roadways, and a building permit for such addition or alteration is required, the following procedures must be complied with:
  - (1) If the proposed addition or alteration will result in no increase in floor area, the applicant must submit a plan to the Design Review Board for review and recommendation prior to the issuance of a building permit;
  - (2) If the proposed addition or alteration will result in an increase in floor area, the applicant must submit an application to the Board of Appeals to modify the special permit.
- J. Plans. Floor plans, elevation drawings of each side of any proposed building, and a certified site plan showing the proposed buildings on the lot and their relationship to other structures and premises within 200 feet of the lot shall be filed with the application for a special permit.
- K. Parking. Provisions for off-street parking of residents and guests of both units shall be provided in such a manner as is consistent with the character of the neighborhood, as determined by the Board of Appeals. The Board of Appeals shall seek the advice of the Director of Municipal Inspections and the Design Review Board in such review. In no case shall the number of parking spaces on the lot be less than two per unit, including spaces inside garages. Unless the Board of Appeals specifically waives the following requirement, the duplex shall be served with two separate driveways, one for each unit.
- L. Design review. The Board of Appeals shall forward a copy of the submission materials to the Design Review Board for review and recommendation. The Design Review Board shall review the exterior design of the proposed buildings, parking, driveways, and landscaping and screening, to determine whether the proposed lot development will be compatible with and not detract from the surrounding neighborhood. Such review shall include consideration of the design guidelines adopted pursuant to § 210-145 of this chapter.
- M. Special permit. No building permit shall be issued in accordance with the special permit issued under this section until the special permit has been recorded in the Registry of Deeds by the applicant and evidence of such recording has been submitted to the Director of Municipal Inspections.
- N. Separate conveyance. The ownership of each duplex unit may be conveyed or otherwise transferred separately from the other unit. The lot on which the duplex is located shall be held in common ownership. Documents describing the proposed form of ownership and maintenance agreements shall be submitted to the Board of Appeals for its review and approval with the application.
- O. Definition. A duplex is a building which is situated on a single lot and contains two dwelling units which share a common wall or ceiling/floor but are entirely and permanently separated from each other by an unpierced wall extending from the ground to the roof or an unpierced ceiling/floor extending to all exterior walls, except that the building may have a common stairwell exterior to both dwelling units.
- P. Special provisions for low- or moderate-income units.
  - (1) In order to facilitate the creation of affordable housing units in Hopkinton which will count toward the 10% statutory goal (MGL c. 40B, § 20), all applicants for a special permit for one or both duplex units to be occupied by a low- or moderate-income family shall be furnished

with copies of the regulations and guidelines of the Massachusetts Department of Housing and Community Development for approval of such unit as an affordable housing unit for purposes of the statutory goal. Such regulations and guidelines shall include those of the Local Initiative Program and any other program designed to promote the creation of certifiable affordable housing units. Prior to issuance of a special permit for a low- or moderate-income unit which is to be occupied and maintained in accordance with any such program, the Board of Selectmen shall make application to the Department of Housing and Community Development for certification of the unit as an affordable housing unit includable in the Town's inventory of low- and moderate-income housing for the purposes of MGL c. 40B. In the event such application is not approved the special permit shall not be issued. The affordable units shall contain deed restrictions which require that the unit remain affordable in perpetuity. The Board of Appeals may impose permit conditions to ensure that the unit remains affordable, including conditions relating to long-term monitoring and rights of first refusal.

- (2) No building permit shall be issued until certification has been received by the Town of Hopkinton that at least one of the units shall constitute an affordable unit pursuant to MGL c. 40B.
- (3) In the event that such certification is not received, the units shall not be constructed.

### **§ 210-126.3. Animal Shelters [Added 5-2-2016 ATM, Article 40]**

- A. An Animal Shelter may be permitted in any zoning district upon the grant of a special permit from the Board of Appeals, subject to the requirements set forth in this section.
- B. Animal Shelters shall conform to the following provisions:
  - (1) An Animal Shelter shall be located on a lot containing a minimum of three (3) acres;
  - (2) All animals shall be kept indoors after 7:00 PM;
  - (3) Adequate measures shall be implemented to ensure that noise impacts to the surrounding neighborhood are mitigated;
  - (4) Outside areas for animals shall be enclosed by a fence of at least 6 feet in height;
  - (5) Animal waste shall be contained and legally removed in a timely manner;
  - (6) Adequate odor control measures shall be implemented;
  - (7) Adequate screening for abutters shall be provided.

### **§ 210-126.4. Dog Day Care Facilities [Added 5-2-2016 ATM, Article 39]**

- A. A Dog Day Care Facility may be permitted in any zoning district upon the grant of a special permit from the Board of Appeals, subject to the requirements set forth in this section.
- B. Dog Day Care Facilities shall conform to the following provisions:
  - (1) The Dog Day Care Facility shall be located on a lot containing a minimum of three (3) acres;

- (2) There shall be no more than twelve (12) dogs at the Dog Day Care Facility at any one time;
- (3) The hours of operation of the facility shall be as determined by the Board of Appeals in the Special Permit, provided that a Dog Day Care Facility shall not open before 7:00 AM and be open later than 6:00 PM, and a Dog Day Care Facility shall not be open on Saturday or Sunday;
- (4) The outside areas for dogs shall be enclosed by a fence of at least 6 feet in height;
- (5) When the dogs are outside they shall be on the premises and under constant supervision. No more than two (2) dogs shall be outside together before 9:00 AM.
- (6) All dog waste shall be contained and legally removed in a timely manner;
- (7) Adequate odor control measures shall be implemented;
- (8) Adequate measures shall be implemented to ensure that noise impacts to the surrounding neighborhood are mitigated;
- (9) There shall be no overnight care or boarding of dogs;
- (10) Adequate screening for abutters shall be provided;
- (11) Any Special Permit issued for a Dog Day Care Facility shall remain in force for a period of two (2) years from the date of issuance or until there is a change in ownership of the premises, whichever occurs first.

### ARTICLE XIX

#### Nonconforming Lots, Uses and Structures

[Amended 4-13-1978 ATM, Art. 39, 5-2-2011 ATM, Article 43]

#### **§ 210-127. Continued use of existing uses. [Amended 5-2-2011 ATM, Article 43]**

Notwithstanding any possible nonconformity, this Chapter shall not apply to the continued use of existing buildings or structures or of land to the extent of its lawful use at the time of adoption of this Chapter.

#### **§ 210-128. Changes to existing lots, uses and structures. [Amended 5-2-2011 ATM, Article 43]**

##### A. Single and Two Family Residential Dwellings

Alteration, reconstruction, extension or structural change (collectively “alteration”) to a single or two family residential dwelling shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right in the following circumstances, if a) the lot conforms to the minimum lot area and frontage requirements of this Chapter, or b) the lot complied with the minimum area and frontage requirements in effect at the time the lot was created, has not been held in common ownership with adjoining land since rendered nonconforming, and has at least 5,000 square feet of area and 50 feet of frontage:

- (1) Alteration to an existing dwelling which complies with all current size and setback requirements and such alteration also complies with the current size and setback requirements and building height requirements;

- (2) Alteration to an existing dwelling which encroaches upon one or more required yard width or setback requirement, where the alteration will comply with all current setback and building height requirements.

Alteration of a single or two family dwelling which does not conform to the foregoing circumstances shall require the issuance of a special permit by the Board of Appeals upon a finding that the proposed change is not substantially more detrimental to the neighborhood.

### B. Nonconforming Structures

A nonconforming building or structure which is not a single or two family dwelling may be altered, reconstructed, extended or structurally changed only after the issuance of a special permit by the Board of Appeals upon a finding that the proposed change is not substantially more detrimental to the neighborhood.

### C. Nonconforming Lots

A lot which complied with the minimum area and frontage requirements in effect at the time it was created, has not been held in common ownership with adjoining land since rendered nonconforming, and has at least 5,000 square feet of area and 50 feet of frontage, may be built upon for a single or two family dwelling as of right if the dwelling will comply with all applicable regulations of this Chapter. Construction of a single or two family dwelling or other lawful building on such lots where the proposed dwelling or building will not comply with the applicable regulations of this Chapter is permitted only upon the issuance of a special permit by the Board of Appeals and a finding that the proposed change is not substantially more detrimental to the neighborhood.

### D. Nonconforming Uses

- (1) Alteration, reconstruction, extension or structural change (collectively “alteration”) to a nonconforming use to provide for the use 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 shall require the issuance of a special permit by the Board of Appeals upon a finding that the proposed use is not substantially more detrimental to the neighborhood.
- (2) A change from one nonconforming use to another nonconforming use shall require the issuance of a special permit by the Board of Appeals, upon a finding that the proposed use is not substantially more detrimental to the neighborhood and that the proposed use is a similar or more restricted use.
- (3) Where an existing use lacks the required off-street parking facilities for the district in which it is located, such lack shall not render said use nonconforming, but any part of a lot containing such use that is used for parking on the effective date of this Chapter may not be thereafter built upon unless either sufficient additional parking facilities are obtained and made available to keep the ratio of parking space to floor area the same or the remaining number of parking spaces provided conforms to the requirements of this Chapter.

### **§ 210-129. Abandonment. [Amended 4-13-1978 ATM, Art. 39]**

A nonconforming use may not be resumed or changed to another nonconforming use after any of the events or periods described below have taken place:

- A. Abandonment of use for two years (for example, removal and failure to replace installations necessary thereto).

- B. Two years during which it has been neither used nor offered for sale.
- C. Failure to resume use or to convert to another approved nonconforming use within two years of purchase.

### **§ 210-130. Reversion.**

Once a nonconforming use reverts to a more restricted use, it may not return again to its original less restricted use.

### **§ 210-131. Destruction.**

Once a nonconforming use has been destroyed or damaged by fire, explosion or other catastrophe, it may be rebuilt or restored at the same location and again used as it previously was, provided that its owner shall apply for a building permit and start operations for restoring or rebuilding on said premises within 12 months after such catastrophe; and further, provided, that the buildings as restored shall not exceed in volume or area the original nonconforming structure.

### **§ 210-132. Existing special permit uses not nonconforming.**

Where an existing building use or land use is situated in a zoning district where it is permitted only upon the granting of a special permit by the Board of Appeals, said use shall not be deemed nonconforming by reason thereof; rather, the special permit shall be deemed to have been granted for the use as it was on the effective date of this Chapter.

## **ARTICLE XX Site Plan Review**

**[HISTORY: Replaces Zoning Bylaw Article XX in its entirety by the Annual Town Meeting of the Town of Hopkinton 05-07-2012, Art. 45.]**

### **§ 210-133. Purpose.**

The purpose of this Article is to protect the health, safety, convenience and general welfare of the public by providing a comprehensive review of plans for uses and structures that may have impacts on traffic, services and utilities, environmental quality, water resources, drainage and community character. The Town encourages site plans to be designed to utilize energy efficient technology and renewable energy resources, and adhere to the principles of energy-conscious design with regard to orientation, building materials, shading, landscaping and other elements. With respect to building design, consideration should be given to the architectural style and its relation to the prevailing character and scale of buildings in the neighborhood. Factors to be considered include appropriate building materials, screening, breaks in roof and wall lines, massing and other architectural techniques. The construction, alteration, enlargement or reconstruction of buildings that are to be used exclusively for residential purposes shall be exempt from the provisions of this Article. Any use or structure, or expansion thereof, referred to in section 3 of Chapter 40A of the *Massachusetts General Laws* shall not be exempt from the provisions of this article, provided any of the criteria contained in §210-134 also applies.

### **§ 210-134. Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

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**MAJOR PROJECT** - Any construction project that requires new construction or will result in a change in the outside appearance or a change of use of a building or buildings or premises, and that includes one or more of the following

- A. Construction of 5,000 or more square feet of gross floor area; or
- B. An increase in gross floor area by 50% or more, which results in a gross floor area of at least 5,000 square feet; or
- C. Construction of a parking area containing 25 or more parking spaces, or the addition of 25 or more parking spaces to an existing parking lot.

**MINOR PROJECT** - Any construction project or change of use, not included within the definition of a "major project," that includes one or more of the following:

- A. An increase in gross floor area of not more than 5,000 square feet or the addition of rooftop HVAC or mechanical equipment, substantially visible from a public or private street or public place, requiring a building permit; or
- B. Construction, enlargement or alteration of a parking area containing five or more parking spaces.

For the purposes of Site Plan Review, the term "gross floor area" shall mean the sum of the gross horizontal areas of the several floors of a building including all garages, basements and cellars. All dimensions shall be taken from the exterior faces of walls, including the exterior faces of enclosed porches. [**Amended 5-1-2017 ATM, Article 37**]

### **§ 210-135. Procedure.**

- A. An Applicant for site plan review shall file with the Planning Board an application and submission materials as required by the Site Plan Review Submission Requirements and Procedures adopted by the Planning Board and filed with the Town Clerk.
- B. The Planning Board shall, within five days of receipt of a site plan review application, transmit copies of the application and the site plan to the Director of Municipal Inspections, Conservation Commission, Board of Health, Design Review Board, and Director of Public Works for comments and recommendations.
- C. The Planning Board shall hold a public hearing within 65 days of the filing of any application for a major project and shall file a decision within 90 days of the close of the hearing. The Planning Board shall hold a public hearing and shall file a decision on an application for a minor project within 60 days of the receipt of the application. Notice of the time, place, and subject matter of the public hearing shall be given by the Planning Board, at the expense of the Applicant, to the Applicant and to all owners of land abutting the land being the subject of such application as appearing on the most recent tax list on file at the Assessors Office. In addition, in the case of major project site plan review, the Planning Board shall also give notice of the time, place, and subject matter of the public hearing, at the expense of the Applicant, by advertisement in a newspaper of general circulation in the Town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing. The time within which the Planning Board must act on an application may be extended upon mutual agreement in writing between the Planning Board and the Applicant. Notwithstanding anything to the contrary in this Section, the Planning Board must act on a major project site plan review application for a renewable/alternative energy research and development or renewable/alternative energy manufacturing facility within six (6) months of the date of submission of a complete application. Failure



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to act within the time limitations established in this article shall be deemed constructive approval of the application.

- D. Final action shall be a "Decision of Site Plan Review" that is filed with the Office of the Town Clerk and the Director of Municipal Inspections.
- E. A majority vote of the membership of the Board shall be sufficient to approve or disapprove a Decision of Site Plan Review.
- F. Appeals.

Any person aggrieved by a Decision of Site Plan Review by the Planning Board may appeal such Decision to the Board of Appeals within 20 days of the date filed with the Office of the Town Clerk. All Decisions of Site Plan Review issued by the Planning Board shall include a brief notice of such rights of appeal. Any such appeal shall contain a reasonably concise statement of the grounds therefor.

If the Planning Board has issued a denial decision, the Board of Appeals shall examine the proposal and prepare its own findings to determine if the Applicant has failed to furnish the information, materials or fees required by this Article or by the Submission Requirements and Procedures adopted by the Planning Board, or if the application and site plan present a problem so intractable as to admit of no reasonable solution.

If the Planning Board has issued an approval decision, the Board of Appeals shall examine the proposal and prepare its own findings to determine whether the conditions imposed by the Planning Board are reasonable, and shall limit its evaluation to those conditions at issue in the appeal. The Board of Appeals shall determine the reasonableness of each such condition in a two-step process:

- (1) The Board shall determine whether the condition relates to one of the Site Plan Standards listed in Section 210-136.1; and
- (2) The Board shall examine the condition for reasonableness, which requires that the Board make detailed factual findings to justify its determination of the condition's reasonableness or unreasonableness.

As the party requesting relief, the Appellant bears the burden of proof before the Board of Appeals. Any party before the Board of Appeals upon appeal shall have the right to introduce testimony or evidence relating to the grounds for appeal.

### **§ 210-136.1 Site Plan Standards**

The site plan shall be designed to conform to the following Site Plan Standards:

- A. Site disturbance in wetland buffer zones and to slopes in excess of 25% shall be minimized.
- B. Unique natural and historic features shall be preserved whenever feasible, and the use of § 210-117.2, Lots with Historic Structures, shall be considered as a mechanism to do so, where appropriate. **[Amended 5-2-2016 ATM, Art. 35]**
- C. Tree, vegetation and soil removal shall be minimized.
- D. The site activities shown on the Site Plan shall be screened from view from abutting properties in residential use. Methods of screening may include solid fencing, landscaping or other proposals of the

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Applicant, subject to review by the Planning Board. Such screening may be located on or off-site. If located off-site, written permission of the off-site property owner shall be provided to the Board.

- E. All utilities shall be underground.
- F. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other similar uses shall be visually screened from abutting properties and those using public ways. Screening methods may consist of solid fencing, landscaping or similar proposals submitted by the Applicant, subject to review by the Planning Board.
- G. The site plan shall show measures to reduce and abate noise and odors generated from the site that will impact surrounding properties.
- H. The site plan shall comply with all zoning requirements.
- I. The site plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and to and from adjacent public ways. If supporting documentation, such as a traffic or parking study, submitted to the Planning Board indicates that the vehicular and pedestrian traffic movement depicted on the site plan and proposed in the application will have a significant negative impact or impacts on the site or within the adjacent ways, such impacts shall be mitigated by the Applicant.
- J. Parking areas shall be designed so that they are safe and convenient and do not detract from the use and enjoyment of proposed structures. Parking areas shall be designed to facilitate safe pedestrian access to the structures and other on-site facilities.
- K. The site plan shall minimize the number of curb cuts on public ways.
- L. Driveways shall be designed to ensure safe sight distances at interior and exterior intersections and along driveways, in accordance with applicable AASHTO requirements.
- M. Sidewalks shall be provided along the entire frontage of the subject property along existing public ways. The Planning Board may approve alternative provisions or waive the requirements of this Standard in situations where sidewalk construction or use is not feasible or practical.
- N. Levels of illumination shall be provided as follows: **[Amended 5-6-2015 ATM. Art. 36]**
  - (1) No property may have exterior lighting that exceeds the average illumination level recommended by the Illuminating Engineering Society of North America for such use as set forth in "Lighting Facilities for Parking Facilities," Illuminating Engineering Society, 2014 and "The Lighting Handbook," 10<sup>th</sup> Ed., Illuminating Engineering Society, 2011.
  - (2) For pole mounted lights in parking and driveway areas, the height of the light source shall not exceed 15 feet, which shall be measured from the ground at the base of the pole to the bottom of the fixture.
  - (3) Pedestrian area lighting shall utilize fully shielded fixtures, and the height of light source shall not exceed 12 feet, measured from the ground at the base of the pole to the bottom of the fixture.
  - (4) No exterior lighting may interfere with the safe movement of motor vehicles on public ways or private ways open to the public.
  - (5) Mercury vapor lamps shall be prohibited.

- (6) Uplighting shall be permitted only when used in one of the following manners:
- (a) To light a primary entrance, when the fixture or lamp is wall-mounted under an architectural element (e.g., roofs over walkways, entries or overhanging, nontranslucent eaves) so that the uplighting is fully captured;
  - (b) To light local, state or national flags; or
  - (c) To highlight or illuminate a building facade or landscaping, or to highlight or illuminate statues or monuments.
- (7) Floodlighting shall be permitted only if a fully shielded fixture is utilized and no lighting will fall onto the property of others.
- (8) Safety and security lighting shall use motion sensors, photocells, or photocells or timers to control duration of nighttime illumination.
- (9) Exterior lighting of recreation facilities shall utilize fully shielded fixtures and, except as authorized by Special Permit or Site Plan Approval, shall be turned off by 10:00 p.m. or at the conclusion of an activity begun before 10:00 p.m.; provided, however, that in any event the exterior lighting shall be turned off by midnight.
- (10) Blinking, flashing, moving, revolving and flickering lights, as well as lighting that changes intensity or color shall be prohibited except for lighting for public safety or traffic control and lighting required by the U.S. Federal Aviation Administration for air traffic control and warning purposes.
- (11) Notwithstanding any provisions of this subsection to the contrary, sidewalks that run along the perimeter of a site and are in a public right of way or on abutting property may be illuminated, and illumination may spill onto abutting non-residential property if requested in writing by the abutting property owner.

Exterior lighting that does not conform to the provisions of this subsection may be allowed by special permit from the Planning Board if the Planning Board finds that such exterior lighting will be consistent with the Purposes of this Article, or that there are other demonstrable community, health, safety or welfare benefits that will be served by the exterior lighting. No special permit may be granted pursuant to this subsection unless the Planning Board determines that the proposed exterior lighting is appropriate for the size and use of the property, any buildings thereon, and the neighborhood setting.

- O. Adequate access shall be provided to each structure for emergency vehicles and personnel.
- P. The site plan shall conform to applicable Massachusetts Department of Environmental Protection Stormwater Management Regulations. The site plan shall show adequate measures to prevent pollution of surface water and groundwater, to minimize erosion and sedimentation and to prevent changes in the potential for flooding. Stormwater management facilities shall be designed so that neighboring properties, public ways and public storm drainage systems will not be adversely impacted.
- Q. Mechanical equipment or other utility hardware on the roof, grounds or buildings shall be screened from view from the ground.

R. All dumpsters shall be screened from public view.

### **§ 210-136.2. Decision criteria.**

The Planning Board shall issue a “Decision of Site Plan Review” in one of the following forms:

- A. A written approval of the application subject to any reasonable conditions, modifications and restrictions relating to the Site Plan Standards contained in Section 210-136.1; or
- B. Disapproval of the application if the Applicant fails to furnish the information, materials or fees required in this Article or by the Submission Requirements and Procedures adopted by the Planning Board, or if the application and site plan present a problem so intractable so as to admit of no reasonable solution.

Notwithstanding the above, regulation of uses and structures referred to in section 3 of Chapter 40A of the *Massachusetts General Laws* shall be limited to the extent required by said section.

### **§ 210-137. Conditions of approval; building permits.**

Site plan approval may be made subject to reasonable conditions, modifications and restrictions relating to the Site Plan Standards contained in Section 210-136.1 as the Planning Board may deem necessary, and any construction, reconstruction, alteration or addition shall be carried out only in conformity with such conditions, modifications or restrictions and in conformity with the application and site plan. An order of conditions issued pursuant to section 40 of Chapter 131 of the *Massachusetts General Laws* or Chapter 206 of the Town of Hopkinton Bylaws, which imposes conditions inconsistent with a site plan approval, shall require a revision of the site plan to be submitted to the Planning Board for review and approval.

In the discretion of the Planning Board, recording of a certification of the Town Clerk and the Decision of Site Plan Review at the Registry of Deeds may be made a condition of an approval. For any construction project or change in use that requires site plan review, no building permit may be issued unless and until the Applicant has complied with the provisions of this Article. The conditions, modifications, and restrictions contained within the Decision of Site Plan Review shall be referenced in, incorporated into, and made an express condition of, such building permit.

### **§ 210-138. Performance guarantee.**

As a condition of site plan approval, the Planning Board may require that a performance bond, secured by a deposit of money or negotiable securities in a form selected by the Planning Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the Applicant's engineer, which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the Applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any.

### **§ 210-139. Duration of approval.**

Site plan approval for a minor or major project shall become void two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal, unless any

construction work contemplated hereby shall have commenced and proceeded in good faith continuously to completion, except for good cause. In such case, a request for extension of the date of completion must be submitted to the Planning Board for approval.

### **§ 210-140. Fees.**

Site plan review fees shall be governed and set by the Planning Board and shall be assessed to the owner and/or the Applicant. Such fee may include a deposit for review by a consultant selected by the Town.

## **ARTICLE XXI**

### **Design Review**

**[Added 5-2-1994 ATM, Article 20]**

### **§210-141. Purpose.**

It is the intent of this article to provide detailed review of uses and structures having substantial impact on the town, to prevent blight, to enhance the natural and aesthetic qualities of the town, to preserve the value of land and buildings and to protect and preserve the historic and cultural aspects and heritage of the town.

### **§ 210-142. Design Review Board.**

- A. The Design Review Board shall be appointed annually by the Planning Board and shall consist of five residents of the Town as follows:
- (1) Chairman of the Planning Board or his/her designee.
  - (2) One person qualified by training and experience in the fine arts or landscape design.
  - (3) One person doing business in the Town or a citizen at large.
  - (4) One person qualified by training and experience in the art or design professions.
  - (5) One member of the Historic District Commission or a designee of the Planning Board.
- B. The Planning Board may also appoint up to two alternate members who shall be Town residents.

### **§ 210-143. Applicability and authority.**

The Design Review Board shall review applications for site plan review submitted pursuant to Article XX and applications for new signs requiring a building permit, provided, however, that the Design Review Board shall not have jurisdiction to review applications for signs over which a Historic District Commission has review authority. **[Amended 5-6-2015 ATM, Art. 37]** It shall evaluate such requests based on the design criteria set forth in this Article. With respect to site plan review applications, the Design Review Board's written findings shall be advisory to the Planning Board and shall be submitted to the Planning Board and the applicant along with any recommendations and proposed conditions. With respect to sign applications, the Design Review Board's written findings shall be advisory to the Director of Municipal Inspections and shall be submitted to the Director of Municipal Inspections and the applicant. Any such findings shall specifically identify each of the design criteria set forth in this Article to which they pertain. **[Amended 5-6-2013 ATM, Art. 53]**

### **§ 210-144. Design criteria.**

The Design Review Board shall review requests for site plan review based on the following criteria:  
**[Amended 5-3-2004 ATM, Art. 30]**

- A. Preservation and enhancement of landscaping. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal and any grade changes shall be in keeping with the general appearance of neighboring developed areas.
- B. Relation of buildings to environment. The proposed development shall be related harmoniously to the terrain and to the use, scale and architecture of existing buildings in the surrounding area that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings with respect to:
  - (1) Height.
  - (2) Street facade.
  - (3) Rhythm of solids and voids.
  - (4) Spacing of buildings or signs.
  - (5) Materials, textures and color.
  - (6) Roof slopes.
  - (7) Scale.
- C. Open space. All open space, landscaped and usable, shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.
- D. Heritage. Removal or disruption of historic, traditional or significant uses, structures or architectural elements shall be minimized insofar as practicable.

### **§ 210-145. Design guidelines.**

The Design Review Board may publish and make available to the public on request a booklet of guidelines based on the specific design criteria cited above to effectuate the purposes of this article.

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### ARTICLE XXII

#### Board of Appeals

[Added 3-12-1973 ATM, Article 32; Title Amended 5-6-2015 ATM, Article 39]

#### § 210-146. Board of Appeals.

- A. Establishment. It is hereby provided that there shall be a Board of Appeals of the Town of Hopkinton.
- B. Powers. The Board of Appeals shall have the following statutory powers under MGL c. 40A:  
[Amended 4-13-1978 ATM, Art. 39, 5-4-2009 ATM, Art. 25]
- (1) Appeals. To hear and decide appeals by any person aggrieved by any order or decision of the Director of Municipal Inspections or other administrative official in violation of any provision of MGL c. 40A or of this Chapter. (See MGL c. 40A, § 8.)
  - (2) Special Permits. Pursuant to MGL c.40A, § 9, to act as the Special Permit Granting Authority in accordance with Article XXXIV. [Amended 5-6-2015 ATM, Art. 39]
  - (3) Variances. Pursuant to MGL c. 40A, § 14, to hear and decide petitions for use and dimensional variances as set forth in MGL c. 40A, § 10. Use variances permit a use of land other than a use expressly permitted in a particular district. Dimensional variances authorize deviations from restrictions dealing with such matters as setbacks, *frontage* and lot size. If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance, such rights shall lapse, unless otherwise extended by the Board of Appeals pursuant to MGL c. 40A, § 10. [Amended 5-3-1999 ATM, Art. 24]
- C. Members. The Board of Appeals shall consist of five regular members and four associate members. They shall be appointed by the Selectmen for terms of five years each in such manner that the term of one regular member shall expire each year. The Board shall annually elect a Chairman and a Vice Chairman from among its regular members, and a Clerk from among its regular or associate members. A member can only be removed for cause by the Selectmen and only after written charges have been made and a public hearing has been held. The Chairman may designate an associate member to sit on the Board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said Board, in which case an associate member may sit as a member of the Board until said vacancy is filled. [Amended 3-12-1973 ATM, Art. 32; 3-4-1974 ATM, Art. 47; 4-13-1978 ATM, Art. 39, 5-3-2004 ATM, Art. 28]
- D. Rules. The Board shall adopt rules not inconsistent with the General Laws and the provisions of this Chapter for conducting its business and shall file a copy thereof with the Town Clerk. [Amended 4-13-1978 ATM, Art. 39]
- E. Meetings. Meetings of the Board shall be held at the call of the Chairman and also when called in such other manner as the Board shall determine in its rules. The Chairman or, in the absence of the Chairman, the Acting Chairman, may administer oaths, summon witnesses and call for the production of papers. [Amended 5-4-2009 ATM, Art. 25]

#### § 210-147. Filing of appeals and repetitive applications. [Amended 4-13-1978 ATM, Art. 39 5-4-2009 ATM, Art. 25]

Appeals under MGL c. 40A, § 8 must be filed within 30 days after the administrative decision or action from which the appeal is being taken. Initial applications for special permits or variances, where not in the nature



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of an appeal from an administrative order or decision, may be filed at any time. A repetitive application for a special permit or variance which has been unfavorably acted upon by the Board of Appeals within the past two years shall not be reconsidered until after a public hearing held by the Planning Board and a vote of consent of eight of its members to the resubmittal, and unless four of the members of the Board of Appeals vote to admit the resubmittal after a finding, described in the record of its proceedings, that there are specific and material changes in the conditions upon which the previous unfavorable action was based.

### **§ 210-148. Notice of appeals and petitions.**

Notice of any appeals, application or petition to the Board of Appeals shall be filed with the Town Clerk, who shall forthwith transmit copies thereof to the officer or board from whose order or decision the appeal is taken, if any, and to the members of the Board of Appeals. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case from which the appeal was taken. Any such notice of appeal, application or petition shall specify the grounds thereof.

### **§ 210-149. Hearings. [Amended 4-13-1978 ATM, Art. 39; Amended 5-6-2015 ATM, Art. 39]**

Public hearings shall be held pursuant to MGL c.40A, § 11, on all appeals and applications or petitions for variance.

### **§210-150. Voting. [Amended 4-13-1978 ATM, Art. 39; 5-4-2009 ATM, Art. 2009]**

A vote of four of the five members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official or to decide in favor of this applicant on any matter on which it is required to pass under this Chapter or to effect any variance in the application thereof.

### **§210-151. Decisions. [Amended 4-13-1978 ATM, Art. 39; 5-4-1993 ATM, Art. 17, 5-4-2009 ATM, Art. 25; Amended 5-6-2015 ATM, Art. 39]**

- A. The Board of Appeals may, in conformity with the General Laws and the provisions of this Chapter, reverse or affirm, in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made and, to that end, shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issue of a permit.
- B. The decision of the Board of Appeals on all appeals and applications or petitions for variance shall be made within 100 days after the date of filing.
- C. Failure of the Board of Appeals to act within the specified period shall be deemed to be the grant of the relief, application or petition sought.
- D. The Board of Appeals shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and setting forth clearly the reason or reasons for its decision, and of its other official actions, copies of all of which shall be immediately filed in the office of the Town Clerk and shall be public record. Notice of decisions shall be mailed forthwith to parties in interest as designated in MGL c.40A, § 11, to the Planning Board and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent.

### **§210-152. Standards. [Removed 5-6-2015 ATM, Art. 39]**

- A. Variances. [Amended 4-13-1978 ATM, Art. 39; 5-3-1999 ATM, Art. 24]

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- (1) A variance from the terms of this chapter may be granted only where the Board of Appeals specifically finds that:

(a) Owing to circumstances relating to the soil conditions, shape or topography (but not size) of such land or structures, and especially affecting such land or structures (but not affecting generally the zoning district in which it is located), a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner; and

(b) Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this chapter.

- (2) Failure to establish any of the standards shall constitute grounds to deny a petition for a variance. A variance may not be granted if the circumstance creating the hardship was self-created or the hardship is unrelated to the premises for which the variance is sought. The loss of the protection afforded a nonconforming use under § 210-127 of this chapter is not a substantial hardship justifying the grant of a variance. **[Amended 5-4-2009 ATM, Art. 2009]**

- (3) If the Board grants a variance, it may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures. The Board may not impose conditions, safeguards or limitations based upon the continued ownership of the land or structures by the petitioner or any owner.

- B. In all matters on which it has jurisdiction to act, the Board of Appeals shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land and shall permit no building or use injurious, noxious, offensive or detrimental to a neighborhood. To this end, it may prescribe appropriate conditions and safeguards in each case.

### ARTICLE XXIII

#### Amendments

**[Added 4-13-1988 ATM, Article 39; amended 4-14-1980 ATM. Article 47]**

#### **§ 210-153. Procedure. [Amended 4-13-1978 ATM, Article 39]**

- A. No change or amendment to this chapter shall be adopted until after the Planning Board has held a public hearing thereon as required by Chapter 40A of the General Laws, as amended, and has submitted a final report with recommendations to the Town Meeting, or until 21 days shall have elapsed after such hearing without the submission of such a report.
- B. After such notice, hearings and report, or lapse of time without report, the Town Meeting by a 2/3 vote may adopt, reject or amend and adopt any such proposal, provided that not more than six months have elapsed since the public hearing. No proposed Zoning Bylaw which has been unfavorably acted upon by Town Meeting shall be reconsidered within two years of such action unless its adoption is recommended in the final report of the Planning Board.
- C. In all cases involving changing the Zoning Map where notice of public hearing is required, notice shall be sent to the parties of interest by mail, postage prepaid. "Parties of interest" shall mean the petitioner, the owner of the property if he is not the petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to abutters within 300 feet of the property line of the land subject to public hearing as they appear on the most recent applicable tax list. **[Added 4-14-1980 ATM, Art. 47]**

**§ 210-154. Conformance of permits to subsequent amendments. [Added 4-13-1978 ATM, Article 39]**

Construction or operations under a building or special permit shall conform to any subsequent amendment of this chapter unless the use or construction is commenced within six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as possible.

### **ARTICLE XXIV**

#### **Administration and Enforcement**

**[Added 6-19-1972 STM, Article 2; amended 4-13-1978 ATM, Article 39;  
amended 4-14-1980 ATM, Article 42; amended 5-6-1996 ATM, Article 40]**

**§ 210-155. Enforcement official. [Amended 5-6-1996 ATM, Article 40]**

This chapter shall be enforced by the Director of Municipal Inspections.

**§ 210-156. Investigation; notice to desist violation. [Amended 4-13-1978 ATM, Article 39]**

If the Director of Municipal Inspections shall be informed, or have reason to believe that any provision of this chapter or any permit thereunder has been, is being or is likely to be violated, he shall make or cause an investigation to be made of the facts, including an inspection of the property where the violation may exist. When the Director receives a written request to enforce this chapter against any alleged violator, the Director shall reply in writing within 14 days, stating his action, or nonaction, and the reasons therefor. If he finds any violation, he shall give immediate notice in writing to the owner or his duly authorized agent and to the occupant of the premises and shall order that any violation of the provisions of this chapter immediately cease.

**§ 210-157. Sketch plan; responsibility of Director of Municipal Inspections. [Amended 4-14-1980 ATM, Article 42]**

No building permit shall be issued for the erection or alteration of any building, structure or part thereof if the plans, specifications and intended use of the land are not in all respects in conformity with the provisions of this chapter. With each application for a permit, there shall be filed duplicate copies of a plan or sketch drawn to scale showing the lot and location of the buildings, structures and uses of land thereon. It is the responsibility of the Director of Municipal Inspections to ensure that foundations and buildings are constructed in conformance with the submitted plan. If the Director so requests, the applicant shall furnish to the said Director the necessary proof of compliance in the form of an as-built plan of the subject premises certified by a registered land surveyor or registered engineer.

**§ 210-158. Penalty. [Amended 6-19-1972 STM, Art. 2, 4-13-1978 ATM, Article 39]**

Whoever violates any provision of this chapter or any of the conditions under which a permit is issued by the Director of Municipal Inspections or any decision rendered by the Board of Appeals under the provisions of this chapter shall be liable to a fine of not more than \$100 per day for each violation.

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### **ARTICLE XXV Miscellaneous Provisions**

#### **§ 210-159. Repeal.**

As of the effective date of this chapter, the previously existing Zoning Bylaw of the Town of Hopkinton is hereby repealed. Any existing bylaws or such parts thereof as may be inconsistent herewith are also hereby repealed.

#### **§ 210-160. Separability.**

The provisions of this chapter are hereby declared to be separable, and if any such provision or the application of such provision to any person or circumstances shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions or the application of such provisions to persons or circumstances other than those as to which it is held invalid. It is hereby declared to be the legislative intent of this chapter that said remaining sections would have been adopted had such invalid or unconstitutional provisions not been included herein.

#### **§ 210-161. When effective.**

This chapter shall take effect upon satisfaction of the requirements of MGL c. 40A, § 5.

### **ARTICLE XXVI Open Space Mixed Use Development Overlay District [Added 5-5-2008 ATM, Article 29] [Amended ATM 5/6/2014]**

#### **§ 210-162. Development and Design Objectives**

The purposes of the Open Space Mixed Use Development Overlay District (OSMUD District) are to balance conservation and development goals and to protect and enhance the character of the natural and cultural resources of the Town, while promoting planned development and appropriate use of land in accordance with community goals and design guidelines. Toward that end, the OSMUD District is intended to permit the clustering of residential and commercial uses on large tracts of land that have open space as an integral characteristic, and to ensure quality site planning to accommodate a site's physical characteristics, including its topography, vegetation, water bodies, wetlands, open spaces, historic resources and major scenic views.

#### **§ 210-163. District and Sub-District Delineations; Applicability**

- A. The OSMUD District is shown on the Official Zoning Map. The OSMUD District is divided into Residential Subdistricts (R), Commercial Subdistricts (C), and a Village Center Subdistrict (VC), as shown on the Official Zoning Map.

The OSMUD District is an overlay district that is superimposed over the underlying zoning districts. Development of land within the OSMUD District may be undertaken either pursuant to this Article or pursuant to the provisions of this Chapter applicable to the corresponding underlying zoning district except as otherwise provided in § 210-172.

- B. Notwithstanding any provision of this Chapter to the contrary, development undertaken pursuant to this Article shall not be subject to the following provisions [**Amended 5-6-2015 ATM, Art. 30; deleted 5-2-2016 ATM, Art. 34**]:

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- (1) § 210-125 (Conversion of Residential Property); and
  - (2) § 210-126.1 (Residential Subdivisions of 10 acres or more).
- C. Development undertaken pursuant to this Article shall be subject to the following provisions of this Chapter only to the extent provided for, and as modified by, the provisions of this Article:.
- (1) Article XI, Flexible Community Development Bylaw;
  - (2) Article XII, Water Resources Protection Overlay District;
  - (3) Article XVIII, Supplementary Regulations;
  - (4) Article XIX, Nonconforming Uses; and
  - (5) Article XX, Site Plan Review.

### **§ 210-164. Definitions [Amended 5-2-2011 ATM, Art. 48]**

Except as otherwise provided in this section, the definition set forth in § 210-4 shall be applicable to all terms used in this Article. Notwithstanding the forgoing, the following terms, as used in this Article, shall have the meanings indicated:

**AFFORDABLE HOUSING** – Any Dwelling Units qualifying as low or moderate income housing as defined by regulations of the Department of Housing and Community Development.

**APARTMENT BUILDING** – See definition of Garden Apartment.

**ATTACHED DWELLING** – A dwelling consisting of two or more dwelling units, each of which has a building element such as a wall, floor, ceiling or roof in common with or other Structure attached to another dwelling unit. Attached dwellings include Garden Apartments.

**BUILDABLE AREA** – All area of a Development Project that is not Restricted Land.

**COMMERCIAL USES** – All uses other than Dwelling Uses and Restricted Land Uses.

**COMMON OWNERSHIP** – Common ownership shall mean ownership by the same person or persons or legal entities or ownership by any two or more persons or entities, when there is active or pervasive control of those legal persons or entities by the same controlling person and there is an intermingling of activity among those persons while engaging in a common enterprise. Common Ownership can include a Condominium or Landowners' Association.

**COMMUNITY CENTER** – A facility for a social, educational, or recreational purpose, intended primarily for the occupants of the Development Project or the OSMUD District, in which food and beverages may be served and live entertainment may be provided, and which may include performance and assembly space and indoor and outdoor recreational facilities.

**CONSTRUCTION ACTIVITY** – The construction of new structures or site work associated with the construction of new structures. The term does not include site work not associated with the construction of new structures, the construction of roadways, installation of utilities, restoration and improvement of

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Restricted Land, additions and improvements to existing structures, or activities involving uses and structures referred to in M.G.L. c.40A §3, to the extent allowed under said section of the General Laws.

**CONTINUING CARE RETIREMENT COMMUNITY OR ASSISTED LIVING FACILITY** – A facility providing living accommodations and communal facilities for persons over age 62 and that includes at least: a) 24-hour on-site responsible staff; b) a common dining area in which at least one main full meal is served each day; c) optional laundry, housekeeping and personal services available to residents; d) transportation services; and e) common indoor and outdoor passive or active recreational areas. Such a facility may include: a) a medical or nursing home component; and b) retail sales and services for the convenience of residents, accessible only from inside the facility.

**CULTURAL USES** – Art gallery; art use; museum; public art display space; arts studio, arts; production studio; or ticket sales undertaken in connection with a cultural use.

**DESIGN GUIDELINES** – The Design Guidelines for the OSMUD District adopted by the Planning Board as part of the Master Plan Special Permit to govern Site Plan Review within the OSMUD District.

**DEVELOPMENT PROJECT** – A development undertaken pursuant to this Article, as shown on a site plan submitted to the Planning Board for Site Plan Review. A Development Project may consist of one or more lots and may be located in more than one subdistrict, as long as the applicable requirements of this Article are satisfied with respect to each subdistrict.

**DUPLEX** – An Attached Dwelling consisting of two dwelling units located on a lot in Common Ownership.

**DWELLING USE** – Use as Dwelling Units as defined in § 210-4, but specifically not including residential units that may be part of a Continuing Care Retirement Community, Assisted Living Facility or similar institution.

**GARDEN APARTMENT** – A multifamily residential land use consisting of two or more dwelling units each of which is on a single level, at least some of which have a floor or ceiling in common with another unit.

**GREENHOUSE** – A building made of a material transparent or partially transparent to light, in which the temperature and humidity can be regulated, and which is used primarily for the cultivation of plants.

**HEALTH AND FITNESS CLUB** – A private club, whether or not operated for profit, solely for the purpose or providing physical fitness, exercise therapy, rehabilitation or health-related services.

**HEIGHT** – The vertical distance from the mean finished grade of all sides of building or structure to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs, excluding chimneys, spikes, towers, wireless communication facilities, screens, parapet walls, and other structures, equipment, or projections not used for human occupancy. In determining the height of buildings within the area designated “OSMUD District Height Zone” on the Official Zoning Map, the area above the mean finished grade and below the floor of the first occupiable story, not to exceed 10 feet, shall be excluded from measurement of height and of stories.

**LANDOWNERS’ ASSOCIATION** – A corporation, trust or other legal entity owned or controlled by the owners of all lots within the OSMUD District, or by owners of all lots within a specified area within the OSMUD District, as the context permits or requires.



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**MASTER PLAN** – The Master Plan for the OSMUD District as submitted to the Planning Board for approval in a Master Plan Special Permit to be issued pursuant to § 210-172.

**MULTIFAMILY DWELLING OR PROJECT** – A collective term referring to any dwelling units other than a Single Family Dwelling located on an individual lot, including an Attached Dwelling, Simplex Dwelling, Duplex Dwelling, Townhouse, Garden Apartment or Apartment Building.

**NEIGHBORHOOD RESTAURANT** – A restaurant or eating establishment intended for the use and convenience of the residents of the immediate neighborhood, not to exceed 1,500 square feet of indoor seating, which may also include outdoor seating.

**RESTRICTED LAND** – Land devoted to uses permitted by § 210-170A, which may include (1) open space land left substantially in its natural state; (2) open space land that is restored or landscaped, including irrigation, detention and/or retention ponds or stormwater catchment areas and subsurface utilities; (3) open space land used for agricultural purposes; (4) open space land improved for active and passive recreational uses, including pedestrian, bicycle and equestrian trails; (5) land improved for other municipal uses; (6) food preparation and sales areas, restrooms, parking and access areas, and similar uses, structures or portions thereof, operated in association with other Restricted Land uses; and (7) A total of no more than 30 acres of land, which may be restricted for the benefit of landowners within a particular area of the OSMUD District. Restricted Land shall not include land set aside for road and/or parking uses that are not accessory to other Restricted Land Uses.

**RESTRICTED LAND COVENANT** – A legally enforceable restriction or covenant, recorded in the Registry of Deeds and enforceable by the Town, providing that the land subject thereto will remain as Restricted Land in perpetuity.

**RETAIL NEIGHBORHOOD STORE** – A store, other than a restaurant or eating establishment, not to exceed 2,000 square feet, located in a neighborhood in which merchandise is sold or services provided for the convenience of the occupants of the immediate neighborhood, such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream.

**SENIOR HOUSING DEVELOPMENT** - A multifamily residential land use consisting of multiple dwelling units on one single contiguous parcel, operated with the intent that at least one resident of every unit be 55 years of age or older. **[Added 5-6-2015 ATM, Art. 30]**

**SIMPLEX DWELLING** – A detached dwelling separated from another dwelling unit by not more than 25 feet and located on a lot in Common Ownership.

**SINGLE FAMILY DWELLING** – A detached dwelling unit on an individual lot or a detached dwelling unit separated from another dwelling unit by more than 25 feet, but not including a mobile home or trailer.

**STRUCTURE** – A man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, carports, porte-cocheres, covered walkways and the like; provided, however, that signs, fences, tents, poles, swing sets and the like are not to be considered structures.

**TOWNHOUSE** – One of a row of three or more dwelling units, each of which has a wall in common with another dwelling unit, with each dwelling unit having a separate entrance and located on a lot in common ownership.



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### § 210-165. Uses [Amended 5-7-2012 ATM, Art. 46; 5-6-2015 ATM, Art. 30; 5-2-2016 ATM, Art.32;]

No land, structure or building shall be used for any purpose in the OSMUD District, other than as set forth in this section, except as otherwise set forth in this Chapter or otherwise permitted by law.

- A use is permitted by right in any subdistrict that is denoted by the letter “Y”.
- A use is prohibited in any subdistrict that is denoted by the letter “N”.
- A use denoted by the letters “SP” may be permitted by Special Permit from the Planning Board.

Use	Residential Subdistrict	Commercial Subdistrict	Village Center Subdistrict
Single-family dwellings	Y	SP	SP
Multifamily Dwellings other than Senior Housing Developments	Y	Y	Y
Attached dwellings including garden apartments	Y	Y	Y
Senior Housing Development	Y	Y	Y
Home occupations	Y	Y	Y
Licensed home day care providers	Y	Y	Y
Renting of rooms and/or the furnishing of table board in a dwelling occupied as a private residence	Y	Y	Y
Bed-and-breakfast establishments and inns with a maximum of 12 guest rooms	SP	Y	Y
Business or professional offices and banks	N	Y	Y
Community Centers	Y	Y	Y
Conference centers, with or without a residential dormitory component	N	SP	SP
Drive-in, drive-through or drive-up uses, but excluding the dispensing of food or drink	N	Y	Y
Health clubs	SP	Y	Y
Hotels, motels, and inns with greater than 12 guest rooms	N	SP	SP
Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices for uses permitted in the Professional Office (P) District under Article IX	N	Y	Y
Recreational Uses of buildings, structures or land, not limited to occupants of the Development Project or OSMUD District, but excluding recreational uses which are part of the Restricted Land	SP	Y	SP
Research centers and laboratories not involving noxious or hazardous substances and processes	N	Y	Y
Research centers and laboratories with a biosafety Level of Level 1 or Level 2	N	SP	N
Restaurants	N	Y	Y
Neighborhood Restaurants	SP	Y	Y
Retail businesses including retail services involving manufacturing, if clearly incidental and accessory to a retail use on the same premises	N	Y	Y
Retail Neighborhood Stores	SP	Y	Y

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Use	Residential Subdistrict	Commercial Subdistrict	Village Center Subdistrict
Retail stores and retail service shops, including take-out food establishments exclusive of drive-in, drive-up or drive-through take-out food	N	Y	Y
Cultural Uses	SP	Y	Y
Cinemas, concert halls, theaters, auditoriums	N	SP	SP
Adult day care	SP	Y	Y
Continuing care retirement communities, assisted living facilities, or similar institutions	SP	Y	SP
Group homes	Y	Y	Y
Nursing homes, extended care facilities, or physical rehabilitation facilities	N	Y	SP
Health services facility	N	SP	SP
Out-patient surgery	N	SP	SP
Medical offices	N	Y	Y
Veterinary clinics	N	SP	SP
Municipal Cemeteries	SP	N	N
Places of worship and other religious uses	Y	Y	Y
Funeral homes and mortuaries	SP	Y	SP
Public or semipublic institutions of a philanthropic or charitable character	SP	Y	Y
Child care centers	Y	Y	Y
Municipal uses	Y	Y	Y
Public and private educational uses (including schools for scholastic and non-scholastic subjects) and public libraries	Y	Y	Y
Telecommunication and telephone facilities (if located within a building with another allowed primary use, not to exceed 20% of such building)	Y	Y	Y
Public transportation facilities, limited to 1) shuttle bus stop facilities and 2) park and ride parking facilities intended for occupants of the OSMUD District	Y	Y	Y
Facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services within the OSMUD District	Y	Y	Y
Alternate power generation and co-generation facilities serving other uses within the OSMUD District	SP	SP	SP
Agricultural and horticultural uses, including farms of all kinds, nurseries, gardens, greenhouses and livestock, except fur farms	Y	Y	Y
Equestrian facilities, public or private	SP	SP	N
Farm stands	Y	Y	Y
Landscaping business and storage/staging facilities	SP	Y	Y
Mixed use buildings consisting of commercial space or retail space on the first floor and a different category of use on one or more upper floors	N	Y	Y

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Use	Residential Subdistrict	Commercial Subdistrict	Village Center Subdistrict
Uses customarily associated with any permitted use on a lot within a Development Project, which may be on a different lot within the same Development Project	Y	Y	Y
Accessory uses	Y	Y	Y
Restricted Land uses	Y	Y	Y

### § 210-166. Intensity of Use Limitations [Amended 5-6-2015 ATM, Art. 30]

- A. Dwelling Uses within the OSMUD District shall be limited to 940 new Dwelling Units constructed after May 5, 2008, plus 180 Dwelling Units in Senior Housing Developments constructed after May 4, 2015, provided, however, that the owner or owners of any such additional Dwelling Unit in Senior Housing Developments shall require, through deed restrictions, condominium documents, leases, rental agreements or other appropriate instruments, the form and adequacy of which has been approved by the Planning Board, that no child under the age of 18 may be a resident in any such Dwelling Unit. No more than 50 of the 1120 new Dwelling Units so constructed may be single-family dwellings, and the remainder shall be multi-family dwellings, including attached dwellings, garden apartments, units in mixed-use buildings and Senior Housing Developments.

Neither the dwellings located at 80, 82, 83 nor 90 East Main Street or 26 Clinton Street, nor the Group Home located at 44 Wilson Street, all of which were in existence as of the effective date of this Article, shall be deemed to be a Dwelling Unit for the purposes of this Intensity of Use limitation. However, in the event that any such dwelling is converted to or reconstructed as a multi-family dwelling use, the resulting number of Dwelling Units in excess of one (1) on any such property shall be counted towards the Intensity of Use limitation.

No Accessory Family Dwelling Unit for which the Board of Appeals grants a Special Permit pursuant to § 210-126 shall be deemed to be a separate Dwelling Unit for purposes of this Intensity of Use limitation.

- B. Commercial Uses within the OSMUD District shall be limited to 450,000 square feet of Gross Floor Space in the aggregate, which shall be allocated among the Subdistricts as authorized by a Master Plan Special Permit issued pursuant to § 210-172.
- C. Commercial uses within the VC Subdistrict shall not exceed 150,000 square feet of Gross Floor Area in the aggregate. No single building within the VC Subdistrict shall exceed 25,000 square feet of Gross Floor Area except for a single building which may contain up to 38,000 square feet of Gross Floor Area; provided, however, that, notwithstanding the foregoing, the Planning Board may, by Special Permit, approve a single building in the VC Subdistrict which may contain up to 45,000 square feet of Gross Floor Area. The following shall be excluded from the calculation of Gross Floor Area for purposes of this Intensity of Use limitation: (i) The building at 83 East Main Street, in existence as of the effective date of this Article, in the event such building is converted to Commercial Use, and the building at 97 East Main Street (the Pearson House); (ii) structures accessory to or commonly associated with a Dwelling Use, such as a clubhouse, recreational amenity or management or marketing space; (iii) uses, structures or portions thereof, operated in association with Restricted Land uses; (iv) structures accessory to agricultural and horticultural use, including greenhouses, except that 40% of the area of a greenhouse that is associated with a retail use in the same or an adjacent building shall be included in the calculation of Gross Floor Area; (v) structures or portions thereof located at 0 East Main

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Street, the athletic fields parcel/recreational parcel. [Amended 5-5-2014, Article 32; Amended 5-1-2017 ATM, Article 37]

### § 210-167. Affordable Housing

Affordable Housing shall be provided within the OSMUD District in accordance with the following requirements:

- A. Except as otherwise provided in the following paragraph of this Section, not fewer than sixty (60) Dwelling Units within the OSMUD District shall be Affordable Housing, which shall be located within one or more Development Projects containing, in the aggregate, not fewer than two hundred forty (240) Dwelling Units eligible for inclusion in the Massachusetts Department of Housing and Community Development's Subsidized Housing Inventory. These requirements shall be in addition to the Affordable Housing requirements provided in Subsection C of this Section.

Notwithstanding the foregoing, if, prior to the issuance of a building permit for a Development Project that contains Affordable Housing, either (i) M.G.L. c. 40B, §§ 20 through 23 is no longer in effect, or (ii) the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development issued pursuant to M.G.L. c. 40B, §§ 20 through 23 no longer provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then not fewer than ninety-four (94) Dwelling Units within the OSMUD District shall be developed as Affordable Housing, in addition to the Affordable Housing requirements provided in Subsection C of this Section. [Amended 5-6-2015 ATM, Art. 30]

- B. All Affordable Housing shall be integrated with the rest of the Development Project in which it is located, and shall be comparable in design, exterior appearance, construction, and quality of exterior materials with other units in such Development Project. The mean number of bedrooms in Affordable Housing Dwelling Units shall be no greater than the mean number of bedrooms in the market-rate Dwelling Units in the Development Project in which they are located.
- C. In addition to the Affordable Housing requirements provided in Subsection A of this Section, to the extent that the Senior Housing Developments create a total number of Dwelling Units within the OSMUD District in excess of 940, those Senior Housing Developments shall require the provision of, in the aggregate, one Dwelling Unit of Affordable Housing for every 10 Dwelling Units in Senior Housing Developments, but not to exceed twenty (18) Dwelling Units of Affordable Housing in the aggregate. The additional Dwelling Units of Affordable Housing required under this section may be provided anywhere within the OSMUD District. [Added 5-6-2015 ATM, Art. 30]

### § 210-168. Dimensional Requirements [Amended 5-6-2015 ATM, Art. 30]

- A. The following size and setback requirements shall apply to each lot within the applicable Subdistrict, and between Subdistricts:

	Residential Subdistrict (R) and Commercial Subdistrict (C) [Dwelling Uses]	Commercial Subdistrict (C) [Commercial Uses]	Village Center Subdistrict (VC)
Minimum lot frontage	25 feet	100 feet	100 feet
Minimum lot area*	4,000 square feet	30,000 square feet	30,000 square feet
Minimum setback from street line	10 feet	25 feet	25 feet
Minimum side yard width	0	0	0

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Minimum rear yard depth	10 feet	10 feet	10 feet
Maximum building height	35 feet or 3 stories, whichever is less; provided, however, that buildings within the area designated OSMUD District Height Zone on the Official Zoning Map, may be 40 feet or 3 stories, whichever is less	35 feet or 3 stories, whichever is less; provided, however, that buildings within the area designated OSMUD District Height Zone on the Official Zoning Map, may be 40 feet or 3 stories, whichever is less	35 feet or 3 stories, whichever is less

\* Notwithstanding the definition of Lot Area in §210-4, the surface area of man-made ponds, retention ponds and irrigation ponds shall be included in the area needed to satisfy Minimum Lot Area requirements within the OSMUD District.

When a Commercial Subdistrict abuts a Residential Subdistrict within the OSMUD District, a setback of at least 50 feet between buildings in the Commercial Subdistrict used for commercial purposes and the boundary of the Residential Subdistrict shall be provided

B. The following setback requirements shall apply to any lot within the OSMUD District that abuts land outside the OSMUD District:

	Residential Subdistrict (R) and Commercial Subdistrict (C) [Dwelling Uses]	Commercial Subdistrict (C) [Commercial Uses]	
Minimum setback from street line	50 feet	50 feet	50 feet
Minimum side yard width	25 feet	25 feet	25 feet
Minimum rear yard	20 feet	25 feet	25 feet

C. All buildings in the Commercial Subdistrict used for commercial purposes shall be located a minimum of 100 feet from any lot outside the OSMUD District used for residential purposes at the time of the Site Plan Review application. Such setback area shall be left undeveloped but landscaped; provided, however, that such setback area may contain access ways. This Subsection shall not be deemed to require a minimum setback from lots that are located across any street or right of way from the OSMUD District boundary.

D. All buildings in the Village Center Subdistrict shall be located a minimum of 100 feet from any lot outside the OSMUD District used for residential purposes at the time of Site Plan Review application. Such setback area shall be left undeveloped but landscaped; provided, however, that such setback area may contain access ways and parking areas, if screening of such parking areas is provided in a manner approved by the Planning Board. The Master Plan Special Permit may authorize the Planning Board to approve, pursuant to § 210-173, a setback of a lesser width than is set forth in this Subsection upon a finding that such a lesser setback is sufficient to screen and/or separate the building from the lot outside of the OSMUD District. This Subsection shall not be deemed to require a minimum setback from lots that are located across any street or right of way from the OSMUD District boundary.

### § 210-169. Parking [Amended 5-1-2017 ATM, Article 37]

A. The requirements of § 210-124(B) (1) relating to the minimum number of parking spaces shall

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apply in the OSMUD District, with the following additions and exceptions:

Uses	Requirement
Single family dwelling	2 spaces per dwelling unit
Dwelling units other than single family dwelling and those within mixed use buildings	Dwellings with up to 1 bedroom: 1.5 spaces Dwellings with more than 1 bedroom: 2.0 spaces
Residential Component of a Mixed Use Building	1 space per dwelling unit
Hotel, motel, and inns	1 space for each unit available for occupancy
Adult day care	1 space for each full time employee on the largest shift
Continuing care retirement community or assisted living facility, or similar institutions	3 spaces for each 4 units available for occupancy
Funeral homes and mortuaries	5 spaces per 1,000 square feet of gross floor area, not including corridors and other service areas

- B. Structures accessory to agricultural and horticultural use, including greenhouses, shall not be included in the calculation of Gross Floor Area for purposes of the minimum parking requirements, except that 40% of the area of a greenhouse that is associated with a retail use in the same or an adjacent building shall be included in such calculation of Gross Floor Area.
- C. Where parking uses have peak user demands at different times or where different uses are accommodated by a shared parking space, as certified by a registered traffic engineer, the Planning Board, by Special Permit may approve shared parking facilities, designed and intended to serve more than a single use shown on a Site Plan, in satisfaction of the applicable minimum parking requirements of § 210- 124(B) (1), as modified by this Section.
- D. The Planning Board may, by Special Permit, approve an amount of parking less than applicable minimum parking requirements of § 210- 124(B) (1), as modified by this Section, if it finds that the lesser amount of parking will not cause excessive congestion or endanger public safety, and that the lesser amount of parking will provide positive environmental or other benefits.
- E. The Planning Board may, by Special Permit, approve a combination of on-lot and on-street parking, as is appropriate to a pedestrian-oriented environment, in satisfaction of the applicable minimum parking requirements of § 210- 124(B)(1), as modified by this Section.
- F. No Special Permit shall be granted pursuant to Subsection C, D, or E above, unless the Planning Board determines that the provision of parking spaces proposed will be in harmony with the general purpose and intent of this Chapter and adequate for all parking needs, and that all parking spaces associated with a use are within practical walking distance thereof. The Planning Board may grant such approvals with conditions, which may include, but need not be limited to, the following:
- (1) A requirement that shared and off-site parking arrangements between property owners be formalized in an instrument that runs with the land and is recorded at the Registry of Deeds;
  - (2) A requirement that adequate space shall be set aside within the Development Project to construct additional parking spaces in the future should the mix of uses and peak demand times change and require additional parking.



