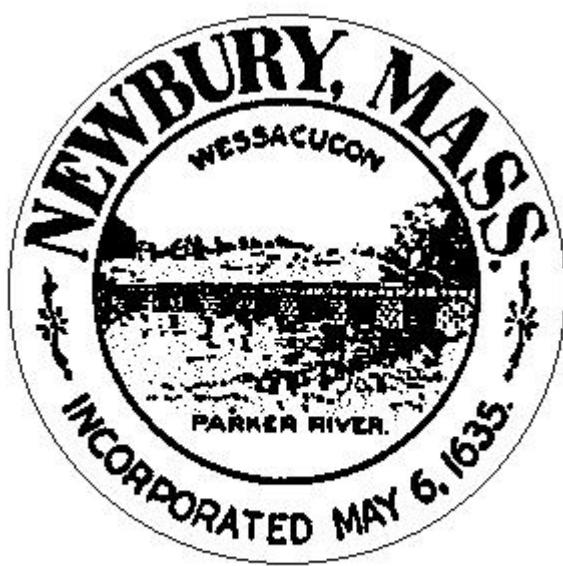


Code of the  
Town of  
**NEWBURY**



MASSACHUSETTS

## **Officials of the Town Of Newbury**

**Town Offices**  
25 High Road  
Newbury, MA 01951  
(978) 465-0862

---

2009-2010

---

**Selectmen**  
Joseph Story, Chairman  
Vincent J. Russo  
Geoff Walker  
Michael Bulgaris  
Audrey Keller

**Town Administrator**  
Charles E. Kostro

**Town Clerk**  
Anne Hatheway

**Town Counsel**  
Bowman and Penski

## HISTORY

### Brief History of Newbury, Massachusetts

In 1634 the ship "Mary and John" left the Thames River in England carrying John Parker, James Noyes, and other men, women and children bound for a better life in the Massachusetts Bay Colony. They wintered in Agawan (today Ipswich) and in the Spring of 1635 they moved up the Quascacunquen (today the Parker River) and landed east of the present day Parker River Bridge. At the end of present day Cottage Road is a Memorial Bolder designating this spot marking Newbury's beginnings. The people were farmers depending upon the land and themselves for survival.

The settlers built their settlement and prospered and, as the population increased, Newbury's boundaries extended from the Parker River outward to the Merrimac River and the Artichoke. In 1654 the first navigable bridge, called "Thorlay's Bridge," was built over the Parker River by Richard Thorley. Thorley's Bridge opened the road for travel from Boston, Ipswich and Salem. Richard Thorley charged a toll, not for humans but for animals. Today Thurlow's Bridge is still in existence.

On the upper Parker River, near the falls, industry was started such as the Byfield Woolen Mills on the Falls, Old Tappan Grist Mill on Main Street, Sawmill on River Street and the Larkin-Morrill Mill, which later became the Pearson's Snuff Mill, on Larkin Road. By 1932 the only industrial business remaining was the Pearson's Snuff Mill and that closed down in the 1990's.

In 1807 the first Female Seminary in America was founded in Byfield. Today the building is privately owned after a few years of being a Military School. Also, Governor Dummer Academy, oldest boarding school in America, founded in 1763, is still an integral part of Newbury.

In 1878 silver was discovered in a large field off Scotland Road. This discovery made money for those who sold their land and those who became involved in what was known as the "Chipman Silver Mine." The mine produced \$500,000.00 worth of silver and \$100,000.00 in dividends. The mine closed in 1925.

The "Waterside" group built their homes, churches, businesses and municipal buildings along the Merrimac River. This "Waterside" group, having acquired the title of merchant, shipbuilder, or sea captain, decided that they had nothing in common with the farmers of "Old Town." These "Waterside" people petitioned the General Court to become a separate community. In 1764 the Town of Newburyport became incorporated. In 1819 the residents of the West Parish petitioned the General Court to become a separate community, and they became the Town of West Newbury.

Newbury is presently divided into three villages, Old Town, Byfield and Plum Island. Each village functions individually under the umbrella of the local government. Yet, each village extends to one another a unique dependency such as that of the

government center and schools located in Old Town, the library in Byfield and ocean recreation on Plum Island.

Today Newbury is considered a residential community with some farming. Clams and Salt March Haying continue to provide income for local residents.

## PREFACE

The Town of Newbury has, over the years, passed through a process of legislative change common to many American communities. While only a few simple laws were necessary at the time of the establishment of the town, subsequent growth of the community, together with the complexity of modern life, has created the need for new and more detailed legislation for the proper function and government of the town. The recording of local law is an aspect of municipal history, and as the community develops and changes, review and revision of old laws and consideration of new laws, in the light of current trends, must keep pace. The orderly collection of these records is an important step in this ever-continuing process. Legislation must be more than mere chronological enactments reposing in the pages of old records. It must be available and logically arranged for convenient use and must be kept up-to-date. It was with thoughts such as these in mind that the town ordered the following codification of the town's legislation.

## Contents of Code

The various chapters of the Code contain all currently effective bylaws enacted by the Town Meeting, as well as certain rules, regulations and/or bylaws adopted by various boards, commissions, departments and/or agencies, which were deemed to be general and permanent in nature and appropriate for inclusion in the volume.

The legislation of the town has been included exactly as adopted, with no changes being made to correct grammar, spelling or punctuation, at the request of the town. The following codification is merely a reorganization and renumbering of existing town legislation.

## Division of Code

The Code is divided into three major parts, known as "Divisions." Division 1 contains the bylaws adopted by the Town Meeting. This Division is further broken down into Parts I and II. Part I, Administrative Legislation, contains all bylaws of an administrative nature, namely, those dealing with the administration of government, those establishing or regulating municipal departments and those affecting officers and employees of the municipal government and its departments. Part II, General Legislation, contains all bylaws of a regulatory nature. Bylaws in this part generally impose penalties for violation of their provisions, whereas those in Part I do not. Division 2 contains the regulations adopted by the Board of Selectmen. Division 3

contains all other miscellaneous regulations, such as those adopted by the Planning Board.

### Grouping of Legislation and Arrangement of Chapters

The various items of legislation are organized into chapters, their order being an alphabetical progression from one subject to another. Wherever there are two or more items of legislation dealing with the same subject, they are combined into a single chapter. In such chapters, use of article or part designations has preserved the identity of the individual items of legislation.

### Table of Contents

The Table of Contents details the alphabetical arrangement of material by chapter as a means of identifying specific areas of legislation. Wherever two or more items of legislation have been combined by the editor into a single chapter, titles of the several articles are listed beneath the chapter title in order to facilitate the location of the individual item of legislation.

### Reserved Chapters

Space has been provided in the Code for the convenient insertion, alphabetically, of later enactments. In the Table of Contents such space appears as chapters entitled "(Reserved)." In the body of the Code, reserved space is provided by breaks in the page-numbering sequence between chapters.

### Pagination

A unique page-numbering system has been used, in which each chapter forms an autonomous unit. One hundred pages have been allotted to each chapter, and the first page of each is the number of that chapter followed by the numerals "01." Thus, Chapter 6 begins on page 601, Chapter 53 on page 5301, etc. By use of this system, it is possible to add or to change pages in any chapter without affecting the sequence of subsequent pages in other chapters, and to insert new chapters without affecting the existing organization.

### Numbering of Sections

A chapter-related section-numbering system is employed, in which each section of every item of legislation is assigned a number which indicates both the number of the chapter in which the legislation is located and the location of the section within that chapter. Thus, the first section of Chapter 6 is ~ 6-1, while the fourth section of Chapter 53 is ~ 53-4. New sections can then be added between existing sections using a decimal system. Thus, for example, if two sections were to be added between ~ 53-4 and 53-5, they would be numbered as ~ 53-4.1 and 53-4.2.

## Scheme

The Scheme is the list of section titles which precedes the text of each chapter. These titles are carefully written so that, taken together, they may be considered as a summary of the content of the chapter. Taken separately, each describes the content of a particular section. For ease and precision of reference, the Scheme titles are repeated as section headings in the text.

## Histories

At the end of the Scheme in each chapter is located the legislative history for that chapter. This History indicates the specific legislative source from which the chapter was derived, including the enactment number (e.g., ordinance number, local law number, bylaw number, resolution number, etc.), if pertinent, and the date of adoption. In the case of chapters containing parts or articles derived from more than one item of legislation, the source of each part or article is indicated in the text, under its title. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

## General References; Editor's Notes

In each chapter containing material related to other chapters in the Code, a table of General References is included to direct the reader's attention to such related chapters. Editor's Notes are used in the text to provide supplementary information and cross-references to related provisions in other chapters.

## Appendix

Certain forms of local legislation are not of a nature suitable for inclusion in the main body of the Code but are of such significance that their application is community-wide or their provisions are germane to the conduct of municipal government. The Appendix of this Code is reserved for such legislation and for any other material that the community may wish to include.

## Disposition List

The Disposition List is a chronological listing of legislation adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. The Disposition List will be updated with each supplement to the Code to include the legislation reviewed with said supplement.

## Index

The Index is a guide to information. Since it is likely that this Code will be used by persons without formal legal training, the Index has been formulated to enable such persons to locate a

particular section quickly. Each section of each chapter has been indexed. The Index will be supplemented and revised from time to time as new legislation is added to the Code.

#### Instructions for Amending the Code

All changes to the Code, whether they are amendments, deletions or complete new additions, should be adopted as amending the Code. In doing so, existing material that is not being substantively altered should not be renumbered.

Adding new sections. Where new sections are to be added to a chapter, they can be added at the end of the existing material (continuing the numbering sequence) or inserted between existing sections as decimal numbers (e.g., a new section between ~ 65-5 and 65-6 should be designated ~ 65-5.1).

Adding new chapters. New chapters should be added in the proper alphabetical sequence in the appropriate division or part (e.g., Part I, Administrative Legislation, or Part II, General Legislation), utilizing the reserved chapter numbers. New chapter titles should begin with the key word for the alphabetical listing (e.g., new legislation on abandoned vehicles should be titled "Vehicles, Abandoned" under "V" in the table of contents, and a new enactment on coin-operated amusement devices should be "Amusement Devices" or "Amusement Devices, Coin-Operated" under "A" in the table of contents). Where a reserved number is not available, an "A" chapter should be used (e.g., a new chapter to be included between Chapters 166 and 167 should be designated Chapter 166A).

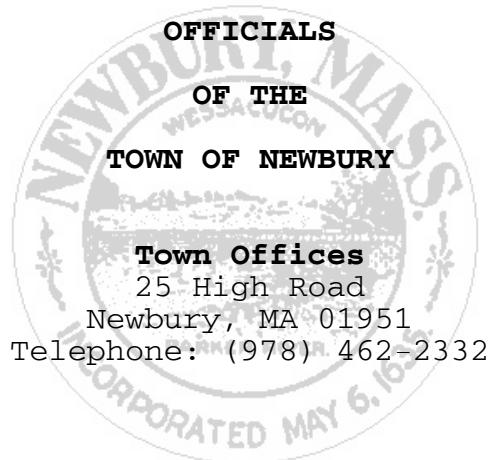
Adding new articles. New articles may be inserted between existing articles in a chapter (e.g., adding a new district to the Zoning Regulations) by the use of "A" articles (e.g., a new article to be included between Articles XVI and XVII should be designated Article XVIA). The section numbers would be as indicated above (e.g., if the new Article XVIA contains six sections and existing Article XVI ends with ~ 166-30 and Article XVII begins with ~ 166-31, Article XVIA should contain ~~ 166-30.1 through 166-30.6). NOTE: In chapters where articles appear on the Table of Contents, simply add new articles to the end of the chapter since they are not arranged by subject matter.