### § 210-170. Restricted Land

- A. Restricted Land may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, underground utilities, municipal purposes and other similar purposes necessary for the convenience and enjoyment of the OSMUD District or the Town, as well as other purposes customarily associated with a use authorized by this Subsection.
- B. The Planning Board shall not issue a Master Plan Special Permit pursuant to §210-172 unless the Master Plan includes not less than 500 acres of Restricted Land consistent with the development and design objectives set forth in §210-162 and planned as large contiguous parcels wherever possible.
- C. Prior to the commencement of a Construction Activity, the North Parcel, consisting of not less than 68 acres, and the South Parcel, consisting of not less than 35 acres, both as shown on the Official Zoning Map, shall be made subject to a Restricted Land Covenant designating such land as open space Restricted Land to be left in substantially its natural state, restored or landscaped, in perpetuity. Thereafter, land designated as Restricted Land shall be subject to a Restricted Land Covenant in accordance with the provisions of Subsection E below.
- D. Except with respect to the North Parcel and the South Parcel, which may not be released from their Restricted Land Covenants, the Restricted Land Covenants applicable to any Restricted Land may provide that such Restricted Land may be released from a Restricted Land Covenant by an instrument executed by the owner, the Planning Board and the Board of Selectmen, and recorded, provided that not less than an equivalent area of land is made subject to a Restricted Land Covenant and substituted therefor, subject to the approval of the Planning Board. The forms of Restricted Land Covenants appropriate for particular Restricted Land uses shall be approved by Town Counsel and included in the Master Plan Special Permit.
- E. Applications for Site Plan Review of Development Projects shall designate 1.80 acres of area to remain as Restricted Land for every 1 acre of Buildable Area within the Development Project. The Restricted Land so designated may be located within the Development Project for which Site Plan Review is being sought or may be located elsewhere within the OSMUD District, and may consist of an entire lot or of a portion of a lot. The North Parcel and the South Parcel may be designated to meet the Restricted Land requirement for Development Projects within the OSMUD District.

In the event that less than 500 acres have been made subject to a Restricted Land Covenant at the expiration of fifteen (15) years from the filing of a Notice pursuant to the provisions of §210-172, the owner or owners of such additional land as is required to achieve the 500-acre total shall subject such land to Restricted Land Covenants. In the event that such owner or owners have not made such additional land as is required to achieve the 500-acre total subject to Restricted Land Covenants within 60 days of the expiration of such period, the Planning Board may designate one or more parcels as are required to achieve such 500-acre total, and such parcels shall forthwith be made subject to a Restricted Land Covenant by the owner or owners thereof. The Planning Board shall have the authority to extend such deadline to a later date upon a finding that the holder or holders of the Master Plan Special Permit are continuing to pursue development of the OSMUD District and have not yet achieved substantial completion notwithstanding good faith efforts. The foregoing obligation shall be binding and enforceable pursuant to the provisions of Article XXIV only upon the owner of the parcels required to be restricted at the expiration of such period, as it may be extended, and shall not affect the compliance with this Chapter of any lot in a Development Project which has received Site Plan Approval prior to the expiration of such period, as it may be extended.



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- F. Restricted Land may be (i) owned by a Landowners' Association, (ii) owned by a non-profit entity, a principal purpose of which is land conservation or the provision of recreational facilities, (iii) conveyed to the Town, or (iv) owned by, made subject to easement rights benefiting, or leased to third parties. In all such cases the uses permitted by such deeds, easements or leases of required Restricted Land shall be consistent with the provisions of this §210-170, the Master Plan Special Permit and the applicable Restricted Land Covenant. A Landowners' Association or other party responsible for Restricted Land may adopt reasonable rules and regulations to govern the use of the Restricted Land under its control and to prevent encroachment thereon.
- G. Restricted Land Covenants shall specify the permitted uses of specific parcels of Restricted Land; the responsible party to be charged with maintenance and stewardship of the Restricted Land in perpetuity; and a required program for such maintenance and stewardship. Applications for Site Plan Review of Development Projects shall include an agreement authorizing the Town to perform maintenance or stewardship of areas designated as Restricted Land in connection with the approval of such Development Project in the event of any failure to comply with the required program for maintenance and stewardship of the Restricted Land, after thirty (30) days notice to the Landowners' Association or other responsible party and failure of the Landowners' Association or such party to cure such failure; provided, however, that, if the Town elects to perform any maintenance or stewardship work, the responsible party therefor shall pay the cost thereof, which cost shall constitute a lien, subordinate to any mortgage or other statutory lien, upon the properties in connection with which the Restricted Land was originally designated, until the cost has been paid.
- H. Nothing in this Section shall be interpreted to preclude the owner of Restricted Land from imposing additional restrictions on the Restricted Land or a Conservation Restriction or Agricultural Preservation Restriction under M.G.L. c. 184 §31-33 which are not inconsistent with the applicable Restricted Land Covenant.

### **§ 210-171. Administration**

- A. The Planning Board shall be the Special Permit Granting Authority for any Special Permit authorized by this Article. The Planning Board may adopt and file with the Town Clerk Regulations governing Submission Requirements and Procedures for any such Special Permit.
- B. In all matters in which it has jurisdiction to issue a use Special Permit pursuant to § 210-165, the Planning Board may issue such Special Permits only upon a finding that the proposed use is in harmony with the general purpose and intent of this Chapter. Any such Special Permit shall be subject to such conditions and safeguards as the Planning Board may prescribe. In reviewing any application for such Special Permit, the Planning Board shall give due consideration to promoting the public health, safety, convenience and welfare; shall encourage the most appropriate use of land and shall permit no building or use that is injurious, noxious, offensive or detrimental to its neighborhood.
- C. After the initial issuance of a Master Plan Special Permit, uses that require a Special Permit pursuant to § 210-165 may be authorized either by an amendment of the Master Plan Special Permit pursuant to an application filed by or on behalf of the owners of all land covered by the Master Plan Special Permit or by a separate use Special Permit pursuant to an application filed by or on behalf of the owners of the land upon which such use is proposed to be located; provided, however, that all use Special Permits shall be consistent with and subject to all provisions of the Master Plan Special Permit applicable to the OSMUD District as a whole.

### § 210-172. Master Plan Special Permit

- A. Except as otherwise provided in this Section, no Construction Activity for any development project to be located on land within the OSMUD District may commence unless authorized by a Master Plan Special Permit issued pursuant to the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- B. Prior to the commencement of any Construction Activity for any Development Project approved under an OSMUD District Master Plan Special Permit, the applicant may continue to exercise its rights under the underlying zoning and may elect not to exercise the rights granted in the OSMUD District Master Plan Special Permit. If the applicant elects to exercise the rights granted in the OSMUD District Master Plan Special Permit and pursue development as shown on the approved Master Plan, a Notice to such effect shall be filed with the Town Clerk, Planning Board and Department of Municipal Inspections prior to the issuance of any building permit pursuant to such Master Plan Special Permit. From and after the filing of such Notice, all Construction Activity within the OSMUD District shall be in accordance with the approved Master Plan Special Permit. Activities that do not constitute Construction Activity may be undertaken prior to the filing of the Notice under this Section.
- C. Application for Master Plan Special Permit
  - (1) A record owner desiring an OSMUD District Master Plan Special Permit shall file with the Planning Board an application therefor in accordance with any applicable regulations adopted pursuant to §210-171.
  - (2) At a minimum, the application for the Master Plan Special Permit shall contain the following information relating to development of the OSMUD District:
    - (a) Identification of the entire area of land to be developed;
    - (b) The existing topography of the land, vegetative cover, soil types, wetlands and water bodies, roads and ways, the general location, size and shape of structures to be removed and the location, size and shape of structures to remain;
    - (c) The general proposed location within which structures will be constructed, including a schedule of various land use types including Dwelling Uses, Commercial Uses, mixed use buildings, and/or buildings accessory to Restricted Land uses;
    - (d) The general proposed location, size and intended use of all Restricted Land, including pedestrian, bicycle and equestrian trails, and the Landowners' Association or other entity intended to own, operate and/or maintain such Restricted Land;
    - (e) The general proposed location of all existing and proposed roads, water supply systems, wastewater systems, storm water drainage, utilities, and connections to existing infrastructure, and the Landowners' Association or other entity intended to own, operate and/or maintain such facilities;
    - (f) An analysis of the impact of implementing the Master Plan on surface and ground water quality, groundwater recharge, wildlife habitat and corridors, wetlands and bodies of water, including streams and rivers, both localized and general, and an evaluation of pre-development conditions and post-development conditions;
    - (g) A traffic impact and access study on the impact of implementing the Master Plan—on the operation, safety and overall convenience of the roadway system providing access to the

OSMUD District, including impacts on both vehicular and pedestrian travel, and proposed mitigation and trip reduction techniques, if applicable;

- (h) An analysis of the projected economic impact of implementing the Master Plan on the Town, prepared by a qualified independent economic research consultant;
  - (i) A phasing projection indicating the general proposed times within which construction of improvements within the OSMUD District in accordance with the Master Plan is anticipated, which schedule may be subject to variation depending on market forces;
  - (j) Proposed Design Guidelines for the OSMUD District; and
  - (k) Proposed forms of the Restricted Land Covenants.
- (3) Within seven (7) days of receipt of the application, the Planning Board shall transmit copies of the application material to the Board of Selectmen, Director of Public Works Conservation Commission, Fire Department, Police Department, Board of Health, Design Review Board, and Director of Municipal Inspections for review and comment. The Planning Board shall not approve any such application until the final reports of such departments have been submitted to it or until 35 days have elapsed after the transmittal of the application without such report being submitted.
- (4) The Planning Board shall hold a public hearing and file its decision with the Town Clerk in conformance with the requirements of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**

#### D. Master Plan Special Permit Approval Criteria

No Master Plan Special Permit shall be granted unless the Planning Board finds that:

- (1) The Master Plan complies with the provisions of this Article and of the Design Guidelines.
- (2) The Master Plan shall serve the purposes of the OSMUD District as described in § 210-162. **[Amended 5-6-2015 ATM, Art. 39]**
- (3) The impact of the development activities shown on the Master Plan is anticipated to be of benefit to the Town.
- (4) The major intersections and roadways providing access to the OSMUD District will continue to operate at an acceptable level of service (LOS) based on the anticipated impact of vehicular traffic from any previously approved uses within the OSMUD District that will remain plus all new proposed development within the OSMUD District.
- (5) The Master Plan provides adequately for the convenience and safety of vehicular and pedestrian movement within the OSMUD District and in relation to streets, property or improvements outside of the OSMUD District.
- (6) The Master Plan provides for the adequacy of the methods of disposal of sewage, refuse, and other wastes, provision of utilities, and the methods of drainage for surface water and seasonal flooding, if any, and protection of water sources for the Town.

### E. Master Plan Special Permit Amendment

- (1) Amendment of the Master Plan Special Permit shall require approval of the Planning Board. An application to amend the Master Plan Special Permit may be submitted separately or together with an application to the Planning Board for Site Plan Review. If the Board determines that such amendment is significant, it shall hold a public hearing in conformance with M.G.L. c. 40A §9. If the Board determines, at a noticed public meeting of the Board but without a public hearing in conformance with MGL c. 40A §9, that such amendment is minor, it may amend the Master Plan Special Permit without a public hearing, and a copy of the amendment shall be filed with the Town Clerk.
- (2) Applications for amendment to the Master Plan Special Permit may be filed by the owners of the affected land, and shall not be required to be filed by the owners of all land within the OSMUD District.

### F. Duration of Approval

The issuance of a building permit within two (2) years of the date of the filing of the decision with the Town Clerk (or the date of the final resolution of any appeal of such decision) and the commencement of a Construction Activity within six (6) months of issuance of a building permit for such Construction Activity shall be deemed to constitute substantial use of rights under the OSMUD District Master Plan Special Permit.

### § 210-173. Site Plan Review

- A. Construction of all Development Projects within the OSMUD District shall be subject to Site Plan Review by the Planning Board in accordance with the provisions of Article XX, with the following additions and exceptions:
  - (1) Construction of Development Projects for Residential Uses shall be subject to Site Plan Review, notwithstanding any provision of §210-133 or § 210-134 to the contrary. However Site Plan Review shall not apply to the alteration, reconstruction or enlargement of residential buildings. For the purposes of this Section, a mixed-use building shall be considered a commercial building, and shall not be considered a residential building.
  - (2) Construction of all Development Projects for Commercial Uses shall be considered a Major Project with respect to the procedures contained in Article XX.
  - (3) The Decision Criteria in this Article shall supersede the Site Plan Standards listed in §210-136.1 and referred to in §210-136.2.A. (**Amended ATM 5-6-2014 Article 32**)
- B. As part of the Site Plan Review process, the applicant and/or licensed professionals engaged by the applicant also shall file with the Planning Board a certification indicating the manner in which the Development Project complies with the provisions of this Article, the Master Plan Special Permit and the Design Guidelines.
- C. Permissible Building Areas: A Site Plan may show proposed construction within a Permissible Building Area, where the mix of uses and related construction details are subject to change, and shall specify the maximum square feet of Gross Floor Area to be constructed within such Permissible Building Area. Although the Site Plan may show a proposed building in a specific location, the Site Plan approval shall authorize the construction of the Development Project if the structures therein and other site features thereof are located within the Permissible Building Area indicated. After the issuance of a Certificate of Occupancy for a building, the amount by which such building is less than the

maximum square footage of Gross Floor Area allocated thereto or the amount by which the number of Dwelling Units constructed is less than the Dwelling Units proposed shall be available for reallocation to other proposed buildings or Dwelling Units within the OSMUD District, subject to further site plan review of the buildings to which such intensity of uses is reallocated, if required. **[Amended 5-1-2017 ATM, Article 37]**

D. Decision Criteria.

The Planning Board shall approve an application for Site Plan review if it finds that:

- (1) The Site Plan complies with the Master Plan Special Permit;
- (2) The Site Plan meets all of the requirements and standards set forth in this Article, the Master Plan Special Permit, and applicable Design Guidelines;
- (3) The convenience and safety of vehicular and pedestrian movement within the Development Project and in relation to adjacent areas and public ways is ensured;
- (4) Substantial adverse potential impacts of the Development Project have been adequately mitigated.
- (5) Adequate mitigation has been provided with respect to any conditions impacting on-site safety, whether such conditions are created on-site or off-site. **[Added 5-6-2015 ATM, Art. 30]**

E. Minor Modifications: After the filing of a Decision of Site Plan Review, the Planning Board shall have the authority to approve minor modifications to the Site Plan. Minor modifications shall include changes that involve minor Permissible Building Area adjustments, utility or building orientation adjustments; minor adjustments to parking, landscaping, Restricted Land or other building or site details; or other changes that do not significantly increase the square footage of Gross Floor Area of Commercial Uses within a Development Project or the number of Dwelling Units in a Development Project. Minor modifications may be approved by the Planning Board at any regularly scheduled public meetings, without the need to hold a public hearing. **[Amended 5-1-2017 ATM, Article 37]**

F. Duration of Approval: Site Plan approvals under this Article shall remain in effect as to a Development Project as long as a building permit for not less than one (1) building in the Development Project is issued within two (2) years of issuance of the Site Plan approval (or the date of final resolution of any appeal of such issuance).

### **§ 210-174. Design Guidelines**

A. To ensure that Development Projects shall be of quality design, the Site Plans for Development Projects within the OSMUD District shall be based on Design Guidelines adopted for the OSMUD District under the Master Plan Special Permit, which shall supersede any inconsistent provisions of design guidelines adopted under Article XXI.

B. The Design Guidelines shall implement the following principles:

- (1) The design shall consider the natural resources of the land, including topographic, geologic and natural features, and the historical character of the Town, where applicable.
- (2) Restricted Land and landscaped areas shall complement, enhance or screen the building and parking areas. Natural features shall be incorporated within Restricted Land areas where possible.

- (3) A network of trails shall provide access to various points of interest, including recreation areas, unique vistas, and historic sites both within and outside of the OSMUD District and shall link Restricted Land areas.
  - (4) The design of the OSMUD District shall incorporate stormwater practices consistent with low impact development techniques in addition to Best Stormwater Management Practices.
  - (5) Buildings within the OSMUD District shall utilize energy efficient design and execution and low impact development techniques and principles, to the extent feasible.
  - (6) The design shall be respectful of existing neighborhood settings.
- C. The Master Plan Special Permit may provide that the provisions of the Design Guidelines may be waived by the Planning Board as part of the Site Plan Review process based on a finding that such modifications are necessary or appropriate to meeting the development and design objectives of this Article.

### **§ 210-175. Modifications of zoning provision, applicability**

- A. Modifications to Article XII, Water Resources Protection Overlay District. In the OSMUD District, the following modifications to the provisions generally applicable to the Water Resources Protection Overlay District shall apply:
- (1) For purposes of § 210-70(C) (2), the term “Development Project” shall be substituted for the term “lot.”
  - (2) In § 210-70(D) (5), the words “except for excavations related to site work” shall be inserted at the end of the clause.
- B. Modifications to Article XVIII, Supplementary Provisions. In an OSMUD District, the following modifications to the Supplementary Provisions shall apply:
- (1) The provisions of the Design Guidelines shall supersede the provisions of § 210-119.1 pertaining to the width of driveways.
  - (2) The provisions of the Design Guidelines shall supersede the provisions of § 210-124 pertaining to the design of parking facilities.
- C. All land within the OSMUD District shall be subject to the provisions of this Chapter as in effect on the effective date of the amendments added to this Chapter by the 2015 Annual Town Meeting. **[Amended 5-6-2015 ATM, Art. 30]**



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### ARTICLE XXVII

#### Signs

(Added ATM 5-4-2009, Article 18; deleted and replaced ATM 5-2-2016, Article 36)

#### § 210-176. Purpose.

The requirements of this Article are intended to: 1) facilitate efficient communication; 2) avoid conflict between signs and the visual qualities of the environs; 3) support economic vitality and opportunity; and 4) encourage compatibility and harmony with surrounding buildings, land and land uses.

#### § 210-177. Definitions.

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

**BANNER** – A temporary sign that is applied to cloth, paper, flexible plastic or fabric of any kind, and that is hung from the ends and/or the top thereof.

**BUSINESS ESTABLISHMENT** – A lawfully existing non-residential use.

**GOVERNMENT SIGN** – A sign that is constructed, placed or maintained by the federal, state or local government or that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.

**HEIGHT** – The vertical distance measured from the finished grade at the sign to the highest point of the sign or its supporting structure, whichever is higher.

**SANDWICH BOARD SIGN** – A portable A-frame sign constructed of durable materials with two flat faces and designed to be displayed on the ground.

**SIGN** – Any letter, word, symbol, drawing, picture, design, device, article or object of whatever material and manner of composition or construction that is displayed in an exterior location. The term "sign" shall not include: historical date plaques and markers, athletic scoreboards, pavement markings, memorials and monuments, decorations, traffic control devices, trailhead markers, kiosks, or flags and insignias of governmental jurisdictions.

**SIGN AREA** – The area that includes all lettering, wording and accompanying symbols or designs as well as the background on which they are displayed, whether open or enclosed, any frame around such background and any cutouts or extensions. The area of a sign consisting of individual letters or symbols attached to or painted on a surface, wall or building shall be considered to be that of the smallest rectangle comprised of horizontals and verticals that encompasses all of the letters and symbols. Only one side of a two-sided identical sign shall be counted in computing the area of a sign.

**TEMPORARY SIGN** – A sign that, by its design or use is temporary in nature and not permanently affixed. Temporary signs are frequently composed of paper, plastic, fabric, posterboard or cardboard, and are typically displayed on property that is for sale, lease or rental, under construction, where a garage, yard or special sale is being held, or where a seasonal or occasional use or event is occurring.

#### § 210-178. General Regulations. [Amended 5-1-2017 ATM, Article 39]

The following regulations shall apply in all zoning districts:



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- A. No exterior sign shall be displayed except as provided in this Article, except as exempted by this or other applicable law.
- B. No sign shall be displayed so as to create a hazard, obstruct the line of sight at an intersection or obstruct pedestrian travel on public sidewalks.
- C. Neon signs, including any sign that features exposed glass tubing filled with fluorescent gas, are prohibited. No messages or graphics on permanent signs shall be formed by lights of any kind.
- D. No sign shall be mounted, affixed or painted on roofs or on parapet walls, or extend above the roof eave line of a building.
- E. No sign shall flash, rotate, be animated, make noise, be motorized or move or be designed to move by any means, either in whole or in part.
- F. Notwithstanding any provision of this Article to the contrary, signs may be displayed within the right of way of the following major public ways, if authorized by the Board of Selectmen: East Main St., Main St., Cedar St., West Main St., Wood St., South St. and Hayden Rowe Street. Such signs shall not exceed 20 square feet in area and shall not be illuminated.
- G. The provisions of this Article shall not apply to government signs.
- H. Signs may be externally illuminated by steady, stationary light shielded and directed solely at the sign; signs may be backlit or channel lit. Internally illuminated box and panel signs are prohibited.
- I. Signs attached to a building shall be placed and aligned to define or enhance the building's architectural elements. Sign design shall be reasonably compatible with the mounting location, height, proportions and materials of other signs on the same lot.
- J. Unless specifically authorized by this Article, no sign that advertises goods, products or services that are not sold, manufactured or distributed on or from the premises or facilities on which the sign is located shall be permitted.
- K. No sign that is mounted to be flush with a building wall shall be more than 6 inches in depth.
- L. No portion of any wall sign or projecting sign shall be above the first story of a building.

### **§ 210-179. Temporary signs.**

Temporary signs and banners are permitted in all zoning districts as follows:

- A. No more than 2 temporary signs may be displayed on a lot, neither of which shall exceed 8 square feet in area. A temporary sign shall not be displayed for more than 30 days.
- B. One banner for each business establishment may be displayed on the premises of such use. Such banners shall not exceed 24 square feet in area, and shall not be displayed for more than 30 days.
- C. Temporary banners may be displayed over Main Street if authorized by the Board of Selectmen and subject to such limitations as it shall require. Such banners shall not be displayed for more than 14 days and may not exceed 75 square feet in area.

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D. For a period of time beginning 30 days before Patriots Day and ending two days after Patriots Day every year, there shall be no maximum number of temporary signs and banners permitted, and the maximum size of temporary signs shall be 24 square feet.

E. For a period of time beginning 30 days before a municipal, state or federal election and ending two days after the date of the election, there shall be no maximum number of temporary signs permitted.

### **§ 210-180. Sign regulations by zoning district**

A. Signs are permitted by right in each zoning district as follows.

(1) Residence A, Residence B, Residence-Lake Front and Agricultural Districts:

(a) Signs displayed on property that is for sale, lease or rental, not to exceed 6 square feet in area.

(b) Temporary or permanent signs that advertise goods, products or services that are sold, manufactured or distributed on or from the premises or facilities on which the sign is located, not to exceed 6 square feet in area.

(2) Business, Downtown Business and Rural Business Districts

(a) Wall signs and projecting signs shall be allowed on each side of a building facing a public way or parking lot. The area of such signs shall not exceed, in the aggregate, 1.5 square foot for each linear foot of a building wall that faces a public way or parking lot. If a building or business establishment has a street level public entrance that does not face a public way or parking lot, there may be one secondary wall sign in the vicinity of each such entrance, not to exceed 15 square feet in area.

(b) Except as otherwise provided herein, one standing sign per lot shall be allowed, not to exceed 32 square feet in area. Lots that have frontage on more than one public way may have two standing signs on the lot, not to exceed 32 square feet in area, each along a different public way. The height of standing signs shall not exceed 10 feet.

(c) Each business establishment may display one sandwich board sign or other standing sign not permanently affixed to the ground on the premises when the business establishment is open to the public. Such sign shall not exceed 8 square feet in area.

(d) Permanent signs shall conform to all applicable side yard and rear yard requirements.

(e) Two accessory signs per lot may be displayed. No such accessory sign shall exceed 2 square feet in area.

(f) In Rural Business Districts, illuminated signs shall be shielded from view of any residential district lot line adjoining the premises, except as authorized by Special Permit issued pursuant to section 210-180(B).

(g) Signs displayed on property that is for sale, lease or rental of the premises, not to exceed 6 square feet in area.

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### (3) Industrial A and Industrial B Districts

- (a) A non-illuminated sign displayed on property that is for sale, lease or rental, and having an area of not more than 32 square feet, shall be permitted.
- (b) Permanent signs shall conform to all applicable side and rear yard requirements. Signs may be located no nearer than 15 feet to the edge of a street.
- (c) There may be one standing sign at the entrance to each individual parcel of land, not to exceed 32 square feet in area and 10 feet in height. There may be one wall sign for each business establishment, each not to exceed 32 square feet in area. In addition, there may be one wall sign at the top of the building, not to exceed 32 square feet in area; provided, however, that the sign does not extend above the roofline of the building. **[Amended 5-1-2017 ATM, Article 39]**
- (d) Additional non-illuminated signs that do not exceed 2 square feet in area and, if freestanding, do not exceed 4 feet in height are permitted on a lot.

### (4) Professional Office District; Campus Style Developments approved by the Planning Board pursuant to Article XIV:

- (a) There may be one standing sign at the main entrance to a development site, not to exceed 32 square feet in area and 10 feet in height which shall not be located closer than 15 feet to the edge of a street.
- (b) There may be one standing sign at secondary entrances to a development site, not to exceed 15 square feet in area and 10 feet in height which shall not be located closer than 15 feet to the edge of a street.
- (c) Each building within a development site may display one wall or standing sign, located on or at the front of the building, not to exceed 25 square feet in area.
- (d) There may be up to three additional signs within a development site, each not to exceed 2 square feet in area, and if freestanding, not to exceed 4 feet in height.

B. The following signs shall be allowed by Special Permit from the Board of Appeals, upon a finding that the sign will further the Purposes of this Article, and is otherwise appropriate for the size of the property, any buildings thereon, and the neighborhood setting.

- (1) Signs, not otherwise permitted by right, to be displayed in connection with allowed uses, subject to such limitations as may be imposed by the Board of Appeals.

### **§ 210-181. Special Regulations**

A. Garden Apartments in Residential Districts, Village Housing in Residential Districts, Senior Housing Development, Open Space Mixed Use Development Overlay District: In developments approved by the Planning Board pursuant to Article XIII, Garden Apartments in Residential Districts, Article XIII A, Village Housing in Residential Districts, Article XVI A, Senior Housing Development and Article XXVI, Open Space Mixed Use Development Overlay District, all signs shall be solely subject to such limitations of size and usage as may be imposed by the Planning Board.

B. Adult Uses: Signs shall be permitted subject to the requirements of those applicable to the Business District and Article XVI, Adult Uses, of this Chapter. No sign may depict or represent any sexual conduct or state of sexual excitement as defined in Section 31 of Chapter 272 of the Massachusetts General Laws. Nor shall any such depictions or representations be placed upon or within the windows or walls of the premises so as to be visible to the public from the exterior of the premises.

C. Wireless Communications Facilities: For wireless communications facilities permitted pursuant to Article XVI of this Chapter, there shall be no signs, except as required by the applicable Special Permit. All signs shall conform to the requirements of the zoning district in which the facility is located.

D. Signs at a Registered Marijuana Dispensary (RMD) shall be subject to the requirements applicable in the Zoning District in which they are located, with the following additional restrictions:

(1) At a minimum, all signs at RMDs shall be in compliance with the provisions of 105 CMR 725.105 or any applicable successor regulation of the Massachusetts Department of Public Health, as such provisions may be amended from time to time;

(2) RMD window signs shall be limited to a maximum of 20% of the window area. No window sign shall be illuminated. Neon signs, including any sign that features exposed glass tubing filled with fluorescent gas, shall neither be displayed in windows; nor be visible through windows. No window signs or signs visible through windows shall flash, rotate, be animated, be motorized or move or be designed to move by any means, either in whole or in part.

### **§ 210-182. Nonconforming signs**

#### **Legal nonconforming signs shall be regulated as follows:**

A. Except as otherwise provided in this Section, signs lawfully erected or displayed prior to the adoption of this Article may be maintained, reworded, redesigned, altered or repaired without requiring conformance with the provisions of this Article, provided that the sign is not thereby rendered more nonconforming.

B. The protections set forth in this Section shall terminate with respect to any sign that 1) has been abandoned for 6 months or more; or 2) advertises goods, products or services that have not been sold, manufactured or distributed on or from the premises or facilities on which the sign is located for 6 months or more; or 3) has not been properly repaired or properly maintained within 60 days after notice thereof has been given by the Director of Municipal Inspections to the property owner of record.

### **ARTICLE XXVIII Office Park District [Added 5-4-2009 ATM, Art. 23]**

#### **§ 210-183. Development and design objectives.**

The Office Park District is designed to accommodate a range of uses which are suitably located with convenient highway access and to provide specialized services to the community and the region. It is the intent that within the District there shall be an overall unity of design. The location and design of such uses should be such that it will not disturb residential neighborhoods or detract from the appearance of the Town and will result in the maintenance of a balance and workable relationship between undeveloped natural resources, residential neighborhoods and commercial development.

#### **§ 210-184. Permitted uses.**

No new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used in an Office Park District for any purpose except one or more of the following, provided that no use shall involve noxious odors or excessive noise:

- A. Professional offices, medical offices, administrative offices, clerical offices, establishments for research and development or laboratories with a biosafety level of Level 1 or Level 2.  
[Amended 2012 ATM, Art. 47]
- B. Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices.
- C. Conference center.
- D. Banks.
- E. Restaurants.
- F. Drive-in, drive-through, or drive-up uses, but excluding the dispensing of food or drink.
- G. Public and private educational uses.
- H. Agricultural and horticultural uses.
- I. Child care centers.
- J. Places of worship and other religious uses.
- K. Continuing care retirement community, assisted living facility or similar institution, with a maximum number of beds and/or units not to exceed 300. For definition of use, see § 210-164 and for parking requirement, see § 210-169A.
- L. Accessory uses to any use allowed by right or by special permit herein.
- M. Health services facility [Added 5-7-2012 ATM, Art. 46]
- N. Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream provided, however, that any such retail store may operate only between the hours of 6:00 A.M. and 10:00 P.M.  
[Added 2012 ATM, Art. 50]

### **§ 210-185. Uses allowed by special permit.**

The following uses shall be allowed upon the grant of a special permit by the Planning Board:

- A. Residential dormitory component of a conference center.
- B. Public transportation facilities, limited to 1) shuttle bus stop facilities and 2) park and ride parking facilities.
- C. Continuing care retirement community, assisted living facility or similar institution, with a number of beds and/or units greater than 300. For definition of use, see § 210-164 and for parking requirement, see § 210-169A.

### **§ 210-186. Dimensional requirements.**

The following dimensional requirements shall apply:

- A. Minimum development site area: five acres. The five acres may be comprised of individual lots of less than five acres which, when combined, will be considered to be one development site. Once the lots are combined to constitute a development site, there shall be no further subdivision of the site which would result in a development site of less than five acres.
- B. Minimum lot frontage for the development site on a public way: 50 feet.
- C. Minimum lot frontage within the development site: none, provided that the interior roads, which must provide adequate access for all buildings on the development site, shall not become public ways and are to be considered private access roads. Fifty feet of frontage is required for each lot if the roads are intended to be considered public ways.
- D. Minimum lot area for individual lots within the development site: none.
- E. Setback from development site property lines:
  - (1) Minimum setbacks of buildings and parking areas from development site property lines:
    - (a) Fifty (50) feet from the property line of a Business, Downtown Business, Rural Business, Industrial A or Industrial B zoning district; one hundred (100) feet from the property line of all other zoning districts.
    - (b) Sixty (60) feet from the street line.
  - (2) The minimum setback area shall be landscaped and/or wooded so as to provide adequate year-round screening of the use from abutting property and streets. The minimum setback area shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped.
- F. Minimum setbacks of buildings from development site interior property lines and private access roads: none.
- G. Maximum building size: Total gross floor area of all buildings shall not exceed 60% of the total development site area.
- H. Maximum building height: No building or structure shall exceed 45 feet and shall not exceed three stories in height.
- I. A minimum of 40% of the development site shall remain undeveloped Open Land.

J. Multiple buildings and uses shall be permitted on a single lot.

### **§ 210-187. Open land.**

- A. Adequate pedestrian access shall be provided to the Open Land. The Open Land may remain as part of the overall development site and need not be a separate parcel, but there shall be deed restrictions stating that there shall be no further development of the Open Land. The Open Land may consist of a separate parcel and may be conveyed to a nonprofit organization, the purpose of which is the preservation of open space. If the Open Land is conveyed to another entity, it shall continue to be part of the development site for the purpose of calculating dimensional requirements.
- B. The Open Land shall consist primarily of undisturbed land which may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the Open Land may be used solely by occupants of the development site or may be available for use by the general public. The decision as to whether to permit the general public to use the Open Land shall be that of the property owner or as provided for in the deed restriction. The Open Land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for the above purposes.
- C. Setback areas from exterior development site property lines of 100 feet or more may be counted as part of the Open Land as long as such setback area is part of the deed restricted area referred to in this section.
- D. If stormwater management facilities are necessary for the construction of the buildings on the development site, such facilities shall not be located within the required setback areas, unless specifically permitted by the site plan approval. Such stormwater management facilities shall be designed to appear as natural landforms.
- E. Areas set aside for planned or reserve parking spaces or fire lanes may not be considered to be Open Land.

### **§ 210-188. Design Principles.**

- A. Curb cuts on streets shall be minimized, and to the greatest extent possible, buildings shall be located away from public ways and surrounding residential uses.
- B. Buildings, roadways and parking lots shall be designed to accommodate the landscape and natural site features, and disturbance to the site shall be minimized so that as many trees and natural features are retained as possible.
- C. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling onto adjacent lots and streets.
- D. Interior roadways shall remain private and shall not become public ways. The design of interior roadways shall conform to the Design Standards of the Rules and Regulations Relating to the Subdivision of Land, with the exception that the Planning Board may waive such Standards if desirable. Utilities shall be underground.

### **§ 210-189. Planned Development.**

The Site Plans submitted pursuant to Article XX, Site Plan Review, shall show the planned design, use and lighting of the entire development site, and proposed Design Guidelines. If development will be phased over time, a phasing plan shall be submitted.

### **§ 210-190. Signs**

Signs shall conform to the regulations applicable in the Professional Office (P) District.



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### **ARTICLE XXIX Hotel Overlay District [Added 5-4-2009 ATM, Art. 24]**

#### **§ 210-191. Purpose.**

The purpose of the Hotel Overlay District (HOD) is to provide for hotel uses in select locations within Hopkinton, based on proximity to infrastructure and appropriateness of the site. The District is intended to ensure that good site planning and design is an integral component of such uses, and will accommodate a site's physical characteristics. The intent is to permit hotels within the geographic area delineated on the Zoning Map in the manner described herein, as additional uses permitted in those areas.

#### **§ 210-192. Applicability.**

- A. The HOD is an overlay district superimposed on the zoning districts established by the Hopkinton Zoning Bylaws. Within the HOD, the uses listed in this Article may be permitted in the manner described, in addition to the uses permitted in the underlying zoning districts.
- B. When a portion of a lot is in the HOD, only the portion of the lot in the HOD shall be governed by this Article.
- C. All regulations and restrictions contained within the underlying zoning district shall remain in effect. The purpose of this Article is to allow up to two hotels by special permit in specific geographic areas only.

#### **§ 210-193. Use Regulations.**

Within the HOD, the following uses may be authorized upon the issuance of a special permit:

- A. Hotels and inns, provided that such facilities include: 1) a minimum of 1,500 sq. ft. of function and/or meeting room space; 2) restaurant; and 3) fitness center. Such facilities may be located either within the building or on the same lot. **[Amended 5-2-2016 ATM, Art. 37]**
- B. Accessory uses to hotels which may not be a use by right in the underlying zoning district, or which are not included in Section A above.

#### **§ 210-194. Special Permits.**

- A. The special permit granting authority shall be the Planning Board.
- B. Special Permit Criteria. No special permit shall be granted unless the Planning Board finds that:
  - (1) The proposed use complies with the provisions of this Article.
  - (2) The major intersections and roadways providing access to the use will operate at an acceptable level of service based on the anticipated impact of vehicular traffic.
  - (3) There will be adequate methods for the disposal of sewage and refuse, provision of utilities, and water supply.
  - (4) The design of the site and the architecture of the buildings will be compatible with surrounding structures and landscape features.
- C. The Planning Board shall deny an application for special permit if the number of hotels within the HOD would exceed one on the east side of Rt. 495 and one on the west side of Rt. 495, even if the application would meet the Special Permit Criteria.

### **ARTICLE XXX** **Wind Energy Systems** **[Added 5-4-2009 ATM, Art. 19]**

#### **§ 210-195. Purpose.**

The purpose of this section is to:

- A. Promote the safe, effective and efficient use of Wind Energy Systems installed to reduce the on-site consumption of utility-supplied electricity;
- B. Minimize the impacts of Wind Energy Systems on the character of neighborhoods, property values, scenic, historic, and environmental resources of the Town; and
- C. Protect health and safety, while encouraging Wind Energy Systems and limiting obstacles to their installation and use.

#### **§ 210-196. Applicability.**

Construction and use of a Wind Energy System, Meteorological Tower or any part thereof shall be permitted in all zoning districts subject to the requirements set forth in this section.

#### **§ 210-197. Definitions.**

For the purpose of this section, terms shall have the following meanings:

METEOROLOGICAL TOWER (MET TOWER) – A tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

TOTAL HEIGHT - The vertical distance from ground level to the tip of a wind turbine blade when it is at its highest point.

TOWER - The monopole, freestanding, or guyed structure that supports a wind turbine.

WIND ENERGY SYSTEM (WES) – Equipment that converts and then stores or transfers energy from the wind into useable forms of energy. This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other components used in the system.

WIND TURBINE - A device for converting wind energy to mechanical, electrical or another form of energy.

#### **§ 210-198. Use Regulations.**

- A. A WES may be erected upon the issuance of a special permit by the Board of Appeals, provided that the WES is an accessory use to the primary use of the lot.
- B. A Meteorological Tower shall be allowed as of right for a period of two years, subject to renewal by the Director of Municipal Inspections for one additional two year period. A Met Tower shall conform to all provisions of this section, with the exception of the requirement for a special permit.

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- C. A WES shall be set back from property lines a distance which is equal to the total height of the WES, measured from the point of a tower base which is closest to the property line. A Wind Energy System may be located closer to a property line only under the following circumstances: a) the adjacent lot is held in common ownership with the lot on which the WES is proposed; b) upon provision by the applicant of a recordable easement from an abutting property owner(s) that is satisfactory to the Board of Appeals; or c) the WES will be mounted on a building.
- D. In no instance may the noise level at the lot line exceed 10 dB(A) over the average ambient nighttime sound level. In a case where the applicant is also the owner of the abutting lot, the distance shall be measured from the furthest lot line of the abutting lot. Any WES which is located at least 600 feet from a property line shall be presumed to meet this requirement.
- E. Unauthorized climbing access to the tower shall be limited by one or more of the following methods: a) by placing climbing apparatus no lower than 10 feet from the ground; b) by placing shielding over climbing apparatus or access; or c) by installation of a fence.
- F. Tower lighting shall not be permitted unless required by the Board of Appeals.
- G. A WES shall be properly maintained and kept in good working order by the owner at all times.
- H. A WES shall be deemed to have been discontinued if it is out of service for a continuous 24-month period. Upon receipt of a Notice of Discontinuance from the Director of Municipal Inspections, the owner shall have the right to respond to the Notice within 30 days of receipt. The Director of Municipal Inspections shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates to the satisfaction of the Director of Municipal Inspections that the WES has not been discontinued. If the WES is determined to be discontinued, the owner of the WES shall remove the system at the owner's sole expense within three months of receipt of the Notice of Discontinuance. Failure to remove the system within said time period may subject the owner to action pursuant to Article XXIV.
- I. The visual impact of Wind Energy Systems shall be mitigated to the extent possible. Methods such as the use of landscaping, alternative locations, and non-reflective paint may be utilized.
- J. There shall be periodic inspection of the WES by a Registered Professional Engineer and submission of such reports to the Director of Municipal Inspections
- K. Nothing in this section shall prevent the co-location of wireless communications equipment on the tower, provided that all other provisions of this Chapter have been satisfied, including the issuance of all necessary permits.

### **§ 210-199. Administration**

- A. A special permit is required from the Board of Appeals to erect or install a Wind Energy System. A record owner desiring to erect a WES shall file with the Board of Appeals an application for a Wind Energy System Special Permit, together with such plans, drawings, specifications, fees and additional information as required by the Board of Appeals.
- B. The Board of Appeals shall have the authority to waive specific provisions of this section upon a determination that the waiver is not inconsistent with the purpose and intent of this section.

- C. The Board of Appeals shall conduct its review, hold a public hearing and file its decision with the Town Clerk as required by the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- D. Approval Criteria. Before the Board of Appeals may issue the special permit, it shall determine each of the following:
- (1) The WES conforms to the use regulations and purpose of this section.
  - (2) The WES will not be detrimental to the neighborhood or the Town.
  - (3) The WES is an accessory use to the principal use of the lot.
- If the Board of Appeals does not make all of the above determinations, it shall deny the application stating its reasons for such denial.
- E. The Board of Appeals may approve the special permit with conditions, which may include, but shall not be limited to, a performance bond, secured by deposit of money or negotiable securities, is posted with the Town to guarantee proper maintenance and/or removal of the WES. The amount of the performance bond shall not exceed the estimated cost of the WES removal.

### **Article XXXI** **Commercial Solar Photovoltaic Installations** **[Added 5-6-2013 ATM Article 57]**

#### **§ 210-200. Purpose and Intent**

The purpose and intent of this Article is to permit the creation of new commercial solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety and minimize impacts on residential neighborhoods and scenic, natural and historic resources.

#### **§ 210-201. Applicability**

Construction and use of a commercial solar photovoltaic installation or any part thereof shall be permitted in any zoning district subject to the requirements set forth in this section.

Nothing in this Article should be construed to prevent the installation of solar photovoltaic installations that are permitted as-of-right in any zoning district as an accessory use.

#### **§ 210-202. Use Regulations**

Commercial solar photovoltaic installations shall conform to the following provisions:

- A. A commercial solar photovoltaic installation may be erected, upon the issuance of a special permit by the Planning Board, on a lot containing a minimum of three (3) acres.
- B. All setback, yard, buffer and screening requirements applicable in the zoning district in which the installation is located shall apply.
- C. All security fences surrounding the installations shall be set back from the property line a distance equal to the setback requirement applicable to buildings within the zoning district in which the installation is located.

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- D. The provisions of Article XX, Site Plan Review, shall not apply to commercial solar photovoltaic installations.
- E. The visual impact of the commercial solar photovoltaic installation, including all accessory structures and appurtenances, shall be mitigated. All accessory structures and appurtenances shall be architecturally compatible with each other. Whenever reasonable, structures shall be shielded from view by vegetation and/or joined and clustered to avoid adverse visual impacts. Methods such as the use of landscaping, natural features and fencing may be utilized.
- F. Lighting shall not be permitted unless required by the Planning Board or by the State Building Code. Where used, lighting shall be directed downward and full cut-off fixtures shall be used.
- G. All utility connections from the commercial solar photovoltaic installation shall be underground unless otherwise specifically permitted otherwise by the Planning Board in the special permit. Electrical transformers and inverters to enable utility interconnections may be above ground if required by the utility provider.
- H. Clearing of natural vegetation shall be limited to the minimum necessary for the construction, operation and maintenance of the commercial solar photovoltaic installation except as otherwise prescribed by applicable laws, regulations and bylaws or the special permit.
- I. The commercial solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, continued compliance with landscaping and screening requirements, and integrity of security measures. The owner or operator shall be responsible for the maintenance of any access roads serving the installation.

### § 210-203. Administration

- A. A special permit is required from the Planning Board to erect or install a commercial solar photovoltaic installation. A record owner desiring to erect or install a commercial solar photovoltaic installation shall file with the Planning Board an application for a special permit, together with such plans, drawings, specifications, fees and additional information as required by the Planning Board.
- B. The Planning Board shall have the authority to waive specific provisions of the Use Regulations of this Article upon a determination that a waiver would not be inconsistent with the purpose and intent of this Article.
- C. The Planning Board shall conduct its review, hold a public hearing and file its decision with the Town Clerk as required by the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- D. Approval Criteria. Before the Planning Board may issue such Special Permit, it shall determine each of the following: **[Amended 5-6-2015 ATM, Art. 39]**
  - (1) The commercial solar photovoltaic installation conforms to the provisions of this Article.
  - (2) The commercial solar photovoltaic installation will not be detrimental to the neighborhood or the Town.
  - (3) Environmental features of the site and surrounding areas are protected, and specifically surrounding areas will be protected from the proposed use by provision of adequate surface water drainage.
- E. Any special permit issued pursuant to this Article shall be subject to such conditions and safeguards as the Planning Board may prescribe. Such conditions may include the requirement of a performance bond, secured by deposit of money or negotiable securities, posted with the Town to

guarantee proper maintenance and/or removal of the commercial solar photovoltaic installation. The amount of the performance bond shall not exceed the estimated cost of the commercial solar photovoltaic installation's removal. Such conditions may also include additional screening of the facility.

### **§ 210-204. Discontinuance**

A commercial solar photovoltaic installation shall be deemed to have been discontinued if it has not been in service for a continuous 24-month period. Upon receipt of a Notice of Discontinuance from the Director of Municipal Inspections, the owner shall have the right to respond to the Notice within 30 days of receipt. The Director of Municipal Inspections shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates to the satisfaction of the Director of Municipal Inspections that the commercial solar photovoltaic installation has not been discontinued. If the commercial solar photovoltaic installation is determined to be discontinued, the owner shall remove the installation, including all structures, equipment, security barriers and transmission lines, and stabilize or re-vegetate the site as necessary to minimize erosion and sedimentation, at the owner's sole expense within three months of receipt of the Notice of Discontinuance. Failure to remove the installation and stabilize the site within said time period may subject the owner to action pursuant to Article XXIV.

## **ARTICLE XXXII (Reserved)**

### **§ 210-205. through § 210-218. (Reserved)**

## **ARTICLE XXXIII Registered Marijuana Dispensaries [Amended 5-6-2014, ATM, Article 31]**

### **§ 210-219. Special Permit**

The Planning Board and not the Board of Appeals shall be the Special Permit Granting Authority for any Registered Marijuana Dispensary (RMD). Applications for Special Permits for RMDs must conform to the Standards and Procedures of this Article XXXIII, in addition to the generally applicable standards for the grant of a special permit set forth in MGL. c. 40A, § 9.

### **§ 210-220. Buffer Zone**

A. RMDs shall not be located within 500 feet of:

- (1) Any school, including a public or private elementary, vocational or secondary school or a public or private college or university;
- (2) Any child care facility, including preschools;
- (3) Any facility in which children commonly congregate, including, but not limited to, a public library, a playground, an athletic field or recreational facility, a place of worship, and a Town owned beach.

- B. For the purposes of this section, the distance of an RMD from a protected use shall be measured in a straight line from the nearest point of the property line of the protected use to the nearest point of the RMD.

### **§ 210-221. Requirements**

- A. No smoking, burning or other consumption of marijuana or marijuana-related products shall be permitted on the premises of an RMD.
- B. No person under the age of 21 shall be permitted on the premises of an RMD unless that person is a qualified patient or accompanied by a caregiver or patient with a valid registration card.
- C. No RMD shall be located inside a building containing residential units, including transient housing.
- D. No RMD shall be located in a movable or mobile structure such as a van or truck.
- E. No RMD shall be located in a building that contains any medical doctor's offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.
- F. All RMDs shall be contained within buildings or structures having a gross floor area of not less than 1,000 square feet and not more than 20,000 square feet.
- G. An RMD shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state issued licenses or permits or within six months of ceasing operations, whichever comes first.

### **§ 210-222. Standards and Procedures Applicable to Special Permits for Registered Marijuana Dispensaries:**

- A. Applicants for an RMD Special Permit shall submit the following information in addition to all other required submissions:
  - (1) Names and address of all owners, managers, members, partners and employees;
  - (2) Sources of all marijuana that will be processed, packaged, sold or distributed at the facility;
  - (3) Projected quantity of marijuana that will be processed, packaged, sold or distributed at the facility;
  - (4) The name and contact information for a person on staff at the RMD whose responsibilities include community relations, to whom Town staff can provide notice if there are operating problems associated with the establishment.
- B. No Special Permit may be issued unless the Planning Board finds that the RMD is designed so as to minimize any adverse visual or economic impacts on the abutters or other parties in interest, as defined in *M.G.L. c. 40A, §11*.
- C. Each RMD receiving a Special Permit shall, as a condition of the Special Permit, file with the Planning Board and the Town Clerk a copy of all reports submitted to any state agency, including



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the reports required by 105 CMR 725.105(Q)(4) describing the RMD's liability insurance coverage and the annual security system audits required by 105 CMR 725.110(G).

- D. Special Permits for RMDs shall have a term limited to the duration of the applicant's ownership and the use of the premises as an RMD. Transfers of the special permit may occur only with the permission of the Planning Board, and only in the form of an amendment to the Special Permit.

### **Article XXXIII A** **Temporary Moratorium on Marijuana Establishments** **[Added 5-1-2017 ATM, Article 38]**

#### **§ 210-222.1 Purpose.**

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, manufacture, processing, distribution, sale, possession, testing and use of marijuana. The law provides that it is effective on December 15, 2016, and that a new state agency, the Cannabis Control Commission (CCC), is required to issue regulations regarding implementation by March 15, 2018.

Article XXXIII of the Zoning Bylaw allows Registered Medical Marijuana Dispensaries by Special Permit. The regulation of other types of Marijuana Establishments, however, raises novel and complex legal, planning, and public safety issues. The Town needs time to consider and address these issues, as well as the potential impact of the forthcoming Cannabis Control Commission regulations, by means of a comprehensive planning process to consider amending the Zoning Bylaw to regulate Marijuana Establishments. The temporary moratorium provided in Article XXXIII A is intended to allow sufficient time for the Town to engage in such a planning process and to adopt suitable Zoning Bylaw provisions in a manner consistent with sound land-use planning objectives.

#### **§ 210-222.2 Definition.**

As used in Section 5.6.6, the term "Marijuana Establishment" shall mean a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer, or any other type of marijuana-related business, subject to regulation under Chapter 94G of the Massachusetts General Laws; provided, however, that a Registered Medical Marijuana Dispensary shall not be deemed to be a Marijuana Establishment.

#### **§ 210-222.3 Temporary Moratorium.**

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures as a Marijuana Establishment. The moratorium shall be in effect through August 31, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of Marijuana Establishments and other related land uses and structures, consider the Cannabis Control Commission regulations regarding Marijuana Establishments when they are issued, and shall consider adopting new provisions of the Zoning Bylaw governing the location, operation and effects of Marijuana Establishments for consideration by the 2018 Annual Town Meeting.

### **ARTICLE XXXIV** **Special Permit Granting Authority** **[Added 5-6-2015 ATM, Art. 30]**

#### **§ 210-223. Special Permits.**

- A. Pursuant to MGL c. 40A, § 9, the Special Permit Granting Authority (SPGA) shall hear and decide applications for Special Permits for which express provision is made in this Chapter. The SPGA may be the Board of Appeals or the Planning Board.
- B. The SPGA shall adopt rules not inconsistent with the General Laws and the provisions of this Chapter for conducting its business and shall file a copy thereof with the Town Clerk.
- C. A Special Permit shall lapse within two years of the grant thereof unless good cause is shown why substantial use thereof, or related construction, has not begun; provided, however, that an applicant may request an extension of the term of a Special Permit from the SPGA, and the SPGA may extend such term as it deems appropriate.
- D. Public hearings on all applications for Special Permits shall be held in accordance with MGL c. 40A, § 11.
- E. The decision of the SPGA shall be made within 90 days after the close of the public hearing. The required time limits for a public hearing and the filing of a decision may be extended by written agreement between the applicant and the SPGA, and shall be filed with the Town Clerk.
- F. Failure of the SPGA to act within the specified period shall be deemed to be a grant of the Special Permit.
- G. Unless otherwise specified in this Chapter, a special permit may be granted only if the SPGA determines that:
  - (1) All applicable criteria and standards set forth in this Chapter have been satisfied, and
  - (2) Grant of the Special Permit will be in harmony with the general purpose and intent of this Chapter.
- H. In reviewing an application for a Special Permit, the SPGA shall give due consideration to promoting the public health, safety, convenience and welfare; and shall not permit a use that is injurious, noxious, offensive or detrimental to its neighborhood except as otherwise specified in this Chapter.
- I. Special permits shall be subject to whatever appropriate conditions and safeguards the SPGA may prescribe.

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### **ARTICLE XXXV Neighborhood Mixed Use District [Added ATM 5-6-2014, Article 34]**

#### **§210-237. Development and Design Objectives.**

The Neighborhood Mixed Use District (NMU District) is designed to accommodate the integration of umlti-family residential uses with commercial development in areas suitably located with convenient highway access, to increase the inventory of affordable housing in Hopkinton that are Local Initiative Program (LIP) units in compliance with the requirements specified by the Department of Housing and Community Development (DHCD) so that said units will count toward the Town's requirements under M.G.L. c. 40B, §§ 20-23, and to provide specialized services to the community and the region. It is the intent that, within the NMU District, there shall be an overall unity of design of the uses consistent with designs that are traditional to New England and Hopkinton. The location and design of such uses should be such that they will not disturb residential neighborhoods or detract from the appearance of the Town and will result in the maintenance of a balance and workable relationship between undeveloped natural resources, residential neighborhoods and commercial development.

#### **§210-238. Applicability.**

- A. Notwithstanding any provision of this Chapter to the contrary, development undertaken under a Master Plan Special Permit issued pursuant to § 210-247 shall not be subject to § 210-126.1 Residential Subdivisions of 10 acres or more.
- B. Development undertaken pursuant to a Master Plan Special Permit issued pursuant to § 210-247 shall be subject to the following provisions of this Chapter only to the extent provided for in, and as modified by, the provisions of this Article:
  - (1) Article XI, Flexible Community Development Bylaw;
  - (2) Article XII, Water Resources Protection Overlay District;
  - (3) Article XVIII, Supplementary Regulations;
  - (4) Article XX, Site Plan Review.

#### **§210-239. Definitions.**

Except as otherwise provided in this section, the definitions set forth in §210-4 shall be applicable to all terms used in this Article. Notwithstanding the forgoing, the following terms, as used in this Article, shall have the meanings indicated:

**AFFORDABLE HOUSING** – Any Dwelling Units qualifying as low or moderate income housing as defined by regulations of the Department of Housing and Community Development.

**AIR-SUPPORTED STRUCTURE** – A structure used in conjunction with an athletic club/health and fitness club wherein the shape of the structure is attained by air pressure, and occupants of the structure are within the elevated pressure area.

**BUILDABLE AREA** – The portion of a Development Project area that is not Open Conserved Land.

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**CONSTRUCTION ACTIVITY** – The construction of new structures or site work associated with the construction of new structures. The term includes the construction of roadways, installation of utilities, and restoration and improvement of Open Conserved Land.

**DEVELOPMENT PROJECT** - A development undertaken pursuant to this Article, as shown on a site plan submitted to the Planning Board for Site Plan Review. A Development Project may occupy one or more lots.

**DEVELOPMENT SITE** — All land area located within the NMU District.

**DWELLING UNIT** - Use as Dwelling Units as defined in §210-4, but specifically not including residential units that may be part of a Continuing Care Retirement Community, Assisted Living Facility or similar institution.

**HEIGHT** – The vertical distance from the mean finished grade of all sides of building or structure to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs, excluding chimneys, spikes, towers, wireless communication facilities, screens, parapet walls, and other structures, equipment, or projections not used for human occupancy. For residences, the area above the mean finished grade and below the floor of the first occupiable story, not to exceed 10 feet, shall be excluded from measurement of height and stories.

**MULTIFAMILY DWELLINGS** – Any dwelling units other than Single-Family Dwellings.

**OPEN CONSERVED LAND** – Land that is available for public use, reserved for outdoor passive or active recreation, and protected in perpetuity by an Open Conserved Land Covenant prohibiting further development or activities within such land that are inconsistent with the Open Conserved Land Covenant's purpose.

**OPEN CONSERVED LAND COVENANT** – A legally enforceable restriction or covenant, recorded in the Registry of Deeds and enforceable by the Town, providing that the land subject thereto shall remain as Open Conserved Land in perpetuity.

**STORY** – That portion of a building included between the upper surface of a floor and the upper surface of the floor above, except that attic or loft space between the upper surface of a floor and the upper surface of a slanted or partially slanted roof shall not be considered a story, whether or not used for human occupancy.

### **§210-240. Permitted Uses.**

No new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used in the NMU District for any purpose except one or more of the following, provided that no use shall involve noxious odors or excessive noise.

- A use that is permitted by right is denoted by the letter “Y”.
  - A use denoted by the letters “SP” may be permitted by Special Permit from the Planning Board.
- A. The following uses shall be permitted by right or allowed by Special Permit in the NMU District without the issuance of a Master Plan Special Permit. Upon the issuance of a Master Plan Special Permit pursuant to § 210-247 and the filing of the Notice pursuant to § 210-247.D, the uses

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permitted in § 210-240.B and not those specified in § 210-240.A shall be permitted within the area subject to the Master Plan Special Permit.

Table of Uses –Land not subject to a Master Plan Special Permit

Professional offices, medical offices, administrative offices, clerical offices, establishments for research and development or laboratories with a biosafety level of Level 1 or Level 2.	Y
Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices.	Y
Conference centers	Y
Banks	Y
Restaurants	Y
Drive-in, drive-through, or drive-up uses, but excluding the dispensing of food or drink.	Y
Public and private educational uses	Y
Agricultural and horticultural uses	Y
Child-care centers	Y
Places of worship and other religious uses	Y
Continuing care retirement communities, assisted living facilities or similar institutions, with a maximum aggregate number of beds and/or units within the NMU District not to exceed 300. For definition of use, see § 210-164 and for parking requirements see § 210-169A.	Y
Continuing care retirement communities, assisted living facilities or similar institutions, if the maximum aggregate number of beds and/or units within the NMU District will be greater than 300. For definition of use, see § 210-164 and for parking requirements see § 210-169A.	SP
Health services facilities	Y
Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream; provided, however, that any such retail store may operate only between the hours of 6:00 a.m. and 10:00 p.m.	Y
Residential dormitory components of a conference center	SP
Public transportation facilities, limited to 1) shuttle bus stop facilities, 2) park and ride parking facilities, and 3) parking facilities for public school buses serving Hopkinton residents.	SP
Facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services within the NMU District.	Y
Accessory uses to any use allowed by right or by Special Permit herein.	Y

B. The following uses shall be permitted in the NMU District for a Development Project under a Master Plan Special Permit issued pursuant to § 210-247:

Table of Uses –Land subject to a Master Plan Special Permit

Multi-family dwellings	Y
Retail stores, not to exceed 15,000 square feet per single tenant or operator	Y
Retail stores exceeding 15,000 square feet per single tenant or operator, but not to exceed 38,000 square feet per single tenant or operator	SP
Athletic clubs/Health and Fitness clubs	Y
Health services facilities	Y
Professional offices, medical offices, administrative offices, clerical offices, establishments for research and development or laboratories with a biosafety level of Level 1 or Level 2	Y

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Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices	Y
Conference centers	Y
Banks	Y
Restaurants	Y
Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink	Y
Public and private educational uses	Y
Child care centers	Y
Places of worship and other religious uses	Y
Municipal uses	Y
Residential dormitory components of a conference center	SP
Public transportation facilities, limited to 1) shuttle bus stop facilities, 2) park and ride parking facilities, and 3) parking facilities for public school buses serving Hopkinton residents.	SP
Facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services within the NMU District.	Y
Accessory uses to any use allowed by right or by Special Permit herein.	Y

### **§210-241. Intensity of Use Limitations.**

- A. Commercial Uses within the NMU District shall be limited to 250,000 square feet of Gross Floor Area in the aggregate, as authorized by a Master Plan Special Permit issued pursuant to §210-247. No single building shall have a footprint exceeding 19,000 square feet of Gross Floor Area or exceed 38,000 square feet of Gross Floor Area in total, with the exception of buildings used for an Athletic Club/Health and Fitness Club. An Athletic Club/Health and Fitness Club may have a footprint of up to 80,000 square feet of Gross Floor Area exclusive of Air Supported Structures or a footprint of up to 110,000 square feet of Gross Floor Area inclusive of Air Supported Structures, but shall not exceed 150,000 square feet of Gross Floor Area inclusive of Air Supported Structures; provided, however, that the Planning Board may, by Special Permit, approve an Athletic Club/Health and Fitness Club with a greater area of Gross Floor Area.