#### Supplementation

Supplementation of the Code will follow the adoption of new legislation. New legislation or amendments to existing legislation will be included and repeals will be indicated as soon as possible after passage. Supplemental pages should be inserted as soon as they are received and old pages removed, in accordance with the Instruction Page which accompanies each supplement.

#### Acknowledgment

The assistance of the town officials is gratefully acknowledged by the editor. The codification of the legislation of the town reflects an appreciation of the needs of a progressive and expanding community. As in many other municipalities, officials are faced with fundamental changes involving nearly every facet of community life. Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. It is the profound conviction of General Code Publishers that this Code will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."



**Town Offices**  
25 High Road  
Newbury, MA 01951  
Telephone: (978) 462-2332

**2006/2007**

**Selectmen**

VINCENT J. RUSSO, **Chairman**  
JOSEPH STORY, II  
JENNIFER F. WRIGHT

**Town Clerk**

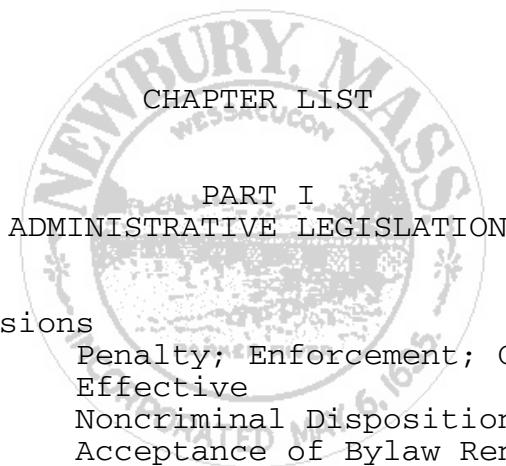
DONNA R. STEFANILE

**Finance Director/Treasurer**

CHARLES E. KOSTRO

**Town Counsel**

BOWMAN AND PENSKI



CHAPTER LIST

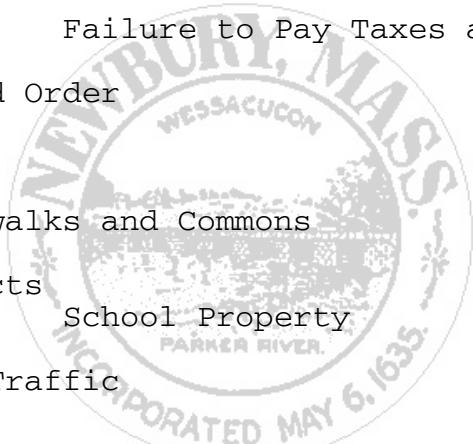
PART I  
ADMINISTRATIVE LEGISLATION

1. General Provisions
  - Article I Penalty; Enforcement; Operation; When Effective
  - Article II Noncriminal Disposition
  - Article III Acceptance of Bylaw Renumbering
4. Board of Appeals
7. Conservation Commission
11. Finance Committee
12. Capital Planning Committee
15. Municipal Finance, Department of
18. Officers and Employees
  - Article I Selectmen
  - Article II Inspector of Gas Piping and Gas Appliances
22. Personnel Board
24. Personnel Policy
28. Police Department
34. Town Meetings

PART II  
GENERAL LEGISLATION

41. Alcoholic Beverages
45. Beaches
49. Burial Places
56. Dogs and Other Animals
60. Earth Removal
67. Hunting
71. Junk
  - Article I Junk Dealers and Collectors
  - Article II Junk Vehicles
76. Licenses
  - Article I Denial, Revocation or Suspension for

Failure to Pay Taxes and Charges

- 
- 82. Peace and Good Order
  - 86. Solid Waste
  - 88. Streets, Sidewalks and Commons
  - 90. Tobacco Products
    - Article I School Property
  - 93. Vehicles and Traffic
  - 95. Wetlands
  - 97. Zoning

DIVISION 2  
SELECTMEN'S ENACTMENTS

DIVISION 3  
MISCELLANEOUS ENACTMENTS

- 109. Animals
  - Article I Disposal of Waste
  - Article II Dogs on the Beach
- 114. Sewers
- 117. Subdivision of Land
- 120. Water Systems and Supply
  - Article I Wells and Leaching Areas
  - Article II System Regulations
- 122. Waterways

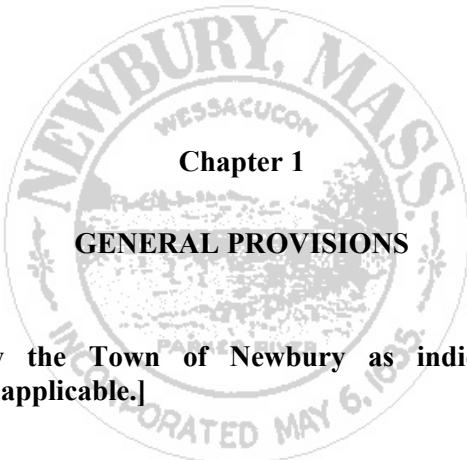
APPENDIX

A124. General Law Acceptances

A125. Special Acts

DISPOSITION LIST

INDEX



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

## ARTICLE I

### Penalty; Enforcement; Operation; When Effective

[Adopted by the Annual Town Meeting 3-3-1914 by Art. 21 as Chapter 4, Sections 3 through 6]

#### § 1-1. Enforcement; prosecution.

Except whenever otherwise provided by law, prosecution for offences<sup>1</sup> under the by-laws of the town, may be made by any constable or police officer of the town.