The Planning Board may, by Special Permit, approve the re-use of a building or combination of buildings formerly containing an Athletic Club/Health and Fitness Club for non-residential uses permitted under §210-240.B where such re-use would exceed the maximum footprint or Gross Floor Area otherwise permitted for such uses by this section; provided, however, that no Special Permit may authorize an Air Supported Structure to be used for purposes that are not a component of an Athletic Club/Health and Fitness Club. Under no circumstances shall a Special Permit be issued that results in more than 250,000 square feet of Gross Floor Area of commercial uses within the NMU District. **[Amended 5-1-2017 ATM, Article 37]**

- B. For the purposes of this section, the area of buildings used for water supply or sewage treatment facilities shall be excluded from the calculation of Gross Floor Area. **[Amended 5-1-2017 ATM, Article 37]**
- C. Residential Uses within the NMU District shall be limited to 280 Dwelling Units, which shall be multi-family dwellings with a maximum of 472 bedrooms in total and which shall not include more than 20 three-bedroom units, as authorized by a Master Plan Special Permit issued pursuant to §210-247.

### **§210-242. Affordable Housing.**

Affordable Housing shall be provided in accordance with the following requirements:

- A. One (1) Dwelling Unit shall be established as an Affordable Housing Unit for every four (4) Dwelling Units within the NMU District. As long as the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development issued pursuant to M.G.L. c. 40B, §§ 20-23 provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then all Dwelling Units within the NMU District shall be operated as a rental development. However, if either (i) M.G.L. c. 40B, §§ 20-23 is no longer in effect, or (ii) the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development, issued pursuant to M.G.L. c. 40B §§ 20-23, no longer provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then the Dwelling Units may be operated either as a rental development or as a for-sale condominium development. In such case, the number of affordable Dwelling Units shall be no less than one (1) for every four (4) Dwelling Units within the NMU District.
- B. All Affordable Housing Units shall be integrated with the rest of the residential development in which it is located, and shall be comparable in design, exterior appearance, construction, and quality of exterior materials with other units in such residential development. The mean number of bedrooms in Affordable Housing Units shall be equal to the mean number of bedrooms in the market-rate Dwelling Units in the residential development in which they are located.

### **§210-243. Dimensional Requirements.**

- A. Where a Master Plan Special Permit has not been issued, the dimensional requirements set forth in § 210-186 shall be applicable.
- B. The following dimensional requirements shall apply to any uses for which a Master Plan Special Permit has been issued:

- (1) Development Site:

- (a) Minimum lot frontage for the Development Site on a public way: 50 feet.

- (b) Minimum setback of buildings and parking areas:

- i. For buildings: Forty (40) feet from the boundary line of a Business, Downtown Business, Industrial A, Industrial B or Agricultural District for all buildings; forty (40) feet from the boundary line of a Rural Business District for residential buildings; zero (0) feet from the boundary line of a Rural Business District for commercial buildings; one hundred (100) feet from the boundary of all other zoning districts.
    - ii. For parking: Forty (40) feet from the boundary line of a Business, Downtown Business, Industrial A, or Agricultural District; forty (40) feet from the boundary line of an Industrial B District for parking accessory to residential buildings and thirty (30) feet from the boundary line of an Industrial B District for parking accessory to commercial buildings; zero (0) feet from the boundary line of a Rural Business district for at-grade parking accessory to commercial buildings; one hundred (100) feet from the boundary of all other zoning districts.



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- iii. Thirty (30) feet from the street line for residential buildings; forty (40) feet from the street line for all other buildings; five (5) feet from the street line for at-grade parking areas; provided, however, that such setbacks shall not be applicable to private roadways located entirely within the NMU District.
- (c) The minimum setback of buildings and parking areas from property lines shall be landscaped and/or wooded so as to provide adequate year-round screening of the use from abutting property and streets. Such minimum setback areas shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped.

The Planning Board may authorize by special permit a lesser setback or lesser screening than set forth herein, upon a finding that such lesser setback or screening is appropriate for the Development Site and the surrounding neighborhood and uses.

(2) Individual lots within the Development Site:

- (a) Minimum lot area for individual lots within Development Site: None.
- (b) Minimum lot frontage within the Development Site: None; provided, however, that roadways located entirely within the Development Site shall provide adequate access for all buildings on the development site, but shall not become public ways. Fifty feet of frontage shall be required for each lot in the Development Site if the roads are intended to be eligible for acceptance as public ways.
- (c) Minimum setback of buildings from interior property lines within the Development Site and from private roadways: None.

(3) Maximum building height:

Buildings and structures shall not exceed 50 feet in height or have more than four stories.

(4) A minimum of 40% of the total area of the Development Site shall be Open Conserved Land.

(5) Multiple buildings and uses may be permitted on a single lot.

### **§210-244. Parking.**

The requirements of §210-124(B) (1) relating to the minimum number of parking spaces shall apply in the NMU District, with the following addition:

Use	Requirement
Multi-family dwelling units	1 space for one bedroom unit; 2 spaces for every unit with 2 or more bedrooms.

### **§210-245. Open Conserved Land.**

- A. Adequate pedestrian access, as determined by the Planning Board, shall be provided to the Open Conserved Land. The Open Conserved Land may remain as part of the overall Development Site and need not be a separate parcel, but there shall be Open Conserved Land Covenants stating that there shall be no further development and no activities within the Open Conserved Land that are not consistent with the Open Conserved Land Covenant's purpose. The Open Conserved Land may consist of a separate parcel and may be conveyed to the Town or a nonprofit organization, the purpose of which is the preservation of open space, or may be retained by an owner of land

within the Development Site. Regardless of any such conveyance, the Open Conserved Land shall continue to be considered part of the Development Site for the purpose of calculating dimensional requirements.

- B. The Open Conserved Land shall consist of land that may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the Open Conserved Land shall be available for use by the general public, subject to such reasonable rules and regulations to govern the use of the Open Conserved Land as may be adopted by the owner thereof. The Open Conserved Land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for outdoor active or passive recreational purposes.
- C. Setback areas from zoning district boundaries, if more than 100 feet in depth, may be considered to be part of the Open Conserved Land.
- D. Areas set aside for planned or reserved parking spaces or fire lanes shall not qualify to be part of the Open Conserved Land.
- E. Open Conserved Land may be used for the provision of subsurface utilities for the NMU District such as sewer lines, water lines, wastewater disposal beds and related underground equipment.
- F. Open Conserved Land Covenants shall specify the permitted uses of specific parcels of Open Conserved Land; the responsible party to be charged with maintenance and stewardship of the Open Conserved Land in perpetuity; and a required program for such maintenance and stewardship.
- G. Nothing in this section shall be interpreted to preclude the owner of Open Conserved Land from imposing additional restrictions on the Open Conserved Land or a conservation restriction which are not inconsistent with the applicable Open Conserved Land Covenant.

### **§ 210-246. Design Principles.**

- A. Curb cuts on public ways abutting the Development Site shall be minimized. Whenever feasible, Development Projects shall include interior vehicular connections to adjacent Development Projects and to adjacent non-residential development outside the NMU District for the purpose of reducing curb cuts and traffic flow on adjacent public ways. The location of curb cuts shall be determined by the Planning Board during the Site Plan Review process.
- B. Buildings, roadways and parking lots shall be designed to accommodate the landscape, natural site features and natural resources. Disturbance to the site shall be minimized so that as many trees and natural features are retained as possible. Natural features shall be incorporated within the Open Conserved Land where possible.
- C. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling outside of the intended areas.
- D. The design of any interior roadway that connects two or more Development Projects shall conform to the Rules and Regulations Relating to the Subdivision of Land, whether or not such interior roadway is laid out in accordance with the Subdivision Control Law. The Planning Board may waive specific provisions of the Rules and Regulations Relating to the Subdivision of Land

if such waiver would be not be inconsistent with the design principles set forth in this section and otherwise in the public interest. All utilities within the Development Site shall be underground.

- E. The design of buildings shall be consistent with styles that are traditional to New England and Hopkinton. Buildings shall utilize energy efficient design and low impact development techniques and principles, to the extent feasible.
- F. If stormwater management facilities are necessary for the construction of the buildings on the Development Site, such facilities shall not be located within the required setback areas, unless specifically permitted by the Planning Board. Such stormwater management facilities shall be designed to appear as natural landforms, to the extent feasible.

### **§210-247. Master Plan Special Permit.**

- A. The Planning Board shall be the Special Permit Granting Authority for any Special Permit issued pursuant to the provisions of this Article. The Planning Board may adopt and file with the Town Clerk regulations governing Submission Requirements and Procedures for any such Special Permit.
- B. In all matters in which it has jurisdiction to issue use Special Permits pursuant to the provisions of this Article, the Planning Board may issue such Special Permits only upon a finding that the proposed use is in harmony with the general purpose and intent of this chapter. Any such Special Permit shall be subject to such conditions and safeguards as the Planning Board may prescribe and shall include design guidelines applicable to development of the site. In reviewing any application for such a Special Permit, the Planning Board shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land, shall require that development be consistent with the Design Principles set forth in §210-246 and shall permit no building or use that is injurious, noxious, offensive or detrimental to its neighborhood.
- C. Except as otherwise authorized in this Section, no Construction Activity for a use that is subject to a Master Plan Special Permit pursuant to the provisions of this Article shall commence unless authorized by said Master Plan Special Permit.
- D. If the applicant elects to exercise the rights granted in a Master Plan Special Permit issued pursuant to the provisions of this Article, a Notice to such effect shall be filed with the Town Clerk, Planning Board and Department of Municipal Inspections, and recorded in the Registry of Deeds, prior to the commencement of Construction Activity. From and after the filing of such Notice, all Construction Activity within the NMU District shall be in accordance with the approved Master Plan Special Permit.
- E. The entirety of the NMU District shall be subject to one Master Plan Special Permit, for uses allowed pursuant to § 210-240.B.
- F. Application for a Master Plan Special Permit.
  - (1) A record owner desiring a Master Plan Special Permit pursuant to the provisions of this Article shall file with the Planning Board an application therefor in accordance with any applicable regulations and submission requirements adopted pursuant to this Article. At a minimum, the application shall be accompanied by a Master Plan that depicts the planned use of the entire

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NMU District, as well as the following information relating to development of the NMU District:

- (a) Identification of the entire area of land to be developed;
  - (b) The existing topography of the land, vegetative cover, soil types, wetlands and water bodies, roads and ways;
  - (c) The general proposed location within which structures will be constructed, together with a schedule of proposed land use types including Multifamily Dwellings, commercial uses, Air-Supported Structures, mixed use buildings, and/or buildings accessory to Open Conserved Land uses;
  - (d) The general proposed location, size and intended use of all Open Conserved Land, including pedestrian, bicycle and equestrian trails, and the entity intended to own, operate, and/or maintain such Open Conserved Land;
  - (e) The general proposed location of all existing and proposed roads, water supply systems, wastewater systems, storm water drainage, utilities, and connections to existing infrastructure;
  - (f) An analysis of the impact of implementing the Master Plan on surface and ground water quality, groundwater recharge, wildlife habitat and corridors, wetlands and bodies of water, including streams and rivers, both localized and general, and an evaluation of pre-development conditions and post-development conditions;
  - (g) A traffic impact and access study on the impact of implementing the Master Plan;
  - (h) An analysis of the projected economic impact of implementing the Master Plan on the Town, prepared by a qualified independent economic research consultant;
  - (i) A phasing projection indicating the general anticipated schedule of construction of improvements within the NMU District in accordance with the Master Plan Special Permit; provided, however, that such schedule may be subject to variation depending on market forces;
  - (j) Proposed Design Guidelines for the NMU District;
  - (k) Proposed forms of the Open Conserved Land Covenant necessary for the Open Conserved Land.
- (2) Approval criteria. No Master Plan Special Permit shall be granted unless the Planning Board finds that:
- (a) The Master Plan complies with the provisions of this Article.
  - (b) The impact of the development activities shown on the Master Plan is anticipated to be of benefit to the Town.
  - (c) The intersections and roadways providing access to the NMU District will operate at an acceptable level of service based on the anticipated impact of vehicular traffic from all proposed development within the NMU District.

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- (d) The Master Plan provides adequately for the convenience and safety of vehicular and pedestrian movement within the NMU District and in relation to streets, property or improvements outside the NMU District.
- (e) The Master Plan provides for the adequacy of the methods of disposal of sewage, refuse and other wastes, provision of utilities, and the methods of drainage for surface water and seasonal flooding, if any, and adequate provision of water for domestic purposes.
- (3) An NMU special permit may be combined with a special permit regarding parking pursuant to Section 210-124(C) and (D).
- (4) Approval of an NMU Master Plan Special Permit application shall not be considered to constitute approval of any construction.
- (5) Master Plan Special Permit Amendment.
  - (a) Amendment of a Master Plan Special Permit issued pursuant to the provisions of this Article shall require the approval of the Planning Board. An application to amend the Master Plan Special Permit may be submitted separately or together with an application to the Planning Board for Site Plan Review. If the Board determines that a proposed amendment is significant, it shall hold a public hearing in conformance with M.G.L. c. 40A §9. If the Board determines, at a noticed public meeting of the Board but without a public hearing in conformance with M.G.L. c. 40A §9, that a proposed amendment is minor, it may amend the Master Plan Special Permit without a public hearing; provided, however, that a copy of such amendment shall be filed with the Town Clerk.
  - (b) Applications for an amendment to a Master Plan Special Permit issued pursuant to the provisions of this Article may be filed by the owners of the affected land, and shall not be required to be filed by the owners of all land within the NMU District.
  - (c) Duration of Approval. The commencement of Construction Activity within two (2) years of the date of the filing of the decision with the Town Clerk (or the date of the final resolution of any appeal of such decision) shall be deemed to constitute substantial use of rights under the Master Plan Special Permit.

### **§210-248. NMU Site Plan Review.**

- A. Construction of all Development Projects within the NMU District shall be subject to Site Plan Review by the Planning Board in accordance with the provisions of Article XX, with the following additions and exceptions:
  - (1) Submitted Site Plans shall show the planned design, use and lighting of the entire Development Site; provided, however, that, if development will be phased over time, separate site plan submissions may be made for separate portions of the Development Site.
  - (2) Construction of residential Development Projects shall be subject to Site Plan Review, notwithstanding any provision of §210-133 to the contrary. However, Site Plan Review shall not apply to the alteration, reconstruction or enlargement of residential buildings.
  - (3) In addition to the Site Plan Standards set forth in §210-136.1, the Site Plan shall conform to the Master Plan Special Permit.
- B. Permissible Building Areas: A Site Plan may show proposed construction within a Permissible Building Area, where the mix of uses and related construction details are subject to change, and

shall specify the maximum square feet of Gross Floor Area to be constructed within such Permissible Building Area. Although the Site Plan may show a proposed building in a specific location, the Site Plan approval shall authorize the construction of the Development Project if the structures therein and other site features thereof are located within the Permissible Building Area indicated. After the issuance of a Certificate of Occupancy for a building, (i) for commercial buildings: the amount by which such building is less than the maximum square footage of Gross Floor Space allocated thereto shall be available for reallocation to other proposed commercial buildings in computing the total Gross Floor Area for commercial uses in the NMU District for purposes of the Intensity of Use Limitations set forth in §210-241.A, and (ii) for residential buildings: the amount by which the number of Dwelling Units constructed is less than the number of Dwelling Units proposed shall be available for reallocation to other proposed Dwelling Units in computing the total number of Dwelling Units for purposes of the Intensity of Use Limitations set forth in §210-241.B, subject to further site plan review of the buildings to which such intensity of uses is reallocated, if required. **[Amended 5-1-2017 ATM, Article 37]**

- C. **Minor Modifications:** After the filing of a Decision of Site Plan Review, the Planning Board shall have the authority to approve minor modifications to the Site Plan. Minor modifications shall include changes that involve minor utility or building orientation adjustments; minor adjustments to parking, landscaping, Open Conserved Land or other building or site details; or other changes that do not significantly increase the square footage of Gross Floor Area of Commercial Uses within a Development Project or the number of Dwelling Units in a Development Project. Minor modifications may be approved by the Planning Board at any regularly scheduled public meetings, without the need to hold a public hearing. **[Amended 5-1-2017 ATM, Article 37]**
- D. **Duration of Approval:** If the development is to be phased over time, Site Plan approvals under this Article shall remain in effect as long as a building permit for not less than one (1) building in a Development Project on the Development Site is issued within two (2) years of issuance of the Site Plan approval (or the date of final resolution of any appeal of such issuance).

### **§ 210-249. Signs**

All signs in the NMU District are solely subject to such limitations of size and usage as may be imposed by the Planning Board.

### **§210-250. Miscellaneous.**

- A. **Modifications to Article XII, Water Resources Protection Overlay District.** In the NMU District, the following modifications to the provisions generally applicable to the Water Resources Protection Overlay District shall apply:

For purposes of §210-70(C) (2), the term “Development Project” shall be substituted for the term “lot.”

- B. **Modification to Article XVIII, Supplementary Provisions.** The Planning Board may, at its discretion, waive provisions of §210-124, Off-Street Parking which pertain to the design of parking facilities, as part of the Site Plan Review process if such waiver would assist with achieving the purposes of this Article.

# **Town of Hopkinton**

## **GENERAL BYLAWS**



**Printed September 2017**



# **TOWN OF HOPKINTON**

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**TOWN OF HOPKINTON**

**Part I**

**ADMINISTRATIVE LEGISLATION**

# **TOWN OF HOPKINTON**



# **TOWN OF HOPKINTON**

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **ARTICLE I General Penalty**

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##### **§1-7. Acceptance and approval; copies.**

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

#### **ARTICLE I General Penalty**

**[Adopted 3-15-1973 ATM, Article 52]**

##### **§1-1. General penalty for bylaw violations.**

Whoever violates any bylaw of the town, or the order of any Board lawfully established thereunder, shall, where no other punishment is prescribed, be punished by a fine not exceeding \$25 for a first offense nor less than \$25 for a second or subsequent offense. Each day that any violation continues shall be considered a separate violation.

#### **ARTICLE II Noncriminal Disposition [Adopted 5-6-1997 ATM, Article 47]**

##### **§1-2. Criminal complaint.**

The violation of any provision of these Bylaws may be addressed by institution of indictment or criminal complaint brought in the District Court. The penalty shall be that fixed by the bylaw; provided, however, that in no case shall the maximum penalty for each violation or offense brought in such manner be in excess of \$300 unless otherwise permitted by law. Each day during which any such violation or offense exists or continues shall be deemed to be a separate violation or offense and be subject to the penalty referred to above.

##### **§1-3. Noncriminal disposition.**

- A. The violation of any provision of the bylaws set forth below, for which a specific penalty is enumerated, may be addressed by the procedure for noncriminal disposition as provided in MGL c. 40, §21D, as the same is now in force and effect or may hereafter be amended or supplemented.
- B. Without intending to limit the generality of the foregoing, it is the intention of this article that the following ordinances and bylaws and rules and regulations are to be included within the scope of this article, that the specific penalties, as hereinafter set forth, shall apply in such cases, and that, in addition

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to any of the police officers of the Town of Hopkinton, who shall in all cases be considered to be enforcing persons for the purposes of this article, a municipal official or position, or the person serving the functions of same, shall also be enforcing persons with regard to violations or offenses of such ordinances, bylaws, rules and regulations.

- C. It is hereby specifically provided that each day during which any such violation or offense exists or continues shall be deemed to be a separate violation or offense.
- D. Nothing contained herein shall be deemed to require the use of this noncriminal disposition procedure, and, at the option of the appropriate enforcing person, criminal and/or civil proceedings may also be utilized.

## §1-4. Penalties enumerated.

It is hereby established that the following provisions shall be subject to the noncriminal disposition procedure:

<b>Citation to Law, Bylaw, Rule or Regulation, if Applicable</b>	<b>Subject of Bylaw and Enforcing Person</b>	<b>Penalty</b>
Hopkinton Board of Health Code of Regulations	Sales of tobacco to minors and tobacco smoke in public places  Public Health Administrator or agent as designated by the Board of Health	First violation: \$100 Second violation: \$200 Third and subsequent Violations: \$300
Hopkinton Board of Health Code of Regulations, remaining Sections which include but are not limited to:	General public health matters	\$50
105 CMR 590.00	Food establishments	
105 CMR 410.00	Standards of human habitation	
310 CMR 15.00	Subsurface sewerage disposal	
105 CMR 435.00	Swimming pools	
105 CMR 123.00	Tanning facilities  Public Health Administrator or agent as designated by the Board of Health	
MGL c. 111, all applicable sections	Public health statute  Public Health Administrator or agent as designated by the Board of Health	\$50

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Citation to Law, Bylaw, Rule or Regulation, if Applicable	Subject of Bylaw and Enforcing Person	Penalty
MGL c. 114, §49	Funeral directors	\$50
	Public Health Administrator or agent As designated by the Board of Health	
MGL c. 140, §51	Massage licensing	\$50
	Public Health Administrator or agent as designated by the Board of Health	
Scenic Roads Regulations (Ch. 160)	Scenic roads	\$50
	Planning Board members, Town Planner or agent as Designated by the Planning Board	
Earth Removal Bylaw (Ch. 96) <b>[Amended 9-28-1998 STM, Article 10]</b>	Earth removal	\$50
	Earth Removal Agent, Planning Board members or agents as designated by the Planning Board	
Hopkinton Animal Control Bylaws (Ch. 62)	Animal control	First violation: \$25 Second violation: \$50 Third and subsequent of Violations: \$75
	Animal Control Officer or Agent as designated by the Animal Control Officer	
Kennel license (Ch 62, Art V) <b>[Added 5-3-1999 ATM, Article 47; Amended 5-1-2017 ATM, Art. 46]</b>	Regulations relating to kennels for dogs	First violation: \$50 for each offense, each day being a separate offense Second violation: \$200 for each offense, each day being a separate offense Third and subsequent violations: \$300 for each offense, each day being a separate offense day being a separate offense
	Animal Control Officer and Police Department	

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<b>Citation to Law, Bylaw, Rule or Regulation, if Applicable</b>	<b>Subject of Bylaw and Enforcing Person</b>	<b>Penalty</b>
Nuisance by reason of barking dogs <b>[Added 5-3-1999 ATM, Article 46]</b>	Barking or noisome dogs  Animal Control Officer and Police Department	First violation: \$25, for each offense, each day being a separate offense Second violation: \$50, for each offense, each day being a separate offense
Noise Bylaw (Ch. 141) <b>(Amended 5-5-2008 ATM, Article 61)</b>	Noise violation  Director of Municipal Inspections, Board of Selectmen or agent as designated by Board of Selectmen	First violation: \$50 Subsequent violations: \$100
Rules and regulations affecting the use or possession of tobacco products on school property <b>[Added 5-4-1999 STM, Article 3]</b>	Use or possession of tobacco products on school property  Board of Health or agent designated by Board of Health	First violation: \$100 Second violation: \$200 Third violation or subsequent violation: \$300
Alcoholic Beverages, Marijuana or Tetrahydrocannabinol Bylaw (Ch. 58) <b>[Added 5-3-2000 ATM, Article 60, 5-4-2009 ATM, Article 20, 5-2-2011 ATM, Article 41, 5-7-2012; Amended 5-1-2017 ATM, Article 40]</b>	Alcoholic Beverages, Marijuana or Tetrahydrocannabinol and Tobacco  Police Department	Alcoholic Beverages: \$100 Marijuana or Tetrahydrocannabinol: \$100  Tobacco: tobacco and products containing tobacco confiscated, and parent(s) or guardian(s) of violator notified and provided with educational materials on the health issues related to tobacco, and information on smoking cessation programs; no monetary penalty
.Numbering of Buildings Bylaw (Ch. 78) <b>[Added 5-3-2000 ATM, Article 60]</b>	Building identification  Director of Municipal Inspections, Board of Selectmen or agent as designated by Board of Selectmen or Director of Municipal Inspections	\$25
Cemetery Regulations Bylaw (Ch. 83) <b>[Added 5-3-2000 ATM, Article 60]</b>	Operation of snowmobiles in cemeteries  Board of Cemetery Commissioners or agent designated by Board of Cemetery Commissioners	\$100

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<b>Citation to Law, Bylaw, Rule or Regulation, if Applicable</b>	<b>Subject of Bylaw and Enforcing Person</b>	<b>Penalty</b>
Disorderly Conduct Bylaw (Ch. 91) <b>[Added 5-3-2000 ATM, Article 60]</b>	Disorderly conduct  Police Department	\$50
Dumping Bylaw(Ch. 93) Rules and Regulations of Board of Health <b>[Added 5-3-2000 ATM, Article 60]</b>	Dumping of refuse  Board of Health or agent designated by Board of Health	First violation: \$100 Second violation: \$200 Third and subsequent violations: \$300
Easement Management Bylaw (Ch. 99) <b>[Added 5-3-2000 ATM, Article 60]</b>	Management of obligations relating to easements  Town Board, officer or department having jurisdiction over easement area or agent designated by any of them	\$100, plus appropriate mitigation
Electrical Installations Bylaw (Ch. 103) <b>[Added 5-3-2000 ATM, Art. 60]</b>	Installation of electrical facilities  Inspector of Wires, Director of Municipal Inspections or agent designated by either	\$20
Firearms Bylaw (Ch. 109) <b>[Added 5-3-2000 ATM, Article 60]</b>	Discharge of automatic weapons  Police Department	\$50
Fuel Storage Tanks Bylaw (Ch. 119) <b>[Added 5-3-2000 ATM, Article 60]</b>	Installation and maintenance of underground fuel storage tanks  Fire Department	First violation: \$50 Second violation: \$100 Third and subsequent violations: \$200
Construction Waste or Debris (Ch. 142) <b>[Added 5-1-2017 ATM, Article 47]</b>	Construction Debris on Property	First offense: \$25, with each day being a separate violation Second offense: \$50, with each day being a separate offense Third offense: \$100, with each day being a separate offense Fourth and subsequent offense: \$300, with each day being a separate offense

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<b>Citation to Law, Bylaw, Rule or Regulation, if Applicable</b>	<b>Subject of Bylaw and Enforcing Person</b>	<b>Penalty</b>
Door to Door Soliciting and Canvassing Bylaw (Ch. 150) <b>[Added 5-3-2000 ATM, Article 60, amended 5-7-2007 ATM, Art. 39, 11-5-2007 STM, Article 6]</b>	Door to Door Soliciting and Canvassing  Police Department	\$200
Sale of Products Bylaw (Ch. 154) <b>[Added 5-3-2000 ATM, Article 60]</b>	Sale of certain items  Police Department	\$50
Solid Waste Bylaw (Ch. 170) <b>[Added 5-3-2000 ATM, Article 60]</b>	Disposal of solid waste Board of Health, Board of Selectmen, Director of the Department of Public Works or agent designated by any of them	\$50
Storm Drain System, Discharges to, Bylaw (Ch. 171) <b>[Added 5-1-2017 ATM, Article 48]</b>	Stormwater	First violation: \$100 Second and subsequent violations: \$300
Streets and Sidewalks Bylaw (Ch. 174) <b>[Added 5-3-2000 ATM, Art. 60, amended 5-5-2008 ATM, Article 20]</b>	Obstruction of streets and sidewalks  Discharge of water onto a public way  Director of the Department of Public Works or agent designated by such Director	\$25  \$25
Trees Bylaw (Ch. 186) <b>[Added 5-3-2000 ATM, Article 60]</b>	Cutting or removal of trees  Tree Warden, Director of the Department of Public Works or agent designated by either	\$300

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<b>Citation to Law, Bylaw, Rule or Regulation, if Applicable</b>	<b>Subject of Bylaw and Enforcing Person</b>	<b>Penalty</b>
Unregistered Motor Vehicles Bylaw (Ch. 188) <b>[Added 5-7-2012 ATM, Article 45; Amended 5-1-2017 ATM, Article 50]</b>	Parts of motor vehicles and trailers; unregistered motor vehicles and trailers  Police Department	First offense: \$25, with each day being a separate offense Second offense: \$50, with each day being a separate offense Third offense: \$100, with each day being a separate offense Fourth and subsequent offense: \$300, with each day being a separate offense
Vehicles and Traffic Bylaw (Ch. 190) <b>[Added 5-3-2000 ATM, Article 60]</b>	Removal of cars for snow plowing and handicapped parking  Director of the Department of Public Works or agent designated by such Director	First violation: \$50 Second violation: \$100 Third and subsequent violations: \$200
Water Bylaw (Ch. 199) <b>[Added 5-3-2000 ATM, Article 60]</b>	Conservation of water supplies  Director of the Department of Public Works or agent designated by such Director	First violation: warning Second and subsequent violations: \$100
Fire Prevention Bylaw (§113-2) <b>[Added 5-7-2001 ATM, Art. 39]</b>	Truss Roof and Floor Identification Placards  Fire Department	First violation: \$50 Second violation: \$100 Third violation and subsequent violation

## **§1-5. Severability.**

If any provision of this article is declared to be unconstitutional, invalid or illegal by a court, agency or other body of competent jurisdiction, the offending provision shall be deemed stricken from this article and shall not affect the validity of the remaining provisions hereof which shall remain in full force and effect.



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## **ARTICLE III**

### **Recodification of Bylaws**

**[Adopted 5-3-1999 ATM, Art. 39]**

#### **§1-6. Acceptance and approval.**

The town accepts and approves the recodification of the bylaws of the Town of Hopkinton as presented in the volume entitled the "By-laws of the Town of Hopkinton," which is on file in the office of the Town Clerk, said recodification containing only a renumbering, recaptioning, repositioning and grammatical editing of the present bylaws, with no substantive changes having been made to any of the bylaws included therein. Such recodification shall be known as the "Bylaws of the Town of Hopkinton."

## **ARTICLE IV**

### **Recodification of Zoning Bylaws**

**[Adopted 5-2-2000 ATM, Art. 21]**

#### **§1-7. Acceptance and approval; copies.**

The town accepts and approves the recodification of the Zoning Bylaws of the Town of Hopkinton in the format presented as Chapter 210 in the volume entitled "Code of the Town of Hopkinton," which is on file in the office of the Town Clerk, said recodification containing only a renumbering, re-captioning, repositioning and grammatical editing of the present Zoning Bylaws, with no substantive changes having been made to any of the Bylaws included therein. Such recodification shall be known as the "Zoning Bylaws of the Town of Hopkinton." A copy of such recodified bylaw is on file at the office of the Town Clerk.

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## **CHAPTER 5**

### **BOARDS, COMMITTEES AND COMMISSIONS**

#### **ARTICLE 1**

##### **Appropriation Committee**

- §5-1. Appointment; compensation; duties.**
- §5-2. Vacancies.**
- §5-3. Officers; regular meetings.**
- §5-4. (Reserved) [5-7-2007 ATM, Art 4]**
- §5-5. Insertion of requests in Town Warrant; report by Committee.**
- §5-6. Explanation of actions.**
- §5-7. (Reserved)**

#### **ARTICLE II**

##### **(Reserved)**

**§§5-8 through 5-9. (Reserved)**

#### **ARTICLE III**

##### **Quarterly Meetings**

- §5-10. Coordination of efforts.**
- §5-11. Chairman.**

#### **ARTICLE IV**

##### **Council on Aging**

- §5-12. Appointment, purpose.**
- §5-13. Membership; terms; compensation.**
- §5-14. Filling of vacancies.**
- §5-15. Election of officers; vacancies.**
- §5-16. Annual report.**
- §5-17. Appointment of clerks and other employees.**

#### **ARTICLE V**

##### **Capital Improvement Program Committee**

- §5-18. Establishment.**
- §5-19. Selection of members and term of service.**
- §5-20. Vacancies; officers; compensation.**
- §5-21. Definitions.**

#### **ARTICLE VI**

##### **Community Preservation Committee**

- §5-23. Establishment; membership; terms vacancies; appointments.**
- §5-24. Responsibilities.**
- §5-25. Quorum.**
- §5-26. Severability; time limit for appointments.**

#### **ARTICLE VII**

##### **Hopkinton Affordable Housing Trust Fund Board**

- §5-27. Establishment; membership; terms; purpose.**
- §5-28. Powers and Duties.**

#### **ARTICLE VIII**

##### **Minutes of Public Bodies**

- §5-29. Meeting Minutes.**

#### **GENERAL REFERENCES**

Department of Municipal Inspections -- See Ch. 24.

Duties of Town officers -- See Ch. 28, Art. I.

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## **ARTICLE I**

### **Appropriation Committee**

**[Adopted 3-6-1944 ATM, Art. 1]**

**§ 5-1. Appointment; compensation; duties.** [Amended 4-14-1992 ATM, Art. 42; 5-2-2000 ATM, Art. 48, 5-7-2007 ATM, Art. 4, 5-4-2009 ATM, Art. 16, 5-2-2011 ATM, Art. 39]

A. There shall be an Appropriation Committee of five registered voters of sound business experience or good judgment, who shall serve without pay and who shall consider any and all questions involving the expenditure of money, for the purpose of making reports or recommendations thereon to the Town. The Finance Director shall serve on the Appropriation Committee *ex officio*, as a sixth non-voting member.

B. The members of the Appropriation Committee, excluding the Finance Director, shall be appointed to serve terms of three (3) years and shall be chosen immediately following the Annual Town Meeting as provided in the Town Charter.

C. No person holding any other elective or appointive office in his or her individual capacity shall be eligible to appointment or qualified to serve as a member of the Appropriation Committee, with the exception of the Finance Director; provided, however, that a member of the Appropriation Committee may be designated by the Appropriation Committee to serve on another board, committee or commission as a representative of the Appropriation Committee.

**§ 5-2. Vacancies.**

Whenever a vacancy shall occur in the membership of the Appropriation Committee for any reason, the vacancy shall be filled by appointment, as provided in the Town Charter, for the remainder of the term. [Amended 5-2-2011 ATM, Art. 39]

**§ 5-3. Officers; regular meetings.**

The Appropriation Committee shall, as soon as possible after the annual appointment of new members as stated above, meet for the purpose of organization and shall elect from the members a Chairman and a Secretary, who shall hold office until the final adjournment of the next Annual Town Meeting and until their successors are appointed. The Appropriation Committee shall meet at regular intervals.

**§ 5-4. (Reserved)**

**§ 5-5. Insertion of requests in Town Warrant; report by Committee.**

All requests by the Town boards, officers or committees, or by citizens for appropriations shall be inserted in the Town Warrant in proper form, and all articles calling for an appropriation or expenditure of money in the Town Warrant shall be referred to the Appropriation Committee.

The Committee, after consideration, shall report with suggestions on such appropriation or expenditure, in whole or in part, and shall notify the board, officer or committee requesting same, and also the Board of Selectmen, making such suggestions or recommendations as may be advisable.

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## **§ 5-6. Explanation of actions.**

The Appropriation Committee shall at each Town Meeting present and explain its action on each of such articles in the Town Warrant, presenting its budget with advice and explanations, and recommendations as to any appropriation of Town funds.

## **§ 5-7. (Reserved)**

## **ARTICLE II**

**(Reserved)**

## **§§ 5-8 through 5-9. (Reserved)**

## **ARTICLE III**

### **Quarterly Meetings**

**[Adopted 3-5-1959 ATM, Art. 17]**

## **§ 5-10. Coordination of efforts.**

All town-elected officers, appointees and agents shall meet at least four times each year to exchange information regarding the business of the Town and their actions and duties so that the best interests of the Town will be served through coordination of their efforts.

## **§ 5-11. Chairman.**

The Chairman of the Board of Selectmen shall act as Chairman of the meetings, and shall call the meetings.

## **ARTICLE IV**

### **Council on Aging**

**[Adopted 3-3-1971 ATM, Art. 12]**

## **§ 5-12. Appointment; purpose.**

The Board of Selectmen shall appoint a Council on Aging for the purpose of coordinating or carrying out programs designed to meet the problems of the elderly in cooperation with programs of the Commission on Aging established under MGL c. 6, § 73.

## **§ 5-13. Membership; terms; compensation.**

The Board of Selectmen shall appoint the Council on Aging consisting of seven members. Upon acceptance of this article, the Board shall appoint three members for three years, two members for two years and two members for one-year terms. Members can be reappointed for concurrent terms. The members of the Council shall serve without pay.

## **§ 5-14. Filling of vacancies.**

Whenever a vacancy shall occur in the membership of the Council, by reason of death, resignation, inability to act or for any other reason, the vacancy shall be filled by appointment by the Selectmen for the remainder of the term.

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## **§ 5-15. Election of officers; vacancies.**

The Council on Aging at its first annual meeting and thereafter annually in April of each year shall elect from its membership a President, First Vice President, Second Vice President, Secretary and Treasurer. Each officer shall hold office until the next annual election. In the event a vacancy occurs in any of the offices above, the Council shall hold a special meeting for the purpose of electing one of its members to fill such vacancy.

## **§ 5-16. Annual report.**

The Council shall prepare and submit an annual report of its activities to the Town and shall send a copy thereof to the Commission on Aging.

## **§ 5-17. Appointment of clerks and other employees.**

The Council may appoint such clerks and other employees as it may require.

## **ARTICLE V**

### **Capital Improvement Program Committee**

**[Adopted 9-18-1995 STM, Art. 33; Amended 5-1-2006 ATM, Art. 30]**

## **§ 5-18. Establishment.**

A. There shall be established a Capital Improvement Program Committee (hereinafter "Committee") which shall perform the duties set forth in the following sections of this article and shall be governed by the provisions hereof.

B. The Committee shall consist of five registered voters of the Town of Hopkinton (hereinafter "town"), none of whom is a Town employee or Town official (either elected or appointed), who shall be appointed as provided in § 5-19.

## **§ 5-19. Selection of members and term of service. [Amended 9-18-1995 STM, Art. 33]**

A. Of the five members of the Committee, two shall be appointed by the Town Moderator and three by the Board of Selectmen. Subject to the provisions below, members shall be appointed for terms of five years.

B. Upon approval of the provisions of this article, the two most senior incumbent members of the Capital Improvement Program Committee as previously in place, not otherwise in conflict with § 5-18B above, shall continue to serve. Such incumbents shall serve as appointees of the Moderator, one to have a term expiring on June 30, 1997, and the other on June 30, 1999, as the Moderator shall designate. If there are no such incumbents, the Moderator shall otherwise appoint such eligible individuals to terms expiring as aforesaid.

C. The Board of Selectmen shall appoint three members whose terms shall expire on June 30, 1996, June 30, 1998, and June 30, 2000, and shall thereafter upon expiration of each term appoint or reappoint an individual for a term of five years.

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## **§ 5-20. Vacancies; officers; compensation.**

A. Whenever a vacancy occurs on the Committee, it shall be filled by the appointment authority that appointed the member whose position has become vacant. Any person appointed to fill a vacancy shall hold office for the unexpired term of the person succeeded.

B. The Committee shall annually elect from among its members a Chairperson and such other officers as it shall deem appropriate and shall adopt such rules and regulations affecting its governance as may be deemed necessary.

C. Committee members shall serve without compensation.

## **§ 5-21. Definitions. (Amended 5-1-2006 ATM, Art. 30)**

For the purpose of this article, the following terms shall have the meanings indicated

CAPITAL EXPENDITURE -- Any expenditure, financed in whole or in part by Town funds, for a capital improvement.

CAPITAL IMPROVEMENT--

A. Any acquisition, disposition, lease or transfer of land; or a building.

B. Any acquisition, disposition, lease or transfer of motor vehicles; or

C. Any acquisition or lease of any single item of equipment with a total cost of \$25,000 or more, and a substantial useful life as determined by the Committee; or

D. Any construction, reconstruction, replacement, extension or other improvement of public buildings, highways, sidewalks, storm drains, sewerage installations, playgrounds, parks or substantially similar public works, or for a facility, structure or a utility appurtenant to any of the same, with a total cost of \$25,000 or more.

## **§ 5-22. Duties. [Amended 5-1-2006 ATM, Art. 30; 5-7-07 ATM, Art. 4]**

A. The Committee shall ascertain annually what capital expenditures will be required by the Town during the subsequent ten fiscal years. In making its determinations, the Committee shall consult with such officers of the Commonwealth of Massachusetts and of the Town and its various boards and committees, as in its discretion it shall deem appropriate and beneficial. Department heads and chairpersons of all boards, commissions and committees of the town, whether elected or appointed, shall submit to the Committee, not later than the third Monday of November of each year, recommendations and statements for capital expenditures for the subsequent ten fiscal years. Recommendations for the subsequent five fiscal years will include operating cost estimates as deemed necessary by the Committee.

B. The Committee shall submit a Capital Improvement Program to the Town Manager on or before January 1. [Added 5-7-2007 ATM, Art. 4]

C. The Committee shall publish an annual report in conjunction with the Appropriations Committee of the Town and shall include in such report its recommendations for the scheduling of capital expenditures for the subsequent ten fiscal years and for the financing of such expenditures as in its judgment cannot or should not be paid for entirely from current revenues. The Committee shall assist the Town Meeting with

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regard to priorities of projects, financing costs, impacts of recommended projects to the operating budget and other related matters. No capital improvement whether proposed as a separate article, as a part of an operating budget, or in a revolving fund shall be voted upon at any Town Meeting until it has been presented in written form to the Committee for recommendation.

## **ARTICLE VI Community Preservation Committee [Adopted 4-9-2001 STM, Art. 2]**

### **§ 5-23. Establishment; membership; terms; vacancies; appointments.**

There shall be established in the Town pursuant to G.L.c. 44B, sec. 5(a) a Community Preservation Committee (the "Committee"). The Committee shall consist of nine (9) members, which shall include one member of the Hopkinton Conservation Commission as designated by that Commission; one member of the Hopkinton Historical Commission as designated by that Commission; one member of the Planning Board as designated by that Board; one member of the Parks and Recreation Commission as designated by that Commission; one member of the Hopkinton Housing Authority as designated by that Authority; one member of the Hopkinton Open Space Preservation Commission as designated by that Commission; and three members to be appointed at large from the registered voters of the Town by the Board of Selectmen. The members appointed by the Conservation Commission, the Hopkinton Historical Commission, the Planning Board, the Parks and Recreation Commission, the Hopkinton Housing Authority, and the Hopkinton Open Space Preservation Commission shall be appointed annually for a term of one (1) year. The three persons initially appointed at large by the Board of Selectmen shall be appointed for terms of three, two and one year, respectively. Upon the

expiration of the term of each member so appointed by the Board of Selectmen, the Board of Selectmen shall appoint one member for a term of three (3) years. After the initial appointment of the members of the Committee, any vacancy occurring in the Committee from any cause may be filled for the remainder of the unexpired term by the Commission, Board or Authority, as the case may be, which made the initial appointment, for the remainder of the un-expired term. Such appointment shall be made not less than seven (7) days following notice of intent to fill such vacancy. The Committee shall elect a Chairman and Vice Chairman from among its members and shall elect a Secretary who need not be a member of the Committee. After having a public hearing and requesting recommendations from Town boards and committees, the Committee shall adopt policies, rules and regulations for conducting its affairs and for carrying out its responsibilities. Any member of the Committee may, after a public hearing before the Commission, Board or Authority which appointed the said member, be removed for cause by majority vote of such Commission, Board or Authority.

### **§ 5-24. Responsibilities**

- A. The Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with relevant municipal boards, in conducting such studies. As part of its study, the Committee 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.
- B. The Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition,



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creation and preservation of land for recreational uses, 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 community housing that is acquired or created as provided herein. With respect to community housing, the Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

The Committee may include in its recommendation to the Town Meeting 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. Recommendations to the Town Meeting shall include the anticipated cost.

### **§ 5-25. Quorum**

The Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Committee shall constitute a quorum. The Committee shall approve its actions by majority vote.

### **§ 5-26. Severability**

- A. In the event that any section, paragraph or part of this Chapter is for any reason declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph or part shall continue in full force and effect.
- B. Each appointing authority shall have twenty days after approval by the Attorney General to make its appointment. Should any appointing authority fail to make its appointment within the allotted time, the Board of Selectmen shall have the authority to make the appointment.

## **ARTICLE VII**

### **Hopkinton Affordable Housing Trust Fund Board**

**[Adopted 5-3-2010 ATM, Art. 33]**

### **§5-27. Establishment; membership; terms; purpose.**

There shall be established a Hopkinton Affordable Housing Trust Fund Board. The Board of Trustees (the "Board") shall consist of five (5) trustees. The trustees shall be appointed by the Board of Selectmen and shall include one member of the Board of Selectmen. The members of the Board of Trustees are designated as public agents for the purposes of the constitution of the Commonwealth.

The initial terms of the trustees shall be staggered as one (1) or two (2) year terms. All terms thereafter shall be for two (2) years.

The purpose of the Hopkinton Affordable Housing Trust is to provide for the creation and preservation of affordable housing in Hopkinton for the benefit of low- and moderate-income households.

### **§5-28. Powers and Duties.**

- A. The Board shall administer the Hopkinton Affordable Housing Trust Fund, created by the vote

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taken pursuant to Article 7 of the May 2009 Special Town Meeting. The powers of the Board, all of which shall be carried on in furtherance of the purposes set forth in Chapter 44, section 55C of the Massachusetts General Laws, shall be as set forth in this section; provided, however, that the Board shall not purchase, sell, lease, exchange, transfer or convey any interest in real property except with the approval of the Board of Selectmen; and provided further that the Board shall not incur any debt, borrow money, grant and mortgage or pledge trust assets except with the approval of Town Meeting pursuant to applicable law. Subject to such limitations, the Board shall be authorized:

1. To accept and receive property, whether real or personal, by gift, grant, contribution, devise, or transfer from any person, firm, corporation or other public or private entity including, without limitation, grants of funds or other property tendered to the trust in connection with provisions of any applicable general or zoning bylaw;
2. To purchase and retain real or personal property including, without restriction, investments that yield a high rate of income or no income;
3. To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property, as the Board deems advisable notwithstanding the length of any such lease or contract;
4. To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Board engages for the accomplishment of the purposes of the trust;
5. To employ advisors and agents, such as accountants, appraisers and lawyers as the Board deems necessary;
6. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Board deems advisable;
7. To apportion receipts and charges between income and principal as the Board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
8. To participate in any reorganization, recapitalization, merger or similar transactions; to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
9. To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
10. To carry property for accounting purposes other than acquisition date values;

## **TOWN OF HOPKINTON**

11. To borrow money on such terms and conditions and from such sources as the Board deems advisable, to mortgage and pledge trust assets as collateral;
  12. To make distributions or divisions of principal in kind;
  13. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of Chapter 44, section 55C of the Massachusetts General Laws and this Article, to continue to hold the same for such period of time as the Board may deem appropriate;
  14. To manage or improve real property and to abandon any property that the Board determines not to be worth retaining;
  15. To hold all or part of the trust property uninvested for such purposes and for such time as the Board may deem appropriate; and
  16. To extend the time for payment of any obligation to the Trust.
- B. All moneys paid to the Trust in accordance with any general or zoning bylaw, exaction fee, grant, development agreement, development approval, host community agreement, or private contributions shall be paid directly into the Trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the Board within one year of the date they were appropriated into the trust, shall remain trust property.
- C. The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.
- D. The Board shall make an annual report to the Board of Selectmen. The report shall include a description and source of funds received and expended and the type of affordable housing programs or properties assisted with the funding.

# TOWN OF HOPKINTON

## ARTICLE VIII

### Minutes of Public Bodies

[Added 5-1-2017 ATM, Article 41]

#### § 5-29. Meeting Minutes.

- A. Approval of Minutes. All boards, committees, and commissions of the Town shall approve the minutes of their open session or executive session meetings within forty (40) calendar days of the meeting, or at its next meeting, whichever is later.
- B. Review of Executive Session Minutes. Executive session minutes shall be reviewed at least quarterly to determine whether continued non-disclosure of the minutes is warranted. Such determination must be announced at the next open session meeting of the board or committee.
- C. Town Clerk. Within ten (10) calendar days of approving open session minutes, the board, committee, or commission shall provide the Town Clerk with a copy of the open session minutes. Within ten (10) calendar days of determining that continued non-disclosure of executive session minutes is no longer warranted, the board or committee shall provide the Town Clerk with a copy of the executive session minutes. If a portion of the executive session minutes is subject to continued non-disclosure, a redacted version of the executive session minutes shall be provided.
- D. Posting on the Town's Website. Boards, committees, or commissions shall provide copies of all open session and public executive session minutes to a Records Access Officer within the same time frame specified in Subsection C of this Section. The Records Access Officer shall, to the extent feasible, cause such minutes to be posted on the Town's website within ten (10) calendar days. Minutes redacted in compliance with Subsection C above, shall be posted in redacted form.
- E. Effect. Failure to comply with this Section shall not impact the validity of any decision, action, or vote taken by the board or committee. Compliance with this Section shall not relieve any individual from responsibility as a records custodian under the *Public Records Law* or as a member of a public body under the *Open Meeting Law*.

# **TOWN OF HOPKINTON**

## **CHAPTER 13**

### **FINANCES**

#### **ARTICLE I**

##### **Bonds, Notes and Money**

- §13-1. Payment to Treasurer.**
- §13-2. Negotiation and selling by Treasurer; bids.**

#### **ARTICLE II**

##### **Procurement**

- §13-3. Compliance with statute.**
- §13-4. Statutory thresholds.**

#### **ARTICLE III**

##### **Reversion of Appropriations of General Fund**

- §13-5. Definitions**
- §13-6. General appropriations.**
- §13-7. Specific appropriations.**
- §13-8. Exceptions.**

#### **ARTICLE IV**

##### **Payment of Fees into Treasury**

- §13-9. Payment by Town officers Required.**

#### **ARTICLE V**

##### **Payment of Insurance Premiums**

- §13-10. Premium costs payable by Town for surviving spouse.**

#### **ARTICLE VI**

- §13-11. Purpose**
- §13-12. Expenditure Limitations**
- §13-13. Interest**
- §13-14. Procedures and Reports**
- §13-15. Authorized Revolving Funds**

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

#### **GENERAL REFERENCES**

**Appropriation Committee -- See Ch. 5, Art. I.**

#### **ARTICLE I**

##### **Bonds, Notes and Money**

**[Adopted 3-6-1944 ATM, Art. 1]**

##### **§ 13-1. Payment to Treasurer.**

All income, revenue and money belonging to the Town when received or collected by any board, commission or officer shall be promptly paid over to the Town Treasurer.

##### **§ 13-2. Negotiation and selling by Treasurer; bids.**

All notes and bonds issued by the Town for the purpose of borrowing money shall be negotiated and sold by the Treasurer, who shall in all cases secure by advertisement or otherwise, if possible, at least two bids or offers therefor.

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## **ARTICLE II**

### **Procurement**

**[Adopted 10-10-1990 STM, Art. 7]**

#### **§ 13-3. Compliance with statute.**

Every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by the town, with the exception of those matters referred to in MGL c. 30B, § 1(b), shall be made in accordance with the procedures set forth in MGL c. 30B.

#### **§ 13-4. Statutory thresholds. [Amended 5-7-2001 ATM, Art. 46]**

The Town shall comply with the thresholds set forth in MGL c. 30B, as it may be amended from time to time, in all of its procurement activities.

## **ARTICLE III**

### **Reversion of Appropriations to General Fund**

**[Adopted 5-3-1994 ATM, Art. 4]**

#### **§ 13-5. Definitions.**

As used in this article, the following words shall have the following meanings:

GENERAL APPROPRIATION -- Any appropriation made by Town Meeting which is not a specific appropriation within the meaning of this article.

SPECIFIC APPROPRIATION -- An appropriation made by Town Meeting which is described in the vote of the Town Meeting to be an appropriation for a specific purpose and is otherwise a specific appropriation under the law.

#### **§ 13-6. General appropriations.**

General appropriations made by the Town Meeting shall continue to revert to the general fund at the close of the fiscal year for which they are made as provided by law.

#### **§ 13-7. Specific appropriations.**

A. Unless otherwise provided in a vote of the Town Meeting making a specific appropriation, or unless a specific appropriation has been encumbered by contractual obligations, a specific appropriation shall remain in existence for a period of two years from the commencement of the fiscal year in which the funds appropriated by the specific appropriation were authorized to be expended. At the end of the second fiscal year, any funds remaining in the specific appropriation shall revert to the general fund of the town. A vote making a specific appropriation may provide that the appropriation shall revert to the general fund at the end of any fiscal year.

B. The Appropriation Committee may at any time extend the date on which a specific appropriation would otherwise terminate and revert to the general fund. [Amended 5-3-2000 ATM, Art. 56]

C. The reversion of the balance of the funds in any specific appropriation account shall include any subsequent transfer of funds to that specific appropriation account which remain unexpended on the date of the reversion.

# **TOWN OF HOPKINTON**

## **§ 13-8. Exceptions.**

- A. Nothing in this article shall be construed to affect the right of any creditor of the Town regardless of the reversion of any appropriation to the general fund.
- B. An article appropriating funds utilized by an enterprise fund shall be closed at the end of the above period to the retained earnings of that enterprise fund.
- C. Nothing in this article shall be construed to affect appropriations which require borrowing.
- D. Articles voted prior to the effective date of this article shall be exempt from the provisions hereof.

## **ARTICLE IV**

### **Payment of Fees Into Treasury [Adopted 5-5-1997 ATM, Art. 35]**

## **§ 13-9. Payment by Town officers required.**

All Town officers shall be required to pay all fees received by them, by virtue of their office, into the Town Treasury within three business days of receipt any such fee.

## **ARTICLE V**

### **Payment of Insurance Premiums [Adopted 5-3-2004 ATM, Art. 13]**

## **§ 13-10. Premium costs payable by Town for surviving spouse..**

The Town shall pay one-half of the premium costs payable by the surviving spouse of an employee who at the time of his/her death was eligible to receive a pension from the appropriate state or county retirement system, or of such a retired employee for group general, or blanket hospital, surgical, medical, dental or other health insurance.

## **ARTICLE VI**

### **Departmental Revolving Funds [Added 5-1-2017 ATM, Article 42]**

## **§ 13-11. Purpose.**

This bylaw establishes and authorizes revolving funds for use by Town departments, boards, committees or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.

## **§ 13-12. Expenditure Limitations.**

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

- A. Full-time employees, whose salaries or wages are paid from the Revolving Fund, shall also have their



## **TOWN OF HOPKINTON**

fringe benefits paid from the fund.

- B. No liability shall be incurred in excess of the available balance of the fund.
- C. The total amount spent during a fiscal year shall not exceed the amount authorized by Town Meeting on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the Board of Selectmen and Appropriations Committee.

### **§ 13-13. Interest.**

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

### **§ 13-14. Procedures and Reports.**

Except as provided in General Laws Chapter 44, § 53E½ and this bylaw, the laws, charter provisions, bylaws, rules, regulations, policies or procedures that govern the receipt and custody of town monies and the expenditure and payment of town funds shall apply to the use of a revolving fund established and authorized by this bylaw. The town accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report of the town accountant provided to the department, board, committee or officer on appropriations made for its use.

### **§ 13-15. Authorized Revolving Funds.**

The Table establishes:

- A. Each revolving fund authorized for use by a town department, board, committee or officer;
- B. The department 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 or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the Town Accountant;
- 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; and
- G. The fiscal years each fund shall operate under this bylaw.

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<u>Revolving Fund</u>	<u>Department, Board, Committee or Officer Authorized to Spend from fund</u>	<u>Fees, Charges or Other Receipts Credited to Fund</u>	<u>Program or Activity Expenses Payable from Fund</u>	<u>Restrictions or Conditions on Expenses Payable from Fund</u>	<u>Other Requirements/ Reports</u>	<u>Fiscal Years</u>
Building Department	Director of Municipal Inspections with approval of the Town Manager	Permit fees	Expenses of operations of department, acquisition and maintenance of vehicles, and salaries of employees	None	None	Fiscal Year 2018 and subsequent years
Part-Time Wire Inspector	Director of Municipal Inspections with approval of the Town Manager	Permit fees and inspection fees of Wire Inspector	Expenses of operation of department and salaries of part-time wire inspectors	None	None	Fiscal Year 2018 and subsequent years
Part-Time Plumbing Inspector	Director of Municipal Inspections with approval of the Town Manager	Permit fees and inspection fees of Plumbing Inspector	Expenses of operation of department and salaries of part-time plumbing inspectors	None	None	Fiscal Year 2018 and subsequent years
Hazardous Materials	Fire Chief	Fees and monies received from insurers and others relating to release or spills of hazardous materials	Purchase equipment and materials, training, contingency planning, site assessments, service at hazardous release incidents	None	None	Fiscal Year 2018 and subsequent years
Conservation Commission	Conservation Commission	Filing and consultant fees referred to in Wetlands Protection Bylaw	To meet expenses and fees of consultants engaged by and other appropriate expenses of Conservation Commission	None	None	Fiscal Year 2018 and subsequent years
Library	Library Director	Lost Materials/Fines	Replacement of lost and damaged materials and the purchase of new materials.	None	None	Fiscal Year 2018 and subsequent years
Emergency Medical Services	Fire Chief and Police Chief	Emergency Medical Services user fees	To operate, maintain service, acquire and upgrade vehicles, equipment and training for emergency medical services	None	None	Fiscal Year 2018 and subsequent years
Public Safety	Police Chief	Permit fees and other collected sums pursuant to the administration and enforcement of the Town of Hopkinton bylaw Ch. 150, Door to Door Soliciting and Canvassing	To meet the expenses of the Police Department related to the administration and enforcement of the Town of Hopkinton bylaw Ch. 150, Door to Door Soliciting and Canvassing	None	None	Fiscal Year 2018 and subsequent years
Planning Board	Planning Board	Permit fees and consultant fees collected by the Planning Board relating to review of Site Plans, petitions, applications, permits and appeals	To meet expenses and fees of consultants engaged by and other appropriate expenses of the Planning Board	None	None	Fiscal Year 2018 and subsequent years

## TOWN OF HOPKINTON

<u>Revolving Fund</u>	<u>Department, Board, Committee or Officer Authorized to Spend from fund</u>	<u>Fees, Charges or Other Receipts Credited to Fund</u>	<u>Program or Activity Expenses Payable from Fund</u>	<u>Restrictions or Conditions on Expenses Payable from Fund</u>	<u>Other Requirements/ Reports</u>	<u>Fiscal Years</u>
Open Space Preservation Commission	Open Space Preservation Commission	User fees, charges and donations collected by the Open Space Preservation Commission in the conduct of its programs and activities.	To meet expenses of the publication, reprinting and sale of the trail guide and the maintenance of trails and signage.	None	None	Fiscal Year 2018 and subsequent years
Youth and Family Services Department	Director of Youth and Family Services	User fees, charges and donations received for the conduct of youth and family services, programs and activities.	To meet expenses incurred in conducting programs and activities for the Town's young people.	None	None	Fiscal Year 2018 and subsequent years
Zoning Board of Appeals	Zoning Board of Appeals	Filing fees and consultant fees collected by the Zoning Board of Appeals relating to review of appeals, petitions and applications.	To meet expenses and fees of consultants engaged by and other appropriate expenses of the Zoning Board of Appeals.	None	None	Fiscal Year 2018 and subsequent years
Department of Public Works	Director of the Department of Public Works	Road Opening, Driveway Opening and Trench Permit fees	Expenses of operation of the Highway Division.	None	None	Fiscal Year 2018 and subsequent years
Department of Public Works	Director of the Department of Public Works	User fees collected at the Recycling Center	Expenses of operation of Recycling Center.	None	None	Fiscal Year 2018 and subsequent years
Department of Public Works	Director of the Department of Public Works	Fees collected from Overflow Trash Bags	To purchase Overflow Trash bags and to meet expenses of Waste Collection and Disposal.	None	None	Fiscal Year 2018 and subsequent years
Cemetery Commission	Cemetery Commission	User fees and charges collected for the use of the Comey Chapel	Maintenance and operation of the Comey Chapel.	None	None	Fiscal Year 2018 and subsequent years
Cemetery Lot Fund	Cemetery Commission	Re-sale of lots purchased by Cemetery	Purchase of lots previously sold.	None	None	Fiscal Year 2018 and subsequent years
School Department 1:1 Laptop Initiative	School Committee	Receipts collected from students and families for leasing computers	Payments for leasing computers.	None	None	Fiscal Year 2018 and subsequent years
Fingerprinting Fund	Police Chief	Permit fees collected from prospective ice cream truck operators	Defray costs associated with fingerprinting	None	None	Fiscal Year 2018 and subsequent years
Senior Center Programs Fund	Senior Center Director	User fees collected from participants in Senior Center programs and activities	Expenses related to the development and operation of Senior Center programs and activities.	None	None	Fiscal Year 2018 and subsequent years

## TOWN OF HOPKINTON

<u>Revolving Fund</u>	<u>Department, Board, Committee or Officer Authorized to Spend from fund</u>	<u>Fees, Charges or Other Receipts Credited to Fund</u>	<u>Program or Activity Expenses Payable from Fund</u>	<u>Restrictions or Conditions on Expenses Payable from Fund</u>	<u>Other Requirements/ Reports</u>	<u>Fiscal Years</u>
Police Department	Police Chief and Police Lieutenants	Detail Administrative fees	To meet expenses of the Police Department related to scheduling, assignment and billing software for detail work.	None	None	Fiscal Year 2018 and subsequent years

And to establish the limit on the total amount that may be expended from each revolving fund established by Chapter 13 of the General Bylaws of the Town of Hopkinton pursuant to Section 53E½ of Chapter 44 of the *Massachusetts General Laws* for the fiscal year beginning July 1, 2017.