#### § 1-2. Violations and penalties.

Any person who shall violate any of the provisions of this chapter or any of the preceding chapters, shall pay a sum not less than five dollars, nor more than twenty dollars.<sup>2</sup>

#### § 1-3. (Reserved)

#### § 1-4. When effective.

These by-laws shall take effect after their approval and establishment as required by law, and all previous bylaws are hereby repealed.

## ARTICLE II

### Noncriminal Disposition

[Adopted by the Annual Town Meeting 5-28-1991 by Art. 22; amended in its entirety 5-22-2007 ATM by Art. 17]

#### § 1-5. Non-criminal disposition.

Any By-Law of the Town of Newbury, or Rule or Regulation of its officers, boards, committees or departments, the violation of which is subject to a specific penalty may, in the discretion of the Town official who is the appropriate enforcing person, be enforced in the method provided for in Massachusetts General Laws, Chapter 40, Section 21D. The non-criminal penalty for each such violation, if not otherwise specified below, shall be \$100.00.

As used herein the term "enforcing person" shall mean any Police Officer of the Town

1. Editor's Note: So in original.

2. Editor's Note: "This chapter" or "the preceding chapters" refers to the chapters codified as Chs. 18, Art. I; 34; 49; 71; 82; and 88. See said chapters for any additional provisions.

of Newbury with respect to any offense, and the Building Inspector, Harbormaster or Assistant Harbormasters, Animal Control Officer, the Board of Health or its designees, the Conservation Commission or its designees, and such other officials as the Board of Selectmen may from time to time designate, each with respect to violations of any By-Laws and/or rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in any specific case, any such official may be an enforcing person with respect thereto.

The specific penalties listed below shall apply in appropriate cases and in addition to police officers, who shall in all cases be considered an enforcing person for the purposes hereof, the municipal officials listed for each section, if any, shall also be enforcing persons for such sections. Each day on which any violation exists shall be deemed to be a separate offense.

1. Alcoholic Beverages, Chapter 41:

Enforcing person: Police Officers

Fine schedule: \$100.00.

2. Beaches, Chapter 45:

Enforcing person: Police Officers

Fine schedule: Sections 45-2 and 45-3 (Vehicles and Littering prohibited) - \$100.00; Sections 45-4 and 45-5 (Games restricted and Fires prohibited) - \$50.00; Section 45-6 (Animals restricted) - \$25.00 first offense, \$35.00 second offense, \$50.00 third and subsequent offenses; Sections 45-7 and 45-8 (Balls and other objects restricted and Camping prohibited) - \$20.00.

3. Dogs and Other Animals, Chapter 56:

Enforcing person: Animal Control Officer, Police Officers

Fine schedule: Section 56-1 (Licensing) - \$10.00 per month; Section 56-2 (Running at Large) - \$25.00 first offense, \$50.00 second offense, \$100.00 third and subsequent offenses.

4. Earth Removal, Chapter 60:

Enforcing person: Building Inspector, Police Officers

Fine schedule: \$100.00.

5. Hunting, Chapter 67:

Enforcing person: Police Officers

Fine schedule: \$100.00.

6. Junk Vehicles, Chapter 71, Article II:

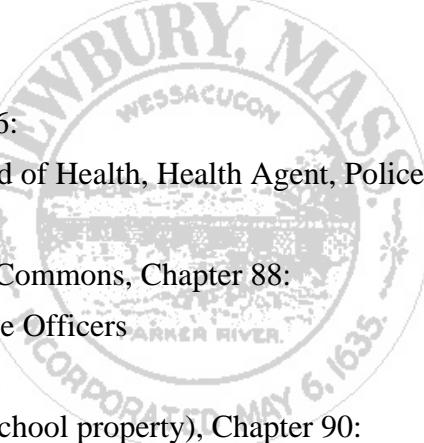
Enforcing person: Police Officers

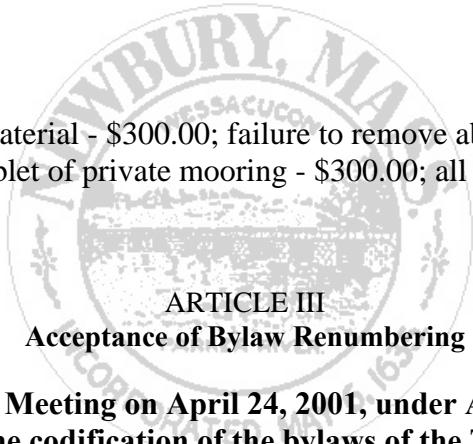
Fine schedule: \$50.00.

7. Peace and Good Order, Chapter 82:

Enforcing person: Police Officers

Fine schedule: \$100.00.