## **TOWN OF HOPKINTON**

# **TOWN OF HOPKINTON**

## **CHAPTER 14**

### **COMMUNITY PRESERVATION ACT**

**[Adopted 5-3-2004 ATM, Art. 59]**

#### **§14-1. Exemption application deadline.**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-3-04, Art. 59.]**

#### **General Reference**

**Community Preservation Act-Provisions of MGL c. 267 of the Acts of 2000-adding MGLc. 44B; accepted by the Town of Hopkinton, Special Town Meeting, 4-9-01, Art. 1, Annual Town Election, 5-21-01, Question 1.**

#### **§14-1. Exemption application deadline.**

All applications for exemption from the surcharge imposed by the Community Preservation Act must be filed no later than the last day for filing applications for statutory exemption from the real estate tax as provided in G.L. chapter 59, section 59.

## **TOWN OF HOPKINTON**



# TOWN OF HOPKINTON

## CHAPTER 24

### DEPARTMENT OF MUNICIPAL INSPECTIONS

**§ 24-1 Statutory authority; appointment of Director**

**§ 24-2. Responsibilities of Department.**

**§ 24-3. Continuation of inspection function by existing agency.**

**§24-4. Recommendations for appointment of staff.**

**§24-5. Removal of officers and employees.**

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-2-1994, Art. 58. Amendments noted where applicable.]

**§ 24-1. Statutory authority; appointment of Director.**

The town accepts the provisions of MGL c.43C, §§ 13 and 14, to allow for the adoption of a new bylaw for the town which would provide for a consolidated Department of Municipal Inspections, to include the Building Inspector/Zoning Enforcement Officer, Wiring Inspector and Plumbing/Gas Fitting Inspector. The bylaw establishing a Department of Municipal Inspections shall provide for the appointment of the Director of Municipal Inspections, who shall be appointed by and shall be responsible to the Town Manager. The term of such Director shall be three years, subject to removal by vote of the Town Manager. [Amended 5-7-2007 ATM, Art. 4]

**§ 24-2. Responsibilities of Department.**

The Department of Municipal Inspection shall be responsible for:

- A. The coordination of inspectional functions carried out by any municipal officer or agent within the Department.
- B. Maintenance of all records relating to inspections in a central common index.
- C. A single application process, which would indicate all inspections which might be necessary, including, but not limited to, any inspections under Chapter 210, Zoning, and other local bylaws, the Building Code and Plumbing and Gas Codes and any other local inspections, within this Department, as may be otherwise authorized.

**§ 24-3. Continuation of inspection function by existing agency.**

Any agency performing an inspection function, within this Department, shall be continued but, for administrative purposes, all personnel performing inspection functions for the existing agency shall, when performing such inspection services, be subject to the administrative control and direction of the Director of Municipal Inspections, but not otherwise.

**§ 24-4. Recommendations for appointment of staff.**

The appointment of offices and employees necessary to staff the Department shall be recommended to the Town Manager by the Director of Municipal Inspections. [Amended 5-7-2007 ATM, Art. 4]

## **TOWN OF HOPKINTON**

### **§ 24-5. Removal of officers and employees.**

The removal of officers and employees shall be done by the appointing authority. Said removals shall follow Section 7-7 of the Hopkinton Town Charter. [**Amended 5-7-2007 ATM, Art. 4**]

# TOWN OF HOPKINTON

## CHAPTER 28

### OFFICERS AND EMPLOYEES

#### ARTICLE I

##### Duties of Town Officers

- §28-1. Deadline for submission of reports**  
**§28-2. Notification by boards and committees of meeting times**

#### ARTICLE I (Cont.)

- §28-3. Publication of list of persons compensated**  
**§28-4. Selectmen.**  
**§28-5. Town Clerk.**  
**§28-6. Town Accountant.**

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

GENERAL REFERENCES: Boards, committees and commissions – See Ch. 5.

#### ARTICLE I

##### Duties of Town Officers

[Adopted 3-6-1944 ATM, Art. I, 5-2-2011 ATM, Art. 40]

##### **§ 28-1. Deadline for submission of reports.**

The reports of all boards, committees and officers which are to be included in the Annual Report of the town shall be delivered to the Selectmen not later than the 15th day of January in each year.

##### **§ 28-2. Notification by boards and committees of meeting times.**

All boards, officers and committees shall notify the Town Clerk of their organization and time of regular meetings.

##### **§ 28-3. Publication of list of persons compensated. [Added 3-12-1951 ATM, Art. 33; amended 3-15-1960 ATM, Art. 31]**

All departments of the town, with the exception of the Department of Public Welfare and the Department of Veteran Benefits and the School Department insofar as the listing pertains to special educational costs of mentally or physically handicapped children covered by appropriate state legislation, shall publish in the Annual Town Report a list of vendors, employees, service companies, equipment hire and other persons or corporations receiving compensation or payment from said town during the previous year and the total amount or amounts paid to each, and also a statement of the persons or corporations that have made payments to the town charges, and the total amount or amounts so paid.

##### **§ 28-4. Selectmen.**

- A. The Board of Selectmen shall have authority to prosecute and defend all suits to which the town is a party, and to employ counsel therefor. It may settle, in its discretion, any legal and valid claim or suit against the town which does not require the payment of more than \$1,000. Any settlement requiring a greater sum, except when authorized by law, shall be made only when authorized by a vote of the Town Meeting. The Selectmen shall bring any necessary suit to collect sums due the town. [Amended 4-15-1981 ATM, Art. 19]

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- B. The Selectmen shall have charge and control of the Town Hall, and may let or rent so much thereof as is not required for town purposes upon such terms as they deem proper.
- C. The annual report of the Selectmen shall state, unless included elsewhere in the Annual Report, what licenses have been issued, franchises granted, hearings held, claims and suits against the town, whether pending or settled, and repairs made upon public buildings.
- D. The Board of Selectmen shall hereafter annually on or before the first day of July, or whenever a vacancy shall exist, choose some competent lawyer, preferably residing in the town, to act as Town Counsel. He shall receive such salary or compensation as the Board of Selectmen may determine; he shall be available for advice to all the town departments under the supervision of the Board of Selectmen and shall perform such duties as the Board of Selectmen may prescribe. **[Added 7-7-1947 STM, Art. 5; amended 5-6-1997 STM, Art. 1]**
- E. The Board of Selectmen shall consist of five members, each of whom shall serve for a term of three years. The members of the Board of Selectmen in office as of the date of TOWN OF HOPKINTON GENERAL BYLAW adoption of this subsection shall remain in office until the expiration of the respective term of such member or until a vacancy occurs in such position for other cause. At the Annual Town Election to be held in May 2001, there shall be three persons elected at large by ballot to the Board of Selectmen by the voters of the town, with the candidate elected with the greatest number of votes to serve for a term of three years, the candidate with the second greatest number of votes to serve for a term of three years, and the candidate with the third greatest number of votes to serve for a term of two years. At each Annual Town Election thereafter the number of members of the Board of Selectmen whose terms have expired shall be elected by ballot for a term of three years. After the election of the Board of Selectmen, if there is a failure to elect or a vacancy occurs in the office of Selectmen, the remaining Selectmen may call a special election to fill the vacancy and shall call such election upon the request, in writing, of the number of registered voters of the town required by and in accordance with the procedure set forth in MGL c. 41 § 10. **[Added 5-1-2000 ATM, Art. 16]**

### **§ 28-5. Town Clerk.**

- A. The Town Clerk shall promptly notify, in writing, each member of every committee elected or appointed at any Town Meeting or in pursuance of any vote thereof, of such election or appointment, giving the names of all members of the committee, and a copy of the vote under which the committee was appointed or elected.
- B. The Town Clerk shall promptly after each Town Meeting furnish the Town Accountant with a statement of all amounts appropriated by the town at such meeting and the purposes for which such appropriations were made.
- C. The Town Clerk shall have published an up-to-date set of all existing Town Bylaws as needed. **[Added 3-3-1953 ATM, Art. 15; 4-9-1985 ATM, Art. 32].**

## **TOWN OF HOPKINTON**

**§ 28-6. Town Accountant. [Amended 4-14-1975 ATM, Art. 65; 4-12-1976 ATM, Arts. 58 and 59]**

The Town Accountant shall, in his annual report, give a detailed statement of all the assets and liabilities of the town and the change, if any, in the town debt, and shall include a list of all debts incurred and not paid up to and including June 30 of each year, showing to whom due, for what incurred and the amount.

## **TOWN OF HOPKINTON**

# TOWN OF HOPKINTON

## CHAPTER 33

### PERSONNEL

**§33-1. Applicability.**

**§33-2. Purposes.**

**§33-2. Personnel Board.**

**§33-4. Employee Handbook.**

**§33-5. Severability.**

[HISTORY: Adopted by the Special Town Meeting of the Town of Hopkinton 6-14-1962, Art. 2; Amended in its entirety 4-8-1985 ATM, Art. 2; 5-3-2010 ATM, Art 37.]

GENERAL REFERENCES: Officers and employees -- See Ch. 28.

§ 33-1. Applicability. [Amended 10-3-2001 STM, Art. 5; 5-6-2002 ATM; Art. 3; 5-5-2003, ATM, Art. 3, 5-5-2008 ATM, Art. 3, 5-3-2010 ATM, Art. 37]

#### **§ 33-1. Applicability:**

This Chapter shall apply to each Town Agency, as defined by Section 1-9 of the Town Charter, of the Town of Hopkinton ("the Town") and to all employees in the service of the Town, including full-time, part-time, temporary, seasonal, special, intermittent, or other employees, but excluding: 1) employees of the School Department; 2) employees holding positions filled by popular election; and 3) employees covered by collective bargaining agreements with the Town; provided, however, that the provisions of this chapter shall be applicable to such employees insofar as the relevant collective bargaining agreement so provides.

The Town adheres to a policy of at-will employment, which permits the Town or an employee to terminate the employment relationship at any time, with or without cause, for any lawful reason. Unless otherwise informed by a written contract, all Town employees are employees-at-will.

#### **§ 33-2. Purposes:**

The purposes of this Chapter are:

- A. To establish fair and equitable personnel policies;
- B. To establish a system of personnel administration based on merit principles that ensure a fair and efficient application of personnel policies;
- C. To provide methods for the recruitment and retention of a work force that is skilled and effective in accomplishing the goals and objectives of the Town of Hopkinton; and
- D. To ensure that personnel actions are made without regard to gender, race, color, religious creed, national origin, ancestry, sexual orientation, genetic information, age as defined by law, handicap, political affiliation or any other non-employment related factor and are instead based on merit alone.

#### **§ 33-3. Personnel Board:**

- A. There shall be a Personnel Board consisting of five members appointed by the Board of Selectmen.

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- B. The Personnel Board shall work with the Town Manager and the Human Resources Director to provide guidance, feedback and advice on matters regarding Town employees.
- C. No member of the Personnel Board shall be a Town employee or an elected official of the Town. Each member of the Personnel Board shall be a resident of the Town and shall serve without compensation. Each member of the Personnel Board shall serve for a term of three (3) years beginning on the July 1 following the expiration of the previous term. Each member shall hold office until his/her successor is appointed in the manner provided herein.
- D. Members of the Personnel Board serving upon the effective date of this Chapter shall serve until the expiration of their respective terms. Upon the expiration of such terms, the Board of Selectmen shall appoint members for successive three-year terms.
- E. If any member shall resign or otherwise vacate his/her office, a successor shall be appointed forthwith by the Board of Selectmen to fill the remainder of the unexpired term.
- F. The Personnel Board shall organize annually, as soon as possible after July 1 of each year, at the call of the then Chair or, lacking a Chair, any member of the Board, and shall elect a Chair from among its members. The Chair shall hold office until his/her respective successor has been elected. In the event a vacancy occurs in the office of the Chair, the Personnel Board shall elect a successor Chair to serve until the next organizational meeting of the Personnel Board or until his/her successor has been elected.
- G. The Personnel Board may make an annual report to the Town, including recommendations on any matters related to the administration of personnel.
- H. The Personnel Board shall endeavor to meet annually with all department heads, the Board of Selectmen and the Chair of the Appropriation Committee.
- I. The Personnel Board shall meet with the Town Manager, or his/her designee, monthly.

### **§ 33-4: Employee Handbook:**

- A. All Town Agencies and employees to which this Chapter applies shall be subject to policies and procedures set forth in an Employee Handbook. The Employee Handbook shall contain all personnel and employment policies and procedures including, but not limited to, a Salary Administration Plan, and provisions covering vacation leave, sick leave, personal leave, holidays, and performance evaluations.
- B. The Employee Handbook, including the Salary Administration Plan, shall be written and amended by the Town Manager, or his/her designee. The initial Employee Handbook and any amendments thereto shall not take effect sooner than thirty (30) days after the Town Manager has submitted a proposed Employee Handbook or proposed amendments to the Personnel Board for advice and recommendations. The Town Manager, or his/her designee, shall review the Employee Handbook not less than once every two years.



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### **§ 33-5 Severability:**

In the event that any provision of this Chapter, or application thereof, is for any reason held to be invalid or unenforceable by any reviewing agency or court of competent jurisdiction, such invalidity or enforceability shall be construed as narrowly as possible and the balance of this Chapter shall be deemed to be amended to the minimum extent necessary so as to serve the purposes hereof.

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# **TOWN OF HOPKINTON**

## **CHAPTER 47**

### **TOWN MEETINGS**

#### **ARTICLE I General Provisions**

- §47-1. Posting of warrant.**
- §47-2. Date and time of Annual Town meeting and elections.**
- §47-3. Consideration of business.**
- §47-4. Persons not on voters' list not admitted to Meeting.**
- §47-5. Election by voice vote.**

#### **ARTICLE II Procedures**

- §47-6. Order of articles.**
- §47-7. Action on committee reports.**
- §47-8. Standing to address Moderator.**
- §47-9. Motion to reconsider.**
- § 47-10. Voting on appropriations questions.**
- §47-11. Speaking time limit.**
- §47-12. Precedence of motions.**
- §47-13. Quorum.**

[HISTORY: Adopted by the Town Meeting of the Town of Hopkinton 3-6-1944, Art. 1. Amendments noted where applicable.]

#### **ARTICLE I General Provisions**

##### **§ 47-1. Posting of warrant. [Amended 4-11-1977 ATM, Art. 35; Amended 5-1-2017 ATM, Art. 43]**

The Board of Selectmen shall cause an attested copy of the warrant to be posted by the Constable of the Town or some other person at least eight (8) days before the time set for the Annual Town Meeting, and at least fourteen (14) days before the time set for a Special Town Meeting, in the following locations within the Town: (1) Town Hall, (2) all post offices, (3) the public library, (4) the senior center, and (5) at least one public safety building.

##### **§ 47-2. Date and time of Annual Town Meeting and elections. [Amended 3-4-1974 ATM, Art. 3; 4-14-1992 ATM, Art. 38; 5-3-2005 STM, Art. 3]**

The Annual Town Meeting of the Town of Hopkinton shall be held on the first Monday in May in each year, at 7:00 in the evening, and the annual Town elections for the purpose of election by ballot of Town officers and voting on any questions required by law to be placed upon the official ballot shall be held on the third Monday in May at an adjournment of the Annual Town Meeting at which the polls shall be open during such hours between 6:00 a.m. and 8:00 p.m. as the Selectmen shall legally determine.

##### **§ 47-3. Consideration of business. [Amended 3-4-1974 ATM, Art. 3; 5-6-1998 ATM, Art. 24]**

All business of the Annual Meeting, except the election of officers and the determination of such matters as are required to be determined by ballot fixed for the third Monday in May as provided, shall be considered at the meeting of the first Monday of May.

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## **§ 47-4. Persons not on voters' list not admitted to Meeting.**

Unless otherwise ordered by the Moderator, or by a vote of the Meeting, no person whose name is not on the list of registered voters shall be admitted to the hall where a Town Meeting is being held. This provision shall be enforced by use of the checklist, and the Moderator shall determine the bounds of the hall.

## **§ 47-5. Election by voice vote.**

All Town officers not required by law to be chosen by ballot shall be elected by a voice vote, unless the meeting at which they are to be elected determines otherwise.

## **ARTICLE II Procedures**

## **§ 47-6. Order of articles.**

All articles in the Town Warrant shall be taken up in the order of their arrangement unless otherwise decided by a majority vote.

## **§ 47-7. Action on committee reports.**

When a report of a committee is placed in the hands of the Moderator, it shall be deemed to be properly before the Meeting for action thereon, and a vote to accept the same shall discharge the committee but shall not be equivalent to a vote to carry out the recommendations of the report in the absence of a vote to adopt the report.

## **§ 47-8. Standing to address Moderator.**

No person shall remain standing during a Meeting, except when that person addresses the Moderator.

## **§ 47-9. Motion to reconsider.**

A motion to reconsider shall not be entertained unless made at the close of the consideration of the article under which it is passed, and no motion to reconsider action of a former day's sitting shall be made at any adjournment. This section may be suspended by a vote of 2/3 of those present and voting.

## **§ 47-10. Voting on appropriations questions. [Amended 5-4-1998 ATM, Art. 20]**

Any motion which calls for the appropriation of less than \$1,000 shall be taken by a rising vote if so requested by three voters, and every motion calling for an appropriation of \$1,000 and over shall be taken by a rising vote, except in the case where the vote of the Town Meeting is a unanimous vote or in the case where, in the opinion of the Town Moderator, the vote constitutes a clear majority vote or a clear 2/3 vote, whichever may be required, in which event the declaration of the Town Moderator shall control, subject to the right of seven voters to question such vote, as provided in MGL c. 39, § 15.

## **§ 47-11. Speaking time limit.**

No person shall speak for more than 10 minutes at any one time without being again recognized by the Moderator, and no person shall speak more than twice upon any question without first obtaining leave of the meeting, except to correct an error.

## **§ 47-12. Precedence of motions. [Amended 5-7-2001 ATM, Art. 44]**

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- A. When a motion is under debate, the Moderator may accept motions, including, but not limited to, the following:
- (1) To adjourn;
  - (2) To end debate;
  - (3) To postpone to a time certain;
  - (4) To amend;
  - (5) To divide the question;
  - (6) To withdraw.
- B. These motions shall have precedence in the order enumerated above. The first three motions shall be decided without debate.

### **§ 47-13. Quorum. [Amended 5-6-1996 ATM, Art. 32; Amended 5-1-2017 ATM, Article 44]**

The presence of a number of voters equal to 1% of the number of registered voters of the Town, as of December 31 of the most recent year ending in a 2 or 7, as determined by the Town Clerk, shall be required to constitute a quorum for the transaction of any business at any Town Meeting.

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## **CHAPTER 55**

### **ALARM SYSTEMS**

#### **ARTICLE I Intrusion Alarms**

- §55-1. Findings; purpose.**
- §55-2. Definitions.**
- §55-3. Administrative rules.**
- §55-4. Control and curtailment of signals emitted by alarm users.**
- §55-5. Testing of equipment.**
- §55-6. False alarms.**
- §55-7. Violations and penalties.**

#### **ARTICLE II Fire Alarms**

- §55-8. Preamble.**
- §55-9. Definitions.**
- §55-10. Fines for system malfunctions.**
- §55-11. Appeal procedure.**
- §55-12. Adoption of regulations and legal action by Fire Chief.**
- §55-13. Disconnection upon failure to pay fine; proceedings.**
- §55-14. Severability.**

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

#### **ARTICLE I Intrusion Alarms**

**[Adopted 9-27-1988 STM, Art. 20; amended 5-6-2002 ATM, Art. 51]**

##### **§ 55-1. Findings; purpose.**

It has been determined by the Hopkinton Police Department that the number of false alarms received by the Department significantly increase departmental expenses, hinders its efficiency and lowers the morale of the Department. This situation endangers the general public, homeowners, businesses and Hopkinton police officers. It is intended that the following article will reduce the number of false alarms and promote the responsible use of alarm devices in the Town of Hopkinton.

##### **§ 55-2. Definitions.**

- A. Words used in the present tense include the future; words used in the plural number include the singular number, and words used in the singular number include the plural number. The word shall is always mandatory and not discretionary.
- B. For the purposes of this article, the following terms, phrases, words and their derivatives shall have the meaning given herein, when not inconsistent with the context:

**ALARM SYSTEM** -- An assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110 volt AC line, arranged to signal the presence of a hazard requiring urgent attention and to which police are expected to respond. Fire alarm systems and alarm systems not directly related to the detection of an unauthorized intrusion into property or premises or an attempted robbery at property or premises are specifically excluded from this article.

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**ALARM USER or USER** --Any person on whose premises an alarm system is maintained within the town, except for alarm systems on motor vehicles or proprietary systems. Excluded from this article are central station personnel and persons who use alarm systems to alert or signal persons within the premises in which the system is located of an attempted unauthorized intrusion or holdup attempt. If such a system, however, employs an audible signal emitting sounds or a flashing light or beacon designed to signal persons outside the premises, such system shall be within the definition of "alarm system" as that term is used in this article and shall be subject to this article.

**AUTOMATIC DIALING DEVICE** -- Refers to an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of an emergency situation that the alarm system is designed to detect.

**CENTRAL STATION** -- An office to which remote alarm and supervisory signaling devices are connected, where operators supervise circuits or where guards are maintained continuously to investigate signals.

**COMMUNICATIONS CONSOLE and DIRECT CONNECT** -- An alarm system which has the capability of transmitting system signals to, or receiving them at, the Hopkinton Police Department communications center.

**FALSE ALARM** -- Activation of an alarm system through mechanical failure, malfunction, improper installation or negligence of the user of an alarm system or his employees or agents, or any signal or oral communication transmitted to the Police Department requesting, requiring or resulting in a response on the part of the Police Department, when in fact there has been no unauthorized intrusion or attempted unauthorized intrusion into any property or premises and no attempted robbery or burglary at any property or premises. Excluded from this definition are activation of alarm systems caused by power outages, motor vehicle accidents, act of God, telephone repairmen and similar situations.

**INTERCONNECT** -- To connect an alarm system to a voice-grade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.

**POLICE CHIEF** -- The Chief of Police of the Town of Hopkinton or designated representative.

**POLICE or POLICE DEPARTMENT** --The Town of Hopkinton Police Department or any authorized agent thereof.

**PUBLIC NUISANCE** --Anything which annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons or of any community or neighborhood.

**TOWN** -- The Town of Hopkinton.

### **§ 55-3. Administrative rules.**

- A. Alarm systems may be connected to the communications console in the Police Department.
- B. If such systems are so connected, the alarm company shall furnish, at no cost to the town, a communications console and the necessary telephone lines which are compatible to the receipt of alarm signals from alarm systems whose lines are connected to the Police Department. The alarm company shall set forth the annual fee each alarm user will be required to pay the alarm company for services rendered with respect to the communications console. Such services shall be set forth

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in the form of a written contract between the alarm company and each alarm user. The provisions of this Subsection B relate solely to the aforementioned communications console connections to the said console by alarm users and fees and charges related to the installation and maintenance of the console. Any alarm user may contract with any alarm company of his choice for the sale, installation, and maintenance and/or servicing of the alarm system to be installed on his premises. System components installed in all future alarm systems or additions to existing systems shall consist of equipment designed for the use for which it was intended and shall be approved for such use by an independent testing laboratory.

- C. The alarm user or the alarm company contracting for servicing the alarm users alarm system shall be responsible for obtaining the leased telephone line between the user's premises and the alarm receiving equipment at the Police Department and for furnishing the appropriate interface equipment, if required, in order to provide an input signal which is comparable with the receiving equipment used to operate the communications console.
- D. The provisions of § 55-6 concerning false alarms shall apply to all alarm users or persons having direct connect systems, except municipal, county and state agencies and religious organizations.

### **§ 55-4. Control and curtailment of signals emitted by alarm users.**

- A. Every alarm user shall submit to the Police Chief the names and telephone numbers of at least two persons in addition to the user who can be reached at any time, day or night, and who are authorized to respond to an emergency signal transmitted by an alarm system and who can open the premises wherein the alarm system is installed.
- B. All alarm systems shall be equipped with a test device which will give a minimum ten-second delay prior to alarm system activation in order to warn the alarm user of an open alarm circuit.
- C. Within six months from the effective date of this article, those alarm systems which use an audible horn or bell shall be equipped with a device that will shut off such horn or bell within 15 minutes after activation of the alarm system.
- D. Procedure if alarm user is unavailable.

(1) Any alarm system emitting a continuous and uninterrupted signal for more than one hour between the hours of 9:00 p.m. and 6:00 a.m. which cannot be shut off or otherwise curtailed due to the absence or unavailability of the alarm user or those persons designated by him under Subsection A of this section, and which disturbs the peace, comfort or repose of a community, a neighborhood or a considerable number of inhabitants of the area where the alarm system is located, shall constitute a public nuisance. Upon receiving complaints regarding such nuisance, the Police Chief or designee shall endeavor to contact the alarm user or members of the alarm user's family, or those persons designated by the alarm user under Subsection A of this section, in an effort to abate the nuisance. The Police Chief shall cause to be recorded the names and addresses of all complaints and the time each complaint was made.

(2) In the event that the Police Chief or designee is unable to contact the alarm user, or those persons mentioned in Subsection A above, or if those aforesaid persons cannot or will not curtail the audible signal being emitted by the alarm system and if the Police Chief or designee is otherwise unable to abate the nuisance, he may direct a police officer or a firefighter or a qualified alarm

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technician to enter upon the property outside the home or building in which the alarm system is located and take any reasonable action necessary to abate the nuisance.

(3) If entry upon the property outside the home or building in which the alarm system is located is made in accordance with this section, the person so entering upon such property shall not conduct, engage in or undertake any search, seizure, inspection or investigation while he is upon the property; shall not cause any unnecessary damage to the alarm system or to any part of the home or buildings; and shall leave the property immediately after the audible signal has ceased. After an entry upon property has been made in accordance with this section, the Police Chief shall have the property secured, if necessary. The reasonable costs and expenses of abating a nuisance in accordance with this section may be assessed to the alarm user, said assessment not to exceed \$50.

(4) Within 10 days after abatement of a nuisance in accordance with this section, the alarm user may request a hearing before the Board of Selectmen and may present evidence showing that the signal emitted by his alarm system was not a public nuisance at the time of the abatement, that the costs of the abatement should not be assessed to him or that the requirements of this section were not fulfilled. The Board shall hear all interested parties and may, in its discretion, excuse the alarm user from paying the costs of abatement.

### **§ 55-6. Testing of equipment**

No alarm system designed to transmit emergency messages directly to the Police Department shall be worked on, tested or demonstrated without first notifying the police dispatcher prior to and upon completion of testing. Permission is not required to test or demonstrate alarm devices not transmitting emergency messages directly to the Police Department. Any unauthorized test constitutes a false alarm.

### **§ 55-6. False alarms. [Amended 5-6-2002 ATM, Art. 51]**

- A. When emergency messages are received by the Police Department that evidence false alarms, the Police Chief or designee shall take such action as may be appropriate under Subsections B, C, D and E of this section and when so required by the terms of the aforementioned subsections, order that use of an alarm system be discontinued.
- B. After the Police Department has recorded three separate false alarms within any calendar year from an alarm system, the Police Chief shall notify the alarm user, in writing and by mail, of such fact and require the said user to submit, within 15 days after receipt of such notice, a report describing efforts to discover and eliminate the cause or causes of the false alarms. If the said user, due to absence from the Town or any other reasonable basis, requests an extension of the time for filing the report, the Police Chief may extend the fifteen-day period for a reasonable period. If the said user fails to submit such a report within 15 days or within any such extended period, the Police Chief may order that use of the alarm system be discontinued. Any such discontinuance shall be effectuated within 15 days from the date of receipt of the Police Chief's order.
- C. In the event the Police Chief determines that a report submitted in accordance with Subsection B of this section is unsatisfactory or that the alarm user has failed to show by the report that he has taken or will take reasonable steps to eliminate or reduce false alarms, then the Police Chief may order that use of the alarm system be discontinued. Any such discontinuance shall be effectuated within 15 days from the date of receipt of the Police Chief's order.

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- D. In the event the Police Department records five false alarms within any calendar year from an alarm system, the Police Chief may order that the user of the alarm system discontinue use of the alarm system for the remainder of the calendar year or for six months from the date the alarm was disconnected, whichever of such period is longer. In the event that the Police Department records eight false alarms within any calendar year from an alarm system, the Police Chief may order that the user of the alarm system discontinue use of the alarm system for one year from the date the alarm was disconnected.
- E. Any user of an alarm system which transmits false alarms shall be assessed a fine of \$50 for each false alarm in excess of three occurring within any calendar year. All fines assessed hereunder shall be paid to the Town Treasurer for deposit in the general fund. Upon failure of the user of an alarm system to pay two consecutive fines assessed hereunder within 60 days of assessment, the Police Chief may order that the user discontinue use of the alarm system. Any such discontinuance shall be effectuated within 15 days from the date of receipt of the Police Chief's order.
- F. Any user of an alarm system who has, in accordance with this section, been ordered by the Police Chief to discontinue use of an alarm system may appeal the order of discontinuance to the Board of Selectmen. Notice of an appeal shall be filed with the Board of Selectmen within 10 days of the date of the order of discontinuance. Thereafter the Board shall consider the merits of the appeal and in connection therewith shall hear evidence presented by all interested persons. After hearing such evidence, the Board may affirm, vacate or modify the order of discontinuance.

### **§ 55-7. Violations and penalties.**

- A. The following acts and omissions shall constitute violations of this article punishable by fines of up to \$50:
  - (1) Failure to obey an order of the Police Chief to discontinue use of an alarm system, after exhaustion of the right of appeal.
  - (2) Failure to pay two or more consecutive fines assessed under this article within 60 days from the date of assessment.
  - (3) Failure to comply with the requirements of § 55-4D of this article.
- B. Each day during which the aforesaid violations continue shall constitute a separate offense.
- C. The penalties hereinabove set forth may be modified by vote of the Board of Selectmen upon the recommendation in writing of the Chief of Police.

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## **ARTICLE II**

### **Fire Alarms**

**[Adopted 4-17-1991 ATM, Art. 51]**

#### **§ 55-8. Preamble.**

Whereas it has been determined by the Hopkinton Fire Department that there has been an increase in the number of false alarms received by that Department; and whereas false alarms needlessly endanger the safety of the public and of the fire fighters, are an unnecessary expense to the Town of Hopkinton and can be prevented through proper installation and maintenance; and, whereas, it is in the best interest of the community to reduce the impact of false alarms, this article is designed to accomplish the above goals.

#### **§ 55-9. Definitions.**

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

**ALARM MONITORING SERVICE** -- A service that monitors fire alarms from a subscriber and then transmits the alarm to the Hopkinton Fire Department.

**CENTRAL STATION** -- An office to which remote alarm and supervisory signaling devices are connected and where operators supervise alarms and transmit them to the Hopkinton Fire Department.

**FIRE ALARM MALFUNCTION** -- The transmittal of a fire alarm to a central station, alarm monitoring service or directly to the Hopkinton Fire Department, which alarm is caused by improper installation of a fire alarm system, a mechanically defective fire alarm system, lack of maintenance or some other reason that causes a fire alarm to sound even though there is no actual fire or situation that reasonably could evolve into a fire.

**FIRE ALARM SYSTEM** -- Any heat-activated, smoke-activated, flame-energy activated or other such automatic device capable of transmitting a fire alarm signal to a central station, to an alarm monitoring service or to the Hopkinton Fire Department.

**FIRE ALARM SYSTEM OWNER** -- An individual or entity which owns the title to and/or has on his business or residential premises a fire alarm system equipped to send a fire alarm signal to a central station, to an alarm monitoring service or directly to the Hopkinton Fire Department.

**FIRE CHIEF** -- The Chief of the Hopkinton Fire Department or designated representative.

#### **§ 55-10. Fines for system malfunctions. [Amended 5-5-2008 ATM, Art. 23]**

If there is a fire alarm system malfunction, the Fire Chief may assess a fine against a fire alarm system owner for each malfunction occurring during any 12 month period according to the following schedule:

A. Amount of fine.

(1) First through third malfunction: no charge. Upon recording of the third false alarm by the Hopkinton Fire Department, the Fire Chief shall notify the owner of the building, in writing and by certified

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mail, of such fact, and at that time inform the owner of this article and of the Department's policy with regard to the charging for false alarms.

- (2) Fourth through sixth malfunction: \$250.
- B. Any false alarm which is the result of the failure of the property owner, occupant or their agents to notify the Hopkinton Fire Department of repair, maintenance or testing of an internal fire alarm system within the protected premises shall cause a penalty to be assessed in accordance with Subsection A of this section.
- C. For the purposes of this article, a false alarm shall be defined as follows:
  - (1) The operation of a faulty smoke or heat detection device.
  - (2) Faulty control panel or associated equipment.
  - (3) A water pressure surge in an automatic sprinkler equipment.
  - (4) Accidental operation of an automatic sprinkler system.
  - (5) An action by an employee of the owner or occupant of the protected premises or a contractor employed by the owner or the occupant, causing accidental activation of an internal fire alarm system.
- D. Property owners will be billed once a month for the malfunction activity occurring during the previous month. All fines assessed hereunder shall be paid to the Town Treasurer for deposit into the general fund.

### **§ 55-11. Appeal procedure.**

Any fire alarm system owner who is aggrieved by an action taken by the Fire Chief under this article may, within 10 days of such action, file an appeal, in writing, to the Board of Selectmen of the Town of Hopkinton (the Board). After public notice, the Board shall hold a hearing, after which it may suspend, affirm, annul or modify the action taken by the Fire Chief giving its written reasons therefor. The Board shall send its decision to the owner by first class mail within 10 days after the hearing. The decision of the Board shall be a final administrative decision. The owner shall have 30 days from the date of the written decision to seek judicial review in a court of appropriate jurisdiction.

### **§ 55-12. Adoption of regulations and legal action by Fire Chief.**

The Fire Chief may promulgate such regulations as may be required or as may be necessary to implement this article. The Fire Chief is authorized to pursue such legal action as may be necessary to enforce this article.

### **§ 55-13. Disconnection upon failure to pay fine; proceedings.**

Failure to pay a fine assessed under this article within 60 days may result in disconnection of the fire alarm system. In such event, notice may be sent to the owner's insurance company and other appropriate code officials. The Town of Hopkinton may then initiate collection proceedings available to it under law.

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### **§ 55-14. Severability.**

The provisions of this article shall be deemed to be severable, and if any of its provisions shall be held unenforceable by any law court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.



# TOWN OF HOPKINTON

## CHAPTER 58

### Alcoholic Beverages, Marijuana or Tetrahydrocannabinol and Tobacco

- §58-1. Possession and Use of alcoholic beverages, marijuana or tetrahydrocannabinol
- §58-2. Seizure of alcoholic beverages, marijuana or tetrahydrocannabinol.

- §58-3. Violations and penalties.
- §58-4. Possession and use of tobacco by minors

[HISTORY: Adopted by the Town Meeting of the Town of Hopkinton Adopted 3-6-1944 ATM, Art. 1 replaced in its entirety 5-4-2009 ATM Art. 20.] [amended 5/6/2014 Article 25 by deleting §58-1; and replace in its entirety and inserting, in place thereof, the following:]

#### § 58-1. Possession and Use of Alcoholic Beverages, Marijuana or Tetrahydrocannabinol.

- A. Except as otherwise provided in this Chapter, no person shall consume an alcoholic beverage, as defined by Chapter 138, Section 1 of the General Laws; or possess an opened container of such beverage; or smoke, ingest or otherwise use or consume marijuana or tetrahydrocannabinol, as defined by Chapter 94C, Section 1 of the General Laws, within the limits of any park, playground, public building or any public land (but not including a public way) owned or under the control of the Town of Hopkinton. Nor shall any person consume an alcoholic beverage or smoke, ingest or otherwise use or consume marijuana or tetrahydrocannabinol, as previously defined, on any public way or way to which the public has a right of access as invitees or licensees, including any person in a motor vehicle while it is in, on or upon any public way or any way to which the public has a right of access as aforesaid within the limits of the Town of Hopkinton. Nor shall any person consume an alcoholic beverage, as previously defined, in, or upon any private land or place without the consent of the owner or person in control of such private land or place.
- B. Subsection A of this Section shall not be construed to apply to the consumption or possession on public land of samples of wine provided, without charge, to prospective customers at an agricultural event authorized pursuant to Chapter 138, Section 15F of the General Laws; provided, however, that no such sample may exceed one ounce of wine and no more than five such samples may be served to an individual prospective customer.
- C. Notwithstanding the proscriptions set forth in Section 58-1.A, the Board of Selectmen may authorize events during which alcoholic beverages may be served, possessed, sold, or consumed in a public building or on public land, excluding (1) a public way, (2) property under the care, custody or control of the School Department, or (3) public buildings or public lands within 500 feet of an elementary or secondary school, public or private, giving not less than the minimum instruction and training required by Chapter 71 of the General Laws to children of compulsory school age, and as measured under 204 CMR 2.11, and provided that:
- (1) A non-profit organization hosts the event during which alcoholic beverages may be served, possessed, sold, or consumed;
  - (2) The net proceeds raised from such service, possession, sale, or consumption are used in a

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- manner that directly and specifically benefits the Town or its residents;
- (3) The event marks a special occasion for the non-profit organization or the Town; and
  - (4) Consumption does not occur outside the hours of 10:00 a.m. – 1:00 a.m.

In granting its approval, the Board of Selectmen may impose such terms and conditions as it deems reasonable for the protection of health and safety. Permission to host an event under this Section shall not relieve the non-profit organization from obtaining any required permits or licenses to serve alcoholic beverages pursuant to Chapter 138 of the General Laws.

### **§ 58-2. Seizure of Alcoholic Beverages, Marijuana or Tetrahydrocannabinol.**

All alcoholic beverages, marijuana or tetrahydrocannabinol used in violation of this section may be seized and held until final adjudication of the charge against any such person or persons has been made by a court.

### **§ 58-3. Violations and penalties. [Amended 5-7-2012 ATM, Art. 41]**

Whoever violates the provisions of this chapter as it pertains to alcoholic beverages shall be punished by a fine not exceeding one hundred (\$100) dollars for such offense. Whoever violates the provisions of this chapter as it pertains to marijuana or tetrahydrocannabinol shall be punished by a fine not exceeding three hundred (\$300) dollars for such offense, in addition to any civil penalty imposed under Chapter 94C, Section 32L, of the General Laws.

### **§ 58-4. Possession and Use of Tobacco by Minors. [Added 5-2-2011 ATM, Art. 41]**

- A. The possession and use of tobacco, in any of its forms, in a public outdoor place by a person under the age of 18 shall be prohibited.
- B. All tobacco and products containing tobacco possessed or used in violation of this section shall be confiscated, and the parent(s) or guardian(s) of the violator shall be notified of such violation and provided with educational materials on the health issues related to tobacco, and information on smoking cessation programs. Violations of this section shall not be subject to a monetary penalty.
- C. For the purposes of this section, “public outdoor place” shall be defined as an outdoor place that allows access to the public. For the purposes of this section, “possession” shall be defined as having physical custody of tobacco or a product containing tobacco in public view in a public outdoor place. For the purposes of this section, “use” shall be defined as actual chewing, smoking, spitting or rolling of tobacco or a product containing tobacco in a public outdoor place.

# **TOWN OF HOPKINTON**

## **CHAPTER 62**

### **ANIMALS**

#### **ARTICLE I Dog Burial Fee**

**§62-1. Amount of fee.**

#### **ARTICLE II Dog Licensing**

**§62-2. Deadline; penalty.**

#### **ARTICLE III Leashing of Dogs**

**§62-3. Leashing and curbing required certain hours, exception.**

**§62-4. Violations and penalties.**

**§62-5. Redemption fee.**

#### **ARTICLE IV Animals at Large**

**§62-6. Redemption fee.**

#### **ARTICLE V Kennel Licensing**

**§62-7. Violations and penalties.**

#### **ARTICLE VI Dogs on Town Common**

**§62-8. Violations and penalties.**

#### **ARTICLE VII Regulation and Licensing of Dogs**

**§62-9. Fee amounts.**

**§62-10. Authority of Town Clerk.**

**§62-11. License fees.**

**§62-12. Effect on other bylaws.**

**§62-13. Severability; conflicts with statute.**

#### **ARTICLE VIII Barking dogs**

**§62-14. Disturbance of peace prohibited**

**§62-15. Complaints; investigations.**

**§62-16. Violations and penalties.**

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

**GENERAL REFERENCES** Riding of horse or animals on sidewalks -- See Ch. 91.

#### **ARTICLE I Dog Burial Fee**

**[Adopted 3-8-1955 ATM, Art. 43]**

**§ 62-1. Amount of fee. [Amended 4-14-1975 ATM, Art. 66; 05-07-07 ATM, Art. 4]**

Any person killing a dog with a motor vehicle within the limits of the Town of Hopkinton shall pay the Animal Control Officer the sum of \$5 for burying said dog.

# **TOWN OF HOPKINTON**

## **ARTICLE II**

### **Dog Licensing**

**[Adopted 4-25-1990 STM, Art. 7]**

#### **§ 62-2. Deadline; penalty.**

Any person who is the owner or a keeper of a dog or dogs six months of age or older in the Town of Hopkinton and fails to license said dog or dogs on or before April 1st of each year shall be subject to a penalty in addition to the applicable license fee. The amount of the penalty shall be \$25.00 per household irrespective of the number of dogs which reside in the household which have not been licensed on or before April 1st of such year. **[5-3-2004 ATM, Art. 63]**

## **ARTICLE III**

### **Leashing of Dogs**

**[Adopted 5-3-1993 ATM, Art. 14]**

#### **§ 62-3. Leashing and curbing required certain hours; exception.**

No person who owns or keeps a dog or dogs shall allow the same to run free between the hours of 7:00 a.m. and 8:00 p.m. unless said dog is on the owner's or keeper's premises. Any dog not on the premises of its owner or keeper between said hours shall be leashed and curbed, provided that the said leashing or curbing shall not apply to a hunting dog under direct command of its owner or keeper while training or working in the field.

#### **§ 62-4. Violations and penalties.**

Whoever violates this article shall be subject to the following penalties:

- A. First offense: \$25.
- B. Second offense: \$45.
- C. C. Third and all subsequent offenses: \$75.

#### **§ 62-5. Redemption fee.**

A fee of \$15 shall be charged to the owner or keeper of a dog which must be picked up by the Animal Control Officer and shall be payable to the general fund of the town.

## **ARTICLE IV**

### **Animals at Large**

**[Adopted 5-4-1993 ATM, Art. 15]**

#### **§ 62-6. Redemption fee.**

Should it be necessary in the judgment of the Animal Inspector that the Animal Inspector apprehend and pick up any domestic animal other than a dog, or any livestock, running free within the town, the owner or keeper of the animal shall be charged a fee equal to the expense incurred by the Animal Inspector to apprehend the animal and transport it to a secure facility. Such fee shall include any expense incurred by any other department of the Town in assisting the Animal Inspector in the apprehension of the animal. In no event shall such fee be less than \$15.

# TOWN OF HOPKINTON

## ARTICLE V

### Kennel Licensing

[Adopted 5-3-1999 ATM, Art. 47]

#### § 62-7.A. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

**HUMANE** – Provision of proper food and water, shelter or protection from the weather, veterinary attention needed to reduce or end suffering from disease or injury, a sanitary environment, facilities which are of sufficient size and design as to allow the animal to stand, sit, lie down, turn around, and make other normal postural adjustments without obstruction, interference, or impediment by the presence of food, water bowls, equipment, or other animals, have an appropriate ambient temperature, and the absence of inhumane treatment. Inhumane treatment shall include willfully permitting an animal to be subjected to unnecessary torture, suffering or cruelty, to subject, cause or procure an animal to be tortured or tormented, to be cruelly killed, beaten or mutilated, ineffective measures to prevent the infestation of animals and premises by parasites, insects or vermin, and to be subjected to cruel and inhumane chaining or tethering at any time, which shall include filthy and dirty confinement conditions including, but not limited to: 1) exposure to excessive animal waste, garbage, dirty water, noxious odors, dangerous objects that could injure or kill a dog upon contact or other circumstances that could cause harm to a dog's physical or emotional health, 2) taunting, prodding, hitting, harassing, threatening or otherwise harming a tethered or confined dog, and 3) subjecting a dog to dangerous conditions, including attacks by other animals.

**INSPECTION AUTHORITY** – The Chief of Police, the Animal Control Officer or the agent of any of these.

**KENNEL** – A pack or collection of dogs on a single premise, including a Commercial Boarding or Training Kennel, Commercial Breeder Kennel, Domestic Charitable Corporation Kennel, Veterinary Kennel, or Personnel Kennel, as defined in Section 136A of Chapter 140 of the *Massachusetts General Laws*.

**KENNEL LICENSE** – An annual license permitting a kennel to operate within the Town, issued to a kennel that has demonstrated compliance with the requirements of this section.

**LICENSE PERIOD** – The time between April 1 and the following March 31, both dates inclusive.

**SANITARY** – Conditions which include the interior and exterior floors and all animal contact areas which are smooth, impervious to water and are cleaned and sanitized as often as necessary to maintain sanitary conditions and free of animal wastes, provided that outdoor areas may have a floor of animal-appropriate gravel which is maintained and cleaned on a regular schedule consistent with the maintenance of sanitary conditions, and facilities which are maintained in good repair and kept clean at all times so as to protect animals from disease and injury.

#### § 62-7.B General Requirements.

- A. License. No person or entity shall operate a Kennel within the Town without first obtaining a Kennel License from the Town Clerk in accordance with the provision of this Chapter. The license

## TOWN OF HOPKINTON

shall reflect the maximum number of dogs to be permitted in the Kennel.

- B. Expiration and Fee. The Town Clerk shall determine the amount of the non-refundable fee for a Kennel License for each License Period; provided, however, that there shall be no fee for a domestic charitable corporation incorporated exclusively for the purpose of protecting animals from cruelty, neglect or abuse or for the relief of suffering; and provided, further, to determine the amount of a license fee, a dog under the age of six (6) months shall not be counted in the number of dogs kept in a Kennel.
- C. Inspection. The Town Clerk shall not issue or renew a Kennel License of any type until the Kennel has passed inspection by the Animal Control Officer or a designee thereof.
- D. Number of Permitted Dogs. The Animal Control Officer shall place a cap on the number of dogs permitted in any Kennel, not to exceed the maximum number of dogs that the Kennel can store in a humane and sanitary manner and the number of dogs permitted in the kennel pursuant to any special permit issued pursuant to the Zoning Bylaw, whichever is less.
- E. Tags. Tags shall be furnished to a licensee by the Town Clerk in the exact number of dogs specified by the Animal Control Officer and reflected on the license. Such tags shall bear the name of the Town, the license number, and year of issuance.

### § 62-7.C. Application Process.

- A. Form. Any person or entity seeking a Kennel License or renewal or reinstatement thereof shall complete and submit to the Town Clerk a Kennel License application, in a form prescribed by the Town Clerk.
- B. Deadline. Applications for renewal shall be submitted by February 1 in order to ensure timely renewal.
- C. Inspection. Upon receipt of a completed application, the Town Clerk shall notify the Animal Control Officer, who shall cause an inspection of the Applicant's Kennel to be conducted. For renewal applications, the Animal Control Officer shall cause the inspection to be made prior to the expiration of the existing license, provided that the Applicant submitted a timely Application as provided in Subsection (B) above.
- D. Qualifications. No person or entity shall be given a Kennel License or tag during a period of five (5) years from the date of being found guilty or penalized for a violation of any provision of Section 77, Section 80½, Section 94, or Section 95 of Chapter 272 of the Massachusetts General Laws. Any such license and tag so issued shall be void and shall be surrendered to the Town Clerk. No fee received for a license or tag made shall be refundable.
- E. Issuance. The Town Clerk shall review the complete Application and the Animal Control Officer's report. A Kennel License shall be issued if the Kennel has passed the inspection.

### § 62-7.D. Kennel Operation.

- A. Kennels must be operated and maintained in a sanitary and humane manner.

## TOWN OF HOPKINTON

- B. The following types of documentation shall be maintained at the Kennel and available for inspection:
- (1) The name and address of the owner of each dog kept in the Kennel, other than dogs belonging to the person maintaining the Kennel;
  - (2) The name and address of persons who have purchased dogs from the Kennel;
  - (3) Staff training records and materials;
  - (4) All contracts for goods or services provided in connection with the Kennel's operation; and
  - (5) Organizational policies relating to animal care, intake, veterinary treatment, adoption and euthanasia.
- C. The holder of a Kennel License shall cause each dog kept in its Kennel to wear, while in the Kennel, a collar or harness of suitable material to which a tag shall be securely attached.
- D. Each Kennel shall prominently display on an interior wall of the Kennel a copy of the Kennel License.

### § 62-7.E. Inspection.

The Inspection Authority may inspect any Kennel or its records at any time for compliance with the provisions of this Chapter and applicable statutes.

### § 62-7.F. Surrender of License or Tag

- A. Every license and tag held by any person found guilty of, or penalized in any manner for, a violation of any provision of Section 77, Section 80½, Section 94, or Section 95 of Chapter 272 of the Massachusetts General Laws shall be void, and shall forthwith be surrendered to the Town Clerk.
- B. No fee received for a license and tag made void pursuant to this section shall be refunded to the holder.

### § 62-7.G. Denials, Suspension or Revocation of Kennel License

- A. Denial. If the Town Clerk denies a Kennel License application or renewal application, the Applicant may request a reinspection of the Kennel after reasonably demonstrating to the Animal Control Officer that the proposed Kennel has been brought into compliance with the requirements of this Section and applicable state statutes. The Animal Control Officer shall then make a report to the Town Clerk, who shall, within a reasonable time, review the application in accordance with Section 62-7.C.
- B. Suspension and Revocation.
- (1) Inspection Authority. If the Inspecting Authority determines that a Kennel is not being maintained in a sanitary or humane manner or if records are not properly kept, the Board of Selectmen or Animal Control Officer may revoke or suspend the Kennel License. Depending on the severity of the offense, a license may be suspended or revoked on a first violation of applicable laws or this Bylaw.

## TOWN OF HOPKINTON

### (2) Citizen Initiation and Board of Selectmen Hearing.

- a. Twenty-five (25) residents of the Town may file a petition for hearing with the Board of Selectmen stating the reasons that they believe that suspension or revocation of a Kennel's license is warranted.
- b. Within seven (7) days of the filing of such petition, the Board of Selectmen shall give notice to all interested parties of a public hearing concerning the petition, to be commenced within fourteen (14) days after the date of such notice.
- c. Prior to the close of the public hearing, the Board of Selectmen may cause the Inspecting Authority to inspect the Kennel or its records by the Board's designee.
- d. At the conclusion of the public hearing, the Board of Selectmen may suspend or revoke the Kennel License, or may take such other action to regulate the Kennel as it deems prudent, or may dismiss the petition. Depending on the severity of the offense, a license may be suspended or revoked regardless of whether there have been prior violations of applicable laws or this Bylaw.
- e. The Board of Selectmen shall cause written notice of any order issued pursuant to this section to be provided immediately to the holder of the Kennel License and the Town Clerk.

(3) Reinstatement after Suspension. If a Kennel License is suspended, the Kennel License holder may apply for reinstatement after the close of the suspension period by requesting a reinspection of the Kennel or its records after reasonably demonstrating to the Animal Control Officer that the Kennel has been brought into compliance with this Section and all other applicable state and local requirements, and that the Kennel Licensee has satisfied the terms of the suspension order. The Animal Control Officer shall then make a report to the Town Clerk, who shall, within a reasonable time, review the application in accordance with Section 62-7.C.

(4) Reinstatement after Revocation. If the Kennel License is revoked, the owner may apply for a new Kennel License no sooner than three (3) months after the effective date of the revocation.

C. Reinspection. The Town Clerk may set fees for reinspections performed pursuant to this Section.

### § 62.7-H. Violations and penalties.

- A. Any person or entity who holds a Kennel License and is determined to be in violation of this Section or any law or regulation pertaining to such license shall be subject to the following penalties:

First violation: \$50

Second violation: \$200

Third and subsequent violations: \$300

Each day that such violation continues shall be deemed to be a separate violation and be subject to the above penalty. If the violation results from failure to comply with the limitation on the number of dogs permitted within the Kennel, the fine for such violation shall be \$50 per dog beyond the permissible limit.

- B. Any person or entity maintaining a Kennel after revocation or during suspension of a license shall be punished by a fine of \$250.



## **TOWN OF HOPKINTON**

- C. In lieu of the penalties set forth in Subsection 62.7-H.A., violations of this Section may be addressed in accordance with the provisions of MGL c. 40, § 21D, and Ch. 1, Art. II, Noncriminal Disposition, of the General Bylaws of the Town of Hopkinton.

### **ARTICLE VI**

#### **Dogs on Town Common**

**[Adopted 5-6-1996 ATM, Art. 64]**

#### **§ 62-8. Violations and penalties.**

The owner of any dog which is found on the Town Common in violation of the sign on the Town Common which states "No dogs on the Common" shall be subject to a fine of \$10.

### **ARTICLE VII**

#### **Regulation and Licensing of Dogs**

**[Adopted 9-30-1997 STM, Art. 2; amended  
5-6-2003 STM, Art. 5]**

#### **§ 62-9. Fee amounts. [Amended 5-6-2003 STM, Art. 5]**

All fees for the licensing of dogs, as well as all penalties, fines and other charges in the nature thereof and relating to the maintenance, control, possession, custody or other regulation of dogs shall be in the amounts as established by this article and shall be paid to the Town of Hopkinton.

#### **§ 62-10. Authority of Town Clerk.**

The Town Clerk shall be authorized to take all action necessary or appropriate relating to the licensing of dogs in the town.

#### **§ 62-11. License fees. [Reserved]**

#### **§ 62-12. Effect on other bylaws.**

In all other respects, the bylaws of the Town of Hopkinton relating to the regulation of dogs shall remain in full force and effect, except as specifically modified hereby, and the adoption and enactment of such bylaws is hereby ratified and confirmed.

#### **§ 62-13. Severability; conflicts with statute.**

If any part, section or provision of this article is found to be invalid, the remaining provisions of this article shall not be affected thereby and shall remain in full force and effect. No provision or interpretation of any provision of this article is intended to conflict with or constitute an attempt to change any provision of MGL c. 140, pertaining to dogs.

# **TOWN OF HOPKINTON**

## **ARTICLE VIII**

### **Barking Dogs**

**[Adopted 5-3-1999 ATM, Art. 46]**

#### **§ 62-14. Disturbance of peace prohibited.**

No person shall keep in this Town any dog that by barking, howling or in any other manner disturbs the peace and quiet of any neighborhood or endangers the health or safety of any person.

#### **§ 62-15. Complaints; investigations.**

If any person shall make complaint, in writing, to the Town Manager, the Animal Control Officer or the Police Department that any dog owned or harbored within the Town is a nuisance by reason of such excessive barking, howling or other disturbance or that such excessive barking or howling or other disturbance adversely affects the peace and quiet of any neighborhood or endangers the health or safety of any person, the Animal Control Officer shall be advised of such complaint and shall investigate or cause to be investigated such complaint and may make such order concerning the restraint or disposal of such dog as appears appropriate. **[5-7-07 ATM, Art. 4]**

#### **§ 62-16. Violations and penalties.**

- A. Any person who fails to comply with such order of the Animal Control Officer shall be punished by a fine as hereafter set forth, each day being considered a separate offense.
- B. The violation of any provision of this article may be addressed by the procedure for noncriminal disposition as provided in MGL c. 40, § 21D, as incorporated in the Town of Hopkinton General Bylaws, Ch. 1, Art. II, Noncriminal Disposition. In the event of any violation of the provisions of this article, the provisions for the disposition by noncriminal proceedings pursuant to said Noncriminal Disposition Bylaw of the Town of Hopkinton shall apply.

# **TOWN OF HOPKINTON**

## **CHAPTER 70**

### **(RESERVED)**

## **TOWN OF HOPKINTON**

# **TOWN OF HOPKINTON**

## **CHAPTER 74**

### **BOATS**

**[HISTORY: Adopted by the Special Town Meeting of the Town of Hopkinton 7-30-1959, Art. 5. Amendments noted where applicable.]**

#### **§74-1. Park Commission rules and regulations.**

The Park and Recreation Commission shall provide for the regulation and enforcement of rules and regulations for the operation of motor boats on any inland waters within the Town of Hopkinton under the authority of MGL c. 102, 15 B.

#### **§74-2. Approval of rules and regulations.**

Rules and regulations made under the authority of this chapter by the Park and Recreation Commission shall be subject to the approval of the Commonwealth of Massachusetts, Department of Public Works.

## **TOWN OF HOPKINTON**

# TOWN OF HOPKINTON

## CHAPTER 78

### BUILDINGS, NUMBERING OF

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|--|--|
| <b>§78-1. Designation of numbers.</b>            | <b>§78-4. Numbering system.</b>                      |
| <b>§78-2. Affixing of numbers required</b>       | <b>§78-5. Number specifications.</b>                 |
| <b>§78-3. Visibility of numbers from street.</b> | <b>§78-6. Violations and penalties; Enforcement.</b> |

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 4-13-1992, Art. 18. Amendments noted where applicable.]**

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#### **§ 78-1. Designation of numbers.**

The Inspector of Buildings, in cooperation with the Board of Assessors, shall determine and designate numbers for all buildings abutting upon or adjacent to a street as the Inspector of Buildings may deem appropriate for the public convenience using the criteria set forth in this chapter.

#### **§78-2. Affixing of numbers required.**

No owner of any building shall neglect or refuse to affix to such building the street number designated by the Inspector of Buildings.

Such numbers shall be affixed: **[Added 5-6-2008 STM, Art. 4, 5-4-2009 ATM, Art. 33]**

- A. On all new buildings once exterior walls are standing;
- B. On all new buildings prior to the issuance of a Certificate of Occupancy;
- C. On all buildings undergoing renovations or work requiring a Building Permit and/or an inspection from the Building Department or Fire Department;
- D. On all buildings upon the resale of the underlying property prior to the issuance of a Smoke Detector and or Carbon Monoxide Certificate by the Fire Department, pursuant to M.G.L. c. 148, §§26F and 26F1/2.

#### **§ 78-3. Visibility of numbers from street.**

In cases where the building is not clearly visible from the street, the Inspector of Buildings shall require that said numbers be placed such that they are clearly visible from the street at the point of entry to the property.

#### **§ 78-4. Numbering system.**

Streets off a main artery shall be numbered from low to high, with even numbers on the right and odd numbers on the left. The main artery shall be the street closest to the center of town.

- A. Residence A (RA) Zone: numbered every 100 feet.
- B. Residence B (RB) Zone: numbered every 150 feet.
- C. Agricultural (A) Zone: numbered every 200 feet.

## TOWN OF HOPKINTON

D. Corner lots shall be numbered on the street containing the legal frontage. If both streets have the required frontage, then the number shall be on the side at which the driveway is laid out. The side of the lot on the adjoining street shall reserve a number for possible changes in the building on the lot in the future.

E. Circular streets shall be numbered to the right from low to high number.

F. Culs-de-sac: The right side of the circle shall be numbered with even numbers from low to high number. The left side of the circle shall be numbered with odd numbers from low to high number.

### **§78-5. Number specifications. [Amended 5-2-1995 ATM, Art. 54]**

All numbers shall be in Arabic numerals, a minimum of five inches in height, contrasting in color to the structure, and shall be placed on the knob side of the door of the structure. The numbers shall be clearly visible from the street.

### **§ 78-6. Violations and penalties; enforcement.**

Any person violating any provision of this chapter shall be subject to a fine of not more than \$25. This chapter shall be enforced by the Inspector of Buildings or agent under the direction of the Inspector of Buildings.



# **TOWN OF HOPKINTON**

## **CHAPTER 83**

### **CEMETERY REGULATIONS**

#### **§ 83-1. Restrictions on tree and Shrub planting..**

#### **§ 83-2. Operation of snowmobiles prohibited; penalty**

**[HISTORY: Adopted by the Special Town Meeting of the Town of Hopkinton 11-2-1960, Art. 6; amended 4-9-1979 ATM, Art. 23; 4-14-1988 ATM, Arts. 41 and 42; 5-3-1993 STM, Art. 2. Subsequent amendments noted where applicable.]**

#### **§ 83-1. Restrictions on tree and shrub planting.**

The Board of Cemetery Commissioners has the right to restrict the planting of trees and shrubs in the town cemeteries.

#### **§ 83-2. Operation of snowmobiles prohibited; penalty.**

No person shall at any time operate a snowmobile on cemetery lands in the Town of Hopkinton. Violators shall be punished by a fine of not less than \$100 for each offense.

## **TOWN OF HOPKINTON**

# TOWN OF HOPKINTON

## CHAPTER 87

### CIVIL FINGERPRINTING

- |                                      |  |
|--------------------------------------|--|
| § 87-1. Purpose and Authorization.   | § 87-4. Reliance by Licensing Authority on |
| § 87-2. Licenses Subject to          | Results of Fingerprint-Based               |
| Fingerprinting                       | Criminal Records Background                |
| § 87-3. Police Department Procedure. | Checks                                     |
|                                      | § 87-5. Policies and Procedures            |
|                                      | § 87-6. Fees                               |

**HISTORY:** Adopted by the Annual Town Meeting of the Town of Hopkinton 5-6-2013, Art. 42.]

#### **§ 87-1. Purpose and Authorization.**

In order to protect the health, safety, and welfare of the inhabitants of the Town of Hopkinton, and as authorized by Chapter 6, Section 172B½ of the *Massachusetts General Laws*, this bylaw requires (a) applicants for a license listed in Section 87-2 to submit to fingerprinting by the Hopkinton Police Department, (b) the Police Department to arrange for the conduct of fingerprint-based criminal record background checks of such applicants, and (c) the Town to consider the results of such background checks in determining whether to grant such license.

The Town hereby 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 fingerprint-based state and national criminal history records checks, including FBI record checks, on behalf of the Town and its Police Department consistent with this Chapter. The Town hereby authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this bylaw. The Town shall not disseminate criminal record information received from the FBI to unauthorized persons or entities.

#### **§ 87-2. Licenses Subject to Fingerprinting.**

Any applicant for a license to engage in any of the following occupational activities shall have a full set of fingerprints taken by the Police Department for the purpose of conducting a state and national fingerprint-based criminal history records check:

Ice Cream Truck Vendor

#### **§ 87-3. Police Department Procedure.**

The Police Department shall forward the full set of fingerprints obtained pursuant to this Chapter either electronically or manually to the State Identification Section of the Massachusetts State Police.

The Police Department shall provide the applicant with a copy of the results of his or her fingerprint-based criminal background check and supply the applicant with an opportunity to complete, or challenge the accuracy of, the information contained therein, including the FBI identification record. Any applicant who wishes to challenge the accuracy or completeness of the record shall be advised of the procedures to change, correct, or update the record as set forth in applicable federal regulations.

## **TOWN OF HOPKINTON**

The Police Department shall communicate the results of fingerprint-based criminal history records check to the licensing authority, together with its evaluation of the applicant's suitability for the proposed occupational activity based on the results of the criminal records background check and any other relevant information known to it. In rendering its evaluation, the Police Department shall indicate whether the applicant has been convicted of, or is under pending indictment for, a crime that bears upon his or her suitability for the proposed occupational activity, or any felony or misdemeanor that involved force or threat of force, controlled substances, or a sex-related offense.

### **§ 87-4. Reliance by Licensing Authority on Results of Fingerprint-Based Criminal Records Background Checks**

The licensing authority shall utilize the results of any fingerprint-based criminal records background check performed pursuant to this Chapter for the sole purpose of determining the applicant's suitability for the proposed occupational activity. The licensing authority may deny an application for any license specified herein, including renewals and transfers thereof, if it determines that the results of the fingerprint-based criminal records background check render the applicant unsuitable for the proposed occupational activity.

No application shall be denied on the basis of information contained in a criminal record until the applicant has been afforded a reasonable time, as determined by the licensing authority, to correct or complete the information, or has declined to do so.

### **§ 87-5. Policies and Procedures**

The Police Department shall develop and maintain written policies and procedures for its licensing-related criminal record background check system.

### **§ 87-6. Fees**

Each applicant for a license listed in Section 87-2 shall pay a fee of \$100. A portion of said fee, as specified by Chapter 6, Section 172B1/2 of the *Massachusetts General Laws*, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund established by Chapter 29, Section 2LLL of the *Massachusetts General Laws*, and the remainder shall be retained by the Town for costs associated with the administration of the system.

# **TOWN OF HOPKINTON**

## **CHAPTER 91**

### **DISORDERLY CONDUCT**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton [3-15-1973, Article 52.]**

#### **§ 91-1. Prohibited actions.**

No person shall behave himself in a rude or disorderly manner, nor use indecent, profane or insulting language in any street, public place or public building, or any place in which the public has right of access as invitees or licensees in the town; nor be or remain upon any doorstep, portico or other projection from any building, nor in any public hall, or entrance thereto, to the annoyance or disturbance of any person; nor shall any person ride any horse or other animal upon any sidewalk of the town, whereby the free, safe and convenient use thereof, by travelers thereon, shall in any way be interrupted or the occupants of adjoining estates unreasonably annoyed and disturbed.

## **TOWN OF HOPKINTON**

# **TOWN OF HOPKINTON**

## **CHAPTER 93**

### **DUMPING**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 3-6-1944 ATM, Article 1]**

**GENERAL REFERENCES:** Recycling -- See Ch. 170, Art. I.

#### **§ 93-1. Dumping on public and private land.**

No person shall deposit or dump refuse or decayed animal or vegetable matter on any public or private land contrary to rules and regulations of the Board of Health.

## **TOWN OF HOPKINTON**



# TOWN OF HOPKINTON

## CHAPTER 96

### EARTH REMOVAL

§ 96-1.	Purpose.	§ 96-6.	Criteria for issuance of permits.
§ 96-2.	Definitions.	§ 96-7.	Permit renewal.
§ 96-3.	General requirements.	§ 96-8.	Completion of earth removal activities.
§ 96-4.	Applicability.	§ 96-9.	Enforcement.
§ 96-5.	Permits.	§ 96-10.	Appeal.
		§ 96-11.	Severability.

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 3-5-1951, Art. 23. Amended 9-28-1959 STM, Art. 7; 3-9-1972 ATM, Art. 51; 11-13-1972 STM, Art. 9; 6-18-1978 STM, Arts. 8 and 9; 4-22-1976 ATM, Art. 56; 4-13-1981 ATM, Arts. 42, 43 and 44; 5-4-1998, Art. 40. Subsequent amendments noted where applicable.]

GENERAL REFERENCES: Zoning -- See Ch. 210.

#### § 96-1. Purpose.

- A. The purpose of this chapter is to provide a comprehensive review procedure of plans for earth removal which may affect traffic, environmental quality, water resources, drainage and community character with the objective that the public health, safety, convenience and general welfare is protected. This chapter shall apply to all earth removal activities in the Town of Hopkinton, except as otherwise set forth herein. It shall apply to all areas regardless of zoning district.
- B. Due to the fact that earth removal activities involve the degradation of a natural resource of value to the Town and that alteration of the natural environment and its resources will impact other resources and the environment as a whole, applicants for earth removal permits must demonstrate that the earth removal activity will not have a material detrimental impact on natural resources, such as groundwater quantity and quality, wildlife habitats, natural drainage patterns, viewsheds and wetlands.

#### § 96-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOARD -- The Planning Board of the Town of Hopkinton.

EARTH -- All forms of soil, including, without limitation, loam, sand, gravel, clay, peat, hardpan or rock.

LOAM -- Soil consisting of a mixture of sand, clay, silt and organic matter.

LOT -- A single piece or parcel of land lying in a solid body, under single, joint or several ownerships and separated from contiguous land by property lines or street lines.

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**OWNER** -- The owner of record of the land with respect to which earth is sought to be removed, or the person lawfully standing in the stead of such owner.

**REMOVAL** -- Stripping, digging, excavating or blasting earth on a lot and removing or carrying it away from said lot.

**SURPLUS** -- An amount or quantity in excess of what is needed or required.

### **§ 96-3. General requirements.**

The following requirements shall apply to all earth removal activities, whether or not a permit is required. The Board shall have the authority to waive any of the requirements listed below, on a case-by-case basis:

- A. Grades at the conclusion of the earth removal operation shall not be in excess of one foot in vertical rise for every three feet of horizontal distance (3:1). Grades in excess of 3:1 may be allowed only with a waiver from the Board. When reviewing waiver requests, the Board will consider the final appearance of the lot and surrounding areas with the intent that a natural appearance, natural drainage patterns and sufficient erosion control will be maintained or established.
- B. Proper and reasonable surface drainage of the land affected by earth removal operations shall be assured during and after the removal operations. The applicant shall provide assurance that earth is kept out of streams and drainage-ways and that accumulated earth shall be removed at periodic intervals during and upon the conclusion of the earth removal operation. If the erosion control system includes any structural devices, these structural devices shall be in place and stabilized before excavation can begin in the affected area. All structures shall be inspected and maintained by the owner in accordance with the approved plan and the capacity of the structural device.
- C. At the conclusion of the earth removal operation, or of such portion thereof as the Board deems appropriate, the whole area where removal has taken place shall be covered with not less than eight inches of loam and seeded with a suitable cover crop, except where ledge rock is exposed, and all large stones and boulders which protrude above the finished grade shall be removed or buried. Alternatives to this method of restoration shall be subject to the prior approval of the Board.
- D. In no event shall any loam be stripped and/or removed from any land in an amount which exceeds the eight inches of loam required by Subsection C of this section.
- E. The depth of excavation for any earth removal operation shall not be closer than seven feet above the spring high-water table, as determined by observation of soil profiles or test wells.
- F. All earth that is stripped and piled, and that which will be left exposed for a period of greater than 60 days, within 200 feet of a wetland, stream, river or other body of water, shall be stabilized. Such stabilization may consist of temporary seeding, anchored mulch or other method approved by the Board or its Agent.
- G. Provisions for dust control shall be provided for any earth removal operation.
- H. A buffer strip of undisturbed land not less than 100 feet wide shall be maintained at all boundaries of the lot, including at all street lines, on which an earth removal operation occurs. In the event that an earth removal permit is issued for adjoining lots under the same ownership, the Board may waive the buffer strip requirement in such locations as it deems appropriate.

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- I. No earth removal permit shall be issued for a period in excess of 24 months. The duration of the permit, including dates of commencement and termination, shall be set forth on the permit.

### **§ 96-4. Applicability.**

Except as otherwise provided in this chapter, no earth shall be removed from any lot in the Town unless a permit shall have first been obtained by the owner from the Board. The requirements of § 96-3 shall apply to all earth removal activities, whether or not such activity requires a permit.

- A. No permits are required for removal of earth in the following circumstances:

- (1) Public land. Earth removal on lands in public use.
- (2) Intra-lot activities. Earth moving activities confined entirely to the limits of a single lot as herein defined, provided that no earth is removed from the lot.
- (3) Surplus earth. Removal of surplus earth resulting from a bona-fide construction project being carried on pursuant to the issuance of a building permit or permits which involve the removal of no more than 500 cubic yards of earth, only after presentation and review of appropriate plans and engineering data by the Board.
- (4) Small quantities. The removal of no more than 100 cubic yards of earth from a lot in one twenty-four-month period.
- (5) Definitive subdivision plan. Removal of surplus earth resulting from construction of the infrastructure, roadway and utilities shown on a definitive subdivision plan which has been approved by the Planning Board pursuant to the Subdivision Control Law, only after presentation and review of appropriate plans and engineering data by the Board.
- (6) Site plan. Removal of surplus earth resulting from construction of the infrastructure, roadways, driveways, utilities, sewage disposal system, buildings and other facilities shown on a site plan approved by the Planning Board pursuant to Chapter 210, Zoning, Article XX, Site Plan Review, only after presentation and review of appropriate plans and engineering data by the Board.
- (7) Garden apartment. Removal of surplus earth resulting from construction of the infrastructure, driveways, utilities, sewage disposal system, buildings and other facilities shown on a garden apartment site plan approved by the Planning Board pursuant to Chapter 210, Zoning, Art. XIII, Garden Apartments in Residential Districts, only after presentation and review of appropriate plans and engineering data by the Board.

- B. Without limiting any provision hereinabove set forth, earth removal permits are required for the following activities:

- (1) Any activity not included in Subsection A above.
- (2) Commercial earth removal activities, such as mining, sand and gravel operations, earth removal and quarrying.

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- (3) Removal of earth that is not surplus to an ongoing bona fide construction project, subdivision plan construction, site plan construction or garden apartment site plan construction.

### **§ 96-5. Permits.**

A permit applicant shall file with the Planning Board an application, together with such fees, plans, specifications and additional information as set forth in the Earth Removal Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this chapter, the Planning Board shall vote to adopt the Earth Removal Submission Requirements and Procedures Manual after holding a public hearing.

#### **A. Permit procedure.**

- (1) Within seven days of receipt of an earth removal permit application, the Planning Board shall transmit copies of the application and plan to the Highway Department, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted.
- (2) The Board shall hold a public hearing within 65 days after receipt of a complete application. Notice of such hearing shall 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 day of the hearing. Notice shall also be sent by mail to the applicant, abutters and abutters to abutters, including those across any street, within 300 feet of the property. Notice of the public hearing shall be posted in the Town Hall not less than 14 days prior to the date of the hearing. Such notice shall be at the expense of the applicant. The Board shall file its decision with the Town Clerk within 90 days from the date of submittal. The time limits for a public hearing and Board action may be extended by written agreement between the applicant and the Board.
- (3) The owner of the property subject of any application must be named applicant. An applicant shall submit adequate evidence of ownership or authority to seek the permit.
- (4) An applicant shall submit documentation showing the depth to groundwater in the locations where earth removal will occur. Locations of test holes where such information was obtained shall be shown on a plan in form satisfactory to the Board.
- (5) The Board may forward a copy of the submission package for engineering review by a consultant selected by the town, at the expense of the applicant.
- (6) Applications for permits may be granted, denied, granted in part and denied in part or granted with conditions, at the discretion of the Board. A majority vote of the Board members present and voting shall be required to grant a permit.
- (7) A majority vote of the Board members present and voting shall be required to grant a permit.

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### **B. Permit conditions.**

- (1) The Board may require that the earth removal operation occur in phases, whereby one phase shall be completed and seeded prior to the commencement of the next phase.
- (2) The Board may require that periodic status reports, in such form as the Board may require, be submitted by the applicant during the earth removal permit period.
- (3) The Board may establish hours of operation for the earth removal activity.
- (4) The applicant shall post a bond, in such form as the Board may require, with the Town in an amount determined by the Board as sufficient to guarantee conformity with the provisions or conditions of the permit. The applicant shall submit a bond estimate for Board review and approval prior to the commencement of activities authorized by the permit. In lieu of a bond, the Board may allow or require an alternative method of surety to be held by the town. The Town may use the bond or other surety for the stated purpose in the event that the applicant does not comply with all of the terms and conditions of the permit and complete all restoration in a manner satisfactory to the Board and in accordance with the permit; significant public safety hazards exist which will not be addressed by the applicant; or material environmental damage has resulted from the earth removal activity and remediation will not be addressed by the applicant in a manner satisfactory to the Board.
- (5) The Board may require a deposit of funds to the Town for engineering review and inspection of the premises during the earth removal permit period.

### **§ 96-6. Criteria for issuance of permits.**

- A. The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will meet the requirements of this chapter.
- B. Earth removal permits may be granted by the Board if it finds each of the following:
  - (1) The proposed earth removal conforms to the purpose of the chapter.
  - (2) The earth removal operation on the permitted lot will not:
    - (a) Be injurious or dangerous to the public health or safety.
    - (b) Produce noise, dust or other effects detrimental to the normal use of adjacent property.
    - (c) Have a material adverse effect on the health or safety of persons living in the neighborhood or on the use or amenities of adjacent land.
    - (d) The earth removal activity will not result in traffic conditions on roads in the area of the earth removal activity which will cause unsafe and dangerous conditions.
    - (e) The regulations contained in this chapter will be complied with.

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## **§ 96-7. Permit renewal.**

Permits may be renewed for periods of up to one year, only after written application and a public hearing held in accordance with this chapter. Applications for renewal shall be submitted by the applicant at least two months prior to the expiration date of the permit. If the applicant fails to submit a renewal application two months prior to the expiration date of the permit, the Board may determine that the original permit has expired and that a new application must be submitted. Prior to renewal, inspection of the premises shall be made by the Board's Agent to determine that the provisions of this chapter and the existing permit have been complied with.

## **§ 96-8. Completion of earth removal activities.**

After completion of work authorized by an earth removal permit, the owner shall submit an as-built plan, prepared by a registered professional engineer, showing grades at the conclusion of the operation. The Board shall release the bond after the submission of an as-built plan, a determination that all permit conditions have been met and, when sufficient time has lapsed, to ascertain that vegetation planted has successfully been established and that drainage is satisfactory.

## **§ 96-9. Enforcement.**

- A. The Planning Board shall appoint an Earth Removal Agent in order to carry out the provisions of this chapter. The Agent shall have the authority to issue cease and desist orders in the event of violation of this chapter or a permit. Said cease and desist orders shall remain in effect during such time as negotiations between the Board and the entity to whom the cease and desist order was issued concerning the violation are ongoing or until the violation is corrected. The Planning Board shall have the authority to issue and extend cease and desist orders as it deems appropriate to ensure compliance with this chapter or the permit.
- B. The Board, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Board deems necessary or appropriate, subject to the Constitutions and the laws of the United States and the commonwealth.
- C. The Board shall have the authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, cease and desist orders and civil and criminal court actions. Any entity which violates any provision of this chapter may be ordered to restore the property to its original condition, to take other action deemed necessary or appropriate to remedy such violation or to pay a fine, or any combination of the foregoing.
- D. Upon request of the Board, the Chief of Police shall take legal action as deemed appropriate for enforcement under criminal law. Upon request of the Board, the Town Counsel shall take legal action as deemed appropriate for enforcement of this chapter under civil law. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Board in enforcement.
- E. As an alternative to criminal prosecution in a specific case, the Board may issue a citation under the noncriminal disposition procedure set forth in MGL c. 40, § 21D, if adopted by the Town as a general bylaw.

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- F. The penalty for violating any provision of this chapter shall be as follows: maximum fine, \$50 first offense; \$100, second offense; \$200 for each subsequent offense. Every day that a violation continues shall be considered a separate offense.
- G. In the event the Board determines that there has been a violation of this chapter or of any permit issued thereunder, it may require sufficient replication, restoration, replanting or any other mitigation it determines necessary or appropriate to correct or remedy the violation, in addition to a fine.
- H. A permit may be revoked by the Planning Board after a public hearing with prior notification to the owner and the applicant upon submission of evidence reasonably satisfactory to demonstrate violation of this chapter or an earth removal permit. If a permit is revoked, the earth removal operation shall be discontinued and the area restored in accordance with the requirements of this chapter.

### **§ 96-10. Appeal.**

A decision of the Board shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

### **§ 96-11. Severability.**

The provisions of this chapter are hereby deemed to be severable. The application of any such provision to any individual held to be invalid or unconstitutional or the invalidity of any provision of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any permit that previously has been issued or the application of any such provision to persons or circumstances other than those as to which it is held invalid.

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## CHAPTER 99

### EASEMENT MANAGEMENT

- |   |                               |
|---|-------------------------------|
| <b>§ 99-1. Purpose.</b>                       | <b>§ 99-4. Monumentation.</b> |
| <b>§ 99-2. Jurisdiction.</b>                  | <b>§ 99-5. Enforcement.</b>   |
| <b>§ 99-3. Permission to alter easements.</b> |                               |

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-6-1996, Art. 43. Amendments noted where applicable.]

#### **§ 99-1. Purpose.**

The purpose of this chapter is to provide a mechanism for the management and enforcement of certain obligations concerning easements which exist for a public purpose or benefit.

#### **§ 99-2. Jurisdiction.**

A. This chapter shall apply to easements conveyed to the Town of Hopkinton or established as a result of an official action by a town board or commission of the Town of Hopkinton.

B. This chapter shall not apply to easements on private property existing solely for the benefit of the owners of private property.

C. Except as permitted in this chapter or by recorded documents governing the subject easement, no person shall remove, fill, dredge, build upon, degrade or otherwise alter any easement, without having first obtained the required approvals.

D. Types of easements regulated by this chapter include but are not limited to:

- (1) No-cut and no-build easements or areas.
- (2) Limited disturbance buffers.
- (3) Lot area not included within building envelopes.
- (4) Drainage easements.
- (5) Easements established to provide access for the benefit of the Town of Hopkinton, its agents, employees and/or residents.
- (6) Scenic easements.
- (7) Conservation easements or restrictions.
- (8) Trail easements.

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### **§ 99-3. Permission to alter easements.**

- A. A property owner of the town may propose to the appropriate board, officer or commission that it be permitted to alter land within an easement area subject to this chapter. Such land may be altered, provided that:
  - (1) The alteration is approved by the board, officer or commission of the Town of Hopkinton, responsible for maintaining the easement or, in the event that the easement was not conveyed to the town, the board, officer or commission which required the easement as a result of its official action.
  - (2) If the land is in private ownership and the owner has not requested the alteration, a representative of the town shall consult with the owner.
  - (3) The proposed alteration will not be detrimental to the purpose of the easement.
  - (4) The proposed alteration includes appropriate mitigation.
- B. In the case of an easement that prevents the cutting of certain trees, no tree within this easement shall be cut without certification from a Massachusetts certified arborist that said tree meets the specified criteria of the easement language for cutting or removal or is diseased or should for some other appropriate reason be cut or removed.
- C. In the case of an easement which creates access to or relates to a drainage system, no alteration of the land within the easement area shall be permitted without first obtaining the permission of the Hopkinton Highway Department.

### **§ 99-4. Monumentation.**

The line of each easement which has been or will be established and which will be subject to this chapter shall be completely defined and proper monumentation set on the ground by placing of permanent monuments at all bounds and at each point of change of direction of the line. Such monumentation shall be of a different type than that used to denote property lines and street rights-of-way.

### **§ 99-5. Enforcement.**

- A. Any person who violates any provision of this chapter may, at the discretion of the town board, officer or department having jurisdiction over the easement, be liable for a fine of \$100 per violation, and the requirement to perform appropriate mitigation which shall be determined by such town board, officer or department serving as official holder of the easement. If the easement has not been conveyed to the town, then the town board, officer or commission which required the easement may levy the fine and determine appropriate mitigation. Mitigation shall include restoration of the disturbed area whenever possible.
- B. In the event that trees are cut in violation of this chapter, the cutting of each tree shall be considered a separate violation.
- C. The town board, officer or department which has the authority to levy the fine and determine mitigation may, in appropriate circumstances, waive such fine and mitigation.

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- D. The town board, officer or department which requires the easement as its official action may, in appropriate circumstances, waive the placement or manner of placement of monuments.

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## **CHAPTER 103**

### **ELECTRICAL INSTALLATIONS**

#### **§ 103-1. Notification of Inspector of Wires.                      § 103-2. Violations and penalties.**

[HISTORY: Adopted by the Special Town Meeting of the Town of Hopkinton 10-3-1955, Art. 4. Amendments noted where applicable.]

**GENERAL REFERENCES:** Smoke detectors -- See Ch. 113, Art. I.

#### **§ 103-1. Notification of Inspector of Wires.**

No person shall install wires, conduits, apparatus, fixtures or other appliances for carrying or using electricity for light, heat or power within, or connected to any building, without first notifying the Inspector of Wires, in writing of the proposed installation.

#### **§ 103-2. Violations and penalties.**

Whoever violates this chapter shall be subject to a fine of not more than \$20.

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## **CHAPTER 109**

### **FIREARMS**

#### **§ 109-1. Discharge prohibited.**

#### **§ 109-2. Exceptions.**

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

### **ARTICLE I**

#### **Automatic Weapons**

**[Adopted 4-9-1985 ATM, Article 37]**

#### **§ 109-1. Discharge prohibited.**

No person shall fire or discharge within the limits of the Town of Hopkinton any fully automatic weapon.

#### **§ 109-2. Exceptions.**

Nothing in this article shall prohibit the use of firearms by police or other law enforcement officers in the proper discharge of their duties.

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## **CHAPTER 113**

### **FIRE PREVENTION**

#### **ARTICLE I Smoke Detectors**

**§113-1. Hard-wired detectors required upon sale or transfer of certain buildings.**

#### **ARTICLE II Truss Construction**

**§113-2. Identification placards; applicability; violations and penalties.**

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

**GENERAL REFERENCES: Fire alarms -- See Ch. 55, Art. II.**

#### **ARTICLE I Smoke Detectors [Adopted 4-10-1985 ATM, Art. 42]**

**§ 113-1. Hard-wired detectors required upon sale or transfer of certain buildings.**

Notwithstanding the provisions of MGL c. 148, §§ 26E and 26F, all buildings or structures occupied in whole or in part for residential purposes and not regulated by MGL c. 148, §§ 26A, 26B or 26C, shall, upon the sale or transfer of such building or structure, be equipped by the seller with hard-wired smoke detectors.

#### **ARTICLE II Truss Construction [Adopted 5-7-2001 ATM, Art. 39]**

**§ 113-2. Identification placards; applicability; violations and penalties.**

- A. All buildings or structures with the exception of one- and two-family dwellings that have been, are being, or may in the future, be constructed in whole or in part with prefabricated light weight trusses for roof and/or ceiling components shall be identified with a placard at the main or primary entrance used by the Fire Department. The placard shall be in the shape of an isosceles triangle with a horizontal dimension of 12 inches and a vertical dimension of six inches. The placard shall have contrasting colors as approved by the Fire Department. The placard shall contain lettering to identify those areas of the building which are constructed with prefabricated light weight trusses. The placard shall contain the letter F for floor truss construction, the letter R for roof truss construction, and the letters F/R for occupancies with both roof and floor trusses. Upon the prior approval in writing of the Fire Department, multiple-dwelling residential buildings, such as condominiums, garden apartments, townhouses, planned retirement villages, and group residences, will not be required to place a placard upon each individual building if a placard is placed at a location approved by the Fire Department at each entrance to the complex. All placards must be installed and maintained by the property owner.

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- B. The provisions of this bylaw shall apply to all buildings in existence at the time of passage of the bylaw as well as to all buildings constructed in the future. Buildings existing as of the date of approval of the bylaw must install the placards on or before May 1, 2002.
- C. Any person who fails to comply with the provisions of this bylaw shall be punished by a fine as hereafter set forth, each day of such violation to be considered a separate offense.
- D. The violation of any provision of this article may be addressed by the procedure for noncriminal disposition as incorporated in the General Bylaws of the Town of Hopkinton. The penalty for violation of this section shall be \$50 for the first offense; \$100 for the second offense; and \$200 for the third and each subsequent offense.

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## CHAPTER 119

### FUEL STORAGE TANKS

**§ 125-1. Intent and purpose.**

**§ 125-2. Definitions.**

**§ 125-3. Procedure.**

**§ 125-4. Emergency demolitions.**

**§ 125-5. Enforcement and remedies**

**§ 125-6. Administration.**

**§ 125-7. Severability.**

**§ 125-8. Administration**

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 4-11-1984, Art. 59. Amendments noted where applicable.]

#### **§ 119-1. Authority.**

This chapter is adopted by the Town of Hopkinton under its home rule powers, its police powers to protect the public health and welfare and its authorization under MGL c. 40, § 21.

#### **§ 119-2. Purpose; applicability.**

The purpose of this chapter is to control the installation and maintenance of underground gasoline or fuel storage tanks over 1,000 gallons and to protect groundwater and surface water from contamination due to leakage. The provisions of this chapter are applicable only to underground tanks.

#### **§ 119-3. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**FIRE CHIEF** -- The Chief of the Fire Department for the municipality in which a tank is located.

**NONCORROSIVE SOIL** -- Soil that, when tested by a qualified professional, is shown to have a resistivity greater than 10,000 ohm-cm, and that does not exhibit corrosive characteristics in a soil-chemistry analysis.

**ONE-HUNDRED-YEAR FLOODPLAIN** -- Those areas as shown in the Flood Insurance Rate Maps for the Town of Hopkinton under the Federal Emergency Management Agency's National Flood Insurance Program, or as defined in Article X of Chapter 210, Zoning.

**UNDERGROUND TANK** -- Any fuel storage containment system for gasoline, fuel or lubricating oil with a capacity in excess of 1,000 gallons, the top of which is located below the ground.

#### **§ 119-4. Registration of existing tanks.**

- A. Tank registration. Every operator of an underground tank must file with the Town Clerk the size, type, age, contents, and location of their underground tanks within 90 days of the enactment of this chapter.
- B. Notification of Fire Department. The Town Clerk must forthwith, give the Fire Chief a copy of the information filed for each tank that is registered according to Subsection A of this section. The Fire Chief or his designee must check this information against Fire Department records. He may require

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evidence of the date of purchase and installation if there is any question concerning the age of the tank.

- C. Tank testing. Operators that are known to have underground fuel storage tanks that did not report their tank(s) as required by Subsection A of this section must have such tanks tested in accordance with § 119-6B of this chapter within 120 days of the enactment of this chapter.

### **§ 119-5. Standards applicable to the installation of new tanks.**

A. Tank design.

- (1) Unless proven otherwise by soil tests performed by qualified professionals, the soils in Massachusetts shall be assumed to be corrosive. Metallic tanks (except stainless steel) without cathodic protection or an underground secondary-containment system will be prohibited. Also prohibited is schedule 40 steel pipe, galvanized or black iron, or approved nonmetallic (except fiberglass-reinforced plastic) pipe. If a qualified professional demonstrates that the soils in which the tank is to be placed are noncorrosive as described in § 119-3, definition of "noncorrosive soil," a steel tank with interior coating and other approved piping may be installed.
- (2) In corrosive soils, underground tanks must be constructed of noncorrodible materials, such as fiberglass-reinforced plastic (FRP) or its equivalent; steel with external bonded noncorrodible material (i.e., FRP); a steel system cathodically protected by an impressed current cathodic system, sacrificial anodes or equivalent protection; or a double-walled tank. These requirements are in accordance with the Massachusetts Board of Fire Prevention regulations codified in 527 CMR 9.06(18).
- (3) In corrosive soils, piping shall be constructed of noncorrodible materials, such as FRP or its equivalent, a steel system with cathodic protection or some other type of equivalent protection, in accordance with 527 CMR 9.06(18).
- (4) Cathodic protection systems shall be maintained and checked in accordance with 527 CMR 9.06 (20) (g).
- (5) Commercial tanks must be equipped with striker plates below openings used for product measurement or filling.

B. Tank installation.

- (1) The Fire Chief or his designee must inspect and approve underground tanks prior to their burial, in accordance with 527 CMR 9.06(10).
- (2) Tanks must be installed in accordance with the manufacturer's installation techniques. Damage to protective coatings or to the FRP tank or surface must be repaired prior to covering the tank.
- (3) New underground tanks shall be tested for tightness, hydrostatically or with air pressure at not less than three pounds per square inch and not more than five pounds per square inch

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after installation, but before being covered or placed in use in accordance with 527 CMR 9.06(20)(b).

- (4) Piping should be tested in accordance with 527 CMR 9.06(20)(a) before being covered, enclosed or placed in use.
- (5) Backfill material, used to cover all new tank installations and repairs, must be of the type and quality specified by the tank manufacturer's installation procedures and by the pertinent regulations governing storage tank installation.
- (6) Underground tanks that are to be located in areas subject to flooding or below the maximum water table elevation must be anchored according to manufacturer's instructions.

### C. Tank location.

- (1) Underground tanks may not be installed within the one-hundred-year floodplain.
- (2) Underground tanks that are to be installed within the watershed of a drinking water reservoir or within the cone of depression of a public well (or lacking a defined cone of depression, within 1,000 feet of a public water supply well) must submit, for review by the Fire Chief, the Board of Health or its agent and the Board of Water Commissioners or its agent, a plan outlining the procedures or devices, such as product sensors and/or area monitoring devices, to be used to prevent water supply contamination. The plan must be endorsed by representatives of the three departments noted above prior to tank installation.

## § 119-6. Leak detection for existing and new tanks.

### A. Inventory verification.

- (1) All underground tanks, except fuel-oil tanks and tanks connected with burning equipment, must be monitored for the prevention and detection of leakage of flammable and combustible liquids in accordance with the provisions of 527 CMR 5.05(3).
- (2) The daily inventory records must be shown to the Fire Chief, or his designee, prior to issuance of a permit or license renewal.
- (3) The owner and operator must participate in a program of regularly scheduled inventory verification, at least once every two years, in accordance with 527 CMR 5.05(3)(g). The operator of tanks 10 years of age or older shall submit to the Fire Chief annually a report certifying that the inventory verification has been performed, stating the calculated gain/loss over the verification periods.
- (4) The Fire Chief shall require the operator of an underground tank storage system to test the system for tightness, at the operator's expense, when accurate daily inventory records have not been maintained as specified in this Subsection A.
- (5) If daily inventory records indicate a loss of product in excess of 0.5% of the volume of product used or sold, or an abnormal increase in the amount of water contained in the tank, steps must be taken immediately in accordance with 527 CMR 5.05(3)(e) to detect and stop the leak. The discrepancy must be reported to the Fire Chief.

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### B. Tank testing.

- (1) Unless the tank operator demonstrates to the Fire Chief and the Board of Health that his tank(s) are constructed of a material that will not corrode, has product sensors or has been repaired or tested within the last year, underground tanks shall be required, at the expense of the owner, to undergo one of the following tests at five-year intervals from the date of the installation, up to the 20th year, and annually thereafter: a Kent-Moore (Heath Petrotite) test or a SunMark leak-locator test, or the equivalent as determined by the Fire Chief. The Fire Chief shall be given at least 48 hours' notice of time, date and place of testing. Test results must be submitted to the Fire Chief.
- (2) The waiver from Subsection B(1) may not be granted for a tank that is located within any of the areas specified in § 119-5C(2).
- (3) If flammable fluids or their vapors have been detected in neighboring structures, sewers or wells on or off the property locations, the Fire Chief may require that any nearby tank, in including underground residential tanks less than 1,000 gallons, be tested at the expense of each tank's owner.

### § 119-7. Procedure in case of spill or leak.

A. Leak reporting. Any person who is aware of a spill or abnormal loss of flammable fluids must report such spill or loss immediately to the Fire Chief. The Fire Chief shall be responsible for other notification, including the Board of Health.

### B. Equipment replacement/removal.

- (1) After a leak is confirmed, underground tanks (or piping) must be emptied immediately and removed or repaired forthwith, under the direction of the Fire Chief.
- (2) A leaking tank that is 20 years old or older that does not comply with the design standards in § 119-5A (2) must be removed and may not be repaired. A permit for its removal must be obtained in accordance with MGL c. 148, § 38A.
- (3) A leaking tank that is less than 20 years old must be repaired or removed. If the tank operator can show to the satisfaction of the Fire Chief that (in the case of steel tanks) the leak was from internal corrosion, and that the tank can be repaired so as not to pose a continuing threat to the soils and waters of the commonwealth, considering at a minimum the corrosivity of the soil; tank age and external condition; techniques to be used for the repair; and the location of the tank, then the tank may be repaired. Operators of leaking FRP tanks must demonstrate to the Fire Chief that the tank can be repaired according to manufacturer's instructions. Operators who do not meet these requirements must remove the tank.
- (4) If it is necessary to replace an underground steel tank that has developed a corrosion-induced leak, all other steel tanks at the facility of the same age or older, whether they are leaking or not, shall be repaired or replaced with tanks that meet the requirements of § 119-5A of this chapter.

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### **§ 119-8. Administration.**

- A. The provisions of this chapter shall be administered by the Fire Chief.
- B. Variances from the specific requirements of this chapter may be authorized by the Board of Selectmen after notice and public hearing.
- C. Licenses issued in accordance with MGL c. 148, § 13, for underground tanks must be renewed at five-year intervals from the date of installation, up to the 20th year, and annually thereafter. Tank owners must submit to the Fire Chief and the licensing authority a statement certifying satisfactory leak detection results over the period of the permit (in accordance with § 119-6B of this chapter), and inventory verification, at least 30 days before the issuance of a permit renewal for the time periods specified herein. Test results must accompany the permit renewal application.
- D. Fees necessary for the issuance and renewal of permits or licenses shall be set by the Board of Selectmen.
- E. The Fire Chief or his designee may, at all reasonable times and upon reasonable notice to the occupant of the premises, enter any premises, public or private, for the purpose of investigating, sampling or inspecting any record, condition, equipment, practice or property relating to activities subject to this chapter and may, at any time and upon reasonable notice to the occupant of the premises, enter such premises for the purpose of protecting the public health or safety or to prevent damage to the environment.

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## CHAPTER 123

### HISTORIC DISTRICT.

§ 123-1.	Title; statutory authority.	§ 123-7.	Adoption of Rules and Regulations by Commission.
§ 123-2.	Purpose.	§ 123-8.	Applications for certificates.
§ 123-3.	Boundaries of District.	§ 123-9.	Enlargement or reduction of District.
§ 123-4.	Historic District Commission.	§ 123-10.	Appeals.
§ 123-5.	Commission meetings; quorum.	§ 123-11.	Enforcement.
§ 123-6.	Limitations on Commission authority and Woodville Commission authority.	§ 123-12.	Severability.
		§ 123-13.	Conflict with other laws.

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 4-9-1979 ATM, Art 40 Listed with Zoning Bylaws; Moved to General Bylaws 5-3-2004, Art. 32. Amendments noted where applicable.]

GENERAL REFERENCES: ZONING: See Chapter 210

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#### § 123-1 Title; statutory authority.

This chapter shall be known and may be cited as the "Hopkinton Historic District Bylaw" and is adopted pursuant to M.G.L.c. 40C.

#### § 123-2 Purpose

The purpose of this chapter is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of Hopkinton or significant for their architecture and the maintenance and improvement of settings for such buildings and places and the encouragement of designs compatible therewith.

#### §123-3. Boundaries of District. [Amended 5-2-2000 ATM ATM, Art. 23; 5-7-2001 ATM, Art. 28; 5-2-2005 ATM, Art. 18]

A. There is hereby established under the provisions of M.G.L.c. 40C, an Historic District to be known as the "Hopkinton Center Historic District (the "District"), the location and boundaries of which are shown on a map entitled "Historic District Map of the Town of Hopkinton" and which District is generally described as follows:

- 1) The land on the South side of Main Street consisting of Lot 220, portions of Lots 219, 218, and 216, Lots 217, 197 and 196; the land at the intersection of Main and Hayden Rowe Streets consisting of Lot 195; the land on the West side of Hayden Rowe Street consisting of Lots 194 and 193, and a portion of Lot 192; the land on the South side of Park Street

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consisting of a portion of Lots 172 and 285, and Lots 171 and 170; the land on the West side of Ash Street consisting of Lot 1; the land on the East side of Ash Street consisting of Lot 168; the land at the intersection of Ash and East Main Streets consisting of Lot 167; the land on the South side of East Main Street consisting of Lot 43; the land on the North side of East Main Street consisting of a portion of Lot 156, and Lot 155; the Town Common; the doughboy monument plot; portions of Main, Church, Hayden Rowe, Ash and East Main Streets, and all of Park Street; the parcel of land upon which is situated the Hopkinton Town Hall and which is shown on Hopkinton Assessor's map U16, Block 149, as Lot 0. {Amended 5-2-2000 ATM, Art. 23}.

- 2) The area included in the Historic District known as the "Hopkinton Center Historic District" is enlarged by including therein the following parcel or block of land: [Added 5-7-2001 ATM, Art. 28]

That portion of the parcel of land upon which is situated the Center School which is shown on Hopkinton Assessors Map U17, Block 42, as Lot 0, and which is bounded and described as follows:

Beginning at the most southerly corner of Block 42 at the point of intersection of Block 42, Block 40 and Ash Street, and thence running in a general northeasterly direction on the boundary line between Block 42 and Block 40, approximately 325 feet to the most

northerly corner of Block 40; thence turning and running in a general northwesterly direction on a straight line which is the extension of the rear lot line of Block 40 to a point at the boundary line of Block 42 and Block 44; thence turning and running in a general southwesterly direction on the boundary line between Block 44 and Block 42 to the point of intersection of Block 44, Block 16-168 and Block 42, thence turning and running in a general southwesterly direction on the boundary line between Block 16-168 and Block 42 approximately 214 feet to the most westerly corner of Block 42 at the point of the intersection of Block 16-168, Block 42 and Ash Street; thence turning and running in a general southeasterly direction on the boundary line between Block 42 and Ash Street, approximately 170 feet to the point of beginning.

- B. There is hereby established under the provisions of G.L.c. 40C, an Historic District to be known as the "Woodville Historic District" (the "Woodville District"), the location and boundaries of which are shown on a map entitled "Woodville Historic District Map" and which district is generally described as follows:

"The land on the North side of Wood Street consisting of Lots 200\*, 202\*, 204, 206, 208, 210, 212, 216, 218, 220\*, 222\*, 224\*, 226, 230\*, 232, 234, 238, §240\*, 242, 244, 246, 248, 250, 252\*, 254, 256, 258, 262, 264\*, 266, 268\*, 270\*, 272\*, 274\*, 276\*, 278, 280, 282, Evergreen Cemetery and Lots 2\*, 4\*, and 6\* on Whitehall Lane which fronts on the North side of Wood Street; the land on the South side of Wood Street consisting of Lots 203, 205, 207, 209, 211, 215\*, 217, 219, 221, 223, 225, 227, 229, 235, §237, §239, §241, 247, 249, 251, 253\*, 255\*, 259, §261\*, §263\*, §265\*, 271\*, 273\*, §277\*, 279\*, 283\*, §285\*- §297\* (counted as one parcel as Lake Whitehall parking lot), §299, 301; the land on the West side of Exchange Street consisting of 6, 8, 10, and §12; the land on the West side of Winter Street consisting of Lots 6, 8, 12, 14, 18, 20, 22, and 24; the land on the East side of Winter Street consisting of lot 21; the land on the North side of Highland Street consisting of Lot 10\*; the land on the South side of Highland Street consisting of State Land

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designated as Lot F\* on the accompanying map, the Gatehouse located on a portion of Highland Street within Whitehall State Park; the land on the East side of Fruit Street consisting of Lots §2, 4\*, 20\*, and 26; the land on the West side of Fruit Street consisting of Lot 19. The rear boundary line has been established to coincide with the zoning demarcation between residential and agricultural land. Those lots followed by an \* denote lots whose rear boundary line is established according to the zoning demarcation. All others follow the lot lines established shown on the town assessor maps. Those lots preceded by a § denote lots without addresses."

- C. Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined by the Hopkinton Historic District Commission.

### **§ 123-4. Historic District Commission. [Amended 5-2-1995 ATM, Art. 62; 5-2-2005 ATM, Art. 3]**

- A. There is hereby established under M.G.L.c. 40C, with all the powers and duties of an historic district commission thereunder, the Hopkinton Historic District Commission, consisting of seven members appointed by the Board of Selectmen. The membership of the Commission shall include one resident or property owner within the District, one member from two nominees submitted by the Hopkinton Historical Commission, one member from two nominees submitted by the Boston Society of Architects, one member from two nominees submitted by the Hopkinton Historical Society, one member from two nominees submitted by the Board of Realtors serving Hopkinton and two members at large who shall be citizens of Hopkinton. [Amended 5-2-1995 ATM, Art. 62]
- B. There is hereby established under MGL c. 40C, with all the powers and duties of an Historic District Commission thereunder, the Woodville Historic District Commission, consisting of seven members appointed by the Board of Selectmen. The membership of the Commission shall include three residents or property owners within the Woodville District, one member from two nominees submitted by the Hopkinton Historical Commission, one member from two nominees submitted by the Boston Society of Architects, one member from two nominees submitted by the Hopkinton Historical Society, and one member from two nominees submitted by the Board of Realtors serving Hopkinton.
- C. If, within 60 days after submission of a written request for nominees to any of the organizations named, no such nominations have been made, the Board of Selectmen may proceed to make appointment to the Commission without the nomination of such organization.
- D. The terms of membership on the Commission shall be for three years, except that the terms of membership for the initial appointments shall be as follows: two members for terms of one year, two members for terms of two years and three members for terms of three years.
- E. Vacancies shall be filled in the same manner as the original appointments and shall be for the unexpired terms.
- F. The Commission shall annually elect a Chairman from its members by a majority vote, except that the initial Chairman shall be designated by the Board of Selectmen. The Commission shall annually elect a Vice Chairman and Secretary from its members by a majority vote.

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## **§ 123-5 Commission Meetings; Quorum.**

The Commission shall meet at the call of the Chairman or at the request of two members. A majority of its membership shall constitute a quorum. The Commission shall act on all applications for certificates filed with it in accordance with the provisions of M.G.L.c. 40C, § 11.

## **§ 123-6. Limitations on Commission Authority and Woodville Commission Authority [Amended 5-2-2005 ATM, Art 3]**

Notwithstanding anything contained in this chapter to the contrary, the authority of the Commission shall not extend to the review of the following categories of buildings or structures or architectural features in the District:

- A. Temporary signs used for a period of not more than 30 days.
- B. Walks, driveways and sidewalks to the extent that the alteration is of the same type construction as presently exists.
- C. Storm windows and doors, screen doors and windows, antennae and similar appurtenances and window air conditioners.
- D. Color of paint when structures are repainted the then color or white.
- E. Reconstructions of a building, structure or exterior architectural feature which has been damaged or destroyed by fire, storm or other disaster, provided that the exterior design is substantially similar to the original and the reconstruction is begun within one year of the occurrence and is carried on with due diligence. The Commission may require plans for reconstructions be submitted prior to the commencement of the reconstruction for the sole purpose of determining whether this exclusion is applicable.
- F. Any property feature, other than exterior architectural features, situated within the District that is not visible from one or more public streets within the District or the Town Common.

Notwithstanding anything contained in this Chapter to the contrary, the authority of the Woodville Commission shall not extend to the review of any of the categories of buildings or structures or architectural features referred to in that portion of this section 123-6 relating to the Historic District Commission, and shall also not extend to the review of the following categories of buildings or structures or architectural features in the Woodville District:

- A. Lighting fixtures and satellite dishes.
- B. Color of paint.
- C. Roof materials and roof material color.

In all other respects, Chapter 123, Historic District, of the General Bylaws of the Town of Hopkinton shall remain in full force and effect.

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## **§ 123-7. Adoption of Rules and Regulations by Commission.**

The Commission shall have the authority to adopt and amend rules and regulations for the conduct of its affairs, but only to the extent such rules and regulations are consistent and not in conflict with any of the provisions of M.G.L.c. 40C. A copy of the rules and regulations adopted by the Commission shall be provided, free of charge, to all owners of property situated within the District. Such rules and regulations may include the adoption of a schedule of fees to cover the costs associated with the administration and review of any application which is filed under this chapter.

## **§ 123-8. Applications for certificates.**

The Commission shall determine within 14 days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, whether the application involves any exterior architectural features which are subject to approval by the Commission. If the Commission determines that such application involves any such features which are subject to approval by the Commission, the Commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

The Commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place and purposes thereof at least 14 days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Planning Board, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the Commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within 60 days after the filing of the application, or within such further time as the applicant may allow in writing, the Commission shall make a determination on the application. If the Commission fails to make a determination within such period of time, the Commission shall issue a certificate of hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. A public hearing on an application may be waived by the Commission if the Commission determines that the exterior architectural feature involved or its category or color, as the case may be, is so insubstantial in its effect on the District that it may be reviewed by the Commission without public hearing on the application, provided, however, that if the Commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as above provided and 10 days shall elapse after the mailing of such notice before the Commission may act upon such application.

## **§ 123-9. Enlargement or reduction of District.**

The Commission shall have the authority, pursuant to the provisions of M.G.L. c. 40C, to enlarge or reduce the District herein created and to create additional Historic Districts within the Town of Hopkinton.

## **§ 123-10. Appeals**

Any person aggrieved by a determination of the Commission may, within twenty days after the filing of the notice of such determination with the Town Clerk, file a written request with the Commission for a review by persons of competence in such matters, designated by the Metropolitan Area Planning Council. The

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finding of the persons making such review shall be filed with the Town Clerk within 45 days after the request, and shall be binding on the applicant and the Commission, unless further appeal is sought in the Superior Court as provided in M.G.L. c.40C, sec. 12A.

### **§ 123-11. Enforcement**

- A. The Commission and the Director of Municipal Inspections are both authorized to enforce the provisions of this chapter.
- B. No building permit for construction of a building or structure or for alteration of an exterior architectural feature within the District and no demolition permit for demolition or removal of a building or structure within the District shall be issued by the Director of Municipal Inspections until the certificate required by this chapter has been issued by the Commission.
- C. Any person who violates any provision of this chapter, or any regulation or certificate issued there under, shall be liable for a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of this chapter, or any regulation or certificate which shall have been violated, shall constitute a separate offense.

### **§ 123-12. Severability.**

The provisions of this chapter shall be deemed to be severable. If any of its provisions shall be held invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

### **§ 123-13. Conflict with other laws.**

Where this chapter imposes a greater control upon setback, signs and other external features than is imposed by other bylaws of the Town of Hopkinton, the provisions of this chapter shall govern.

# TOWN OF HOPKINTON

## CHAPTER 125

### HISTORIC PRESERVATION

**§ 125-1. Intent and purpose.**

**§ 125-2. Definitions.**

**§ 125-3. Procedure.**

**§ 125-4. Emergency demolitions.**

**§ 125-5. Enforcement and remedies**

**§ 125-6. Administration.**

**§ 125-7. Severability.**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-6-2002, Art. 36. Amendments noted where applicable.]**

**GENERAL REFERENCES: Zoning -- See Ch. 210.**

#### **§ 125-1. Intent and purpose.**

The purpose of this chapter is to establish a procedure for reviewing requests to demolish significant structures in order to record and, if appropriate, preserve the historical, cultural, and architectural heritage and character of Hopkinton. It is the intent of the Hopkinton Historical Commission that the procedures outlined in this Chapter provide an opportunity for all parties to arrive at a mutually satisfactory resolution. **[Amended ATM 5-6-2013, Art. 44]**

#### **§ 125-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**APPLICANT** -- Any person or entity who files an application for review under this chapter. If the applicant is not the owner of the premises upon which the structure is situated, the owner must indicate on or with the application his/her assent to the filing of the notice or application.

**BUILDING INSPECTOR** -- The Hopkinton Director of Municipal Inspections, Local Inspector, or person(s) otherwise authorized to issue demolition permits.

**COMMISSION** -- The Hopkinton Historical Commission.

**DAY** -- Any calendar day, including Saturdays, Sundays, and holidays.

**DEMOLITION** -- Any voluntary act involving the pulling down, destroying, burning, removing, or razing in any manner whatsoever, of a structure, in whole or in part; commencing any work involving the partial, substantial or total destruction of a structure; or allowing the same to be done by others.

**DEMOLITION PERMIT** -- Any permit, including, without limitation, a demolition, alteration or building permit issued by the Building Inspector, as required by the State Building Code, which authorizes the demolition of a structure, but excluding, however, the demolition of only the nonstructural portions of the interior of the structure.

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**PREFERABLY PRESERVED SIGNIFICANT STRUCTURE** -- Any structure which, after hearing by the Commission, is determined to be a significant structure and in the public's interest to preserve or rehabilitate under this chapter.

**SIGNIFICANT STRUCTURE** -- Any structure which may be worthy of preservation by reason of the fact it may have been constructed, in whole or in part, 75 or more years prior to the application date, and it is determined by the Commission to be either:

- A. Associated in some material respect with a person or event which has contributed to the cultural, political, economic, social, or architectural history of the Town, the Commonwealth, or the United States of America; or
- B. Historically or architecturally important (in terms of period, style, construction, or material association with an architect or builder), either by itself or in the context of a group of structures.

**STRUCTURE** -- Any combination of materials giving support or forming a shelter for persons, animals, or property, and/or including, without limitation, such other buildings, signs, walls, fences, statues, monuments, bridges, burial markers or other combinations of building materials. The word "structure" shall be construed, where appropriate, as though followed by the words "or part or parts thereof."

### **§ 125-3. Procedure. [Amended ATM 5-6-2013, Art. 44]**

#### **A. Demolition Delay**

- (1) No demolition permit for the demolition of any structure shall be issued without the prior compliance with the provisions of this chapter.
- (2) Upon receipt of an application for a demolition permit for any structure, the Building Inspector shall transmit a copy of the application to the Commission.
- (3) Within 14 days of receipt of the application, the Commission shall determine if the structure is a significant structure. The Commission shall notify the Building Inspector and the applicant in writing of this initial determination. If the structure is not determined to be a significant structure, the Building Inspector may proceed to issue a demolition permit in accordance with all applicable codes and regulations.
- (4) If the structure is determined to be a significant structure, the Commission shall hold a public hearing within 30 days of this initial determination to determine whether the structure should be preserved. Notice of the time, place and purpose of the hearing shall be given once in a local newspaper, at least seven days before such hearing and by posting a notice in the Town Hall for a period of at least seven days before such hearing, and by mailing a notice of hearing to the applicant and all immediate abutters to the property upon which the structure is situated.
- (5) The Commission shall make a determination as to whether the structure should be classified as a preferably preserved significant structure within 10 days of the close of the public hearing. The applicant, the Building Inspector, and the Town Clerk shall be provided with a copy of the written determination.



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- (6) If the Commission determines the structure is not worthy of classification as a preferably preserved significant structure, the applicant may apply for the necessary permits to begin demolition.
- (7) If the Commission determines the structure is worthy of classification as a preferably preserved significant structure, no further demolition permits may be applied for or issued with respect to such structure, for a period of six months from the date of such written determination.
- (8) During such six-month period, the Commission will invite the applicant (and the owner of record, if different from the applicant) to participate in an investigation of alternatives to demolition. If acceptable alternatives are agreed upon by the Commission and the applicant, the Commission will file a copy of said agreement with the Building Inspector and Town Clerk and the applicant may apply for necessary permits to begin work. Work shall only be done in accordance with the terms of the agreement unless and until new permit applications are filed and processed hereunder.
- (9) If the Commission is satisfied that there is no feasible alternative to demolition, the Commission may so advise the applicant, the Building Inspector, and the Town Clerk in writing, at any time during this six-month period, and the Building Inspector may issue a permit to demolish the structure in accordance with all applicable codes and regulations.
- (10) In the event that the structure will be demolished, the applicant is encouraged to allow a representative or agent of the Commission to enter upon the premises for the purpose of documenting the historically significant features of the structure. Such documentation could include photographs, videotape recording, or making measurements of the structure.
- (11) An applicant may submit a request for a determination from the Commission as to whether a structure is a preferably preserved significant structure without filing an application for a demolition permit with the Building Inspector. The Commission shall follow the procedures set forth in § 125-3C through G in this chapter in making such determination. The determination and agreement, if any, shall be valid for a period of two years, during which time the application for a demolition permit may be submitted to the Building Inspector, and a demolition permit issued without reapplication to the Commission, so long as such permit is consistent with the determination and/or agreement.

### **B. Information**

The Planning Board, Conservation Commission and Board of Appeals shall transmit to the Commission in electronic format copies of all applications proposing the development or alteration of land that contains a structure as defined in this Chapter. Such applications shall be transmitted within five days of receipt of a complete application. The Community Preservation Committee shall transmit copies of all applications for funding to the Commission if such application relates to land that contains a structure.

### **§ 125-4. Emergency demolitions.**

Nothing in this chapter shall restrict the demolition of a significant structure which the Building Inspector shall have determined presents a danger to the public health, welfare or safety and which only demolition can abate. Such a determination shall be made in accordance with the applicable provisions of the State

## **TOWN OF HOPKINTON**

Building Code and after consultation with the Commission Chairperson or designee. Whenever an emergency demolition permit is issued under the provisions of this section, the Building Inspector must file a written report with the Commission describing the condition of the structure and the basis for the determination.

### **§ 125-5. Enforcement and remedies.**

- A. The Commission and the Building Inspector are both authorized to enforce the provisions of this chapter.
- B. The Building Inspector shall not issue a permit of any type pertaining to any property on which a significant structure has been demolished without first fully complying with the provisions of this chapter for a period of two years from the date of demolition.
- C. The provisions of this chapter may be enforced by a noncriminal disposition pursuant to Chapter 1, Article II, Noncriminal Disposition, of the Bylaws of the Town of Hopkinton.
- D. Any person who violates any provision of this chapter, or of any regulation, permit or agreement issued thereunder, shall be liable for a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized demolition occurs, shall constitute a separate offense, and each provision of this chapter, or any regulation, permit or agreement which shall have been violated, shall constitute a separate offense.
- E. Appeals. Any person aggrieved by the decision of the Building Inspector or the Commission may appeal to the Zoning Board of Appeals within 30 days from the date of receipt of such written administrative decision or action.

### **§ 125-6. Administration.**

- A. The Commission may adopt such rules and regulations as are necessary to administer the terms of this chapter.
- B. The Commission is authorized to adopt a schedule of fees to cover the costs associated with the administration and review of any application which is filed under this chapter.

### **§ 125-7. Severability.**

If any provision of this Chapter is determined to be invalid or unconstitutional for any reason by any court or other tribunal of appropriate jurisdiction, such invalidity or unconstitutionality shall be construed as narrowly as possible, and the balance of the Chapter shall be deemed to be amended to the minimum extent necessary, so as to secure the intent and purpose thereof, as set forth in Section 125-1.

# **TOWN OF HOPKINTON**

## **CHAPTER 135**

### **LICENSES AND PERMITS**

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| <b>§ 135-1. Statutory authority.</b>                                   | <b>§ 135-4. Payment agreement.</b> |
| <b>§ 135-2. Furnishing of lists.</b>                                   | <b>§ 135-5. No applicability.</b>  |
| <b>§ 135-3. Denial, revocation or suspension of license or permit.</b> |                                    |

[HISTORY: Adopted by the Town Meeting of the Town of Hopkinton as indicated in article histories.]