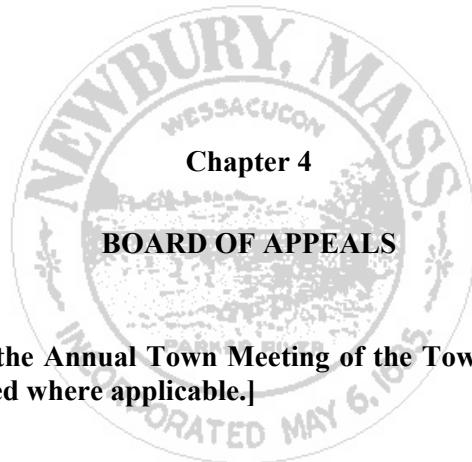
- 
8. Solid Waste, Chapter 86:  
Enforcing person: Board of Health, Health Agent, Police Officers  
Fine schedule: \$300.00.
  9. Streets, Sidewalks and Commons, Chapter 88:  
Enforcing person: Police Officers  
Fine schedule: \$100.00.
  10. Tobacco Products (on school property), Chapter 90:  
Enforcing person: Police Officers  
Fine schedule: \$100.00 first offense or, at violators option, attend approved tobacco education program in lieu of fine, \$100.00 second and subsequent offenses.
  11. Vehicles and Traffic, Chapter 93:  
Enforcing person: Police Officers  
Fine schedule: Article IV (parking) - \$20.00; Article VI (house numbering) — warning for first offense, \$35.00 second and subsequent offenses.
  12. Wetlands, Chapter 95:  
Enforcing person: Conservation Commission, Conservation Agent, Police Officers  
Fine schedule: \$100.00.
  13. Zoning, Chapter 97:  
Enforcing person: Building Inspector, Police Officers  
Fine schedule: \$100.00.
  14. Animal Regulations, Chapter 109:  
Enforcing person: Animal Control Officer, Board of Health, Health Agent, Police Officers  
Fine schedule: Article I (disposal of waste) - \$15.00 first offense, \$25.00 second offense, \$50.00 third and subsequent offenses; Article II (restrictions of dogs on public beach) - \$25.00 first offense, \$35.00 second offense, \$50.00 third and subsequent offenses.
  15. Water Systems and Supply Regulations, Chapter 120:  
Enforcing person: Board of Health, Health Agent, Police Officers  
Fine schedule: Article I (wells and leaching systems) - \$20.00; Article II (system regulations) - \$50.00.
  16. Waterways Regulations, Chapter 122:  
Enforcing person: Harbormaster, Assistant Harbormasters, Police Officers  
Fine schedule: Refusal to obey lawful order of Harbormaster or Assistant Harbormaster - \$300.00; placement of a mooring, float or dock without permit- \$100.00; reckless/negligent operation of a vessel-\$100.00; pollution of waterways



or dumping waste material - \$300.00; failure to remove abandoned, sunk or unsafe vessel - \$100.00; sublet of private mooring - \$300.00; all others - \$50.00.

### ARTICLE III Acceptance of Bylaw Renumbering

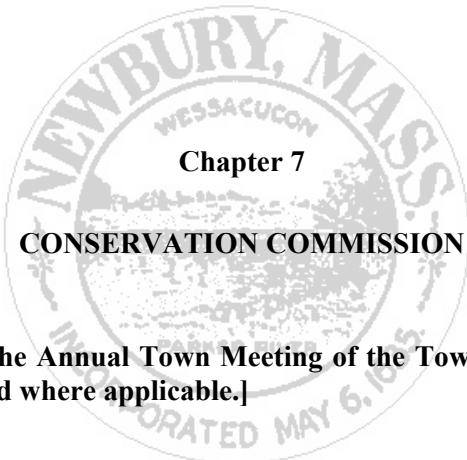
**[At the Annual Town Meeting on April 24, 2001, under Article 16, the town voted to accept and approve the codification of the bylaws of the Town of Newbury in the format presented by General Code Publishers, being a renumbering and recaptioning of the present bylaws. Article 16 was approved by the Attorney General on August 8, 2001.]**



[HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 3-21-1961 by Art. 25. Amendments noted where applicable.]

**§ 4-1. Establishment of Board.**

There is hereby established under the provisions of Chapter 41, Section 81Z of the General Laws, a Board of Appeals to be appointed by the Board of Selectmen.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 3-20-1973 by Art. 23. Amendments noted where applicable.]

**§ 7-1. Acceptance of provisions.**

The Town of Newbury hereby accepts the provisions of General Laws (Ter. Ed.) Chapter 40, Section 8-C as amended, and establishes the Conservation Commission of the Town of Newbury for the purpose and with the rights and duties provided by law, to be composed of seven residents of the Town.

**§ 7-2. Membership; composition.**

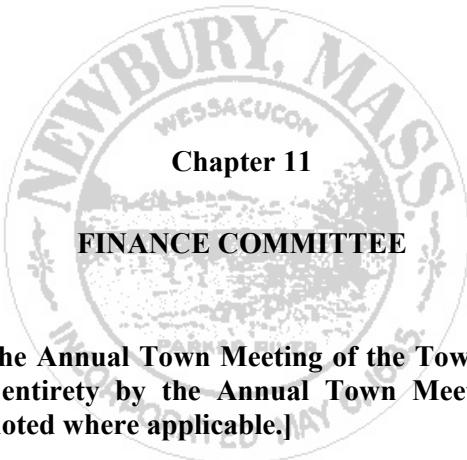
The members to be appointed by the Selectmen should have a diversity of skills, backgrounds and interests, be conservation minded, and willing to actively participate in the regular required functions of the Commission. The Commission will be composed of one member of the Planning Board, the rest preferably to include one each of as many of the following categories as possible; business, agriculture, sports, teaching, engineering, law, literature, art, or ecology.

**§ 7-3. Terms.**

Appointments to be for terms of three years, the two new members to be appointed in 1973 with one additional member reappointment. The first year of the amendment will require three appointments, the next two years two appointments each.

**§ 7-4. Conservation Fund.**

The Conservation Fund to be continued as authorized by law.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 3-17-1925 by Art. 15; amended in its entirety by the Annual Town Meeting 4-24-2001 by Art. 11. Subsequent amendments noted where applicable.]

**§ 11-1. Committee appointed; terms.**

The Board of Selectmen shall, at each Annual Town Meeting, appoint members to a committee of seven (7) registered voters which shall be known as the Finance Committee. Members shall be appointed for three (3) year terms on a staggered basis so that at least two members' terms expire each year. No member of the Finance Committee shall be an elected official, a paid board or committee member, or an employee of the town (except that a person rendering service to the town as an independent contractor and who has been designated a "special municipal employee" under G.L. c. 268A shall not be disqualified from serving on the Finance Committee).