### **ARTICLE I**

#### **Denial for Nonpayment of Taxes**

**[Adopted 6-11-1990 ATM, Art. 16]**

**§ 135-1. Statutory authority. [Amended 5-3-1994 ATM, Art. 68]**

The town accepts the provisions of MGL c. 40, § 57, which authorizes the town to adopt a bylaw which would enable it to deny applications for or to revoke or suspend any local licenses or permit of any person, corporation or business enterprise which has neglected to pay any local taxes or other municipal charges, and further, enable the town to deny any applications, licenses or permits to any person or persons, corporation or business enterprise, which applies upon a parcel or parcels of land of which there are outstanding taxes, betterments or special assessments for any fiscal year; and further hereby amends the Bylaws of the Town of Hopkinton by adding thereto the following article relative to the denial of applications for, or the revocation or suspension of any local licenses and permits of delinquent taxpayers pursuant to the above section. Such article shall provide as follows.

**§ 135-2. Furnishing of list. [Amended 5-3-1994 ATM, Art. 68]**

The Town Collector (hereinafter referred to as the "Collector") shall annually furnish to each department, board or commission, (hereinafter referred to as the "licensing authority") that issues licenses or permits, including renewals and transfers, a list of any person, corporation or business enterprise (hereinafter referred to as the "party") that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve (12) month period and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.

**§ 135-3. Denial, revocation or suspension of license or permit.**

- A. The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the Collector; provided, however, that written notice is given to the party and the Collector, as required by applicable provisions of the law, and the party is given a hearing, to be held no earlier than 14 days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party.
- B. The Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension of said license or permit to any party.

## TOWN OF HOPKINTON

- C. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension.
- D. Any license or permit denied, suspended or revoked under this chapter shall not be reissued or renewed until the licensing authority receives a certificate issued by the Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges payable to the town as of the date of issuance of said certificate.

### **§ 135-4. Payment agreement.**

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

### **§ 135-5. No applicability.**

This chapter shall not apply to the following licenses and permits:

- A. Open burning (MGL c. 48, § 13).
- B. Bicycle permits (MGL c. 85, § 11A).
- C. Sale of articles for charitable purposes (MGL c. 101, § 33).
- D. Children work permits (MGL c. 149, § 69).
- E. Clubs, associations dispensing food or beverage licenses (MGL c. 140, § 21E).
- F. Dog licenses (MGL c. 140, § 137).
- G. Fishing, hunting, trapping licenses (MGL c. 131, § 12).
- H. Marriage licenses (MGL c. 207, § 28).
- I. Theatrical events, public exhibition permits (MGL c. 140, § 181).

# **TOWN OF HOPKINTON**

## **CHAPTER 141**

### **NOISE**

#### **ARTICLE I**

##### **Use of Construction Equipment**

##### **§141-1. Hours and days of operation restricted.**

#### **ARTICLE II**

##### **Commercial Activity in Residential Zones: RLF, RA, RB**

##### **§141-2. Hours and days of activity restricted.**

#### **ARTICLE III**

##### **Penalties**

##### **§141-3. Violations and penalties**

**[HISTORY: Adopted by the Town Meeting of the Town of Hopkinton as indicated in article histories; amended in its entirety 5-5-2008 ATM, Article 61.]**

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#### **ARTICLE I**

##### **Use of Construction Equipment**

##### **§141-1. Hours and days of operation restricted.**

Except in an emergency, outdoor construction activity, including the use of construction, earthmoving or other construction equipment or the delivery to or pick up from a site of such equipment, shall not begin prior to 7:00 a.m. or continue later than 7:00 p.m. on Monday through Friday. Such outdoor construction activity, including the use, delivery or pickup of the above equipment, shall be allowed on Saturdays only between the hours of 8:00 a.m. and 4:00 p.m. No outdoor construction activity or operation of construction, earth moving or other construction equipment or the delivery or pickup of such equipment is allowed on Sundays or holidays, except that outdoor construction activity performed by the owner of an owner-occupied residential property for the maintenance, repair or improvement of such residential property that does not involve the use of heavy construction equipment, may be performed during the hours from 8:00 a.m. to 4:00 p.m. on Sundays and holidays.

The above provisions shall not apply to a.) publicly funded projects involving infrastructure construction and b.) snow removal operations.

#### **ARTICLE II**

##### **Commercial Activity in Residential Zones: RLF, RA, RB**

##### **§141-2. Hours and days of activity restricted**

This section shall apply to the use and occupancy of any lot or structure thereon and to the noise produced thereby in residential zones RLF, RA and RB. This section shall not apply to the intermittent or occasional use, between 7:00 a.m. and 7:00 p.m. Monday through Friday and between 8:00 a.m. and 4:00 p.m. on weekends and holidays, of a homeowner's light residential outdoor equipment.

Except in an emergency, outdoor commercial activity, which includes but is not be limited to, all electric motors or internal combustion engines, other commercial devices, tools, or equipment that is started,

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moved, left to idle or used in any commercial activity including but not limited to, delivery trucks, dump trucks, bulldozers, backhoes, concrete mixers, pneumatic tools, rollers, refuse trucks, scrapers, air compressors, generators, jackhammers, cranes, pavement breakers, pile drivers, rock drills and chain saws shall not begin prior to 7:00 a.m. or continue later than 7:00 p.m. Monday through Friday. Outdoor commercial activity shall be allowed on Saturdays only between the hours of 8:00 a.m. and 4:00 p.m. No outdoor commercial activity shall be allowed on Sundays or holidays.

The above provisions shall not apply to: a.) Publicly funded projects involving infrastructure construction; and b.) Snow removal operations.

### **ARTICLE III**

#### **Penalties**

##### **§141-3. Violations and penalties**

Any person violating this Chapter shall be liable to the Town in the amount of \$50 for the first violation and \$100 for each subsequent violation which shall inure to the town

# **TOWN OF HOPKINTON**

## **Chapter 142**

### **Construction Waste or Debris**

<b>§142-1. Construction Waste or Debris Prohibited.</b>	<b>§142-3. Appeal.</b>
<b>§142-2. Enforcement.</b>	<b>§142-4. Penalties.</b>

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#### **§ 142-1. Construction Waste or Debris Prohibited**

Any construction waste or debris brought from off-site locations situated in any yard or vacant lot for more than 30 calendar days shall be (a) cleared from the yard or vacant lot, (b) removed to a yard not visible from a public way or abutting property, or (c) screened from view by walls, fences or plant materials; provided, however, that such items necessary to and utilized by a legally operating use shall not be subject to this Chapter.

#### **§ 142-2. Enforcement**

- A. If the Director of Municipal Inspections is informed of or has reason to believe that conditions exist on any real property in the Town in violation of Section 142.1, the Director may make or cause to be made an investigation of the facts, including an inspection of the property where the condition may exist. In making such inspection, the Director of Municipal Inspections or a designee thereof shall have such right of access to premises that may be lawfully exercised.
- B. If the inspection confirms the existence of construction waste or debris prohibited under Section 142.1, the Director of Municipal Inspections or its designee may make such Orders as necessary. Said Orders shall be in writing and shall be served upon all owners and occupants as can be determined after reasonable inquiry.
- C. The Director of Municipal Inspections or a designee thereof may enforce this Chapter.

#### **§ 142.3. Appeal**

- A. Any person aggrieved by an Order of the Director of Municipal Inspections may request a review before the Town Manager, the Chief of Police, and a designee of the Board of Selectmen. Said request shall be in writing and received by the Board of Selectmen and the Director of Municipal Inspections within twenty-one (21) calendar days of issuance of the Order.
- B. A request for review shall not constitute a stay of the Order unless the Director of Municipal Inspections so orders; provided, however, that any fines or fees imposed shall be stayed during the pendency of an appeal.
- C. Within thirty (30) calendar days of a request, the Town Manager, the Chief of Police, and the designee of the Board of Selectmen shall convene to determine whether the construction waste or debris exists. Based on the credible evidence and testimony presented, they may affirm the Order, reverse and nullify the Order, or issue any such Order as they deem necessary to eliminate the items prohibited by Section 142.1.

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## § 142.4. Penalties

- A. Whoever violates any provision of this Chapter may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars (\$300). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- B. In lieu of the penalties set forth in Section 142.4(A), any person who violates this Chapter may be penalized by non-criminal disposition as provided by Section 21D of Chapter 40 of the *Massachusetts General Laws*, and Chapter 1, Section 1-4 of the Town's General Bylaw. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.



# TOWN OF HOPKINTON

## CHAPTER 150

### Door to Door Soliciting and Canvassing

<b>§150-1. Purpose.</b>	<b>§150-7. Duties of persons going door-to-door.</b>
<b>§150-2. Definitions.</b>	<b>§150-8. Restriction on methods of solicitation, canvassing, or other door-to-door activities.</b>
<b>§150-3. Registration.</b>	<b>§150-9. Penalty.</b>
<b>§150-4. Registration Fee.</b>	<b>§150-10. Appeals.</b>
<b>§150-5. Registration Cards.</b>	<b>§150-11. Severability.</b>
<b>§150-6. Exceptions.</b>	

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 4-9-1991, Art. Replaced in its entirety 5-7-2007 ATM, Art. 40. Amendments noted where applicable]**

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#### **§150-1. Purpose**

This by-law adopted pursuant to Chapter 43B, Section 13, of the General Laws and Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts, establishes registration requirements and specific operational requirements for persons intending to engage in door-to-door canvassing or soliciting in the Town of Hopkinton in order to protect its citizens from disruption of the peaceful enjoyment of their residences and from the perpetration of fraud or other crimes; and, to allow for reasonable access to residents in their homes by persons or organizations who wish to communicate either commercial or non-commercial messages.

#### **§150-2. Definitions [Amended 11-5-2007 STM, Art. 6]**

For the purpose of this By-Law, the following definitions shall apply:

**§150-2.1.** “Soliciting” shall mean and include any one or more of the following door-to-door activities:

- (a) selling, or seeking to obtain orders for the purchase of goods or services, including advertising in any type of publication, for any kind of consideration whatsoever;
- (b) selling, or seeking to obtain prospective customers for application for purchase of insurance of any kind;
- (c) selling, or seeking to sell subscriptions to books, magazines, periodicals, newspapers or any other type of publication;
- (d) seeking to obtain gifts or contributions of money, or any valuable thing for the support or benefit of any association, organization, corporation or project wholly or in part for commercial purposes or by a professional solicitor or commercial co-venture for a charitable or other non-commercial organization; and
- (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
- (f) purpose of selling or using such data, wholly, or in part, for commercial purposes.

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**§150-2.2.** “Canvassing” shall mean and include any one or more of the following door-to-door activities:

- (a) person-to-person distribution of literature, periodicals, or other printed materials for commercial purposes, but shall not include placing or dropping off printed materials on the premises:
- (b) seeking to enlist membership in any organization for commercial purposes: and
- (c) seeking to present, in person, organizational information for commercial purposes.

**§150-2.3.** “Residence” shall mean and include every individual dwelling unit occupied for residential purposes by one or more persons.

**§150-2.4.** “Registered Solicitor” shall mean any person who has obtained a valid certificate of registration for the Town of Hopkinton as required by this By-Law.

**§150-2.5.** “Charitable Organizations”, “Professional Solicitor” and “Commercial co-venturer” shall be defined as set forth in Chapter 68, Section 18, of the General Laws. [Amended 11-5-2007 by STM, Article 6]

**§150-3. Registration [Amended 11-5-2007 STM, Article 6]**

Every person or organization intending to engage in soliciting or canvassing door-to-door in the Town of Hopkinton must apply for a permit with the Chief of Police by filing a registration application form with the Hopkinton Police Department. Application for both individual and organizational registrations shall be filed at least seven (7) business days in advance.

**§150-3.1.** Organization application forms shall include the following information:

- (a) The name and address of the organization applying for registration, and the names and addresses of the organizations’ principal officers. If the organization is a charitable organization, a certification that the most recent Annual Registration Statement required to be filed with the Attorney General’s Division of Public Charities has been so filed.  
  
If the organization is a professional solicitor or a commercial co-venturer for a charitable organization, a copy of the contract with the charitable organization must be provided with this application. Failure to include a copy of the contract with the charitable organization under such circumstances will render the application incomplete and no action will be taken thereon:
- (b) The name, title and phone number, IRS or Social Security (optional) number and valid driver’s license or other government-issued photo identification of the persons filing the application form:
- (c) The names, addresses and phone numbers of the person(s), if any, who will be directly supervising the solicitation or canvassing operation in the Town of Hopkinton:
- (d) A list of the names, addresses, date of birth of all individuals who will be employed in solicitation or canvassing, in the Town of Hopkinton, by the applicant:
- (e) Period of time for which certificate of registration is needed provided, however, that no certificate may be granted for longer than a 90-day (90) period:

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- (f) Names of the last three (3) communities, if any, in which the organization has conducted a solicitation or canvassing operation, complete with the date of the issuance and date of the expiration of any permits or licenses issued by those communities to the organization. **[Amended 11-5-2007 by STM, Article 6]**
- (g) Insurance information and license, if applicable.

**§150-3.2.** Individual registration forms shall be required for all individuals, including those who are affiliated with an organization registered under Chapter 150-3.1 hereof. Individual registration forms shall contain the following information:

- (a) Name and address of the present place of residence and length of residence at that address; if less than three (3) years residence at present address, the address of residence(s) during the past three (3) years:
- (b) Date of birth:
- (c) Name, address and telephone number of the person or organizations whom the applicant represents and the length of time the applicant has been associated with or employed by that person or organization. If the individual is a professional solicitor or a commercial co-venturer for a charitable organization, a copy of the contract, if any, with the charitable organization must be provided with this application. Failure to include a copy of the contract with the charitable organization under such circumstances will render the application incomplete and no action will be taken thereon:
- (d) Period of time for which certificate of registration is needed provided, however, that no certificate may be granted for longer than a 90-day (90) period;
- (e) Names of the last three (3) communities, if any, in which the applicant has solicited or canvassed door-to-door, complete with the date of issuance and date of the expiration of any permits or licenses issued by those communities to the applicant. **[Amended 11-5-2007 by STM, Article 6]**
- (f) Valid drivers license or other government issued photo identification; and
- (g) Make, model and registration number of any vehicle to be used by the applicant while soliciting or canvassing.

### **§150-4. Registration Fee**

There shall be a \$20.00 (twenty dollar) application fee for an individual registration card or re-registration. There is no application fee for organizational applicants that apply for registration or re-registration.

### **§150-5. Registration Cards**

150-5.1. The Police Chief or his designee, after a review of the application, which will include an investigation of the applicants reputation as to morals and integrity, but in no event more than seven (7) business days after receipt of a fully-completed application, shall furnish each person with a registration card which shall contain the following information:

- (a) The name of the person;

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- (b) A recent photograph of the person;
- (c) The name of the organization, if any, which the person represents;
- (d) A statement that the individual has been registered with the Town of Hopkinton Police Department but that registration is not an endorsement of any individual or organization: and
- (e) Specific dates or period of time covered by the registration.

**§150-5.2.** Persons engaged in solicitation or canvassing as defined in this By-Law must carry the registration card while soliciting or canvassing and present the card to any person solicited or upon request of any police officer.

**§150-5.3.** Registration cards are valid only for the specific dates or time period specified thereon and in no case for longer than 90 days.

**§150-5.4.** The Police Chief shall routinely grant registrations without further inquiry but shall refuse registration to an organization or an individual where registration has been revoked for violation of this By-Law within the previous two-year period or who has been convicted (*NOTE: For the purposes of this bylaw, a "Continue without a finding" or similar disposition will be considered the same as a conviction.*) of murder/manslaughter, rape or any other sex crime, kidnapping, robbery, arson, burglary/breaking and entering, felony assault, illegal possession of a firearm or dangerous weapon, distribution of any illegal narcotic drugs, felony larceny, three (3) or more misdemeanor assaults or three (3) or more misdemeanor larcenies, as such persons pose a substantial degree of dangerousness to minors and other persons vulnerable to becoming victims of the violent crimes so listed. The police chief shall also refuse to register a person who is a sex offender required to register with the Massachusetts Sex Offender Registry Board, or any other similar government entity, and who is a classified or considered to be a moderate to high risk or re-offending. Such individuals pose a substantial degree of dangerousness to minors or to other persons vulnerable to becoming victims of sex crimes.

### **§150-6. Exceptions**

**§150-6.1.** Registration shall not be required for officers or employees of the Town, County, State or Federal governments when on official business.

**§150-6.2.** Individual registration shall not be required for minors under the age of 17.

**150-6.3.** Nothing in this By-Law shall be construed to impose any registration requirement or otherwise restrict or in any way regulate any activity for religious, political, newspaper distribution or public policy purposes or other non-commercial purposes, including, charitable, benevolent or fraternal activities, regardless of whether such activity includes acts that would otherwise constitute soliciting or canvassing.

### **§150-7. Duties of Persons Going Door-to-Door**

**§150-7.1.** Upon going into any residential premises in the Town of Hopkinton, every solicitor, canvasser or other person must first examine any notice that may be posted, prohibiting solicitation or other

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activities. If such a notice is posted, the solicitor, canvasser or other person shall immediately and peacefully depart from the premises.

§ 150-7.2. Any solicitor, canvasser or other person who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

§ 150-7.3. Immediately upon gaining entrance to any residence, each solicitor or canvasser as defined in this By-Law must do the following:

- (a) Present his registration card for inspection by the occupant;
- (b) Request that the occupant read the registration card; and
- (c) Inform the occupant in clear language of the nature and purpose of his business and, if he is representing an organization, the name and nature of that organization.

### § 150-8. Restriction on Methods of Solicitation, Canvassing, or Other Door-to Door activities.

It shall be unlawful for a solicitor, canvasser or other person to do any of the following:

- (a) Falsely represent, directly or by implication, that the solicitation, canvassing or other activity is being done on behalf of a governmental organization, or on behalf of any municipal employee or elected official;
- (b) Solicit, canvass or conduct any other activity at the residence without express prior permission of an occupant, before 9:00 a.m. or after 7:00 p.m., where there is no sign posted otherwise limiting solicitation or the hours of solicitation or such other activities;
- (c) Continue to solicit, canvass or conduct activities after being advised by police of the registration requirements or after a registration certificate has been revoked or denied;
- (d) Utilize any form of endorsement from any department head currently employed or serving the Town of Hopkinton; and
- (e) Solicit, canvass or conduct and other activity at any residence in an illegal fashion.

### § 150-9. Penalty

150-9.1. Any person or organization who violates Section 7.2, with an accompanying signed statement of the offended party, or Section 8 of this By-Law, or any other applicable state or federal laws may be arrested without a warrant and punished by a fine of two hundred dollars (\$200) for each and every offense, which may be recovered upon complaint before the district court and shall ensure to the town, all in accord with Chapter 40, Section 21 of the General Laws of Massachusetts.

150-9.2. Any person or organization who for himself, itself, or through its agents, servants or employees is found after investigation by a police officer to have:

- (a) Violated any provision of this By-Law, or applicable state or federal laws governing soliciting or canvass; or

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- (b) Knowingly provided false information on the registration application shall have his, her or its registration revoked by the Chief of Police by written notice delivered to the holder of the registration in person, or sent to the holder by certified mail at the address set forth in the application.

### **§ 150-10. Appeals**

Any person or organization who is denied registration or whose registration has been revoked may appeal by filing a written notice of appeal with the Town of Hopkinton Town Manager. Such appeal must be filed within 5 days after the receipt of the notice of denial or revocation. The Town Manager shall hear the appeal within 10 days after the filing of the written notice of appeal, provided, however, that if the Town Manager fails to make a determination within 30 days after the filing of the appeal, the registration shall be deemed granted or reinstated as the case may be.

### **§ 150-11. Severability**

Invalidity of any individual provision of this By-Law shall not affect the validity of the By-Law as a whole.

# **TOWN OF HOPKINTON**

## **CHAPTER 154**

### **PRODUCTS, SALE OF**

#### **ARTICLE I**

##### **Plastic String and Streamers**

##### **§154-1. Sale and use prohibited.**

#### **ARTICLE II**

##### **Cigarette Rolling Papers**

##### **§154-2. Sale and display prohibited.**

##### **§154-3. Violations and penalties.**

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

#### **ARTICLE I**

##### **Plastic String and Streamers**

**[Adopted 6-11-1990 ATM, Art. 26]**

##### **§ 154-1. Sale and use prohibited.**

No person shall sell or expose for sale, use or cause or permit to be used any product designed to project a string or streamer of plastic material.

#### **ARTICLE II**

##### **Cigarette Rolling Papers**

**[Adopted 5-3-1993 STM, Art. 23]**

##### **§ 154-2. Sale and display prohibited.**

No person or business shall sell, or offer for sale, nor display any cigarette rolling paper in the Town of Hopkinton.

##### **§ 154-3. Violations and penalties.**

Any person or business which violates this article shall be punished by a fine of \$50 for each offense.

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## **CHAPTER 156**

### **REGISTERED SEX OFFENDER RESTRICTIONS**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-2-2011, Article 42, Amendments noted where applicable.] [Deleted in its entirety 5-2-2016, Article 41]**

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## **CHAPTER 158**

### **SALE OF LAND**

#### **§ 158-1. Authority of Selectmen to sell certain real estate.**

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 3-9-1966 ATM, Art. 28. Amendments noted where applicable.]

#### **§ 158-1. Authority of Selectmen to sell certain real estate.**

The Selectmen are authorized to sell at private sale to the Conservation Commission any of the real estate which the town may have acquired or may hereinafter acquire through proceedings based upon nonpayment of taxes or under proceedings for the sale of land of low value; provided, however, that such lands are in or adjacent to marshes, rivers or swamps or adjacent to real estate owned by the town or under the control of the Conservation Commission and to execute and deliver in the name and under the Seal of the town a quitclaim deed or other appropriate instrument necessary to effectuate the conveyance of said lands.

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## **CHAPTER 160**

### **SCENIC ROADS**

- |   |  |
|---|--|
| <b>§160-1. Definitions</b>                                | <b>§160-4. Notification of designation of scenic road.</b> |
| <b>§160-2. Purposes.</b>                                  | <b>§160-5. Procedures for obtaining permits.</b>           |
| <b>§160-3. Recommending designation as a scenic road.</b> | <b>§160-6. Criteria for work projects.</b>                 |
|   | <b>§160-7. Enforcement.</b>                                |

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 4-15-1988, Art. 49. Amended ATM 5-5-2003, Art. 31.]**

**GENERAL REFERENCES: Streets and sidewalks -- See Ch. 174.**

#### **§ 160-1. Definitions**

In the absence of a contrary meaning established through legislative or judicial action, the following terms contained in G.L.c. 40, § 15C, or used herein shall be defined as follows:

**CUTTING OR REMOVAL OF TREES** - The removal of one or more trees, trimming of major branches, measuring 5 inches in diameter 6 inches from the tree trunk cutting of roots, but not the trimming or cutting of trees which the Tree Warden has certified in writing are dead, or the trimming or cutting of dead branches. **[Amended 12-14-2009 STM, Art. 6, 05-06-2013 ATM, Art. 46]**

**REPAIR, MAINTENANCE, RECONSTRUCTION OR PAVING WORK** - Any work done within a scenic road layout by any person or agency, public or private. Included within this definition is any work on a portion of a scenic road layout which was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways or alteration of existing driveways is also included, insofar as it takes place within the scenic road layout.

**ROAD** - Any right-of-way used and maintained as a public way including the vehicular traveled way plus necessary appurtenances within the right-of-way, such as bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks. Trees or stone walls or portions thereof shall be presumed to be within the bounds of the right of way unless it is shown to the contrary on the scenic road layout plan.

**SCENIC ROAD** - A road so designated in accordance with G.L.c. 40, § 15C and these regulations.

**STONE WALL** – A man-made grouping of stones forming a straight or curved line.

**TEARING DOWN OR DESTRUCTION OF STONE WALLS** – Any intentional act of removal of stones, moving of stones in any direction, covering over with non-stone materials, or any other intentional act by which stones are dislocated from a stone wall.

**TREES** – Includes any tree the trunk of which has a diameter of three inches or more as measured four and one half feet above the ground (dbh).

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## **§ 160-2. Purposes.**

These regulations are intended to ensure that:

- A. Ways will be recommended for designation as scenic roads under stated criteria; and
- B. Trees and stone walls along scenic roads will be protected and will not be altered except after notification of interested parties and a public hearing at which the Planning Board shall consider the work project based on the criteria set forth in §160-6 of this chapter, and shall authorize such work to proceed.

## **§ 160-3. Recommending designation as a scenic road.**

- A. Public Hearing. M.G.L.c. 40, § 15C authorizes designation of a road as a scenic road by the Town upon recommendation or request of the Planning Board, Conservation Commission, or Historical Commission. Prior to making any recommendation or request to Town Meeting regarding designation of a particular road as a scenic road, the Planning Board shall conduct a public hearing regarding such proposed designation. Notice of the public hearing shall be given by the Planning Board pursuant to the requirements for notice set forth in §160-5B of this chapter.
- B. Criteria for Designation. In determining which roads should be recommended for designation as scenic roads, the Planning Board shall consider whether the road contains or is characterized by any of the following:
  - (1) Bordering trees of exceptional quality in terms of type, age, specimen size or spread, density of stand or related flora.
  - (2) Bordering trees which themselves constitute, or are a significant part of, natural or man-made features of aesthetic value, including by way of illustration, trees having spring flowering or high fall color potential; trees which are part of vistas paralleling roadways or which create a frame of reference for more distant views; and trees whose presence contributes substantially to the rural or woodland character of a roadway, particularly in comparison to more developed or urbanized adjacent areas.
  - (3) Bordering stone walls.
- C. Scenic road layout plan. Prior to the designation of any scenic road after April 30, 1988, a scenic road layout plan shall be prepared by the proponent. The scenic road layout plan shall be drawn to a scale of one inch equals 40 feet or to a scale approved by the Planning Board and shall include:
  - (1) Name of street, street lines, north arrow, date, date of acceptance (in the case of accepted streets), legend.
  - (2) Names of all abutters as they appear on the most recent tax list.
  - (3) Locations, names and width of any intersecting streets.
  - (4) Location of all trees (as defined in § 160-1) and stone walls within the scenic road layout.

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## **§ 160-4. Notification of designation of scenic road.**

Upon the designation of any road as a scenic road by the Town Meeting, the Planning Board shall promptly undertake the following to give effective notice of such designation:

- A. Notify all municipal departments that may have any interest in the designation of such roads.
- B. Notify the Massachusetts Highway Department.
- C. Cause a notice or informal article to be published in a local newspaper stating that the road, or roads, have been designated as scenic.
- D. Notify all utility companies or other such parties which may undertake work within or on the border of such road.
- E. Notify abutters as they appear on the most recent tax list by regular mail.

## **§ 160-5. Procedures for obtaining permits.**

- A. Filing. Any person, organization, public agency or utility company contemplating the cutting or removal of trees, the tearing down or destruction of stone walls, or portions thereof, within the scenic road layout shall first obtain the written authorization of the Planning Board by filing a request for such work with the Planning Board, which shall include the following:
  - (1) Three (3) copies of a plan showing the proposed work and the extent of alterations or removal of trees or stone walls. The plan shall be drawn at a scale of one inch equals 40 feet, or to a scale approved by the Planning Board, and shall show the name of the street or streets, the lines of the scenic road layout, north arrow, names of abutters within 100 feet of the proposed work, and suitable space to record the action, including the signatures of five (5) members, of the Planning Board. In instances where relatively minor alterations are proposed, as an alternative to the submission of the above referenced plans, the Planning Board may accept prints of the approved scenic road layout with the proposed minor alterations clearly indicated thereon.
  - (2) A statement of the purpose, or purposes, for the changes proposed.
  - (3) A list of owners of properties located in whole or in part within 100 feet of the proposed work.
  - (4) Except in the case of town agencies, a \$50 filing fee.
  - (5) Any further explanatory material as may be required by the Planning Board.
- B. Notice. The Planning Board shall, as required by statute, give notice of a public hearing regarding the proposed work by advertising twice in a newspaper of general circulation in the town. This notice shall contain a statement as to the date, time, place and purpose of the hearing with a reasonable description of the work proposed by the applicant. Copies of this notice shall also be delivered or mailed to the Board of Selectmen and the Hopkinton Department of Public Works, and the owners of property within 100 feet of the proposed work.

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- C. Timing of Notice and Hearing. The first publication of the notice shall be made as soon as practicable after the Planning Board receives the request from the applicant. The last publication shall occur, as required by statute, at least seven days prior to the hearing. The Planning Board shall hold a public hearing within thirty days of the date upon which a properly filed request is received.
- D. Timing of Decision. Within 21 days after the public hearing, the Planning Board shall render a written decision on the request.
- E. Performance Guarantee. Before endorsement of its approval on a plan, the Planning Board may require that the proposed work to be done, be secured by a bond sufficient in form and amount in the opinion of the Planning Board to ensure satisfactory performance of the proposed work within the scenic road layout.
- F. Tree Warden. Whenever a public hearing concerning the proposed work is also required to be held by the Tree Warden pursuant to M.G.L.c. 87 (The Public Shade Tree Law), the Planning Board and Tree Warden hearings shall be consolidated and notice thereof shall be given by the Tree Warden in accordance with the provisions of MG.L.c. 87. The authorization of the Planning Board to such proposed work shall not be regarded as implying the authorization of the Tree Warden or vice versa. The Planning Board decision shall include a condition that no work shall be done until all applicable provisions of the Public Shade Tree Law, G.L. c. 87, have been complied with.

### **§ 160-6. Criteria for work projects.**

The Planning Board's decision on any application for proposed work affecting scenic roads shall be based on consideration of the following criteria:

- A. The degree to which the proposed work would adversely affect the scenic and aesthetic values upon which the scenic road designation was originally based.
- B. The necessity for the proposed work in terms of public safety, welfare, or convenience.
- C. Compensatory action proposed, such as replacement of trees or walls.
- D. Availability of reasonable alternatives to the proposed work which could reduce or eliminate anticipated damage to trees or stone walls.
- E. Whether the proposed work would compromise or harm other environmental or historical values.
- F. Consistency of the proposed work with previously adopted Town plans and policies.

### **§ 160-7. Enforcement.**

The Planning Board is responsible for the enforcement of this chapter. Whoever violates any provision of this chapter or any conditions of any permit granted pursuant hereto shall be liable for a fine of not more than the maximum permitted by law for each citation for any violation and shall be required to restore any damage. Removal of each individual tree shall be considered a separate violation. Removal of each linear foot of stone wall shall be considered a separate violation.



# **TOWN OF HOPKINTON**

## **CHAPTER 163**

### **SEWERS**

#### **ARTICLE I**

##### **Private Sewage Treatment Plants**

- §163-1.** Statement of public policy and purpose.
- §163-2.** Actions required.
- §163-3.** Severability.

#### **ARTICLE II**

##### **Betterment Assessments and Sewer Privilege Fees**

- §163-4.** Assessments.

#### **ARTICLE II**

##### **(Continued.)**

- §163-5** Statutory authority.
- §163-6** Severability.
- §163-7** Method of assessing betterments; Order of assessment.
- §163-8** Time of assessment.
- §163-9** Sewer unit designation.
- §163-10** Betterment payment.
- §163-11** Sewer privilege fee.

**GENERAL REFERENCES:** Waste collection system -- See Ch. 195.

#### **ARTICLE I**

##### **Private Sewage Treatment Plants**

**[Adopted 4-11-1988 ATM, Art. 24]**

##### **§ 163-1. Statement of public policy and purpose.**

- A. The Town of Hopkinton does not intend to become the owner or operator of small sewerage treatment plants proposed or in operation in subdivisions or garden apartment complexes. Keeping a sewerage treatment plant, the interconnecting piping, controls, equipment in top operating condition and performing the necessary monitoring and sludge removal is time-consuming and expensive. In addition, expensive retro-fill actions to meet new standards may be required by the state or federal government in the future.
- B. Further, the Town sewer system, which started construction in 1987, is limited in the amount of sewerage that can be processed and will not be available to provide service to the subdivisions and garden apartments that have failed private sewerage treatment plants. The owners of property served by these private sewerage treatment plants own and operate the plants and are financially and legally liable for their proper operation and maintenance. Potential buyers should fully investigate the potential costs and effects on resale of the property.

##### **§ 163-2. Actions required.**

- A. The seller (property owner) or realtor showing the property will warn any potential buyer that the property is serviced by a private sewerage treatment plant and will explain fully the responsibilities, liabilities and potential operating and equipment replacement costs.
- B. The seller or realtor will give all potential buyers a copy of this article on the first visit to the property. The seller or realtor will keep a written record that proper notification has been given.

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- C. The Board of Health will approve the wording of the sewerage treatment plan ownership provisions to be included in the property deed.
- D. The Board of Health shall require a funded reserve to be maintained at all times sufficient to protect the financial interests of the Town and ensure the public safety concerns over improperly operated or maintained privately owned sewerage treatment plants.

### **§ 163-3. Severability.**

If any provision(s) of this article or the application of such provision(s) to any person, partnership or corporation or circumstances shall be held invalid, the validity of the remainder of this article and applicability of such provision(s) to persons or circumstances shall not be affected thereby.

## **ARTICLE II**

### **Betterment Assessments and Sewer Privilege Fees [Adopted 9-26-1988 STM, Art. 7; amended 5-5-1993 ATM, Art. 43; 5-5-1993 ATM, Art. 44; 9-12-1994 STM, Art. 18; 9-28-1998 STM, Art. 5; 5-1-2000 ATM, Art. 66; 9-25-2000 STM, Art. 2; 10-21-2002 STM, Art. 14]**

### **§ 163-4. Assessments. [Amended 5-1-2000 ATM, Art. 66]**

The Town of Hopkinton, acting through its Board of Selectmen, shall assess the owners of land abutting a public sewer line installed by the Town by a rate based upon any or a combination of the methods set forth in MGL c. 83, § 14 and § 15. Sewer assessments shall be determined by the Board of Selectmen and approved by Town Meeting and shall be levied as betterment assessments and/or sewer privilege fees as described herein.

### **§ 163-5. Statutory authority.**

The authority to assess betterments, as well as the permitted methodologies for doing so, are described in MGL c. 80, Betterments, and c. 82, Sewers, Drains, and Sidewalks, § 14 and § 24.

### **§ 163-6. Severability.**

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without such invalid provisions or applications.

### **§ 163-7. Method of assessing betterments; order of assessment. [Amended 5-1-2000 ATM, Art. 66]**

- A. The Town of Hopkinton shall assess sewer betterments based upon any or a combination of the methods referred to in MGL c. 83, § 14 and § 15. Those properties abutting a sewer street which are assessed based upon the uniform unit method, shall be assessed by a rate proportional to the value assigned to the sewer unit at the time of the assessment. Said rate shall be determined by user class and shall apply to all lands developed or undeveloped abutting the sewer street. Those properties abutting a sewer street which are assessed based upon the fixed uniform rate method shall be assessed according to the frontage of such land on any way in which a sewer is constructed, or according to the area of such land within a fixed depth from such way, or according to a

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combination of both such frontage and area. Said rate shall apply to all lands developed or undeveloped abutting the sewer street. The total assessments shall not exceed the local share of the total sewer project cost which shall include total costs of engineering survey and design, construction, land acquisition, construction engineering services, legal services and all related contingencies less all state and federal aid received.

- B. The Board shall levy, by preparing an order of assessment, assessments against all properties abutting a sewer street. In the order of assessment, the Board shall designate the owner of each parcel, as of the preceding January 1, as liable to assessment as stipulated under the provisions of the General Laws.

### **§ 163-8. Time of assessment.**

- A. Betterments. The equivalent monetary value of one sewer unit shall be set at \$4,000 for the Phase 1, Phase 2 and Phase 3 sewer construction projects. The equivalent monetary value of one sewer unit for the Phase 4 and Phase 5 sewer construction project shall be set at \$15,840. For the Phase VI Sewer Construction Project, the betterment assessment shall be allocated by the fixed uniform rate method utilizing a combination of the area and frontage method such that area shall constitute 75% of the calculation and frontage shall constitute 25% of the calculation. Appropriations for the construction cost of sewer projects may establish a differing equivalent monetary value of one sewer unit to be used for the construction costs of the appropriation. The time of assessment for lands abutting the sewer street shall be that date upon which the sewer system with appurtenances is approved for use. In the case where the construction of that portion of the sewer system (lateral sewers) partially funded by betterments is completed prior to the date upon which the sewer system is approved for use, it shall be within the powers of the Board to establish an earlier date of assessment. [Amended 9-28-1998 STM, Art. 5; 9-25-2000 STM, Art. 2]
- B. Sewer privilege fees.
  - (1) For those properties not abutting the sewer line but tying into the system at a future date, the time of assessment shall be the date upon which that property connects into the sewer system.
  - (2) For those properties serviced by the sewer system but subdivided at a future date, the time of assessment for the unsewered subdivision shall be the date upon which those subdivisions connect to the sewer system.
- C. The Phase VI Sewer Assessments shall be based upon 100% of the cost of the design and construction of the Phase VI Sewer Facilities, less any grants, gifts, or other funds received by the Town which reduces such amount, but including interest costs incurred by the Town with respect to any short-term borrowing for the project, and shall be assessed as betterments to all properties benefited by this project. [Added 9-25-2000 STM, Art. 2]

### **§ 163-9. Sewer unit designation.**

- A. General. Sewer units shall be designated based upon the user class of those properties to be assessed a betterment. Said classes shall include residential and nonresidential. The nonresidential class shall include commercial, industrial, municipal and any or all other nonresidential properties.

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- B. Sewer unit determinations. Properties receiving direct benefit from the public sewer system, whether developed or undeveloped, shall be designated a number of sewer units in accordance with the following:

(1) Residential, developed.

- (a) Single-family dwellings shall comprise one sewer unit.
- (b) Duplex dwellings shall comprise two sewer units.
- (c) Three-family dwellings shall comprise three sewer units.
- (d) Four-family dwellings shall comprise four sewer units.
- (e) Multiple family dwellings (in excess of four dwelling units) shall comprise a number of sewer units based on the following methodology:

[1] Rental properties (apartments) shall be assessed one sewer unit for each apartment with more than one bedroom. Rental properties shall be assessed on half of one sewer unit for each one-bedroom or studio apartment.

[2] Condominium complexes shall be assessed one sewer unit for each dwelling unit.

(2) Nonresidential, developed.

- (a) Nonresidential property shall include all industrial, commercial and municipal properties.
- (b) **[Amended 5-1-2000 ATM, Art. 66]** Nonresidential buildings which are metered for water use shall comprise a number of sewer units based upon the average water consumption for the 12 months most recently preceding the date of the establishment of the assessment using the following formula:

$$\frac{\text{Nonresidential sewage in gallons per day (gpd)}}{300 \text{ gpd}} = \text{equivalent number of sewer units}$$

(all decimals shall be rounded up to the next whole highest number).

- (c) Nonresidential buildings not metered for water use shall be assigned a water consumption volume based on Title 5 (Part 2, Section 13) of the State Environmental Code for the Commonwealth of Massachusetts, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage. An equivalent number of sewer units shall then be determined by using the following formula:

$$\frac{\text{Nonresidential sewage in gallons per day (gpd)}}{240 \text{ gpd}} = \text{equivalent number of sewer units}$$

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(all decimals shall be rounded up to the nearest whole number).

- (3) Residential undeveloped. Undeveloped lots shall be assigned one sewer unit and be assessed accordingly. Future subdivisions of the assessed lot shall be subject to the assessment of sewer privilege fees.
- (4) Nonresidential, undeveloped. Undeveloped lots shall be assigned one sewer unit and be assessed accordingly. The lot shall be subject to the assessment of sewer privilege fees. Future use of the land shall govern the assessment of sewer privilege fees.

### **§ 163-10. Betterment payment.**

- A. General. Except as herein provided, the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of sewer assessments, to liens therefor and to interest thereon, shall apply to assessments made under this article, and the Tax Assessor of the Town shall have all of the powers conveyed by the General Laws.
- B. Lump-sum betterment. The lump-sum betterment payment for an assessed property shall be equivalent to the product of the total number of sewer units designated upon said property and the appropriate value for one sewer unit at the time of assessment. Said values shall be determined as described herein.
- C. Apportionment of betterment payment. Property owners shall have the option to finance betterment payments through apportionment. The interest rate charged by the Town shall be 2% greater than the project bond rate being paid by the Town for the sewer construction project.
- D. Betterment deferral. The provisions of MGL c. 80, § 13B, with regard to deferral of betterment assessments when adopted by Town Meeting would apply.
- E. Any dwelling which is located within the Phase 1, Phase 2 or Phase 3 municipal sewerage system which is existing as of the date on which the municipal sewerage system is completed within the way adjacent to said premises, and which must install a pressure pump to enter into the municipal sewerage system, shall pay a betterment assessment in the sum of \$1,500, and any sums previously paid for betterment assessments in excess of that amount shall be refunded to the property owner by the Town by any appropriate means. Any property which is located within the Phase 4 or Phase 5 municipal sewage system and which has a low pressure sewer system, or any property which must install a pumping system to connect to the Phase 4 or Phase 5 sewer system, shall pay a betterment assessment in the sum of \$12,340. [Added 5-3-1993 ATM, Art. 44; amended 9-28-1998 STM, Art. 5]

### **§ 163-11. Sewer privilege fee.**

- A. Private sewer extension.
  - (1) If a developer or a person other than the Town of Hopkinton, or duly authorized representative of same, constructs a sewer extension to the public sewer system in a phase of the sewer construction project which has been assessed a sewer betterment based upon the uniform unit method, the Town shall assess a sewer

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privilege fee in lieu of betterment assessment against each property tying into said sewer extension. The sewer privilege fee shall be equivalent to 90% of the calculated betterment assessment value pertinent to each property as determined following the procedure outlined in § 163-9 of these regulations. The sewer privilege fee for Phase 4 and Phase 5 of the sewer construction project shall be the sum of \$14,256. Sewer privilege fees shall be levied at the time of connection to the public sewer system. Property owner options for payment of said fees shall reflect those related to payment of betterment assessments as described in § 163-10B and C of these regulations. [Amended 9-12-1994 STM, Art. 18; 9-28-1998 STM, Art. 5; 5-1-2000 ATM, Art. 66]

- (2) In addition, the developer and/or property owners connecting to private sewer extension shall bear the burden of all costs, including costs of legal services, related to the following:
    - (a) Review of design plans and specifications for the private sewer extensions to be accepted as part of the public sewer system conducted by a registered professional engineer as authorized by the Board.
    - (b) Inspection fees of the Board related to the installation of the private sewer extension tying into the public sewer system.
    - (c) Application fees for a building sewer installation permit, which shall include all reasonable costs related to installation inspection performed by an inspector for the Town of Hopkinton.
  - (3) Costs associated with the design and construction of a private sewer extension shall be considered separate to the sewer privilege fee. Payments or method of payment related to these costs shall not be reflected within the sewer privilege fee.
- B. For those properties which are located within areas included in phases of the sewer construction project which have been assessed a sewer betterment based upon the uniform unit method, if a property abuts a private or unaccepted way within which a public sewer has been installed, the Town shall assess the betterment assessment as described in § 163-10 of this article against said property. All rules and regulations governing the payment and the method of payment relating to betterment assessments as described in § 163-10B and C of these regulations shall apply. For the Phase 4 and Phase 5 sewer construction project, if a property abuts a private or unaccepted way within which a public sewer has been installed or if a property lies within 100 feet of a public sewer within a private or unaccepted way, the Town shall assess a sewer privilege fee in the sum of \$14,256. The sewer privilege fee shall be levied at the time of the connection to the public sewer. All rules and regulations governing the payment and method of payment related to betterment assessments as described in § 163-10B and C of these regulations shall apply. [Amended 5-5-1993 ATM, Art. 43; 9-28-1998 STM, Art. 5]
- C. Compensatory sewer privilege fee.
  - (1) Undeveloped property. In the situation where a betterment has been assessed to an undeveloped property based upon the number of sewer units required by these regulations and said property is ultimately developed to accommodate a number of sewer units in excess of the number used for determining the betterment assessment, the Town shall

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assess a compensatory sewer privilege fee. For the Phase 4 and Phase 5 sewer construction project, in the situation where a betterment has been assessed to an undeveloped property based upon the number of sewer units required by these regulations and said property is ultimately developed to accommodate a number of sewer units in excess of the number used for determining the betterment assessment, the Town shall assess a compensatory sewer privilege fee of \$14,256. [Amended 9-28-1998 STM, Art. 5]

- (2) In the situation where a betterment has been assessed to a developed nonresidential property based upon the number of sewer units required by these regulations and the usage of said property is changed or increased which results in a number of sewer units in excess of the number used for determining the betterment assessment, the Town shall assess a compensatory sewer privilege fee. For the Phase 4 and Phase 5 sewer construction project, in the situation where a betterment has been assessed to developed nonresidential property based upon the number of sewer units required by these regulations and usage of said property is changed or increased which results in a number of sewer units in excess of the number used for determining the betterment assessment, the Town shall assess a compensatory sewer privilege fee of \$14,256. [Amended 9-28-1998 STM, Art. 5]
- (3) The compensatory sewer privilege fee shall be equivalent to that sum of money that would have been charged as a betterment assessment upon the property at the time of the original assessment, under the conditions to which they have changed or increased, less the amount of the original assessment. The compensatory sewer privilege fee shall be the product of the number of sewer units applicable to a property as ultimately developed multiplied by the sewer privilege fee amount for the applicable phase of the sewer construction project. [Amended 10-21-2002 STM, Art. 14]
- (4) All rules and regulations governing the payment and method of payment related to betterment assessments as designated in § 163-10B and C of these regulations shall apply.
- (5) No sewer privilege fee shall be assessed upon properties which have been assessed a betterment assessment based upon the fixed uniform rate method. [Added 9-28-1998 STM, Art. 5; amended 5-1-2000 ATM, Art. 66]
- (6) The Board of Selectmen is authorized to take any other action necessary or appropriate to accomplish the establishment and recovery of such betterment assessments. [Added 9-28-1998 STM, Art. 5; amended 5-1-2000 ATM, Art. 66]

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# TOWN OF HOPKINTON

## CHAPTER 170

### SOLID WASTE

#### ARTICLE I Recycling

**§170-1. Authority of Board of Selectmen.**

**§170-2. Separation of recyclables required.**

#### ARTICLE I (Continued)

**§170-3. Definitions.**

**§170-4. Changes to list of recyclables and disposal areas; notice to residents.**

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

#### ARTICLE I Recycling

**[Adopted 4-14-1992 ATM, Article 22]**

##### **§ 170-1. Authority of Board of Selectmen.**

The Board of Selectmen or its designee may establish a recycling program for the purpose of recycling any type of solid waste, including but not limited to paper, glass, metal and plastics, in accordance with such rules and regulations as the Board of Selectmen or its designee may establish from time to time. Such rules and regulations may require the separation of designated recyclable material or materials from other solid wastes, may specify the point at which the ownership of such designated recyclables shall vest in the town, may prohibit removal without authorization by the Board of Selectmen or its designee of such designated recyclable has vested in the town, and may establish fines for violation of such rules and regulations, provided that such fine shall not exceed \$50 for each violation.

##### **§ 170-2. Separation of recyclables required. [Added 5-2-1995 ATM, Art. 40; amended 5-6-1996 ATM, Art. 50]**

In order to ensure the recycling of as much of the solid waste generated in the town as is possible, all residents of the town are required to separate recyclable materials in the areas designated for such purpose by the Board of Selectmen.

##### **§ 170-3. Definitions. [Added 5-2-1995 ATM, Art. 40]**

For the purposes of this article, the following terms shall have the meanings indicated:

AREAS DESIGNATED -- The Recycling Center on Wood Street.

RECYCLABLE MATERIALS -- Glass, metal, paper and certain plastics, as well as any other materials the Board of Selectmen may determine should be recycled.

##### **§ 170-4. Changes to list of recyclables and disposal areas; notice to residents. [Added 5-2-1995 ATM, Art. 40]**

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The Board of Selectmen shall have the authority to add, alter or delete items to those deemed to be recyclable materials as it deems appropriate. The Board of Selectmen shall also have the authority to add, alter or delete areas designated for disposing of recyclable materials. Should the Board of Selectmen make any such changes to the definitions of areas designated or recyclable materials, the Board of Selectmen shall provide notice of such change to the residents of the town in such manner as it deems appropriate.

# TOWN OF HOPKINTON

## CHAPTER 171

### DISCHARGES TO STORM DRAIN SYSTEM

**§171-1. Purpose.**

**§171-2. Definitions.**

**§171-3. Responsibility for Administration.**

**§171-4. Prohibition.**

**§171-5. Notification of Releases.**

**§ 171-6. Enforcement.**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-1-2017, Art. 48]**

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#### **§ 171-1. Purpose.**

Non-stormwater discharges into the municipal storm drain system can harm water quality and create public health hazards. The purpose of Chapter 171 is to provide for the health, safety, and welfare of the citizens of the Town of Hopkinton through the regulation of non-stormwater discharges into the municipal storm drain system.

The provisions of Chapter 171 shall be administered so as to:

- Prevent pollutants from entering the municipal storm drain system;
- Prohibit illicit connections and illicit discharges into the municipal storm drain system;
- Comply with the requirements of the Town's National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal storm drain system; and
- Ensure compliance through inspection, monitoring, and enforcement.

#### **§ 171-2. Definitions.**

Unless the context clearly indicates otherwise, the following words and terms, as used in Chapter 171, shall have the following meanings:

DPW – The Hopkinton Department of Public Works.

**HAZARDOUS MATERIAL** -- Any solid or liquid substance or combination of substances, including any liquid petroleum product, that, because of quantity, concentration or physical, chemical or infectious characteristics, poses a significant present or potential hazard to water supplies or to human health if disposed of into or on any land or water. Any substance deemed to be a "hazardous waste" pursuant to M.G.L. Chapter 21C, or deemed to be a toxic or hazardous substance pursuant to M.G.L. Chapter 94B, shall be deemed to be a hazardous material.

**ILLICIT CONNECTION** -- Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the municipal storm drain system, regardless of whether the drain or connection was previously allowed, permitted or approved before the effective date of Chapter 171. An illicit connection shall include:

- Any conveyance that allows sewage, process wastewater, wash water or other non-stormwater discharge into the municipal storm drain system; and
- Any connection to the municipal storm drain system from indoor drains and sinks.

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**ILLCIT DISCHARGE** -- Any direct or indirect non-stormwater discharge, including dumping, into the municipal storm drain system, except that the following non-stormwater discharges shall not be considered illicit discharges:

- Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated groundwater infiltration (as defined by 40 CFR 35.2005(20)); uncontaminated pumped groundwater; discharges from potable water sources; foundation drains; air conditioning condensation; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual resident car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; residential building wash waters without detergents; and discharges or flow from firefighting; unless the DPW or the Planning Board determines that the discharge is a significant contributor of pollutants to the municipal storm drain system;
- Discharges associated with dye testing; provided, however, that the discharger shall notify the DPW before any such test; and
- Discharges permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger under the authority of the U.S. Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and that written approval has been granted by the DPW for any discharge to the municipal storm drain system.

**MUNICIPAL STORM DRAIN SYSTEM (OR STORM DRAIN SYSTEM)** -- The system of conveyances owned by the Town (including roads, catch basins, curbs, gutters, ditches, man-made channels, pipes, and outfalls) by which stormwater is collected or conveyed.

**POLLUTANT** -- Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, and agricultural waste, and any other material that may cause or contribute to exceedance of water quality standards in the waters to which the storm drain system discharges.

**STORMWATER** -- Any surface flow, runoff or drainage resulting entirely from any form of natural precipitation.

### **§ 171-3. Responsibility for Administration.**

The DPW and Planning Board shall administer, implement, and enforce the provisions of Chapter 171. Any powers granted to the DPW or the Planning Board by this Chapter, except the power to hear appeals, may be delegated in writing by (respectively) the DPW Director or the Planning Board to other employees or agents of the Town.

### **§ 171-4. Prohibitions.**

#### **A. Prohibition of Illicit Discharges.**

No person shall commence, allow, conduct or continue any illicit discharge.

#### **B. Prohibition of Illicit Connections.**

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No person shall construct, use, allow, maintain or continue any illicit connection, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

### **C. Prohibition of Obstruction of Municipal Storm Drain System.**

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 DPW.

### **§ 171-5. Notification of Releases.**

Any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, who has information of any known or suspected release of materials at that facility or operation that are resulting or may result in illicit discharges shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of a release of hazardous material, that person shall immediately notify the Hopkinton Fire Department and shall notify the DPW within two hours. In the event of a release not involving hazardous material, that person shall notify the DPW no later than the next business day. For all releases, the initial notification shall be confirmed by written notice addressed and mailed, or hand-delivered, to the DPW within two business days.

### **§ 171-6. Enforcement.**

#### **A. Enforcement Orders.**

If any person violates or fails to comply with any of the requirements of Chapter 171, the DPW may order compliance by written notice to the responsible person via certified mail or hand delivery. The order shall include the name and address of the alleged violator, the address at which the violation is occurring or has occurred, a statement specifying the nature of the violation, a description of the actions needed to resolve the violation and come into compliance, the deadline within which such actions must be completed, and a statement that, if the violator fails to come into compliance by the specified deadline, the Town may do the work necessary to resolve the violation at the expense of the violator. In addition, said order may require:

- Elimination of illicit connections or illicit discharges;
- Performance of monitoring, analyses and reporting;
- Remediation of contamination caused by the illicit connection or illicit discharge; and
- The implementation of source control or treatment measures.

#### **B. Appeals.**

Any person aggrieved by an enforcement order issued pursuant to Section 171-6.A may request a hearing before the Planning Board by submitting to the DPW and Planning Board, within 30 days of such order, a letter explaining why the order was not justified. The Planning Board shall thereupon schedule and hold a hearing regarding such request and, upon the close of such hearing, may uphold, modify or rescind the order as the facts and applicable law may require. The Planning Board's decision shall be deemed its final action with respect to the matters determined, and any further appeal shall be to a court of competent jurisdiction.

#### **C. Action by the Town to Remedy a Violation.**

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If a violator fails to come into compliance by the deadline specified in an enforcement order, the DPW may do the work necessary to resolve the violation at the joint and several expense of the violator and property owner. For situations involving an immediate threat, the DPW may remove an illicit connection immediately and take such other action as is necessary to protect public health, safety or the environment. Written notice of any remediation action undertaken by the DPW shall be provided to the property owner by hand within 48 hours of the commencement thereof or by certified mail postmarked no later than the next business day.

### **D. Recovery of Costs.**

If the DPW undertakes remediation work pursuant to Section 171-6.C, it shall, within 30 days after completing the work, notify the violator and the property owner in writing of the costs incurred by the Town, including administrative costs, associated with that work. The violator and the property owner shall be jointly and severally liable to repay the Town for those costs within 30 days of receipt of that notice; provided, however, that the violator or the property owner may file a written protest objecting to the amount or basis of costs with the DPW and Planning Board within such 30 days. The Planning Board shall schedule and hold a hearing regarding such protest and, upon the close of such hearing, may uphold, modify or rescind the costs required to be repaid, as the facts and applicable law may require.

If the amount due is not received by the Town by the expiration of the time in which to file such a protest, or within 60 days after the final decision of the Planning Board or (if appealed to court) a court of competent jurisdiction resolving that protest, the amount of the Town's costs shall constitute a lien on the property pursuant to M.G.L. Chapter 40, Section 58. Interest shall accrue on any unpaid costs at the statutory rate, as provided in M.G.L. Chapter 59, Section 57.

### **E. Civil Relief.**

If a person violates any provision of Chapter 171 or an order issued thereunder, the Town may seek injunctive relief in a court of competent jurisdiction restraining the person from activities that would create further violations or compelling the person to abate or remedy the violation.

### **F. Criminal Penalty.**

Any person who violates any provision of Chapter 171 or any order issued thereunder may be punished by a fine of not more than \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. A criminal complaint may be filed by the DPW or Planning Board, with the authorization of the Board of Selectmen.

### **G. Non-Criminal Disposition (Ticketing).**

As an alternative to criminal prosecution, the DPW or Planning Board may elect to utilize the non-criminal disposition procedure set forth in Chapter 1, Section 1-4 of these Bylaws. The penalty for the first violation shall be \$100.00. The penalty for each subsequent violation shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

### **H. Entry to Perform Duties Under this Bylaw.**

To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Town and its agents, officers and employees may enter privately owned property for the purpose of

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performing their duties under Chapter 171 and may make or cause to be made such examinations, surveys, sampling, or remedial activities as the Town deems reasonably necessary.

### **I. Remedies Not Exclusive.**

The remedies listed in Chapter 171 are not exclusive of any other remedies available under any applicable federal, state or local law.

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# **TOWN OF HOPKINTON**

## **CHAPTER 172**

### **STORMWATER MANAGEMENT AND EROSION CONTROL**

**§172-1. Purpose.**

**§172-2. Applicability.**

**§ 172-3. Administration.**

**§172-4. Enforcement.**

**§172-5. Severability.**

**[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-5-2008, Art. 30]**

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**§ 172-1. Purpose. [Amended 12-14-2009, STM Art. 7]**

- A. The purposes of this Chapter are to: 1) protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment; and 2) protect, maintain, and enhance the public safety, environment and general welfare by establishing minimum standards and procedures to control runoff and prevent soil erosion and sedimentation resulting from construction/alteration and development.

**§ 172-2. Applicability.**

- A. This Chapter shall apply to all construction activity unless exempt pursuant to § 172-2.C of this Chapter.
- B. A Stormwater Management Permit (SMP) shall be required from the Planning Board for the following:
- (1) Construction activities that will result in land disturbance of one acre in area or more, or which is part of a common plan for development that will disturb one acre or more;
  - (2) Construction activities that will disturb land with 15% or greater slope, and where the land disturbance is greater than or equal to 10,000 square feet within the sloped area;
  - (3) Any construction activity that will increase the amount of impervious surface to more than 50% of the area of a lot.
- C. Exemptions. A Stormwater Management Permit shall not be required for the following activities, whether or not such activity results in disturbance or alteration that meets or exceeds the SMP requirements of Section 172-3.B:
- (1) Additions or modifications to single family structures;
  - (2) Additions or modifications to structures which are not for single family use, provided that such addition or modification does not increase the footprint of the structure by more than 100%.
  - (3) Normal maintenance of Town owned public land, ways and appurtenances;

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- (4) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A Section 3;
- (5) Activities conducted in accordance with a Forest Stewardship Plan approved by the Massachusetts Department of Conservation and Recreation;
- (6) Normal maintenance of landscaping, gardens, lawn areas, driveways and the like;
- (7) Construction of patios, decks, walkways, swimming pools, sheds, fences, or replacement of wells;
- (8) Repair or replacement of an existing roof;
- (9) Construction of utilities (gas, water, sewer, electric, telephone, etc.) other than drainage, which will not alter terrain, ground cover, or drainage patterns; the reconstruction, maintenance or resurfacing of any way maintained by the Hopkinton Department of Public Works;
- (10) Emergency repairs to any utilities (gas, water, sewer, electric, telephone, etc.), stormwater management facility or practice that poses a threat to public health or safety, or as deemed necessary by the DPW Director;
- (11) Repair or replacement of sewage disposal systems;
- (12) Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Chapter, including Orders of Conditions issued by the Conservation Commission;
- (13) Any construction activity or project wholly within the jurisdiction of the Conservation Commission provided that an Order of Conditions has been issued by the Conservation Commission;
- (14) Any construction activity or project requiring approval under the Subdivision Control Law where the Planning Board has approved an application for definitive subdivision approval and any construction activity or project requiring Site Plan Review, provided that the plans include stormwater management provisions for the site;
- (15) Any construction activity or project requiring approval under Zoning Bylaw Articles XIII, Garden Apartments in Residential Districts, XIII A, Village Housing in Residential Districts, and XVI A, Senior Housing Development, provided that the Planning Board has granted all required approvals, and that the plans include stormwater management provisions for the site.

### **§ 172-3. Administration.**

- A. The Planning Board shall be the permit granting authority for the issuance of Stormwater Management Permits and shall administer, implement and enforce this Chapter. Any powers granted to or duties imposed upon the Planning Board may be delegated to its employees or agents or other municipal employees as appropriate. Permit applications shall be submitted, considered

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and issued only in accordance with the provisions of this Chapter and the Regulations adopted pursuant to this Chapter.

- B. Stormwater Regulations. The Planning Board shall adopt, and may periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection and/or consultant fees), procedures and administration of this Chapter. The Regulations shall be adopted by majority vote after conducting a public hearing. Such hearing date shall be advertised once in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. Failure of the Planning Board to adopt such Regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Chapter.

Stormwater Management Permit procedures and submission requirements shall be defined and included as part of the Stormwater Regulations. Such Regulations shall include, but shall not be limited to:

- (1) A requirement that Stormwater Management Permits be issued within 60 days of the date of filing a complete application, unless an extension of time has been granted.
  - (2) A procedure for distribution to and review of permit applications by the Town of Hopkinton Conservation Administrator, Public Health Administrator, Director of Municipal Inspections, and Director of Public Works.
  - (3) A requirement for applicants to submit an Operation and Maintenance Plan for the stormwater management system.
  - (4) Performance standards which require that projects must meet the Stormwater Management Standards of the Massachusetts Stormwater Management Policy. The Planning Board will utilize the policy, criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater Management Policy for execution of the provisions of this Chapter. This Policy includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the Stormwater Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.
- C. Waivers. Strict compliance with this Chapter or the Stormwater Regulations may be waived by the Planning Board when, in the judgment of the Board, such action is not inconsistent with the purposes of this Chapter or the Regulations.
- D. Actions by the Planning Board. The Planning Board may take any of the following actions on an application for a Stormwater Management Permit: Approval, Approval with Conditions, or Disapproval. A Permit may be disapproved if the Planning Board determines that the requirements of this Chapter or the Regulations are not met.
- E. Appeals. A decision of the Planning Board shall be final. Further relief of a decision by the Planning Board made under this Chapter shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with M.G.L. Ch 249 § 4.

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### **§172-4. Enforcement.**

- A. When the Planning Board or its agent determines that an activity is not being carried out in accordance with the requirements of this Chapter, Stormwater Regulations or SMP, it shall issue a written notice of violation to the owner of the property. Persons receiving a notice of violation may be required to:
- (1) Halt all construction activities until there is compliance. A “stop work order” will be in effect until the Planning Board or its agent confirms that the activity is in compliance and the violation has been satisfactorily addressed.
  - (2) Maintain, install or perform additional erosion and sedimentation control measures;
  - (3) Monitor, analyze and report to the Planning Board;
  - (4) Remediate erosion and sedimentation resulting directly or indirectly from the activity.

Failure to address a notice of violation in the time specified therein may result in penalties in accordance with the enforcement measures authorized in this Chapter.

- B. **Penalty.** Any person who violates any provision of this Chapter, Regulations, or SMP’s issued thereunder, may be punished by a fine of not more than \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense, and each provision of the Chapter, Regulations or SMP violated, shall constitute a separate offense.
- C. **Non-Criminal Disposition.** As an alternative to the penalty in § 172-4.B, the Town of Hopkinton may elect to utilize the non-criminal disposition procedure set forth in Article II of the Bylaws of the Town of Hopkinton. Each day or part thereof that such violation occurs or continues shall constitute a separate offense, and each provision of this Chapter, Regulation or permit violated shall constitute a separate offense.

### **§172-5. Severability.**

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

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## **Chapter 174**

### **STREETS AND SIDEWALKS**

#### **ARTICLE I**

##### **Street Acceptance Petitions**

**§174-1. Presentation to Board of Selectmen.**

#### **ARTICLE II**

##### **Street Names**

**§174-2. Submission of names to Board of Selectmen.**

#### **ARTICLE III**

##### **Acceptance of Private Ways.**

**§174-3. Plan required; conditions for Acceptance.**

#### **ARTICLE IV**

##### **Laying Out of Streets**

**§174-4. Betterments assessments.**  
**§174-5. Apportionment of assessments in installments**  
**§174-6. Relationship with other laws.**

#### **ARTICLE V**

##### **Depositing Snow**

**§174-7. Obstruction of streets and Sidewalks prohibited.**  
**§174-8. Exceptions.**  
**§174-9. Violations and penalties.**

#### **ARTICLE VI**

##### **Temporary Repairs on Private Ways**

**§174-10. Authorization to make repairs.**  
**§174-11. Type and extent of repairs.**  
**§174-12. Drainage improvements.**  
**§174-13. Abutters.**  
**§174-14. Easements.**  
**§174-15. Approval and method of payment.**  
**§174-16. Board of Selectmen action.**  
**§174-17. Liability of town.**  
**§174-18. Ways to be open to public use.**  
**§174-19. Standard of work.**  
**§174-20. Basis for assessment of betterments.**  
**§174-21. Town Meeting appropriation of funds.**  
**§174-22. Minor repairs.**  
**§174-23. Definitions.**  
**§174-24. Severability.**

#### **ARTICLE VII**

##### **Driveways**

**§174-25. Construction of Driveways**  
**§174-26. Permits**  
**§174-27. Regulations**  
**§174-28. Enforcement**

#### **ARTICLE VIII**

##### **Discharge of Water Onto a Public Way**

**§174-29. Discharge of water onto a public Way prohibited.**  
**§174-30. Violations and penalties**  
**§174-31. Corrective action required within 30 days.**

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

#### **General References**

Noncriminal disposition – See Ch. 1, Art. II.

Betterment assessments and sewer privilege fees – See Ch. 163, Art II.

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## **ARTICLE I**

### **Street Acceptance Petitions**

**[Adopted 3-6-1952 ATM, Art. 21]**

#### **§ 174-1. Presentation to Board of Selectmen.**

No article or petition calling for the acceptance of any new street shall be acted upon at a Special Town Meeting unless said article or petition has been signed by 100, or 10%, of the registered voters of the Town prior to its presentment to the Board of Selectmen for insertion in the Town Warrant.

## **ARTICLE II**

### **Street Names**

**[Adopted 3-3-1953 ATM, Art. 16]**

#### **§ 174-2. Submission of names to Board of Selectmen.**

For the purpose of avoiding duplication of names of streets, the names of all new streets shall be submitted to the Board of Selectmen for approval before becoming official.

## **ARTICLE III**

### **Acceptance of Private Ways**

**[Adopted 6-7-1963 STM, Art. 7]**

#### **§ 174-3. Plan required; conditions for acceptance.**

Any private way in existence in the Town of Hopkinton at the time of the adoption of the Subdivision Control Law, so-called, shall not hereinafter be considered for acceptance as a public way unless the petitioners shall present to the Board of Selectmen a plan suitable for recording in the Registry of Deeds and unless the abutting landowners shall agree to convey to the Town the land necessary to complete the laying out of said way and further agree to pay to the Town 50% of the cost of laying out said way, including water, drainage surfacing and all other necessary construction.

## **ARTICLE IV**

### **Laying Out of Streets**

**[Adopted 3-3-1965 ATM, Art. 52]**

#### **§ 174-4. Betterments assessments.**

The Board of Selectmen is authorized to lay out, relocate and/or alter, as public ways, private ways which were in existence at the time of the adoption by the Town of the Subdivision Control Law, so-called, and providing for assessment of the cost or part of the cost to the abutters of said ways under the Betterment Acts, so-called, based on the special benefits and advantages derived therefrom by the abutters other than the general advantages to all of the community; said betterment assessments to be not less the 60% of the cost of said betterment, provided that the assessment shall not be in excess of the special benefits or advantages derived therefrom by the abutters other than the general advantages to all of the community as authorized by MGL c. 80 and c. 82; provided, further, that action under this article shall not in any way be interpreted as authorizing the establishment of public ways in any manner other than as now provided by law, which requires the layout of proposed public ways and recommendations to Town Meeting by the Board of Selectmen and a separate affirmative vote of the Town Meeting on each street recommended; nor shall any action taken under this article be interpreted as infringing upon the exclusive right of the Board

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of Selectmen to determine what streets they shall lay out and recommend to Town Meeting for acceptance as public ways.

### **§ 174-5. Apportionment of assessments in installments.**

Betterment assessments to be apportioned in equal annual installments over a ten-year period.

### **§ 174-6. Relationship with other laws.**

No action taken under this article shall be interpreted as an amendment of Chapter 210, Zoning, or as in any way qualifying or in conflict with the rules and requirements of the Planning Board relating to the subdivision of land and the requirements of said rules and regulations relating to the construction of ways within subdivisions under the jurisdiction of the Planning Board.

## **ARTICLE V**

### **Depositing Snow**

**[Adopted 11-10-1983 STM, Art. 3]**

### **§ 174-7. Obstruction of streets and sidewalks prohibited.**

No person shall pile, push, throw, shovel, plow or by any other method or means cause snow to be deposited or placed on any public roadway or sidewalk of the Town so as to impede, obstruct or interrupt or otherwise adversely affect the unrestricted flow of traffic or the safe travel of any pedestrian on such roadway or sidewalk.

### **§ 174-8. Exceptions.**

Section 174-7 shall not apply to any person in the employ of the Town or in the employ of an independent contractor which has been hired by the Town for the purpose of snow removal.

### **§ 174-9. Violations and penalties.**

Whoever violates this article shall be liable to a penalty not exceeding \$25 for each such violation. Each instance of such conduct shall constitute a separate violation of this article.

## **ARTICLE VI**

### **Temporary Repairs on Private Ways**

**[Adopted 10-3-2001 STM, Art. 23]**

### **§ 174-10. Authorization to make repairs.**

The Town of Hopkinton may make temporary repairs on private ways when such repairs are deemed necessary or appropriate by the Director of the Department of Public Works (the Director) and are approved by the Board of Selectmen. The Director shall make such determination based on the public convenience and necessity, the protection of the health and safety of the general public using such ways, and the protection of the environment adjacent to the way and in the surrounding area.

### **§ 174-11. Type and extent of repairs.**

The repairs may include the patching and filling of holes; oiling and treatment of road surfaces; the repair of specific portions of the way; cleaning of catch basins and drainage structures; installation of guardrails

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or other infrastructure; and the reconstruction of a way, including the removal of roadway surface and the regrading and installation of fill and roadway surface materials, including asphalt and concrete.

### **§ 174-12. Drainage improvements.**

As part of the repair of any private way, the Town may make such drainage repairs and improvements to the private way as are deemed necessary or appropriate by the Director. The Town shall not perform any such drainage repairs or improvements on a private way unless the Director has indicated that such repairs or improvements are required by public necessity or for the protection of the environment.

### **§ 174-13. Abutters.**

The Town may only perform such repairs, reconstruction, or improvements on a private way upon the occurrence of any of the following events: the request of the Planning Board to the Board of Selectmen; the request of the Director to the Board of Selectmen; or at least 80% of the owners of properties which abut the way to be repaired have signed a petition to the Board of Selectmen requesting that such repairs to the way be performed. Such petition must state that the public convenience and necessity require such repairs, reconstruction and improvements and shall request that the Director make an investigation of the condition of the way and report the findings to the Board of Selectmen.

### **§ 174-14. Easements.**

If any easements are necessary for the completion of such repairs, reconstruction or improvements, the owners of the properties abutting the way and the owners of any land or interest in land upon which such easement would be required, shall be responsible for the cost of the preparation and the grant of such easements to the Town. Such easement shall include the grant of the right to the Town, its agents, contractors and employees, to enter upon the way for the performance of the work.

### **§ 174-15. Approval and method of payment.**

Upon receipt of a request from the Director, or from the Planning Board, or upon receipt of a petition from the owners of abutting properties, the Board of Selectmen shall review the report of the Director, and determine whether such repairs, reconstruction or improvements are required for the public health or safety, the protection of the environment, and the public convenience and necessity, and, if it so determines, the Board of Selectmen may approve the project and determine whether such repairs, reconstruction or improvements shall be paid by the abutters by a cash deposit; shall be paid by the abutters by betterment charges which shall be assessed to the abutters; shall be paid partly by the abutters and partly by the Town by the assessment of betterment charges for a portion of the work; or shall be paid by the Town. In the event the Board of Selectmen determines that the project should be funded in whole or in part by the assessment of betterments or by a cash deposit from the abutters, the Board of Selectmen shall hold a public hearing on such determination within 30 days thereof. The Board of Selectmen shall notify the owners of the properties abutting the way by regular mail at least seven days prior to the date of the hearing, and shall cause notice of such hearing to be published in a newspaper of general circulation in the Town at least seven days prior to the date of the hearing. Such notices shall indicate that the Board of Selectmen is considering the assessment of betterments or a cash deposit to fund the project. The Board of Selectmen shall make the decision on the request and the method of payment therefor, within 60 days of the close of the public hearing. If the appropriation of funds or the assessment of betterments is necessary, the Selectmen shall thereupon submit an article to the next ensuing Town Meeting for approval by the Town of the repairs, reconstruction or improvements to the way and the method of payment therefor.



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## **§ 174-16. Board of Selectmen action.**

If the appropriation of funds, the assessment of betterments or a cash deposit is not to be required in conjunction with the project, the Board of Selectmen shall review the request at a public meeting within 21 days of receipt of the request, and shall make a decision on the request within 45 days of its receipt.

## **§ 174-17. Liability of town.**

To the fullest extent permitted by law, the Town shall not be liable for any claim, damage, loss, cost, liability, or expense, of any name, nature or description, including attorney's fees and costs, arising out of or as a result of the repairs, reconstruction or improvements performed on any private way by the Town or any damage resulting therefrom, including that to third parties. The Board of Selectmen may in relation to any such project as it deems appropriate, require the owners of the properties abutting the way to execute an agreement pursuant to which all such owners agree to save, indemnify and hold harmless the Town from any and all such claims, damages, losses, costs, liabilities or expenses, including attorney's fees, arising out of or as a result of such repairs, reconstruction or improvements.

## **§ 174-18. Ways to be open to public use.**

The ways upon which the Town may perform any such repair, reconstruction or improvement, must have been open to public use for no less than one year prior to the date of the vote of the Board of Selectmen which approves such project or which authorizes the submission of the article relating thereto to the Town Meeting.

## **§ 174-19. Standard of work.**

All work to be performed by the Town on any such way pursuant hereto must be to the standards established by the Department of Public Works of the Town.

## **§ 174-20. Basis for assessment of betterments.**

In the event the Town Meeting authorizes such repair, reconstruction or improvement to such way, and authorizes the assessment of betterments for all or a portion of the cost of such work, it shall determine the percentage of project cost to be assessed, and such assessments shall be made based upon either the fixed uniform rate method using the linear frontage of each lot on the street as the standard for computation, or the uniform unit method, pursuant to which each existing or potential lot abutting the way shall constitute a unit.

## **§ 174-21. Town Meeting appropriation of funds.**

No repair, reconstruction or improvement requiring an appropriation of funds shall be made to any way pursuant hereto unless and until the Town Meeting has appropriated any funds necessary for the project.

## **§ 174-22. Minor repairs.**

Upon the request of the Director, the Planning Board or the owners of properties abutting a way, the Board of Selectmen, based on the recommendation and report and the certification of the Director that the funds necessary for the project are available, may authorize the Town to make minor repairs to private ways to a sum not to exceed \$1,000 in total on any way in any one fiscal year.

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## **§ 174-23. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

PRIVATE WAY -- Shall not include driveways, common driveways, roadways and driveways within condominium projects, private access roads, and ways to which the public does not have access.

## **§ 174-24. Severability.**

The invalidity of any provision of this chapter shall not invalidate any other section or provision thereof, which shall remain in full force and effect.

## **ARTICLE VII**

### **Driveways**

**[Added 5-2-2005 ATM, Art. 33]**

## **§ 174-25. Construction of Driveways.**

This Article shall apply to all driveway permits issued after the adoption of this Article. No driveway permit shall be issued unless the requirements of this Article shall have been complied with. The provisions of this Article shall not apply to roadways or driveways in Garden Apartment or Village Housing developments. **[Amended 5-1-2017 ATM, Article 49]**

## **§ 174-26. Permits.**

Any person, organization, public agency or other entity proposing the construction of a driveway shall first obtain a driveway permit from the Department of Public Works. The Department may require the submission of an application, fee, and other materials containing such information which it determines to be necessary prior to issuing a permit.

## **§ 174-27. Regulations**

- A. The slope of a driveway within 20 feet of the edge of the pavement of a public or private way shall not exceed 10%.
- B. No driveway which has been permitted under this Article shall discharge stormwater runoff into a public or private way so as to cause flooding, icing, erosion or sedimentation, accumulation of debris, or other negative effects which impair the use and function of the way for the general public. If, in the opinion of the Director of Public Works (the "Director"), the use and function of a way has been so impaired, the property owner shall be responsible for mitigating the condition by implementing such measures as are necessary to prevent the discharge into the way. Prior to the implementation of mitigation measures, the owner may consult the Director to review those measures which would be implemented outside the way. The Director must approve any measures which would be implemented within the layout of the way.
- C. As part of its driveway permit review process, the Department of Public Works (DPW) will ensure that the roadway opening at the public or private way is adequate for proper public safety emergency vehicle access. The DPW will consult with the Fire Department for its input as it deems necessary. After issuance of the driveway permit and a Building Permit, the Director of Municipal Inspections will conduct a site visit to review the layout of the driveway once it is roughed in and

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before project completion, to ensure that it is adequate for proper public safety emergency vehicle access. The Director of Municipal Inspections shall consult with the Fire Department if it appears that public safety emergency vehicle access may be impaired. In those instances where the Fire Department has been consulted and determines that a public safety emergency vehicle cannot adequately access the property, the driveway permit holder shall prepare a plan for accommodating safety vehicles that is acceptable to the Fire Department and the Director of Municipal Inspections, and shall be responsible for implementing the plan prior to issuance of an occupancy permit. **[Added 5-5-2008 ATM, Art. 28]**

- D. No driveway permit shall be issued without the written approval of the Fire Department, which may be subject to such conditions as the Fire Department may deem necessary for the protection of the public health and safety. The Fire Department shall prepare publicly available driveway permit guidelines and parameters that it shall consider in its review of every driveway permit application. **[Added 5-1-2017 ATM, Article 49]**

### **§ 174-28. Enforcement**

The Director and the Public Works Highway Manager (the “Manager”) shall have the authority to enforce this Article. Any person who violates any provision of this Article shall be notified as soon as practicable by the Director or Manager. Such notice shall advise such person that if the violation is not corrected and impacts mitigated within a specified period of time, such person shall be punished by a fine of not more than \$100.00. Each day or portion thereof during which a violation continues after the expiration of the specified time period contained in the notice shall constitute a separate offense. As an alternative to criminal prosecution in a specific case, the Director or Manager may issue a citation under the noncriminal disposition procedure set forth in Chapter 1, Article II of the Town of Hopkinton Bylaws.

## **ARTICLE VIII**

### **Discharge of Water Onto a Public Way**

**[Adopted 5-5-2008 ATM, Art. 20]**

### **§ 174-29. Discharge of water onto a public way prohibited.**

No person shall alter existing conditions so as to allow, or cause, the man-made diversion of water onto a public roadway or sidewalk of the Town, by pump, down spout, swale, grading of land, or any other method, so as to create a hazard to vehicle or pedestrian travel on such roadway or sidewalk.

### **§ 174-30. Violations and penalties.**

Whoever violates this article shall be subject to a penalty not exceeding \$25 for each such violation. Each instance of such conduct shall constitute a separate violation of this article.

### **§ 174-31. Corrective action required within 30 days.**

Whoever violates this article shall, within 30 days of receiving a notice of violation, take any and all corrective actions necessary to prevent future violations of this article, or submit to the Department of Public Works a plan of action to prevent future violations of this article.

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## CHAPTER 186

### TREES

**§186-1. Purpose. Notification to Tree Warden of trees to be cut.**

**§186-3. Enforcement.**

**§186-2. Notification of board with jurisdiction over tree; hearing.**

[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 5-5-2003, Art. 32. (This article also repealed former Ch. 186, Trees, adopted by the Special Town 4-11-1979, Art. 8.) Amendments noted where applicable.]

GENERAL REFERENCES: Earth removal -- See Ch. 96., Scenic roads -- See Ch. 160., Wetlands protection -- See Ch. 206.

#### **§ 186-1. Notification to Tree Warden of trees to be cut.**

No live tree over three inches in diameter, measured at a height of four and one half feet from the ground (dbh), mechanically sound and not diseased and which is located on Town of Hopkinton park or conservation lands, or within any public street right-of-way, shall be cut down or removed by anyone unless notice in writing is given to the Tree Warden of such intention, which notice must specify in detail sufficient for identification, the tree or trees to be so cut down or removed and the name and address of the person, firm or governmental agency submitting such notice, and a public hearing is held.

#### **§ 186-2. Notification of board with jurisdiction over tree; hearing.**

Upon receipt of such notice of intention, the Tree Warden shall notify the town board or commission which has jurisdiction over the property upon which the tree or trees are located, and such board or commission shall arrange for a public hearing to be held before it within 30 days of receipt of such written notice. Notice of the hearing shall be posted in two or more public places in the town and upon said tree or trees no less than seven days before the date set for such hearing.

#### **§ 186-3. Enforcement.**

The Tree Warden is responsible for enforcement of this chapter. Whoever violates any provision of this chapter shall be liable for a fine of not more than the maximum permitted by law for each citation for any violation and shall be required to restore any damage. The Tree Warden may order that trees removed in violation of this chapter be replaced. Removal of each individual tree shall be considered a separate violation.

## **TOWN OF HOPKINTON**

# **TOWN OF HOPKINTON**

## **CHAPTER 188**

### **UNREGISTERED MOTOR VEHICLES**

- |   |  |
|---|--|
| <b>§188-1. Storage of parts of motor vehicles and trailers.</b>     | <b>§188-4. Enforcement</b>               |
| <b>§188-2. Storage of unregistered motor Vehicles and trailers.</b> | <b>§188-5. Applicability.</b>            |
| <b>§188-3. Hearing; notice; conditions.</b>                         | <b>§188-6. Violations and penalties.</b> |
|   | <b>§188-7. Noncriminal disposition.</b>  |

**[HISTORY: Replaces General Bylaw Chapter 130 by the Annual Town Meeting of the Town of Hopkinton 05-07-2012, Art. 43.]**

#### **§188-1. Storage of parts of motor vehicles and trailers.**

No person in charge or control of any property within the town, whether as owner, tenant, occupant, lessee or otherwise, shall allow any part or component of any motor vehicle or trailer that is visible from a public or private way or from an abutting property to remain on such property.

#### **§188-2. Storage of unregistered motor vehicles and trailers.**

No person in charge or control of any property within the town, whether as owner, tenant, occupant, lessee or otherwise, shall allow more than one unregistered motor vehicle or trailer to remain on such property, except as provided in §188-3.

#### **§188-3. Hearing; notice; conditions.**

- A. The Board of Selectmen may issue a permit to keep, store or allow more than one unregistered motor vehicle or trailer to remain on a property after the Board has held a public hearing thereon, first causing at least 14 days' notice of the time, place and subject matter of such hearing to be given at the expense of the applicant by:
- (1) Publication in a newspaper of general circulation in the town; and
  - (2) Certified mail to each of the persons appearing upon the Assessors' most recent valuation list as the owners of property abutting the property in question.
- B. Said Board shall not issue a permit unless it finds that the presence of more than one unregistered motor vehicle or trailer on the property:
- (1) Will not nullify or substantially derogate from the intent or purpose of this Chapter; and
  - (2) Will not constitute a hazard to the safety and welfare of the inhabitants of the town; and
  - (3) Will not adversely affect the neighborhood in which such property is situated.

## TOWN OF HOPKINTON

- C. Each such permit shall specify the maximum number of unregistered motor vehicles or trailers that may be kept, stored or allowed to remain on the property, shall be limited to a reasonable period of time not exceeding two years and shall be a personal privilege of the applicant and not a grant attached to and running with the land.

### **§188-4. Enforcement**

The Director of Municipal Inspections or a designee thereof shall have the authority to enforce the provisions of this Chapter.

### **§188-5. Applicability.**

This Chapter shall not apply to:

- A. A motor vehicle in an enclosed building;
- B. A motor vehicle on the property of a holder of a class license under section 58 of Chapter 140 of the *Massachusetts General Laws*;
- C. A motor vehicle on the property of a farming or business enterprise operated in a lawful place and manner when necessary or appropriate to the operation of such enterprise; or
- D. A motor vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the town.

### **§188-6. Violations and penalties.**

Any person who continues to violate any provision of §188-1 of this Chapter after thirty (30) days following receipt by him of written notice of such violation from the Police Department shall be liable for a penalty not exceeding twenty dollars (\$20) for each offense. Each day that any violation continues after said thirty-day period shall constitute a separate offense.

### **§188-7. Noncriminal disposition.**

Any person who violates any provision of this Chapter shall be subject to a noncriminal penalty. Each continuing day of such violation may be considered a separate offense. Such violation may be addressed by the procedure for noncriminal disposition provided in section 21D of Chapter 40 of the *Massachusetts General Laws* and section 1-4 of these B



# **TOWN OF HOPKINTON**

## **CHAPTER 190**

### **VEHICLES AND TRAFFIC**

#### **ARTICLE I**

##### **Removal of Cars for Snow Plowing**

- §190-1. Authority of Highway Superintendent**
- §190-2. Liability for removal costs and storage charges**
- §190-3. Police Department assistance in enforcement**

#### **ARTICLE II**

##### **Handicapped Parking**

- §190-4. Number of spaces required**

#### **ARTICLE II (Cont.)**

- §190-5. Identification and location of spaces; size**
- §190-6. Unauthorized use and obstruction of spaces.**
- §190-7. Violations and penalties**

#### **ARTICLE III**

##### **Temporary Road Closures**

- §190-8. Authority of Police Chief**
- §190-9. Temporary Parking Restrictions.**
- §190-10. Temporary Traffic Plans.**

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

**GENERAL REFERENCES:** Depositing snow on streets – See Ch. 174, Art. V.

#### **ARTICLE I**

##### **Removal of Cars for Snow Plowing**

**[Adopted 3-5-1959 ATM, Art. 13; amended 3-17-1997 STM, Art. 13]**

##### **§ 190-1. Authority of Highway Superintendent.**

The Highway Superintendent, for the purpose of removing or plowing snow or removing ice from any way, shall hereby be authorized to remove or cause to be removed to some convenient place, including in such term of a public garage, any vehicle interfering with such work.

##### **§ 190-2. Liability for removal costs and storage charges.**

The owner of any vehicle so removed shall be liable for the cost of such removal and for the storage charges, if any, resulting therefrom.

##### **§ 190-3. Police Department assistance in enforcement.**

The Highway Superintendent, whenever any vehicle is so removed, shall notify the Police Department, and said Department shall render all necessary assistance to the Highway Superintendent in enforcing this article.

# **TOWN OF HOPKINTON**

## **ARTICLE II**

### **Handicapped Parking**

**[Adopted 5-2-1994 ATM, Art. 41]**

#### **§ 190-4. Number of spaces required.**

Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has a right of access as invitees or licensees, shall be required to reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license or permit authorized by MGL c. 90, § 2, according to the following formula: if the number of parking spaces is:

- A. Fifteen or more but not more than 25: one parking space.
- B. More than 25 but not more than 40: 5% of such spaces but not less than two.
- C. More than 40 but not more than 100: 4% of such spaces but not less than three.
- D. More than 100 but not more than 200: 3% of such spaces but not less than four.
- E. More than 200 but not more than 500: 2% of such spaces but not less than six.
- F. More than 500 but not more than 1,000: 1 1/2% of such spaces but not less than 10.
- G. More than 1,000 but not more than 2,000: 1% of such spaces but not less than 15.
- H. More than 2,000 but not more than 5,000: 3/4 of 1% such spaces but not less than 20.
- I. More than 5,000: 1/2 of 1% of such spaces but not less than 30.

#### **§ 190-5. Identification and location of spaces; size.**

Parking spaces designated as reserved under the provisions of § 190-4 shall be identified by the use of above-grade signs at each space or pair of spaces. Such signs shall have white lettering against blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicles May Be Removed At Owner's Expense." These signs shall be as near as possible to a building entrance or walkway and shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person. The spaces shall be 12 feet wide or two eight-foot wide areas with four feet of crosshatch between them.

#### **§ 190-6. Unauthorized use and obstruction of spaces.**

The leaving of unauthorized vehicles within parking spaces designated for use by disabled veterans or handicapped persons as authorized by §§ 190-4 and 190-5 above or in such a manner as to obstruct a curb ramp designed for use by handicapped persons as a means of egress to a street or public way shall be prohibited.

# **TOWN OF HOPKINTON**

## **§ 190-7. Violations and penalties. [Amended 5-7-2001 ATM, Art. 25]**

The penalty for a violation of this article shall be \$100, and the vehicle may be removed according to the provisions of MGL c. 266, § 120D.

### **Article III Temporary Road Closures [Adopted 5-4-2009 ATM, Art. 21]**

## **§ 190-8. Authority of the Police Chief**

The Chief of Police or the Chief's designee is hereby authorized to close any way, as defined by Chapter 90, Section 1, of the General Laws, when the Chief or the Chief's designee deems it necessary in the interest of public safety.

## **§ 190-9. Temporary Parking Restrictions**

The Chief of Police or the Chief's designee is hereby authorized to temporarily prohibit parking on any way or part thereof: in an impending or existing emergency; to allow work to be performed upon, under, above, or adjacent to anyway; for lawful assemblage, demonstration or procession; or when it is necessary in the interest of public safety.

In the case of an emergency, the Chief of Police or the Chief's designee may order the towing and removal of vehicles at the expense of the owner of the vehicle.

If vehicles are parked in places or in such a manner that they impede work, and if temporary "no parking" signs were not posted, a police officer may order that a vehicle be relocated by towing it and placing it elsewhere on the same or contiguous street, at the expense and liability of the person, company, or entity performing the work or services in or from the way. If a vehicle is relocated, the Police Department shall attempt to notify the owner of the vehicle's location.

## **§ 190-10. Temporary Traffic Plans**

Except upon the consent of the Chief of Police or the Chief's designee, no person shall place, stand, or park a motor vehicle, trailer, construction equipment, other equipment or other vehicle of any kind, nor shall they place goods or materials of any kind, upon any way, including the travel way, parking lanes, sidewalk, or other public appurtenances thereto, (1) with the intent to open said street or highway or to perform work or services upon, under, above, or adjacent to said way, or (2) in such a manner or condition that the movement of vehicles or pedestrians upon or within said street or highway is blocked or impeded.

The Chief of Police or the Chief's designee shall determine appropriate traffic control measures including the erecting of temporary signs, cones, lights, detours, the use of a police officer, or the use of a police officer in the capacity as a private detail, a road flagger, or other measures. It shall be the responsibility of the Chief of Police or the Chief's designee to review, and when the Chief or the Chief's designee concurs, to approve, all construction and safety plans within the Town of Hopkinton.

## **TOWN OF HOPKINTON**

# **TOWN OF HOPKINTON**

## **CHAPTER 195**

### **WASTEWATER COLLECTION SYSTEM**

#### **ARTICLE I**

##### **General Provisions**

- §195-1. Authority.**
- §195-2. Control of inflow/infiltration.**
- §195-3. User compliance**
- §195-4. Severability.**
- §195-5. Glossary of terms**
- §195-6. Passage and Approval**

#### **ARTICLE II**

##### **Prohibited Wastewater Discharges**

- §195-7. Restrictions on wastewater discharges.**
- §195-8. Conditional prohibitions for wastewater discharges.**
- §195-9. Prohibitions on extraneous water discharges**
- §195-10. State requirements.**
- §195-11. Town's right of revision.**
- §195-12. Dilution prohibited in absence of treatment.**
- §195-13. National Categorical Pretreatment Standards.**
- §195-14. Maximum restrictions.**

#### **ARTICLE III**

##### **Control of Prohibited Wastes**

- §195-15. Regulation actions.**
- §195-16. Submission of plans.**
- §195-17. Pretreatment facilities operations.**
- §195-18. Admission to property.**
- §195-19. Protection from accidental discharge**
- §195-20. Reporting of accidental discharge.**

#### **ARTICLE IV**

##### **Use of System for Discharge of Industrial Waste**

- §195-21. Wastewater discharge permit.**
- §195-22. Indemnification.**
- §195-23. Equalization basin.**
- §195-24. Control manhole.**
- §195-25. Measuring device.**
- §195-26. Grease, oil and sand interceptors**
- §195-27. Plan approval required prior to construction of certain facilities.**
- §195-28. Special agreement.**
- §195-29. Surcharge.**
- §195-30. Surcharge billing.**
- §195-31. Determination of character and concentration of waste.**
- §195-32. Monitoring and testing procedures.**
- §195-33. Binding nature of determination by town.**
- §195-34. Cost.**
- §195-35. Alteration of normal industrial operations**
- §195-36. Bypassing of pretreatment facilities**

#### **ARTICLE V**

##### **Permit System for Industrial Discharge**

- §195-37. Required wastewater discharge permits.**
- §195-38. Permit application**
- §195-39. Permit conditions.**
- §195-40. Self-monitoring report.**
- §195-41. Records and monitoring.**
- §195-42. Duration of permits.**
- §195-43. Transfer of a permit.**
- §195-44. Revocation of permit.**
- §195-45. Confidential information.**

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## **ARTICLE VI**

### **Septage Waste Disposal**

- §195-46. Disposal fee.**
- §195-47. Minimum charge.**
- §195-48. Billing increment.**
- §195-49. Payments.**
- §195-50. Returned checks.**
- §195-51. Haulers without liquid-level Indication.**
- §195-52. Disposal hours.**
- §195-53. Required septage disposal permits.**
- §195-54. Septage disposal policy.**
- §195-55. Acceptance of septage.**
- §195-56. Sample of septage for testing.**
- §195-57. Industrial on-site waste disposal.**
- §195-58. Responsibility for damage.**
- §195-59. Revocation of discharge privileges.**
- §195-60. Insurance.**
- §195-61. Septage receiving procedures.**

## **ARTICLE VII**

### **Penalties and Enforcement procedures For Industrial Users and Septage Hauler**

- §195-62. Violations.**
- §195-63. Notification of violation.**
- §195-64. Compliance order.**
- §195-65. Order to show cause**
- §195-66. Show-cause hearing**
- §195-67. Remedies.**
- §195-68. Disconnection of service.**
- §195-69. Damage to town property.**
- §195-70. Legal action by the Town of Hopkinton**
- §195-71. Falsifying information.**

## **ARTICLE VIII**

### **Appeals from Fees and Charges**

- §195-72. Appeal by aggrieved users Authorized.**
- §195-73. Filing of complaint; review by town**
- §195-74. Notification of decision; payment of disputed bill.**
- §195-75. Negative finding; objection to Decision.**

## **ARTICLE IX**

### **Intermunicipal Agreements**

- §195-76. Westborough Treatment not exclusive**
- §195-77. References**
- §195-78. Construal of Provisions.**

## **ARTICLE X**

### **Rules and Regulations**

- §195-79. Authority.**
- §195-80. Violations and penalties.**

[HISTORY: Adopted by the special Town Meeting of the Town of Hopkinton 9-26-1988 STM, Art. 6.  
Amendments noted where applicable.]

# TOWN OF HOPKINTON

## ARTICLE I

### General Provisions

#### **§ 195-1. Authority.**

Hopkinton will connect their sewers with the Town of Westborough's sewers for transporting wastewater to the Westborough treatment plant. Hopkinton's use of the plant is subject to the direction, control and regulation of the Westborough Treatment Plant Board. Any person or governmental agency may connect building sewers with such sewers according to regulations of the town and the Board and to such terms, conditions and regulations as prescribed by each municipality.

#### **§ 195-2. Control of inflow/infiltration.**

All new systems of sewers and extensions of existing systems shall be so constructed as to prevent any and all inflow/infiltration in amounts considered excessive by federal standards. All existing sewerage systems shall be maintained to eliminate any and all inflow/infiltration considered excessive by DEQE.

#### **§ 195-3. User compliance.**

Users shall make wastewater acceptable in accordance with these regulations before discharging to the Hopkinton wastewater collection system. Users required to pretreat wastewater shall do so in accordance with the procedures described in Articles IV, V and VI of these rules and regulations. Users subject to applicable federal or state pretreatment standards shall be in compliance with such standards within the time required by those standards. In addition, the town may deny or place conditions on new or increased

#### **§ 195-4. Severability.**

If any provision, paragraph, word, section or article of these rules and regulations is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

#### **§ 195-5. Glossary of terms.<sup>1</sup>**

Unless the context specifically indicates otherwise, the meaning of terms used in these rules and regulations shall be as follows:

**ACT** – Refers to the Federal Water Pollution Control Act Amendments of 1972, PL 92500 and amendments thereto; commonly referred to as the “Clean Water Act.”

**AMMONIA NITROGEN (NH<sup>3</sup>)** – The initial product in the decomposition of nitrogens organic matter as measured by using standard laboratory methods. Expressed in milligrams per liter (mg/l).

**AUTHORIZED REPRESENTATIVE** – Refers to:

- (1) A principal executive officer at least the level of Vice President if the user is a corporation;
- (2) A general partner or proprietor if the user is a partnership or proprietorship; or
- (3) A duly authorized representative of either (1) or (2) if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

**BIOCHEMICAL OXYGEN DEMAND (BOD)** – The quantity of oxygen utilized in the biochemical oxidation or organic matter under standard laboratory procedure in five days at 20° C, expressed in mg/l.

## TOWN OF HOPKINTON

<sup>1</sup> Note: Terms not otherwise defined herein shall be as adopted in the latest edition of Standard Methods for the Examination of Water and Wastewater (Standard Methods), published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.

**BOARD** – Refers to the Westborough Treatment Plant Board or its authorized representatives, which is responsible for the control and management of the Westborough treatment plant.

**BOARD OF HEALTH** – The duly appointed members of the Board of Health of the Town of Hopkinton or their authorized agent or representative.

**BOARD OF SELECTMEN** – The duly elected members of the Board of Selectmen of the Town of Hopkinton.

**CHEMICAL OXYGEN DEMAND (COD)** -The quantity of equivalent oxygen utilized in the chemical oxidation of organic matter as measured by standard laboratory methods, expressed in mg/l.

**COMPATIBLE POLLUTANT** – **BOD** suspended solids (TSS, pH and fecal coliform bacteria) and such additional pollutants as are now or may be in the future specified and controlled in Westborough's NPDES permit for its wastewater treatment plant where said system has been designed and used to reduce or remove such pollutants.

**CONSISTENT REMOVAL** – Reduction in the amount of a pollutant or alteration of the nature of a pollutant by the wastewater treatment system to a less toxic or harmless state in the effluent which is achieved by the system in 95% of the samples taken when measured according to the procedures described in 40 CFR 403.7(c)(2).

**COOLING WATER** – The water discharged from any use, such as air conditioning, cooling or refrigeration, to which the only pollutant added is heat.

**DOMESTIC WASTES** – Liquid wastes derived from the noncommercial preparation, cooking and handling of food or from human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities and institutions.

**GARBAGE** – The solid wastes from the domestic and commercial activities related to preparation, cooking and dispensing of food and/or from the handling, storage and sale of food.

**GRAB SAMPLE** – A sample that is taken from a waste stream on a one-time basis.

**IMMEDIATE DISSOLVED OXYGEN DEMAND (IDOD)** – The quantity of oxygen utilized by an industrial waste in excess of that normally attributable to sewage as measured by using standard laboratory methods, expressed in mg/l.

**INCOMPATIBLE POLLUTANT** – Any pollutant that is not a compatible pollutant (as defined above).

**INDIRECT USER OR USERS** – The discharge or the introduction into the WWTP of pollutants, from any source, other than a domestic source, regulated under Section 307(b), (c) or (d) of the Act.

**INDUSTRIAL DISCHARGE** – A source of an indirect discharge.

**INDUSTRIAL WASTEWATER** – The liquid wastes resulting from the processes employed in industrial, manufacturing, trade or business establishments as distinct from domestic wastes.



# **TOWN OF HOPKINTON**

**INDUSTRIAL WASTEWATER DOCUMENT** – Any permit, contract or legally enforceable control mechanism for the introduction of industrial wastewater.

**INFILTRATION** – The water entering a sanitary sewer (including sewer service connections) from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.

**INFLOW** – The water discharged into a sanitary sewer (including service connections) from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross-connections from the storm sewers and combined sewers, catch basins, stormwater, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

**NATIONAL CATEGORICAL PRETREATMENT STANDARDS or PRETREATMENT STANDARD** – Any regulation containing pollutant discharge limits promulgated by the Environmental Protection Agency (EPA) in accordance with Section 307(b) and (c) of the Act (33 U.S.C. § 1347) which applies to a specific category of industrial users.

**NATIONAL PROHIBITIVE DISCHARGE STANDARD or PROHIBITIVE DISCHARGE STANDARD** – Any regulation developed under the authority of 307(b) of the Act and 40 CFR, Section 403.5.

**NEW SOURCE** – Any building, structure, facility or installation from which there is or may be discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with the section.

**PERSON** – Any individual, firm, company, partnership, corporation, association, group or society; includes the State of Massachusetts and agencies, districts, commissions and political subdivisions created by or pursuant to state law.

**pH** – The logarithm (base 10) of the reciprocal of the hydrogen ion concentration, and indicates the degree of acidity or alkalinity of a substance. A pH of 7.0 is neutral, above 7.0 is alkaline and below 7.0 is acid.

**PRETREATMENT** – The application of physical, chemical and/or biological processes to reduce the amount of pollutants in (or to alter the nature of the pollutant properties in) a wastewater prior to discharging such wastewater into the publicly owned wastewater treatment plant.

**PRETREATMENT STANDARDS** – All applicable federal rules and regulations implementing Section 307 of PL 92-500, as well as any non-conflicting state or local standards. In cases of conflicting standards or regulations the more stringent thereof shall be applied.

**SANITARY SEWER** – a sewer intended to receive domestic sewage and industrial waste, except that of the type expressly prohibited by these regulations, without the admixture of surface and storm water.

**SEPTAGE** – the liquid and solid wastes of sanitary sewage origin that are removed from a cesspool, septic tank or similar receptacle.

**SHALL** – A mandatory term; while “may” indicates permissiveness.

# TOWN OF HOPKINTON

**SIGNIFICANT INDUSTRIAL USER** – any industrial user who meets one or more of the following five criteria:

Has a wastewater flow greater than 25,000 gallons per day (gpd).

Discharges wastewater from a primary categorical industry.

Discharges excessive compatible pollutants as defined herein.

Discharges incompatible pollutants as defined herein.

Has an existing or planned pretreatment facility.

**SLUDGE** – Water containing varying amounts of solid contaminants removed from water, sanitary sewage, wastewater or industrial wastes by physical, chemical and biological treatment.

**SLUG** – Any excessive discharge of wastewater whereby the concentration of any given constituent or the quantity of flow exceeds for 15 minutes or more five times the average twenty-four-hour concentration of flows during normal operation and which may adversely affect the sewerage system.

**STANDARD INDUSTRIAL CLASSIFICATION (SIC)** – Classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and budget, 1972, as amended from time to time.

**STANDARD METHODS** – Methods of laboratory analysis as described in the most current editions of:

- (1) Standard Methods for the Examination of Water and Wastewater, American Public Health Association;
- (2) Methods for Chemical Analysis of Water and Wastes, United States Environmental Protection Agency;
- (3) Annual Book of Standards, American Society of Testing and Materials; or
- (4) Any other published methods of laboratory analyses which have the approval of the state or federal regulatory agencies.

**STORM SEWER or STORM DRAIN** – A sewer which carries storm or surface waters and drainage, but excludes sewage and industrial wastes.

**STORMWATER** – Any flow occurring during or immediately following any form of natural precipitation and resulting therefrom.

**TOTAL FIXED SOLIDS** – The nonvolatile filterable and nonfilterable solids in a wastewater sample as determined by standard laboratory procedures.

**TOTAL PHOSPHORUS (P)** – All of the phosphorus present, regardless of form, as measured by standard laboratory methods, expressed in mg/l or lb/day.

**TOTAL SUSPENDED SOLIDS (TSS)** – The total suspended matter that floats on the surface of, or in suspended in, water wastewater or other liquids, and which is removable by laboratory filtering.

**TOWN** – the Town of Hopkinton, which is responsible for the control and management of the Hopkinton wastewater collection system, or the Director of Public Works, acting as its authorized representative and agent to enforce the provisions of this Chapter.” [Amended 5-3-2010 ATM, Art. 34]

## **TOWN OF HOPKINTON**

**TOXIC POLLUTANT** – Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under Section 307(a) of the Act, or other Acts; or in regulations promulgated under MGL c.21, including but not limited to 314 CMR 3.00, 7.00 and 12.00.

**UNPOLLUTED WATER** – Water not containing any pollutants limited or prohibited by the effluent standards in effect or water whose discharge will not cause any violation of receiving water quality standards.

**USER** – Any person as heretofore defined who discharges, causes or permits the discharge of wastewater either directly or indirectly into the wastewater collection system.

**USER CHARGE SYSTEM** – The system adopted by the Town of Hopkinton for the assessment of costs of the use of the Hopkinton wastewater collection system and the Westborough wastewater treatment facility as approved by the United States EPA.

**USER CLASSIFICATION** – A classification of user based on the 1972 (or subsequent) edition of the Standard Industrial Classification (SIC) Manual prepared by the United States Office of Management and Budget.

**WASTEWATER** – The liquid and water that carries industrial or domestic waste from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is discharged into or permitted to enter Hopkinton's wastewater collection system.

**WASTEWATER DISCHARGE SITE** – An authorized sewer tap joining a user's system to the wastewater collection system.

**WASTEWATER TREATMENT PLANT** – Any devices, facilities, structures, equipment or work under the control and management of the Westborough Treatment Plant Board and used for the storage, treatment, recycling and reclamation of industrial and domestic wastewater and including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

**WESTBOROUGH WASTEWATER TREATMENT FACILITY (WWTF)** – The works as defined by Section 412 of the Acts of 1979, known as the "Westborough wastewater treatment facility," which is owned by the Town of Westborough. This includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage of industrial wastes of a liquid nature.

### **§ 195-6. Passage and approval.**

These rules and regulations shall be in full force and effect from and after their passage, approval, recording and publication as provided by law; passed and adopted by the Town of Hopkinton, Massachusetts on the 26<sup>TH</sup> day of September 1988.

# TOWN OF HOPKINTON

## ARTICLE II

### Prohibited Wastewater Discharges

#### § 195-7. Restrictions on wastewater discharges.

No person shall discharge, deposit, cause or permit the discharge or deposit of any waste into the wastewater collection system or any wastewater which contains the following unless authorized in the industrial wastewater document:

- A. Oils and grease: total fat, wax, grease or oil (exclusive of petroleum substances) of concentrations of more than 100 mg/l, whether emulsified or not, or containing substances that may solidify or become viscous at temperatures between 0°C. and 65°C. at the point of discharge into the system.
- B. Petroleum substances: viscous, hydrocarbon mixtures, such as gasoline, asphalt waste, lubricating oil and/ or grease in any concentration.
- C. Explosive mixtures: liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the sewerage facilities. At no time shall two successive readings on an explosion hazard meter, at the point of discharge, be more than 5% or any single reading over 10% of the lower explosive limit (LEL) of the explosive substance as defined in Standard Methods. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, perchlorates', bromates, carbides, hydrides and sulfides.
- D. Improperly shredded garbage: garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in the sanitary sewers, with no particle greater than ½ inch in any dimension.
- E. Noxious material: noxious or malodorous solids, liquids or gases, which, either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life or are or may be sufficient to prevent entry into a sewer for its maintenance and repair.
- F. Radioactive wastes: radioactive wastes or isotopes of such half-life or concentration that they do not comply with regulations or orders issued by the appropriate authority having control over their use and which will or may cause damage or hazards to the wastewater collection system or to personnel operating the system.
- G. Solid or viscous wastes: solid or viscous wastes which will or may cause obstruction of the flow in the sewers, or may otherwise interfere with the proper operation of the pumping stations. Prohibited materials include, but are not limited to, grease, uncommuted garbage, animal guts or tissues, paunch, manure, bones, hair, hides of fleshing, entrails, whole blood, feathers, ashes, cinders, sand, egg shells, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastic, tars, asphalt residues, residues from refining or processing of fuel or lubricating oil, coagulants, flocculants, polymerized liquid materials and similar substances.

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- H. Excessive discharge rate: any wastewater whose flow exceeds, for any time period longer than 15 minutes, more than 1.5 times the average twenty-four-hour flow, and any wastewater, whose concentration or quantity of pollutants exceeds, for any time period longer than 15 minutes, more than five times the average twenty-four-hour concentration or quantity of pollutants, and that could cause a treatment process upset and/or subsequent loss of treatment efficiency at the Westborough treatment facility.
- I. Toxic substances: any toxic substances as defined herein, including but not limited to chemical elements or compounds, phenols or other taste- or odor-producing substances, or any other substances that are not susceptible to treatment or that may interfere with the biological processes or efficiency of the Westborough wastewater treatment plant, or that will pass through the system to the receiving stream untreated, except as regulated in items Subsections N through T below and permitted in the user's industrial discharge document.
- J. Unpolluted waters: Any unpolluted water, not requiring treatment before discharge to the stream, which will increase the hydraulic load on the wastewater collection system, including cooling water and roof and yard drainage.
- K. Corrosive wastes: any waste that will cause corrosion or deterioration of the wastewater collection system or wastewater treatment plants. All wastes discharged to Hopkinton's collection system must have a pH value in the range of 6.0 to 9.0 standard units. Prohibited materials include but are not limited to acids, sulfides, concentrated chloride and fluoride compounds and substances that will react with water to form acids and/or alkaline products.
- L. Colors: any wastewater with objectionable color, either real or apparent, not removed in the treatment process, such as but not limited to dye, wastes and vegetable tanning solutions.
- M. Fibers: any clothing, rags, textile remnants or waste, cloth, scraps or fibers, except fibers or scrap that will pass through a one-fourth-inch screen or its equivalent in screening ability. When necessary to protect the collection system, additional screening may be required.
- N. TSS: any wastes or waters in which the TSS exceeds 300 mg/l.
- O. BOD: any waters or wastes in which the BOD exceeds 300 mg/l.
- P. COD: any waters or wastes in which the COD exceeds 750 mg/l.
- Q. IDOD: any waters or wastes in which the IDOD exceeds 5.0 mg/l.
- R. P: any waters or wastes in which the P exceeds 15 mg/l.
- S.  $\text{NH}_3$ : any waters or wastes in which the  $\text{NH}_3$  exceeds 15 mg/l.
- T. Temperature: any liquid or vapor having a temperature higher than 60° C. (140°F.)

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- U. Total fixed solids: any water or wastes in which the total fixed residue exceeds 1,500 mg/l.
- V. Excessive substances: any materials that form excessive amounts of scum or foam which may interfere with the operation of the collection system or any substances that may cause undue additional labor in connection with its operation.
- W. Sludges: deposited solids or residuals resulting from an industrial or pretreatment process.
- X. Heavy metals: any waters or wastes containing amounts of cadmium, chromium, copper, mercury, nickel, zinc or other heavy metals that are in an ionic or chemically active state and that may interfere with the biological treatment of the wastewater or the use or disposal of sludge.
- Y. Chemical discharges: the discharge of cadmium (Cd), Silver (Ag), Molybdenum (Mo) and/or Mercury (Hg) is prohibited except for those industrial users who obtain approval of their discharge by the town. Such discharge limitations will be specified in the applicable industrial wastewater discharge permit and will be determined by the town in a case-by-case basis to protect the final use or disposal of sludge.
- Z. Other discharges: the discharge of polychlorinated biphenyls (pcb's) and dioxin will not be permitted in excess of federal or state regulated quantities.

### **§ 195-8. Conditional prohibitions for wastewater discharges.**

No person shall discharge or convey, or permit or allow to be discharges or conveyed, to the collection system any wastewater containing pollutants of such character or quantity that:

- A. Interferes with the process or efficiency of the Westborough treatment plant or that is not susceptible to treatment.
- B. Constitutes a hazard to human or animal life or to the stream or to the watercourse receiving the Westborough treatment plant effluent.
- C. Violates pretreatment standards, as promulgated by the State of Massachusetts or the United States EPA in 40 CFR, Part 403, and subsequent provisions related thereunto.
- D. Causes the Westborough treatment plant to violate its NPDES permit or applicable receiving water standards or applicable sludge management criteria, guidelines or regulations.
- E. Constitutes a nuisance.

### **§ 195-9. Prohibitions on extraneous water discharges.**

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff or subsurface drainage into the collection system. No person shall connect, or cause to be connected, any pipe or conduit which will allow the discharge of the aforelisted source of inflow into the collection system.

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## **§ 195-10. State requirements.**

Requirements and limitations on discharges set by the DEQE shall apply in any case where they are more stringent than federal requirements and limitations or than those contained in these rules and regulations.

## **§ 195-11. Town's right of revision.**

The town reserves the right to establish, by amendment to these rules and regulations, limitations or requirements on discharges to the collection system if deemed necessary to comply with the objectives presented in Article II of these rules and regulations.

## **§ 195-12. Dilution prohibited in absence of treatment.**

Except where expressly authorized to do so by an applicable National Categorical Pretreatment Standard, no user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in any National Categorical Pretreatment Standards or in any other pollutant-specific discharge limitation developed by the town.

## **§ 195-13. National Categorical Pretreatment Standards.**

Upon the promulgation of National Categorical Pretreatment Standards for a particular industrial subcategory, the pretreatment standard, if more stringent than limitations imposed under these rules and regulations, shall immediately supersede, for users in that subcategory, the limitations imposed under these rules and regulations. The town shall notify all affected users of the applicable reporting requirements under 40 CFR 403.12 and 314 CMR 2.00, 7.00 and 12.00.

## **§ 195-14. Maximum restrictions.**

In the event the effluent standards and limitations adopted in these regulations are more restrictive than those most applicable to state or federal effluent standards and limitations, then the most stringent thereof shall be applied.

## **ARTICLE III**

### **Control of Prohibited Wastes**

## **§ 195-15. Regulation actions.**

If wastewaters containing any prohibited substance (described in Article II) are discharged or proposed to be discharged into the collection system, the town may take any action necessary to:

- A. Prohibit the discharge of such wastewater.
- B. Require a user to demonstrate that in-plant modification will reduce or eliminate the discharge of such substances in conformity with these rules and regulations.
- C. Require pretreatment, including storage facilities, and/or flow equalization necessary to reduce or eliminate the objectionable characteristics and/or substances so that the discharge will not violate these rules and regulations.

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- D. Require that user who is making, causing or allowing the discharge to pay any additional cost or expense incurred by the town for handling and treating excess loads and/or conditions imposed on the Westborough treatment plant.
- E. Take such other remedial action as may be deemed to be desirable or necessary to achieve the purpose of these rules and regulations.

### **§ 195-16 Submission of plans.**

Where treatment or equalization of wastewater flows prior to discharge into the collection system is required, plans, specifications and other pertinent data or information relating to such pretreatment or flow control facilities shall be submitted to the town for review and approval before construction begins. Such approval shall not exempt the discharge of such facilities from compliance with any applicable code, ordinance, rule, regulation or order of any governmental authority. Any subsequent alterations or additions to such pretreatment or flow control facilities shall not be made without due notice to and prior approval of the town.

### **§ 195-17. Pretreatment facilities operations.**

If pretreatment or control of wastewater flows is required, such facilities shall be maintained in good working order and shall be operated by the user at his own cost and expense, subject to the requirements of these rules and regulations and of all other applicable codes, ordinances and laws, whether municipal, state or federal.

### **§ 195-18. Admission to property.**

Whenever it is necessary for the enforcement of the provisions of these rules and regulations, the town, upon the presentation of credentials, may enter upon any property or premises at reasonable times to copy any records required to be kept under the provisions of these regulations, inspect any monitoring equipment or method and sample any discharge of wastewater to the collection system. The town may enter the property at any hour under emergency circumstances. If such request is denied, it will be considered grounds for discontinuing services.

### **§ 195-19. Protection from accidental discharge.**

Each user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by these regulations. Facilities needed to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's own expense. Plans showing facilities and operating procedures for this protection shall be submitted to the town for review and shall be approved by the town before construction of the facility. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility of modifying his facility, as necessary, to meet the requirements of these rules and regulations.

### **§ 195-20. Reporting of accidental discharge.**

If, for any reason, a user does not comply with or is unable to comply with any prohibition or limitation of these regulations, the user responsible for such discharge shall immediately notify the town so that corrective action may be taken to protect the collection system and Westborough's wastewater treatment system. In addition a written report shall be sent to the town by the responsible user within 30 days of the occurrence of the noncomplying discharge. This report shall detail the date, time and cause of the accidental



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discharge; the quantity and characteristics of the discharge; and the corrective action taken to prevent future noncomplying discharges.

## **ARTICLE IV**

### **Use of System for Discharge of Industrial Waste**

#### **§ 195-21. Wastewater discharge permit (permit).**

Any major industrial user who shall hereafter discharge any industrial wastes into the collection system shall make application to the town for a permit to discharge wastewater into the collection system. Approval will be granted such applicants and a permit issued for a period not to exceed two years when evidence is submitted by the applicant that the discharge of wastes will comply with these regulations and with applicable state and federal lawful requirements, subject to any special agreements allowed by the town as stated in the permit. When an industrial user has operated within the terms and conditions of the permit and where no changes in the discharge are planned, extension of the permit for another two-year period shall be granted upon written request by a letter. The permit holder must reapply for permit reissuance at least 90 days prior to the permit expiration date.

#### **§ 195-22. Indemnification.**

Industrial users agree to indemnify and save harmless the town from any and all liability, loss or damage the town may suffer as a result of claims, demands, costs or judgments against it arising as a result of the discharge of industrial wastewater by the industrial user in violation of the Comprehensive Environmental Response Compensation Act, 42 U.S.C. § 9601 et seq., as amended from time to time, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq., as amended from time to time, and/or MGL c. 21E, as amended from time to time, and regulations promulgated by the United States Environmental Protection Agency and/or the Massachusetts Department of Environmental Quality Engineering pursuant to the foregoing statutes.

#### **§ 195-23. Equalization basin.**

In order to equalize flows over a twenty-four-hour period, each user discharging a waste to the collection system in sufficient volume to interfere with the normal operation of the town's collection system and with the proper treatment and disposal of sewage at the Westborough wastewater treatment plant shall construct and maintain at his own expense a suitable equalization basin. Said basin shall have a capacity adequate to control the flow rate in accordance with § 195-7H and an outlet to the sewer controlled by a waterworks-type rate controller, or other approved device, the setting of which shall be approved by the town.

#### **§ 195-24. Control manhole.**

Any person discharging industrial wastes to the collection system shall construct and maintain a suitable control manhole to facilitate observation, measurements and sampling of all wastes, including domestic sewage from the user. The manhole shall be installed by the user discharging the wastes at his own expense and shall be maintained by the user so as to be safe, accessible and in proper operating condition at all times.

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### **§ 195-25. Measuring device.**

Where an equalization basin is not required, the control manhole shall be equipped with a permanent-type volume measuring device and/or flow meter approved by the town. The measuring device shall be installed by the user discharging the wastes at his own expense and shall be maintained by the user so as to be safe, accessible and in proper operating condition at all times.

### **§ 195-26. Grease, oil and sand interceptors.**

Grease, oil and sand interceptors shall be required when, in the opinion of the town, 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 maintained by the user at his expense, in continuously efficient operation at all times.

### **§ 195-27. Plan approval required prior to construction of certain facilities.**

Plans for the construction of equalization basins, control manholes and measuring devices and grease, oil and sand interceptors shall be approved by the town prior to the beginning of construction.

### **§ 195-28. Special agreement.**

Any waters or wastes discharged by any major industrial user, which have characteristics prohibited in Article II, may be admitted to the collection system when such discharge is approved by the town within the wastewater discharge permit as a special agreement. Such discharges will be subject to a surcharge as defined in § 195-29.

### **§ 195-29. Surcharge.**

When the concentration of BOD, COD, TSS or  $\text{NH}_3$  in the industrial waste discharged into the collection system exceeds the limits prescribed in Article II, a surcharge shall be imposed. Charges will be made for poundage in excess of the allowable poundage of TSS,  $\text{NH}_3$  and either BOD or COD, whichever yields the greater charge.