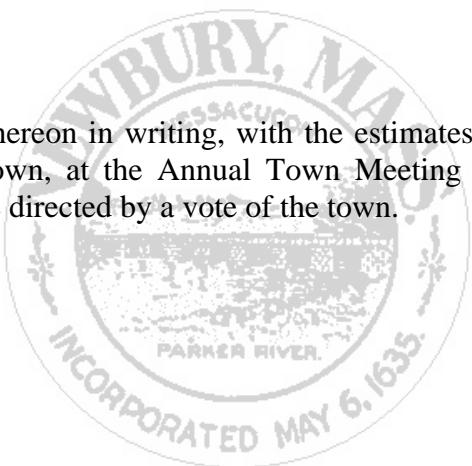
**§ 11-2. Effective date; removal of disqualified members; vacancies.**

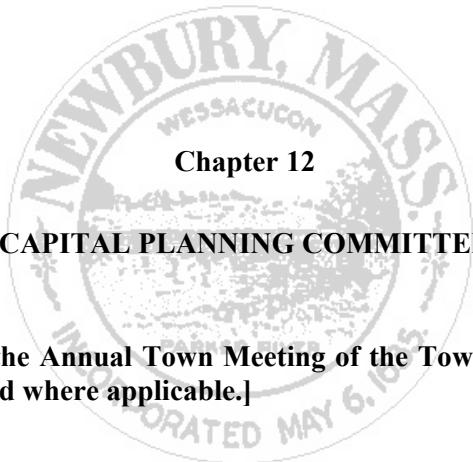
This bylaw shall become effective upon its approval by the Attorney General under G.L. c. 40, § 32. Unless disqualified from service by the provisions of § 11-1, above, any duly appointed member whose term has not expired shall continue in office until the expiration of his/her term. The Board of Selectmen shall remove from the Finance Committee any member disqualified from service by virtue of his/her holding of elective office in the town office or by his/her employment as a town employee or paid committee member. In the event of the death, resignation or disqualification of any of a duly appointed member of the Finance Committee prior to the expiration of his/her term, the Board of Selectmen shall appoint a replacement for the unexpired portion of that person's term in accordance with the preceding section.

**§ 11-3. Powers and duties.**

It shall be the duty of the Finance Committee to consider all municipal questions affecting the revenue, indebtedness or expenditures of the funds of the town, and for this purpose the Committee shall have access to all books and records of the town, and to make reports and recommendations at each annual town meeting, and particularly with reference to the appropriations to be made for the year next ensuing. They may annually choose their own Chairman, who may call meetings of the Committee whenever he deems it advisable and shall so call meetings whenever requested by a majority of the Committee. The Committee shall confer with all boards, officers and department heads in the town as it deems necessary and appropriate to prepare a proposed budget for the next ensuing year. It shall be the duty of the Finance Committee to consider all articles of the warrant or warrants referred to it which call for the appropriation and/or expenditure of

funds, and make report thereon in writing, with the estimates and recommendations for the final action of the town, at the Annual Town Meeting and at any Special Town Meeting, unless otherwise directed by a vote of the town.





## CAPITAL PLANNING COMMITTEE

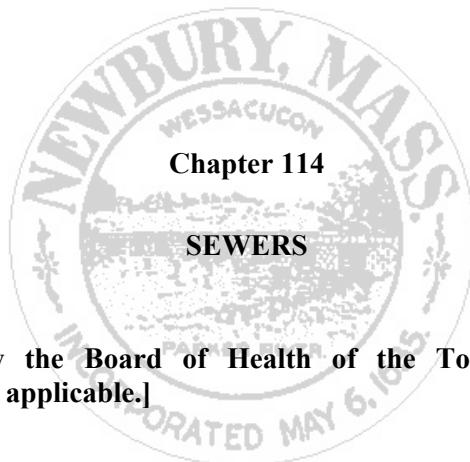
[HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 5-22-2007 by Art. 18. Amendments noted where applicable.]

### § 12-1. Committee Appointed; terms.

There is hereby established a Capital Planning Committee consisting of the Director of Municipal Finance, two members of the Finance Committee annually chosen by it, and two members appointed by the Selectmen from among the registered voters of the Town, who shall be appointed for a term of two years on a staggered basis so that one such member's term expires each year. Any vacancy shall be filled for the unexpired term in the manner of the original appointment. The Capital Planning Committee shall annually choose a chairman and such other officers as it deems appropriate.

### § 12-2. Powers and duties.

It shall be the duty of the Capital Planning Committee to develop a long-range capital planning program to serve as a guideline for capital improvements in the Town with an eye towards ensuring the maintenance of its public infrastructure and planning for new capital improvements. The Capital Planning Committee shall be specifically concerned with physical facilities such as land, buildings, or other structures, as well as pieces of equipment requiring a relatively large investment and having a relatively long useful life. The first capital plan covering the fiscal years 2009-2014 inclusive shall be submitted to the Board of Selectmen and Finance Committee at the same time as the submission of the fiscal year 2009 annual budget and shall take effect, once approved, on July 1, 2008. The first capital plan and an updated five year plan shall be submitted each year as aforesaid, and included in the Warrant for consideration by the Annual Town Meeting. The Committee will meet as often as necessary to review capital needs and requests and to update the plan. The Committee shall also recommend appropriate methods of financing the proposed capital improvements and shall summarize in more general terms the major improvements anticipated during the five-year period. Guidelines for the planning process, defining what constitutes a capital improvement for the purposes of this by-law, specifying minimum cost and useful life of capital improvements to be considered in the plan, the proportion of the total budget to be devoted to outstanding and current capital projects, and any restrictions of methods of financing, shall also be established on the recommendations of the Capital Planning Committee.



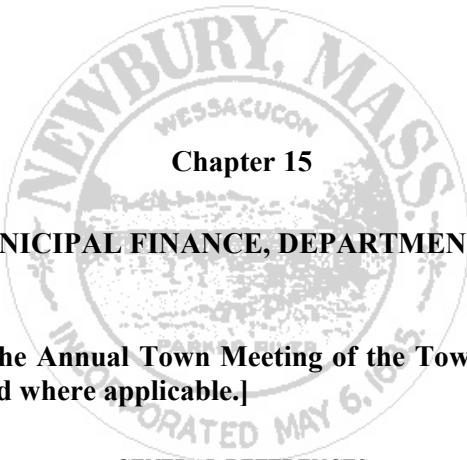
[HISTORY: Adopted by the Board of Health of the Town of Newbury 7-3-1974.  
Amendments noted where applicable.]

**§ 114-1. Pollution of river prohibited.**

The Board of Health of the Town of Newbury prohibits the installation of any sewage disposal system or drainage system or other devices by which pollutants might be introduced into the Parker River and/or its tributary river and streams, said prohibition to affect such installations upon land contiguous to such river, tributaries and streams for a distance of 100 yards on either side of the natural bank of such River, tributaries and/or streams, such prohibition to be applicable to said River, tributaries and/or streams from the Georgetown-Newbury town line to the Central Street Bridge.

**§ 114-2. Pipe requirements.** [Added 11-15-1991]

The Board of Health of the Town of Newbury requires that "schedule 40 pipe" be used throughout any new Sanitary Sewage System, including "schedule 40 perforated" for the leaching trenches. This applies also to any repair to an existing system.



## MUNICIPAL FINANCE, DEPARTMENT OF

[HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 4-26-2005 by Art. 16. Amendments noted where applicable.]

### GENERAL REFERENCES

Finance Committee — See Ch. 11.

#### **§ 15-1. Department established.**

There shall be a consolidated Department of Municipal Finance as provided for under Massachusetts General Laws, Chapter 43C, Section 11 and as provided for in the following section of this bylaw

#### **§ 15-2. Composition.**

This Department shall include the office of the Accountant and the Treasurer/Collector: Additionally, the Director of Municipal Finance, acting in an ex officio capacity, shall coordinate and assist the following financial committees: Finance Committee, Capital Budget Committee and Trust Fund Commissioners.

#### **§ 15-3. Conflicts with other regulations.**

When in conflict, this bylaw shall prevail over other articles, the bylaws or statutes as provided for in MGL 43C.

#### **§ 15-4. Director; appointment; term of office.**

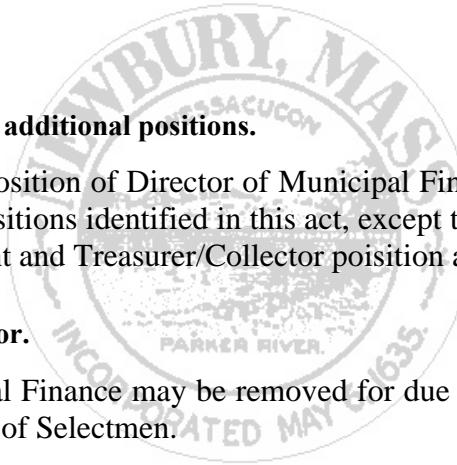
There shall be a Director of Municipal Finance who shall be appointed by the Selectmen, and report to the Selectmen. The term of office for said position shall not be less than three years, nor more than five years, subject to removal as provided for in this bylaw.

#### **§ 15-5. Accountant; Treasurer/Collector.**

The Director of Municipal Finance shall appoint the Accountant, and the Treasurer/Collector, subject to approval by the Selectmen. The Treasurer/Collector and Accountant shall appoint his/her own staff, subject to approval by the Director of Municipal Finance.

#### **§ 15-6. Terms of appointed officers.**

All officers appointed by the Director of Municipal Finance may be appointed for a term of office up to three (3) years.



### **§ 15-7. Director may hold additional positions.**

The person holding the position of Director of Municipal Finance may also be appointed to hold other financial positions identified in this act, except that no one person shall hold both the Town Accountant and Treasurer/Collector position at the same time.

### **§ 15-8. Removal of Director.**

The Director of Municipal Finance may be removed for due cause as determined, and so voted upon, by the Board of Selectmen.

### **§ 15-9. Functions of Department.**

The functions of the Department of Municipal Finance shall include the following:

Coordination of all financial services and activities

Maintenance of all account records and other financial statements

Payment of all obligations

Receipt of all funds due, either directly or via the responsible department head

Assistance to all other town departments and offices in any matter related to financial affairs

Monitor the expenditure of all funds, including periodic reporting to the appropriate agencies on the status of accounts

Supervision of all purchases of goods, materials and supplies and the maintenance of inventory control

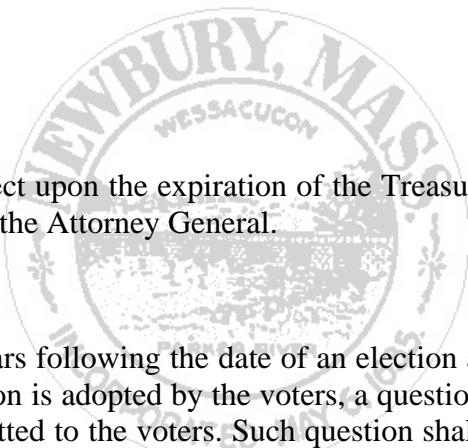
Supervision of all data-accessing facilities

### **§ 15-10. Duties of Director.**

The Director of Municipal Finance shall be responsible for the functions of the Department of Municipal Finance. He/she shall be specifically responsible for the annual budgeting process, beginning with the request and guidelines for submission of budget requests, through the consideration of budgets via support of the Finance Committee, up to the timely issuance of the resulting tax bills.