### **§ 195-30. Surcharge billing.**

The surcharge of each parameter shall be applied in addition to the regular user charge, as determined by the user charge system, and shall be billed separately by the town.

### **§ 195-31. Determination of character and concentration of waste.**

The industrial waste of each user discharging such wastes into the collection system shall be subject to periodic inspection, and a determination of character and concentration of such wastes shall be made as often as may be deemed necessary by the town. Such inspection and tests shall also be made immediately after any process change which may affect the quantity or quality of the wastes discharged.

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### **§ 195-32. Monitoring and testing procedures.**

Samples shall be collected in such a manner as to be representative of the actual quality of the waste. Laboratory methods used in the examination of such waste shall be those set forth in Standard Methods those set forth by the EPA in 40 CFR, Part 136.

### **§ 195-33. Binding nature of determination by town.**

The determination of the character and concentration of the industrial wastewater by the town shall be binding as a basis for charges.

### **§ 195-34. Cost.**

For any user required to meet pretreatment standards as promulgated by the state or federal government for these rules and regulations, costs incident to the supervision, inspection, sampling and analyzing of wastes shall be billed to the user in addition to any other charges for use of the collection system. The town will set a schedule of fees which may be revised annually for this purpose

### **§ 195-35. Alteration of normal industrial operations.**

Notice shall be given the town when normal industrial operation will not be available for discharge, or when a change of process is contemplated, or malfunction of the pretreatment facility occurs or is anticipated, which will alter demands on the Westborough wastewater treatment plant. Normal operations shall include allowance for legal holidays and other announced plan shutdowns.

### **§ 195-36. Bypassing of pretreatment facilities.**

Where preliminary treatment or holding facilities are required for any purpose, they shall be maintained continuously in satisfactory and effective operation by the user at his expense. There shall be no direct discharge of wastes requiring pretreatment to the collection system without first notifying and obtaining approval from the town for the bypassing of the pretreatment facility.

## **ARTICLE V Permit System for Industrial Discharge**

### **§ 195-37. Required wastewater discharge permits.**

All major industrial users, proposing to connect to or discharge into any part of the collection system, must first obtain a permit. All existing major industrial users, connected to or discharging to any part of the collection system, must obtain a permit within 90 days following the effective date of these regulations. No major industrial user shall discharge without a valid permit or without the express written permission of the town.

### **§ 195-38. Permit application.**

A. Users seeking a wastewater discharge permit shall complete and file with the town an application on the prescribed form; the complete form shall be accompanied by the applicable fee. In support of this application, the user shall submit the following information:

- (1) Name, address, and standard industrial classification number of applicant.

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- (2) Volume of wastewater to be discharged.
- (3) Wastewater constituents and characteristics, including but not limited to those set forth in Article II of these rules and regulations as determined by a reliable and certified analytical laboratory.
- (4) Time and duration of discharge.
- (5) Average and sixty-minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any.
- (6) Site plans, floor plans and plumbing plans to show location of water- and sewer lines, location of wet and dry processes and location of chemical storage facilities.
- (7) Description of activities, facilities and plant processes on the premises, including all chemicals, materials and types of materials which are, or could be, discharged.
- (8) Number of employees and hours of operation of facilities.
- (9) Where known, the nature and daily maximum and average concentration of any pollutants in the discharge that are limited by any board or state discharge standard or by any applicable National Categorical Pretreatment Standards. Also required is a statement regarding whether or not any applicable pretreatment requirement or standard is being met on a consistent basis and, if not, whether O&M and/or additional pretreatment is required for the user to meet the applicable pretreatment standard or requirement.
- (10) If additional pretreatment and/or O&M is required to meet the above-described standards or requirements, it shall be according to the shortest schedule by which the user will provide such additional pretreatment or O&M, which shall not be later than the compliance date established for the applicable pretreatment standard or requirement. The following conditions shall apply to this schedule:
  - (a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standard or requirement (e.g. hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
  - (b) No increment [referred to in Subsection A(10)(1)] shall exceed nine months.
  - (c) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the town, including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the town.

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- (11) Any other information as may be deemed by the town to be necessary to evaluate the permit application.

B. The town will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the town may issue a wastewater discharge permit subject to terms and conditions provided herein.

### **§ 195-39. Permit conditions.**

Permits shall be expressly subject to all provisions of these regulations and to all other regulations, user charges and fees established by the town. The conditions of permits shall be uniformly enforced in accordance with these regulations and with applicable state and federal regulations. Permit conditions shall include the following:

- A. The unit charge or schedule of user charges and fees for the wastewater to be discharged to the town's collection system and to the Westborough wastewater treatment plant.
- B. The average and maximum wastewater constituents and characteristics and parameters monitoring frequency.
- C. Limits of rate and time of discharge and/or requirements for the flow regulation and equalization.
- D. Requirements for installations of inspection and sampling facilities.
- E. Requirements for maintaining and submitting self-monitoring reports and plant records relating to wastewater discharges.
- F. Daily average and daily maximum discharge rates or other appropriate conditions when pollutants subject to limitations and prohibitions are proposed or present in the user's wastewater discharge.
- G. Compliance schedules and parameter-monitoring frequency.
- H. Requirements for notification to the town of slug discharges.
- I. Other conditions to ensure compliance with these regulations.

### **§ 195-40. Self-monitoring report.**

Every major industrial user shall file a self-monitoring report at such intervals as are designated on the user's permit. The discharge report shall be filed on forms supplied by the town.

### **§ 195-41. Records and monitoring.**

- A. All significant industrial users who discharge or propose to discharge wastewaters to the collection system shall maintain such records of production, effluent flows and pollutant amounts or concentrations as are necessary to demonstrate compliance with the requirements of these regulations and with any applicable state or federal pretreatment standards or requirements.
- B. Such records shall be made available upon request by the town. All such records relating to compliance with pretreatment standards shall be made available to officials of the regulating authorities upon demand.

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- C. All significant industrial users shall be required to provide the town with yearly, updated, chemical inventory listings, plant process descriptions and plumbing diagrams.
- D. A significant industrial user, subject to the reporting requirements, shall maintain records of all information resulting from any monitoring activities required thereunder. Such records shall include for all samples:
  - (1) The date, exact place, method and time of sampling and the names of the person or persons taking the samples.
  - (2) The dates when the analyses were performed.
  - (3) Who performed the analyses.
  - (4) The analytical techniques/methods used.
  - (5) The results of such analyses.
- E. The user shall keep copies of all such records and reports of monitoring activities and their results for a minimum of three years and shall make such records available for inspection and copying by EPA, DEQE and the town. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the user or the operation of the WWTF pretreatment program, or when requested by DEQE or EPA.
- F. The user of any premises or facility discharging industrial wastes into the system shall install, at his own cost and expense, suitable monitoring equipment to facilitate the accurate observation, sampling and measurement of wastewater. Such equipment shall be maintained in proper working order and shall be kept safe and accessible at all times.
- G. Necessary monitoring equipment shall be located and maintained on the industrial user's premises at a location approved by the town.
- H. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the town's requirements and with all applicable construction standards and specifications.
- I. When more than one user can discharge into a common sewer, the town may require installation of separate monitoring equipment for each user. When there is a significant difference in wastewater constituents and characteristics produced by different operations of a single user, the town may require that separate monitoring facilities be installed for each separate operation.

### **§ 195-42. Duration of permits.**

Permits shall be issued for a specified time period, not to exceed two years. The terms and conditions of the permit may be subject to modification and change by the town during the life of the permit, as limitations or requirements identified in Article II are modified and changed or if there is new and significant information pertaining to this industrial user's discharge. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

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### **§ 195-43. Transfer of a permit.**

Permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, to a new user, to different premises or to a new or changed operation. The town shall be notified, in writing, 30 days prior to a change of ownership or operation by any user, and a new wastewater discharge permit application must be submitted to the town.

### **§ 195-44. Revocation of permit.**

Any user who violates the conditions of this permit or of these regulations or of applicable state and federal regulations may have his permit revoked. Upon revocation of the wastewater discharge permit, the user shall cease any discharge into the wastewater collection system and shall reapply to the town for issuance of a new, valid permit. Violations subjecting a user to possible revocation of his permit include but are not limited to the following:

- A. Failure of a user to accurately report the wastewater constituents and characteristics of his discharge.
- B. Failure of the user to report significant changes in operations or in wastewater constituents and characteristics.
- C. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.
- D. Violation of conditions of the permit.

### **§ 195-45. Confidential information.**

- A. Information and data on a user that is obtained from reports, questionnaires, permit applications, permits, monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the town that the release of such information would divulge information, processes or methods of production.
- B. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available, upon written request, to governmental agencies for uses related to these rules and regulations, to the NPDES permit, to the state disposal system permit and/or related to any local, state or federal pretreatment program; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review of enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.
- C. Information accepted by the town as confidential shall not be transmitted to any governmental agency or to the general public by the town until and unless a ten-day prior notification is given to the user.

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## **ARTICLE VI**

### **Septage Waste Disposal**

#### **§ 195-46. Disposal fee.**

The septage disposal fee is \$30 per 1,000 gallons.

#### **§ 195-47. Minimum charge.**

The minimum charge is \$30.

#### **§ 195-48. Billing increment.**

The billing increment is 500 gallons.

#### **§ 195-49. Payments.**

All payments must be made, prior to unloading, by a company business check.

#### **§ 195-50. Returned checks.**

Should any check be returned for nonpayment, an administrative charge of \$15 shall be assessed. If three checks are returned for nonpayment in any one year, payment will be accepted only by a bank or certified check.

#### **§ 195-51. Haulers without liquid-level indication.**

Haulers will be charged for full tank capacity if the tank does not have liquid-level indication.

#### **§ 195-52. Disposal hours.**

Septage wastes will be accepted at the Westborough wastewater treatment plant during designated hours to be established by the manager and posted at the WWTF.

#### **§ 195-53. Required septage disposal permits.**

All haulers of septage waste, wishing to discharge in the wastewater treatment plant, must first obtain a septage pumping and transportation permit from the Westborough Board of Health in accordance with MGL c. 111, § 31A, and Title 5 of the State Environmental Code, 310 CMR 15.00 Regulation 15.19.

#### **§ 195-54. Septage disposal policy.**

The septage disposal policy only allows disposal of septage from towns that legally discharge into the Westborough treatment plant. No septage will be allowed from towns outside the WWTF service area unless a legally binding treatment agreement has been negotiated between the municipality willing to discharge septage and the town.



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### **§ 195-55. Acceptance of septage.**

Septage, discharged by permitted haulers, shall be accepted into the wastewater treatment plant at a designated receiving site during hours to be specified by the plant manager, provided that:

- A. Such discharge does not contain waste of unusual strength or character.
- B. Such discharge is in compliance with all applicable rules and regulations and policies promulgated by the town and the Board.
- C. Such discharge will not create a hazard to or interfere with operation of the wastewater treatment plant, including that it takes place under the supervision of the operator in responsible charge and that there is written verification as to the origin of the septage on the septage discharge permit.
- D. All applicable fees shall be paid.

### **§ 195-56. Sample of septage for testing.**

A representative sample of the septage to be discharged will be provided prior to discharge for the purpose of testing such waste for compliance with all applicable rules and regulations. The actual discharge of the septage will be prohibited until such time as the sample is shown to be in compliance.

### **§ 195-57. Industrial on-site waste disposal.**

Industries that wish to dispose of waste from on-site disposal systems for process wastewater shall make a written request of the Board for permission to dispose of such waste. Such requests will only be granted at the Board's discretion when it has been determined that the process wastewater will not pose a hazard to the wastewater treatment plant or its personnel. When and if such permission is granted, the Board reserves the right to issue an order of conditions on the disposal and to levy any fees it deems appropriate.

### **§ 195-58. Responsibility for damage.**

The hauler shall save harmless the Town of Westborough from any responsibility for damage done to, or done by, property or participating personnel stemming from activities related to occupying the treatment plant for the purpose of disposing of septage.

### **§ 195-59. Revocation of discharge privileges.**

Any violation of these regulations may be cause of revocation of the hauler's discharge privileges.

### **§ 195-60. Insurance.**

Each hauler must carry the following amount of insurance and provide a certificate of insurance to the town:

- A. Bodily injury: \$100,000 - \$300,000.
- B. Property damage: \$20,000.

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### **§ 195-61. Septage receiving procedures.**

- A. Haulers must stop at the electric gate and contact the secretary to be admitted.
- B. The secretary will notify an operator of the septage deliver, then allow hauler to enter the facility, and log in the entry.
- C. The hauler will fill out the discharge form and provide a sample of the discharge load for the operator.
- D. The operator will date, label and test the pH of the sample for initial discharge acceptability.
- E. The operator will accept payment for the load by company business check, made out to the Town of Westborough, and attach the check to the discharge form.
- F. The operator will inspect the unloading hookup and authorize the hauler to empty the tank of his vehicle.
- G. The operator will take the completed form and sample to the Administration Building for processing.
- H. A copy of the completed form will be sent to the appropriate Board of Health.

## **ARTICLE VII**

### **Penalties and Enforcement Procedures for Industrial Users and Septage Haulers**

#### **§ 195-62. Violations.**

It shall be unlawful for any person to violate any provision of these rules and regulations relating to the pretreatment, disposition or discharge of wastes. Each violation thereof, and each day on which there is a failure to comply with the terms of said provision, shall be distinct and separate offense and punishable as such.

#### **§ 195-63. Notification of violation.**

Whenever the town finds that any user has violated or is violating these regulations, or any prohibition, limitation or requirement contained herein, he may serve upon such user a written notice stating the nature of the violation and providing a reasonable time, not to exceed 30 days, for the satisfactory correction thereof.

#### **§ 195-64. Compliance order.**

The town may issue a compliance order directing the person to take specified action to comply with these rules and regulations or to the provisions of any applicable industrial wastewater discharge permit within a time schedule set forth by the town. Said compliance order may provide for the assessment of penalties and may provide that the person's wastewater disposal service and/or industrial wastewater discharge permit shall be suspended pending submission of proof satisfactory to the town that specified violations of these rules and regulations or the industrial discharge permit have been abated or corrected.

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### **§ 195-65. Order to show cause.**

The town may order any person who has caused a discharge of pollutants, in violation of these rules and regulations or their industrial wastewater discharge permit, to show cause as to why the proposed enforcement action should not be taken. Any such Show Cause Hearing shall be noticed and conducted in accordance with the provisions in paragraph 7.5.

### **§ 195-66. Show-cause hearing.**

- A. If the violation is not corrected by timely compliance, the town may order any user who causes or allows an unauthorized discharge to show cause, before the town, why service should not be terminated or penalties assessed. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the town regarding the violations. It shall also direct the offending party to show cause before the town why an order should not be made directing the termination of service or the assessment of penalties. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing. This notice may be made on any agent or officer of a corporation or business establishment.
- B. Conduct of the hearing. The town may conduct the hearing and shall:
  - (1) Issue notices of hearings, requesting the attendance and testimony of the witnesses and the production of evidence relevant to any matter involved in such hearings.
  - (2) Take the evidence.
  - (3) Generate a report of the evidence and hearing, including transcripts and other evidence, together with recommendations of the town for action thereon.
  - (4) Take any further necessary action as permitted by these rules and regulations.
- C. Testimony recorded under oath. At any hearing held pursuant to these rules and regulations, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or to any party to the hearing upon payment of the usual charges thereof.

### **§ 195-67. Remedies.**

After the town has reviewed the evidence presented at the show-cause hearing, it may issue an order directing that in a specified period of time anyone or combination of the following actions are to be taken:

- A. The user's permit will be revoked.
- B. All discharge into the town's collection system by the user must cease.
- C. The user shall be subject to the imposition by the town of a civil penalty not to exceed \$5,000 for each violation.
- D. The use shall reimburse the Town of Hopkinton upon demand for any expense, loss or damage to the collection system, the wastewater treatment plant, the treatment processes or the receiving waters as a result of such violation and for the amount of any fine or penalty imposed upon the towns by any state or federal regulatory agency as a result of such violation.

## TOWN OF HOPKINTON

- E. The user shall take specified actions to comply with these rules and regulations or the provisions of any applicable industrial wastewater discharge permit within a time schedule set forth by the town.

### **§ 195-68. Disconnection of service.**

- A. If any user shall disregard the town's order following a show-cause hearing, the town may order termination of such user's connection with the town's collection system. The connection shall be resumed thereafter only at such user's expense and only with the approval of the town, based upon a satisfactory rectification of all past violations of these regulations and an assurance that no future violations will take place.
- B. In the case of any user discharging a waste which place the collection system and/or wastewater treatment plant in imminent danger, the town may exercise its authority to immediately sever the user's connection to the collection system. Such connection shall be resumed only under the conditions outlined above (in Subsection A), and the town shall order the user to show cause before the town why penalties (outlined in § 195-67) should not be assessed.
- C. In any case of disconnection of service, the user shall receive prior notification in writing.

### **§ 195-69. Damage to town property.**

It shall be unlawful for any person willfully to damage, destroy, uncover, deface or tamper with any equipment or materials belonging to the town and used, or intended to be used, for the purpose of taking samples or making measurements, tests, examination or repairs to the collection system. Violators shall be guilty of a misdemeanor and shall be punished as provided by law.

### **§ 195-70. Legal action by the Town of Hopkinton.**

- A. If any person discharges sewage, industrial waste or other waste into the collection system contrary to the provisions of these rules and regulations; any applicable federal, state or local pretreatment requirements; the conditions and requirements of any industrial wastewater discharge permit issued hereunder; or any order of the town, the Town of Hopkinton may commence an action for appropriate legal and/or equitable relief in either state or federal court.
- B. In addition to any penalties provided by these rules and regulations, the town shall be entitled to recover reasonable attorneys' fees, court costs, court reporters' fees and other expenses or litigation from any user found to have violated these rules and regulations, any order issued hereunder or any permit condition.

### **§ 195-71. Falsifying information.**

Any person who knowingly makes any false statement, false representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to these rules and regulations or to an industrial wastewater discharge permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under these rules and regulations shall, upon conviction, be punished by a fine not to exceed the maximum amount allowed under the Bylaws of the Town of Hopkinton and the laws of the Commonwealth of Massachusetts or by imprisonment for not more than six months, or by both.

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## **ARTICLE VIII**

### **Appeals From Fees and Charges**

#### **§ 195-72. Appeal by aggrieved users authorized.**

Users aggrieved by charges, fees or surcharges assessed for use of the treatment facility, or by a decision of the town, may appeal as provided for in the next section.

#### **§ 195-73. Filing of complaint; review by town.**

A sewer user may file a written complaint with the town within 30 days of receipt of the disputed decision, user charge, fees or surcharge assessment. Once the complaint is received, it shall be reviewed by the town to verify information supplied in the complaint.

#### **§ 195-74. Notification of decision; payment of disputed bill.**

The complainant shall be notified in writing of the town's decision within 30 days of the complaint. If the town cannot issue a decision within that time frame, the complainant shall be notified in writing that the matter is still under review and a decision is pending. Since nonpayment of water and/or sewer charges may result in a lien on the individual's property, the complainant must pay any disputed bill. Any abatement which may be due will be forwarded to the complainant at the time of a finding in favor of the complainant.

#### **§ 195-75. Negative finding; objection to decision.**

If a negative finding is made by the town, the complainant shall be notified as to the grounds upon which the complaint was defined. Should the complainant wish to object to the decision, the complainant may exercise his right, if any, under the law.

## **ARTICLE IX**

### **Intermunicipal Agreements**

**[Adopted 5-3-2010 ATM, Art. 34]**

#### **§ 195-76. Westborough Treatment Not Exclusive.**

Nothing in this Chapter shall be construed to require that wastewater discharged into the Hopkinton sewer system be transported to the Westborough wastewater treatment plant or to prevent the Town of Hopkinton from entering into an Intermunicipal Agreement providing for the treatment of such wastewater by another wastewater treatment facility.

#### **§ 195-77. References to "Westborough."**

To the extent that the context otherwise permits, all references to "Westborough" in sections 195-1 through 195-75, inclusive, of this Chapter shall be construed to mean "Westborough or Milford;" all references therein to the "Westborough wastewater treat plant" shall be construed to mean the "Westborough wastewater treatment plant or Milford Publicly Owned Treatment Works;" all references therein to the "Westborough wastewater treat facility" shall be construed to mean the "Westborough wastewater treatment facility or Milford Publicly Owned Treatment Works;" and all references therein to a regulation or requirement of the "Board" shall be construed to mean a regulation or requirement of the "Westborough Treatment Plant Board or the Milford Board of Sewer Commissioners, whichever is more stringent."

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## **§ 195-78. Stringency Construction**

The provisions of this Chapter shall be construed to incorporate pollutant specific local limits that address the same pollutant parameters and are at least as stringent as all local limits in effect in the Town of Milford; and further shall be construed so as to render them at least as stringent as the rules and regulations of the Westborough Treatment Plant Board and the Town of Westborough; no less stringent in every particular, as broad in scope as, or stricter than the Milford Sewer Rules and Regulations presently in effect or codified or as may be amended and which are generally applicable to similar sewer users located in the Town of Milford; and consistent with and meeting all requirements of the U.S. Environmental Protection Agency as presently codified at 40 CFR Part 403 and as the same may from time to time be amended.

## **ARTICLE X**

### **Rules and Regulations**

**[Adopted 5-3-2010 ATM, Art. 34]**

## **§ 195-79. Authority**

Sewer Use Regulations governing the use of the Town's wastewater collection system shall be adopted pursuant to the authority granted by Chapter 375 of the Acts of 1998, as amended. Such Regulations may provide for the waiver of any provision of this Chapter 195; provided, however, that the requirements of the Regulations shall, at all times, be at least as stringent as the rules and regulations of the Westborough Treatment Plant Board and the Town of Westborough; shall incorporate pollutant specific local limits that address the same pollutant parameters and are at least as stringent as all local limits in effect in the Town of Milford; shall be no less stringent in every particular, as broad in scope as, or stricter than the Milford Sewer Rules and Regulations presently in effect or codified or as may be amended and which are generally applicable to similar sewer users located in the Town of Milford; and shall be consistent with and meeting all requirements of the U.S. Environmental Protection Agency as presently codified at 40 CFR Part 403 and as the same may from time to time be amended.

## **§ 195-80. Fines and penalties**

Violation of any Sewer Use Regulation adopted under this Chapter shall be punished by a fine or civil penalty as authorized by section 10 of chapter 83 of the Massachusetts General Laws and may also be enforced by non-criminal disposition as provided in Chapter 40, Section 21D, of the General Laws ("Section 21 D"). The penalty under said Section 21 D for such violation shall be \$300 for each offense; provided, however, that each day of violation shall be considered a separate offense."

# **TOWN OF HOPKINTON**

## **CHAPTER 199**

### **WATER**

#### **ARTICLE I**

##### **Water Extension Petitions**

**§199-1. Petition requirements.**

#### **ARTICLE II (Cont.)**

**§199-9. Violation of restrictions and conditions.**

**§199-10. Violations and penalties.**

**§199-11. Severability.**

#### **ARTICLE II**

##### **Water Use Restrictions**

**§199-2. Authority.**

**§199-3. Purpose.**

**§199-4. Definitions.**

**§199-5. Declaration of a state of water supply conservation.**

**§199-6. Restricted water uses.**

**§199-7. Public notification of a state of water supply conservation; notification of Department.**

**§199-8. Termination of a state of water supply conservation; notice**

#### **ARTICLE III**

##### **Rules and Regulations of the Hopkinton Municipal Water Distribution System**

**§199-12. Assessments.**

**§199-13. Statutory Authority.**

**§199-14. Severability.**

**§199-15. Method of Assessing betterments; order of assessments.**

**§199-16. Time of Assessment**

**§199-17. Water unit designation.**

**§199-18. Betterment payment.**

**§199-19. Water privilege fee.**

#### **ARTICLE I**

##### **Water Extension Petitions**

**[Adopted 3-6-1952 ATM, Art. 22; amended 5-3-2000 ATM, Art. 55; 5-6-2002 ATM, Art. 16]**

**§ 199-1. Petition requirements.**

No article or petition calling for a new water extension shall be acted upon at a Special Town Meeting unless said article or petition has been signed by 100, or 10%, of the registered voters of the Town prior to its presentment to the Board of Selectmen for insertion in the Town Warrant.

#### **ARTICLE II**

##### **Water Use Restrictions**

**[Adopted 5-1-1995 ATM, Art. 22; amended 5-3-2000 ATM, Art. 55; 5-6-2002 ATM, Art. 16; , 5-7-2007 ATM, Art. 22]**

**§ 199-2. Authority.**

This article is adopted by the Town under its police powers to protect the public health and welfare and implements the Town's authority to regulate water use and also implements the Town's authority under MGL c. 40, § 41A, conditioned upon a declaration of water supply emergency issued by the Massachusetts

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Department of Environmental Protection (hereinafter the "Department").

## **§ 199-3. Purpose.**

The purpose of this article is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a state of water supply conservation or state of water supply emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Department.

## **§ 199-4. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

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

STATE OF WATER SUPPLY CONSERVATION -- A state of water supply conservation declared by the Town pursuant to § 199-5 of this article.

STATE OF WATER SUPPLY EMERGENCY -- A state of water supply emergency declared by the Department under MGL c. 21G, §§ 15 through 17.

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

## **§ 199-5. Declaration of a state of water supply conservation. [Amended 5-3-2000 ATM, Art. 55, 5-7-2007 ATM, Art. 22]**

The Town, through its Director of the Department of Public Works, may declare a state of water supply conservation upon a determination by the Director that a shortage of water exists and conservation measures are appropriate or if restrictions are required to be implemented by the Department of Environmental Protection or other state agencies to ensure an adequate supply of water to all water consumers. Public notice of a state of water conservation shall be given under § 199-7 of this article before it may be enforced.

## **§ 199-6. Restricted water uses. [Amended 5-7-2007 ATM, Art. 22]**

A declaration of a state of water supply conservation shall include one or more of the following restrictions, conditions or requirements limiting the use of water as necessary to protect the water supply or required to meet state regulations. The applicable restrictions, conditions or requirements shall be included in the public notice required under § 199-7.

- A. Odd/even day outdoor watering. Outdoor watering by water users with odd-numbered addresses is restricted to odd-numbered days. Outdoor watering by water users with even-numbered addresses is restricted to even-numbered days.
- B. Outdoor watering ban. Outdoor watering is prohibited.
- C. Outdoor watering hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a state of water supply conservation and public notice thereof.
- D. Filling swimming pools. Filling of swimming pools is prohibited.
- E. The use of outdoor automatic sprinkler systems is prohibited. **[Amended 5-6-1998 ATM, Art. 27]**



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- F. Watering by Precinct – One or two days per week dependent upon current Department of Environmental Protection Regulations. The designation of the precinct and the days of the week during which water is permitted in each precinct shall be as specified in the declaration of a state of water supply conservation and public notice thereof. [Amended 5-7-2007 ATM, Art. 22]

### **§ 199-7. Public notification of a state of water supply conservation; notification of Department.**

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a state of water supply conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of water of the state of water supply conservation. Any restriction imposed under § 199-6 shall not be effective until such notification is provided. Notification of the state of water supply conservation shall also be simultaneously provided to the Department.

### **§ 199-8. Termination of a state of water supply conservation; notice. [Amended 5-3-2000 ATM, Art. 55, Amended 5-7-2007 ATM, Art. 22]**

A state of water supply conservation may be terminated by the Director of the Department of Public Works, upon a determination that the water supply shortage no longer exists or Department of Environmental Protection Regulations allow. Public notification of the termination of a state of water supply conservation shall be given in the same manner as required in § 199-7.

### **§ 199-9. Violation of restrictions and conditions.**

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

### **§ 199-10. Violations and penalties. [Amended 5-3-2000 ATM, Art. 55]**

Any person violating this article shall be given a written warning for the first offense. For subsequent violations, the person shall be liable to the Town in the amount of \$100 which shall inure to the Town for such uses as the Director of the Department of Public Works may direct. Fines shall be recovered by noncriminal disposition in accordance with MGL c. 40, § 21D. Each day of violation shall constitute a separate offense. In addition to the above fines, for violations beyond the second offense, the Town shall have the right to suspend water service. Fines may be recovered by the inclusion of the amount of the fine as a charge on the next scheduled water bill.

### **§ 199-11. Severability.**

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

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## **ARTICLE III**

### **Rules and Regulations of the Hopkinton Municipal Water Distribution System [Added 5-3-04 ATM, Art. 18]**

#### **§199-12 Assessments.**

The Town of Hopkinton, acting through its Board of Selectmen, shall assess the owners of land abutting a public water line installed by the Town by a rate based upon any or a combination of the methods set forth in MGL c. 40, §§ 42G, 42H, 42I or 42K. Water assessments shall be determined by the Board of Selectmen and approved by the Town Meeting and shall be levied as betterment assessments and/or water privilege fees as described herein.

#### **§199-13 Statutory Authority.**

The authority to assess betterments, as well as the permitted methodologies for doing so, are described in MGL c. 40, §§ 42G, 42H, 42I and 42K.

#### **§199-14 Severability.**

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without such invalid provisions or applications.

#### **§199-15 Method of Assessing Betterments; Order of Assessments.**

- A. The Town of Hopkinton shall assess water betterments based upon any or a combination of the methods referred to in MGL c. 40, §§ 42G, 42H, 42I and 42K. Those properties abutting a street which is served by the town water distribution system and which are assessed based upon the uniform unit method, shall be assessed by a rate proportional to the value assigned to the water unit at the time of the assessment. Said rate shall be determined by user class and shall apply to all lands developed or undeveloped abutting the street. Those properties abutting a street which is served by the town water distribution system and which are assessed based upon the fixed uniform rate method shall be assessed according to the frontage of such land on any way in which a water main is constructed, or according to the area of such land within a fixed depth from such way, or according to a combination of both such frontage and area. Said rate shall apply to all lands developed or undeveloped abutting the street. The total assessments shall not exceed the local share of the total water project cost which shall include total costs of engineering survey and design, construction, land acquisition, construction engineering services, legal services, interest, and all related contingencies less all state and federal aid received.
- B. The Board shall levy, by preparing an order of assessment, assessments against those properties abutting a street which is served by the town water distribution system as it deems appropriate. In the order of assessment, the Board shall designate the owner of each parcel, as of the preceding January 1, as liable to the assessment as stipulated under the provisions of the General Laws.

#### **§199-16 Time of Assessment.**

- A. Betterments – The equivalent monetary value of one water unit shall be established for the water main extension construction project based upon the local share of the cost of the project as indicated

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in §199-15A of this Chapter. Appropriations for the construction cost of water projects may establish a differing equivalent monetary value of one water unit to be used for the construction costs of the appropriation. The time of assessment for lands abutting the street in which the water main has been installed shall be that date upon which the water system with appurtenances is approved for use. In the case where the construction of that portion of the water system partially funded by betterments is completed prior to the date upon which the water system is approved for use, it shall be within the powers of the Board to establish an earlier date of assessment.

### B. Water Privilege Fees

- (1) For those properties not abutting the water line but tying into the system at a future date, the time of assessment shall be the date upon which that property connects into the water system.
- (2) For those properties serviced by the water system but subdivided at a future date, the time of assessment for the portions of the subdivision which receive water in the future shall be the date upon which those subdivisions connect to the water system.

### C. The water main extension water assessments shall be based upon 100% of the cost of the design and construction of the water facilities, less any grants, gifts, or other funds received by the town which reduces such amount, but including interest costs incurred by the town with respect to any short-term borrowing for the project, and shall be assessed as betterments to all properties benefited by this project.

## §199-17 Water Unit Designation.

### A. General. Water units shall be designated based upon the user class of those properties to be assessed a betterment. Said classes shall include residential and nonresidential. The nonresidential class shall include commercial, industrial, municipal and any or all other nonresidential properties.

### B. Water Unit Determinations. Properties receiving direct benefit from the public water system, whether developed or undeveloped, shall be designated a number of water units in accordance with the following:

- (1) Residential, Developed.
  - (a) Single-family dwellings shall comprise one water unit.
  - (b) Duplex dwellings shall comprise two water units.
  - (c) Three-family dwellings shall comprise three water units.
  - (d) Four-family dwellings shall comprise four water units.
  - (e) Multiple family dwellings (in excess of four dwelling units) shall comprise a number of water units based on the following methodology:
    - [1] Rental properties (apartments) shall be assessed one water unit for each apartment with more than one bedroom. Rental properties shall be assessed one half of one water unit for each one bedroom or studio

## TOWN OF HOPKINTON

apartment.

- [2] Condominium complexes shall be assessed one water unit for each dwelling unit.

### (2) Nonresidential, Developed

- (a) Nonresidential property shall include all industrial, commercial and municipal properties.
- (b) Nonresidential buildings which are metered for water use shall comprise a number of water units based upon the average water consumption for the 12 months most recently preceding the date of the establishment of the assessment using the following formula:

$$\frac{\text{Nonresidential Water in gallons per day (gpd)}}{300 \text{ gpd}} = \text{Equivalent number of water units}$$

(All decimals shall be rounded up to the next whole highest number).

- (3) Residential Undeveloped – Undeveloped lots shall be assigned one water unit and be assessed accordingly. Future subdivisions of the assessed lot shall be subject to the assessment of water privilege fees.
- (4) Nonresidential, Undeveloped – Undeveloped lots shall be assigned one water unit and be assessed accordingly. The lot shall be subject to the assessment of water privilege fees. Future use of the land shall govern the assessment of water privilege fees.

### §199-18 Betterment Payment.

- A. General – Except as herein provided, the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of water assessments, to liens therefore and to interest thereon, shall apply to assessments made under this article, and the Tax Assessor of the town shall have all of the powers conveyed by the General Laws.
- B. Lump-sum Betterment – The lump-sum betterment payment for an assessed property shall be equivalent to the product of the total number of water units designated upon said property and the appropriate value for one water unit at the time of assessment. Said values shall be determined as described herein.
- C. Apportionment of Betterment Payment – Property owners shall have the option to finance betterment payments through apportionment. The interest rate charged by the town shall be 2% greater than the project bond rate being paid by the town for the water construction project.
- D. Betterment Deferral – The provisions of MGL c. 80, § 13B, with regard to deferral of betterment assessments when adopted by Town Meeting would apply.

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## **§199-19 Water Privilege Fee**

### **A. Private Water Extension**

- (1) If a developer or a person other than the Town of Hopkinton, or duly authorized representative of same, constructs an extension to the public water system in a phase of the water construction project which has been assessed a water betterment based upon the uniform unit method, the town shall assess a water privilege fee in lieu of betterment assessment against each property tying into said water extension. The water privilege fee shall be equivalent to 90% of the calculated betterment assessment value pertinent to each property as determined following the procedure outlined in § 199-17 of these regulations. Water privilege fees shall be levied at the time of connection to the public water system. Property owner options for payment of said fees shall reflect those related to payment of betterment assessments as described in § 199-18B and 18C of these regulations.
- (2) In addition, the developer and/or property owners connecting the private water extension shall bear the burden of all costs, including costs of legal services, related to the following:
  - (a) Review of design plans and specifications for the private water extensions to be accepted as part of the public water system conducted by a registered professional engineer as authorized by the Board.
  - (b) Inspection fees of the Board related to the installation of the private water extension tying into the public water system.
  - (c) Application fees for a building water installation permit, which shall include all reasonable costs related to installation inspection performed by an inspector for the Town of Hopkinton.
- (3) Costs associated with the design and construction of a private water extension shall be considered separate to the water privilege fee. Payments or method of payment related to these costs shall not be reflected within the water privilege fee.

B. For those properties which are located within areas included in phases of the water construction project which have been assessed a water betterment based upon the uniform unit method, if a property abuts a private or unaccepted way within which a public water main has been installed, the town shall assess the betterment assessment as described in §199-18 of this article against said property. All rules and regulations governing the payment and the method of payment relating to betterment assessments as described in §199-18B and 18C of these regulations shall apply.

### **C. Compensatory Water Privilege Fee**

- (1) Undeveloped Property – In the situation where a betterment has been assessed to an undeveloped property based upon the number of water units required by these regulations and said property is ultimately developed to accommodate a number of water units in excess of the number used for determining the betterment assessment, the Town shall assess a compensatory water privilege fee.

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- (2) In the situation where a betterment has been assessed to a developed nonresidential property based upon the number of water units required by these regulations and usage of said property is changed or increased which results in a number of water units in excess of the number used for determining the betterment assessment, the Town shall assess a compensatory water privilege fee.
- (3) The compensatory water privilege fee shall be equivalent to that sum of money that would have been charged as a betterment assessment upon the property at the time of the original assessment, under the conditions to which they have changed or increased, less the amount of the original assessment. The compensatory water privilege fee shall be the product of the number of water units applicable to a property as ultimately developed multiplied by the water privilege fee amount for the applicable phase of the water construction project.
- (4) All rules and regulations governing the payment and method of payment related to betterment assessments as designated in §199-18B and 18C of these regulations shall apply.
- (5) No water privilege fee shall be assessed upon properties which have been assessed a betterment assessment based upon the fixed uniform rate method.
- (6) The Board of Selectmen is authorized to take any other action necessary or appropriate to accomplish the establishment and recovery of such betterment assessments.

# TOWN OF HOPKINTON

## CHAPTER 206

### WETLANDS PROTECTION

§206-1.	<b>Purpose.</b>	§206-8.1.	<b>Tentative Decisions; Requests for Reconsideration.</b>
§206-2.	<b>Definitions</b>	§206-9.	<b>Written Conditions.</b>
§206-3.	<b>Jurisdiction.</b>	§206-10.	<b>Regulations.</b>
§206-4.	<b>Exceptions.</b>	§206-11.	<b>Fees.</b>
§206-5.	<b>Applications for Permits and Requests for Determination.</b>	§206-12.	<b>Security.</b>
§206-6.	<b>Public Hearings and Notifications.</b>	§206-13.	<b>Enforcement.</b>
§206-7.	<b>Coordination with Other Boards</b>	§206-14.	<b>Burden of Proof.</b>
§206-8.	<b>Determinations, Permits and Conditions</b>	§206-15.	<b>Appeals.</b>
		§206-16.	<b>Relation to the Wetlands Protection Act.</b>
		§206-17.	

[HISTORY: Adopted by the Hopkinton Annual Town Meeting (ATM) 5-2-1995, Art. 42. Amendments noted where applicable.]

**GENERAL REFERENCES:** Trees – See Ch. 186      Zoning – See Ch. 210      Wastewater collection system – See Ch. 1953

#### § 206-1. Purpose.

The purpose of this Chapter is to protect the wetlands, related water resources and adjoining land areas in the Town of Hopkinton by controlling activities deemed by the Conservation Commission likely to have a significant adverse effect, immediate or cumulative, upon wetland values, including but not limited to the following: protection of public or private water supply, protection of groundwater, flood control, erosion and sediment control, storm damage prevention, prevention of water pollution, fisheries, wildlife, wildlife habitat, rare species habitat, including rare plant species, and recreational values. These values are to be known collectively as the "wetlands values protected by this chapter."

#### § 206-2. Definitions.

A. The following definitions shall apply in the interpretation and implementation of this Chapter:

**AGRICULTURE** -- The term "agriculture" shall refer to the definition as provided by G.L. Ch. 128 § 1A. [Added 5-4-2009 ATM, Art. 17]

**ALTER** -- Includes, without limitation, the following activities when undertaken upon, within or affecting resource areas protected by this Chapter:

- (1) Removal, excavation or dredging of soil, sand, gravel, clay, minerals or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood-retention characteristics.
- (3) Drainage or other disturbance of water level or water table.
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill or removal of material which would alter elevation.

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- (6) Driving of piles, erection or repair of buildings, or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting of trees.<sup>1</sup>
- (9) Changing of water temperature, biochemical oxygen demand or other physical, chemical or biological characteristics of surface or ground water.
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this Chapter.

**BANK** -- Includes any land area that normally abuts and confines a water body, the lower boundary being the mean annual low-flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

**BUFFER ZONE** -- That area of land extending 100 feet horizontally outward from the boundary of any resource area specified in §206-3. [Amended 5-7-2012 ATM, Art. 42]

**HYDRIC SOIL** -- Any soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

**INTERMITTENT STREAM** -- A body of running water, including brooks and creeks, which moves in a defined channel that may cease to flow from time to time throughout the area including portions up-gradient of all bogs, swamps, wet meadows, marshes and vernal pools. [Amended 5-7-2012 ATM, Art. 42]

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

**POND** -- The term “pond” shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply. [Added 5-4-2009 ATM, Art. 17]

**RARE SPECIES** -- Includes, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened or of special concern by the Massachusetts Division of Wildlife and Fisheries, regardless of whether the site in which they occur has been previously identified by the Division.

**SUFFICIENT INFORMATION** -- The compliance with all Commission requirements for submission of information, material and fees as set forth in §206-5 and the Regulations. [Amended 5-7-2012 ATM, Art. 42]

**VERNAL POOL** --Includes a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, as well as the area within 125 feet of the mean annual boundary of such depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries, provided, however, the site can be so certified by the Commission based upon generally accepted scientific principles and methods. [Amended 5-5-2003 ATM, Art. 41]



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- B. Except as otherwise provided in this Chapter or in regulations of the Commission, the definitions of terms in this Chapter shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.

### § 206-3. Jurisdiction.

Except as permitted by the Conservation Commission or as provided in this Chapter, no person shall commence

to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; and lands subject to flooding or inundation by groundwater or surface water and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by this Chapter"). Said resource areas shall be protected whether or not they border surface waters. **[Amended 5-4-2009 ATM, Art. 17]**

### § 206-4. Exceptions.

- A. The application and permit required by this Chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services, sanitary sewers and storm sewers, provided that written notice has been given to the Commission at least 48 hours prior to the commencement of work and provided that the work conforms to the performance standards and design specifications in regulations adopted by the Commission.
- B. The application and permit required by this Chapter shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to the commencement of the work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this Chapter. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
- C. Other than as stated in this section, the exceptions provided in the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00, shall not apply under this Chapter.
- D. This Chapter shall not apply to any activity performed for the normal maintenance or improvement of land activity devoted to agricultural use at the time of application. **[Added 5-6-1996 ATM, Art. 47]**
- E. Discretion of Commission. **[Added 5-3-2000 ATM, Art. 57]**

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- (1) Notwithstanding the provisions of the Hopkinton Wetlands Protection Bylaw, the Commission may, in its discretion, issue an Order of Conditions and impose such conditions as will contribute to the interests identified in the Chapter permitting those limited projects identified in the Massachusetts Wetlands Protection Regulations, 310 CMR 10.53(3). No such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species.
  - (2) In the exercise of this discretion, the Commission shall consider the magnitude of the alteration and the significance of the project site to the interests identified in the Chapter, the availability of reasonable or practical alternatives to the proposed activity, the extent to which adverse impacts are minimized and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests identified in the Chapter. The Commission shall also consider if it is particularly important to avoid alteration of a resource area in order to protect the interests protected by the Chapter. For example when the wetland lies adjacent to or above a public water supply, particularly in an area that is the primary cone of influence to a well; is in an area of critical environmental concern (ACEC); contains rare species habitat; is a Class A designated water body by the Division of Water Pollution Control; is an anadromous fish run or has some other special environmental attribute, the Commission may deny the proposal. **[Amended 5-4-2009 ATM, Art. 17]**
  - (3) The Commission shall consider as reasonable or practical alternatives those options that were available to the applicant but appear to be precluded due to self-imposed hardships or constraints (e.g., lot, roadway and drainage layouts engineered without prior regard to impact on bylaw resources). In making the determination regarding reasonable or practical alternatives, the Commission may require the applicant to evaluate the reasonableness of any previously or currently available alternatives, including the realignment or reconfiguration of the project, to conform with the requirements of the Chapter, or to minimize to the greatest extent possible disruption of resource areas. The Commission may require the applicant to utilize an adjacent parcel of land owned by the applicant, or which the applicant has a beneficial ownership of through a realty trust, to avoid disruption of resource areas. The Commission may also consider whether adjacent property has been sold off or built on, thereby creating a self-imposed hard-ship.
- F. The application and permit required by this Chapter shall not be required for emergency projects necessary to effectuate temporary repairs to preexisting structures, provided notice, oral or written, is given to the Commission prior to the commencement of work or within 24 hours after commencement; provided the Commission or its agent certifies the work as an emergency repair; provided the work is performed only for the time and place certified by the Commission or its agent for the limited purpose necessary to abate the emergency; and provided that within 21 days of commencement of the work a permit application shall be filed with the Commission for review as set forth under this Chapter. Upon failure to meet these or other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures. **[Added 5-5-2003 ATM, Art. 41]**
- G. The application and permit required by this Chapter shall not be required for maintaining, repairing and replacing, but not substantially enlarging, an existing lawfully located structure, facility, yard or landscaping on any pre-existing lot of record as of the time this Wetlands Protection Bylaw was first adopted by the Town. **[Added 5-5-2003 ATM, Art. 41]**

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H. Minor Projects Exemption. The application and permit required by this Chapter shall not be required for Minor Projects that occur within the buffer zone but not within any resource area, provided they meet the requirements outlined herein. Minor Projects are defined as those that occur: **[Added 5-5-2004 ATM, Art. 48]**

- (1) Within the outer or second 50 feet from a resource area but in all cases completely outside all Vernal Pool buffer zones; or
- (2) Within the outer riparian zone (outer or second 100 feet) from a river; or
- (3) Within pre-existing lawn areas where the work meets the following criteria:
  - a. Lies within and/or outside the buffer zone
  - b. Will not go beyond the pre-existing lawn edge
- (4) In all cases, where erosion and sedimentation controls shall be implemented during any construction that exposes bare soil.

Minor activities include, but are not limited to

- (1) Unpaved pedestrian walkways for private use;
- (2) Plantings of native, non-invasive species of trees, shrubs, or groundcover, but excluding turf lawns;
- (3) The conversion of impervious to vegetated surfaces;
- (4) Fencing, stonewalls, and stacks of cordwood provided they will not constitute a barrier to wildlife movement, and where fences to contain livestock are located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
- (5) Mowing of pre-existing lawns and pruning of pre-existing landscaped areas but not including disposal of lawn clippings or other yard debris;
- (6) Vista pruning for branches less than 1 inch in diameter, provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
- (7) Conversion of lawn to uses accessory to existing single family houses such as decks, patios, and gardens, and other accessory uses as may be authorized in the Regulations provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
- (8) Removal of dead or dying trees or pruning of live trees that pose a hazard to structures or public safety;
- (9) Repair of existing structures provided the footprint of the structure does not change; and
- (10) Activities that are temporary in nature, have no permanent impacts, and are necessary for planning and design purposes (including installation of monitoring wells, exploratory

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borings, sediment sampling, surveying and other uses as may be authorized in the Regulations). [Amended 5-5-2008 ATM, Art. 56]

Property owners who desire to have confirmation of Exempt status for their proposed work should submit an Exemption Request and a sketch plan to the Commission office at least seven (7) business days prior to the commencement of a minor project, for the sole purpose of determining whether the proposed work falls within its parameters. The Exemption Request is not mandatory under this section of the Bylaw; however, if no Exemption Request is submitted the Property Owner is solely responsible for ensuring that the proposed work is in compliance with all provisions of the Hopkinton Wetlands Protection Bylaw and that all required permit applications have been submitted.

### **§ 206-5. Applications for Permits and Requests for Determination. [Amend 5-4-2009 ATM, Art. 17]**

- A. A written application shall be filed with the Commission to perform activities affecting resource areas protected by this Chapter. The permit application shall include such information and plans as set forth in the Hopkinton Wetlands Protection Regulations authorized under §206-10 of this Chapter and as may be deemed necessary by the Commission to describe the proposed activities and their effects on the resource areas protected by this Chapter. No activities shall commence without receiving and complying with a permit issued pursuant to this Chapter.
- B. The Commission, in appropriate cases, may accept as the permit application and plans under this Chapter the Notice of Intent (NOI) or Abbreviated Notice of Resource Area Delineation (ANRAD) and plans filed under the Wetlands Protection Act, G.L. Ch. 131, Sec. 40, and Regulations, 310 CMR 10.00.
- C. Any person desiring to know whether or not a proposed activity or an area is subject to this Chapter may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) shall include the information and plans as set forth in the Hopkinton Wetlands Protection Regulations and as may be deemed necessary by the Commission.
- D. At the time of filing a permit or other application, or RDA, Certificate of Compliance (COC) or other request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is called the "Filing Fee". The filing fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- E. Upon receipt of a permit or other application, RDA, COC or other request, the Commission is authorized to require an applicant to pay a consultant fee, pursuant to § 206-11 of this Chapter, for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to make a final decision on the application and for enforcement services. This fee is called the "Consultant Fee". The specific consultant services may include but are not limited to resource area survey and delineation and analysis of resource area values, including wildlife habitat evaluations, hydrological and drainage analysis, hydric soil analysis and environmental or land use law.
- F. The Commission may waive the filing fee, for a permit or other application, RDA or other request, when such application is made by a government agency.

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- G. Fees may be established by the Commission, and may be amended. No such fee schedule shall be implemented unless a public hearing is held to discuss the fee.
- H. Adequate access must be granted to the Commission, its agents and consultants, to determine the accuracy of the information submitted in the permit application and the RDA or other application requests.
- I. Adequate access must be granted to the Commission, its agents and consultants, to determine the accuracy of the information submitted in the permit application and the request for determination.

### **§ 206-6. Public Hearings and Notifications. [Amended 5-4-2009 ATM, Art. 17]**

- A. Any person filing a permit or other application, RDA, ANRAD or other request with the Commission shall, at the same time, give written notice thereof, by certified mail (return receipt requested), certificate of mailing, or hand delivery, to all abutters at their mailing addresses shown on a valid certified Assessors abutters list, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any other municipality or across any body of water. The notice to abutters shall have enclosed a summary of the project or proposal, date of the Commission hearing or meeting date if known, copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed and delivered, shall be filed with the Commission. When a person requesting a Determination is other than the owner, the notice of hearing and the Determination itself shall be sent by the Commission to the owner as well as to the person making the request.
- B. The Commission shall conduct a public hearing on any permit application, RDA or ANRAD. Written notice of such hearing shall be given at the expense of the applicant, at least five business days prior to the hearing, by publishing notice of same in a newspaper of general circulation in the municipality.
- C. The Commission shall commence the public hearing within 21 days from the receipt of a completed permit application, RDA or ANRAD unless an extension is authorized in writing by the applicant.
- D. The Commission shall issue its permit, other order or Determination in writing within 21 days from the date of completion of the hearing held after receipt of a completed permit application or RDA unless an extension is authorized in writing by the applicant.
- E. The Commission in appropriate cases may combine its hearing under this Chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- F. The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in § 206-7.

### **§ 206-7. Coordination with Other Boards. [Amended 5-5-2008 ATM, Art. 58, 5-4-2009 ATM, Art. 17]**

Upon receipt of a permit application or request for determination, the Commission shall provide written notice thereof, by electronic mail or hand delivery, to the Board of Selectmen, Planning Board, Board of Health, Highway Surveyor and Building Inspector. A copy shall be provided in the same manner to the

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Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality.

The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive copies of any such comments and recommendations, and to respond to them at the hearing of the Commission, prior to final action.

### **§ 206-8. Determinations, Permits and Conditions. [Amended 5-4-2009 ATM, Art. 17]**

- A. The Commission shall have the authority after a public hearing to determine whether a specific parcel of land contains or does not contain a resource area protected by this Chapter. If the Commission finds that no such resource areas are present, it shall issue a negative Determination.
- B. If the Commission, after a public hearing on the permit application or other request, determines that the activities which are the subject of the application are likely to have a significant individual or cumulative adverse effect upon the resource area values protected by this Chapter, the Commission, within 21 days of the close of the hearing, shall, subject to the provisions of § 206-8.1 of this Chapter, issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose such conditions that it deems necessary or desirable to protect those values, and all activities shall be completed in accordance with those conditions. **[Amended 5-3-2000 ATM, Art. 57]**
- C. The Commission is empowered to deny a permit for failure to meet the requirements of this Chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet design specifications, performance standards; and other requirements in the regulations of the Commission; for failure to avoid, minimize, mitigate, or prevent significant or cumulative detrimental effects upon the resource area values protected by this Chapter; for failure to provide sufficient information; and where no conditions would be adequate to protect the resource area values set forth herein.
- D. The Commission may establish, in its Order of Conditions, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of resource areas, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the resource area values protected by this Chapter.
- E. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuing maintenance work, provided that annual notification of the time and location of work is given to the Commission. Any permit may be renewed for up to three additional years at the discretion of the Commission.
- F. The Commission may revoke or amend a permit issued under this Chapter after notice to the holder, public, abutters and Town Boards and a public hearing and notice in writing to the holder of the permit.

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- G. The Commission in appropriate cases may combine the permit or other action on an application issued under this Chapter with the Order of Conditions or other action issued or taken under the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- H. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or in the Land Registration section of said Registry as may be appropriate for the district wherein the land lies and until the holder of the permit provides a certified copy of the recording activity to the Commission.

### **§ 206-8.1. Tentative Decisions; Requests for Reconsideration. [Added 5-3-2000 ATM, Art. 57]**

- A. Notwithstanding any other provision of this Chapter, all decisions of the Commission issued under § 206-8B shall be deemed tentative decisions subject to the procedure for reconsideration and review set forth in this section.
- B. Any applicant aggrieved by the denial of a permit, or by conditions of approval contained in any permit, issued under this Chapter may request reconsideration and review by written notice to the Commission. Such notice shall be hand delivered or sent by certified mail to the Commission within 10 business days of the delivery or mailing of the tentative decision, shall include a statement of the grounds for the request and shall specify the changes to the decision requested. A request for reconsideration under the bylaw must be submitted to the Commission as specified herein separate from any Request for a Superseding Order of Conditions filed with the Department of Environmental Protection. **[Amended 5-5-2003 ATM, Art. 40]**
- C. Within 21 days following the receipt of a request for reconsideration, the Commission shall either issue a final decision incorporating the changes to the tentative decision requested by the applicant, or vote to reopen the hearing. If the applicant has also filed a request for Superseding Order of Conditions under the Wetlands Protection Act, the applicant may request that the reopened hearing be scheduled after the issuance of such Superseding Order; otherwise, the reopened hearing shall be convened within 30 days of the request for reconsideration. Such reopened hearing shall be subject to the notice requirements in § 206-6 of this Chapter.
- D. Following the conclusion of the reopened hearing, the Commission shall issue a final decision in which it may reaffirm its tentative decision or modify the tentative decision as requested by the applicant in whole or in part, provided that if the Commission includes conditions of approval stricter than those imposed under the Wetlands Protection Act, or if the Commission denies a permit for a project approved under the Wetlands Protection Act, it shall include in its final decision a statement specifying each relevant respect in which this Chapter, or regulations promulgated thereunder, are stricter than the requirements of the Wetlands Protection Act as applied to the project. In the event of any appeal to the Superior Court under MGL c. 249, the tentative decision, the request for reconsideration, the Superseding Order of Conditions (if any) and the Commission's final decision shall be included in the record.
- E. If the applicant does not request reconsideration as provided herein, the tentative decision shall be deemed final as of the date of issuance. If the applicant files a written statement waiving the right to reconsideration or withdrawing a request for reconsideration previously filed, the tentative decision shall be deemed final as of the date such notice is received by the Commission.
- F. It is the policy of the Town of Hopkinton to encourage the resolution of disputes arising under this Chapter by settlement wherever possible. Consistent with this policy, in the event of an appeal to

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the Superior Court under MGL c. 249 from a final decision by the Commission, the Commission shall, subject to the availability of any funds required therefore, participate in good faith in mediation if the party appealing the decision makes a request to the Commission for it to do so, provided that all other parties to the appeal so agree.

### **§ 206-9. Written Conditions. [Amended 5-4-2009 ATM, Art. 17]**

Permits or approved requests issued with conditions shall be written on the same Order of Conditions as that issued pursuant to the Wetlands Protection Act. Conditions authorized solely by the provisions of this Chapter shall be in a separate section under the heading "Additional conditions pursuant to the Town of Hopkinton Wetlands Protection Bylaw."

### **§ 206-10. Regulations.**

- A. After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Chapter. These regulations shall be consistent with the terms of this Chapter. The Commission may amend the rules and regulations after public notice and public hearing.
- B. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Chapter.
- C. Unless otherwise stated in this Chapter or in the rules and regulations promulgated under this Chapter, the definitions, procedures and performance standards of the Wetlands Protection Act, MGL c. 131, § 40, and associated Regulations, 310 CMR 10.00, most recently promulgated shall apply.

### **§ 206-11. Fees. [Amended 5-4-2009 ATM, Art. 17]**

- A. The Commission in its discretion is authorized to require an applicant to pay a filing and/or consultant fee for the reasonable costs and expenses borne by the Commission in its consideration of the application.
- B. The Commission is authorized to utilize the filing and/or consultant fees to obtain consultant services and/or to provide enforcement services which may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitats' evaluations, hydrogeological and drainage analysis, hydric soil testing and environmental land use law.
- C. The exercise of discretion by the Commission in making its determination to require the payment of the filing/consultant fees shall be based upon its reasonable finding that the additional information acquirable only through outside consultants or to provide enforcement services is necessary for the rendering of an objective decision.
- D. At the time of a permit application, RDA, ANRAD, or other request, the applicant shall pay the filing/consultant fees as specified in the Hopkinton Wetlands Protection Regulations. Such fees are in addition to those required by the Wetlands Protection Act, MGL c. 131, § 40, and are not refundable. The Commission may waive the filing fee and the costs and expenses for a permit application, RDA, ANRAD or other request submitted by a government agency. Additional consultant fees may be requested where the requisite review is more expensive than originally



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calculated or where new information requires additional consultant services. The Commission may require the payment of such additional consultant fees for any of the purposes referred to in Subsection B above at any time prior to the issuance of a Certificate of Compliance. **[Amended 5-3-2000 ATM, Art. 57, 5-4-2009 ATM, Art. 17]**

- E. The applicant shall pay the filing/consultant fees to the Town of Hopkinton to be put into an account established pursuant to MGL c. 44, § 53E1/2, which account may be drawn upon by the Commission as necessary to carry out the provisions of this Chapter.
- F. Any applicant aggrieved by the imposition of or the amount of the fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.
- G. No project shall be segmented to avoid being subject to the filing and/or consultant fees referred to herein.
- H. In the event that the applicant has not paid the filing and/or consultant fees as required herein, the Commission may deny the requested permit for lack of sufficient information.

### **§ 206-12. Security. [Amended 5-4-2009 ATM, Art. 17]**

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

- A. By proper bond or deposit of money or negotiable securities under a third-party escrow agreement or other undertaking of financial responsibility sufficient, in the opinion of the Commission, to be released in whole or in part upon the issuance of a Certificate of Compliance for work performed pursuant to the permit.
- B. By accepting a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit condition shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

### **§ 206-13. Enforcement.**

- A. No person shall remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this Chapter, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or Enforcement Order issued pursuant to this Chapter.
- B. The Commission shall have the authority to enforce this Chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates any provision of this Chapter may be ordered to restore the property to its original condition and to take other action deemed necessary to remedy such violation, or may be fined, or both.

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- C. Upon request of the Commission, the Board of Selectmen, the Town Counsel or special counsel shall take legal action for enforcement of this Chapter under civil law. Upon the request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- D. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Commission in enforcement.
- E. Any person who violates any provision of this Chapter, or regulations, permits or administrative orders issued thereunder, shall be punished by a fine as set forth in the Hopkinton Wetland Protection Regulations. Each day or portion thereof during which a violation continues, or unauthorized fill or alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations and permits or administrative orders violated shall constitute a separate offense.
- F. As an alternative to criminal prosecution in a specific case, the Commission may issue a citation under the noncriminal disposition procedure set forth in MGL c. 40, § 21D, if adopted by the Town as a general bylaw.

### **§ 206-14. Burden of Proof.**

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

### **§ 206-15. Appeals.**

A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

### **§ 206-16. Relation to the Wetlands Protection Act.**

This Chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00, thereunder.

### **§ 206-17. Severability.**

The invalidity of any provision of this Chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or Determination that previously has been issued.