### **§ 15-11. Effect on current personnel.**

Any person holding any office or position in the service of the Town upon acceptance of this optional form of administration under MGL Chapter 43C, Section 11, who is employed in an office or agency which is affected by or reconstituted by the creation of this Department of Municipal Finance, shall be allowed to continue in the employ of the Town without reduction in compensation or impairment of any civil service, retirement, pension, seniority, vacation, sick leave, or other rights or benefits to which then entitled.

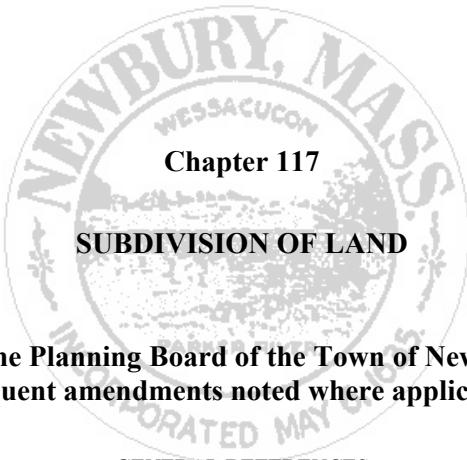


**§ 15-12. When effective.**

This bylaw shall take effect upon the expiration of the Treasurer/Collector's current term subject to the approval of the Attorney General.

**§ 15-13. Reconsideration.**

At any time after four years following the date of an election at which this optional form of municipal administration is adopted by the voters, a question to revoke or rescind such acceptance may be submitted to the voters. Such question shall be in the following form: "Shall the Town of Newbury revoke its adoption of the Department of Municipal Finance optional form of municipal administration?"



[**HISTORY:** Adopted by the Planning Board of the Town of Newbury 1-9-1961, as amended through 12-6-2000. Subsequent amendments noted where applicable.]

#### GENERAL REFERENCES

- Earth removal — See Ch. 60.
- Sidewalks and commons streets — See Ch. 88.
- Zoning — See Ch. 97.
- Sewers — See Ch. 114.
- Water systems and supply — See Ch. 120.

### ARTICLE I General Provisions

#### § 117-1. Purpose.

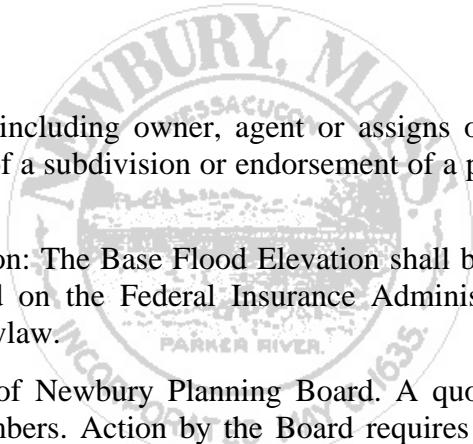
The Rules and Regulations Governing the Subdivision of Land, Town of Newbury, Massachusetts, have been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of Newbury by regulating the laying out and construction of ways (which have not become public) which provide access to the several lots within subdivision, by ensuring sanitary conditions and making adequate provisions for parks and areas therein. The powers of a planning board under the Subdivision Control Law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for ensuring compliance with the applicable provisions of the zoning bylaw; for securing adequate provision for water, sewerage, drainage, utility service, fire, police, and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the Town and with the ways in neighboring subdivisions.

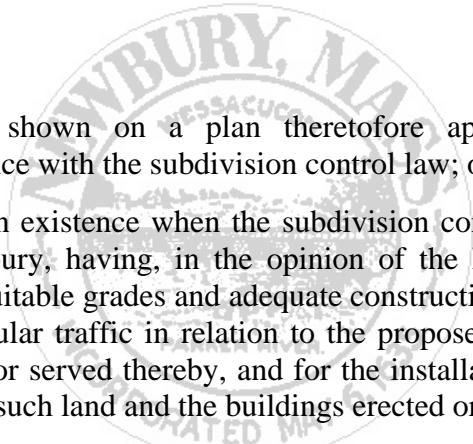
#### § 117-2. Authority.

Under the authority vested in the Planning Board of the Town of Newbury by Section 81-Q of Chapter 41 of the General Laws of Massachusetts, as amended, said Board hereby adopts these Rules and Regulations Governing the Subdivision of Land in the Town of Newbury.

#### § 117-3. Definitions.

For purposes of these regulations, the terms and words defined in the Subdivision Control Law shall have the meaning given therein, unless a contrary intention clearly appears in these definitions. The following other terms and words are defined as follows:

- 
- A. Applicant: Person, including owner, agent or assigns of the owner, applying for approval of a plan of a subdivision or endorsement of a plan believed not to require approval.
- B. Base Flood Elevation: The Base Flood Elevation shall be the level of the 100 year flood as designated on the Federal Insurance Administration's maps and in the Newbury Zoning Bylaw.
- C. Board: The Town of Newbury Planning Board. A quorum for a meeting of the Board is three members. Action by the Board requires a simple majority vote of those present at a meeting unless specified otherwise in the General Laws.
- D. Easement: A right in land required by a public authority or other person to use or control property for a utility or other purpose.
- E. Roadway: That portion of the way, right-of-way or street layout which has been prepared and constructed for vehicular traffic.
- F. Streets:
- (1) Cul-de-sac, Dead End or Non-through: A street or street system which has only one means of ingress or egress to a through street.
  - (2) Collector: A street which, in the opinion of the Board, is being used or will be used as a thoroughfare across or between different portions of the Town, or which will otherwise carry a heavy volume of traffic.
  - (3) Subcollector: A street intercepting one or more minor streets and which, in the opinion of the Board, is used or will be used to carry a substantial volume of traffic from minor street(s) to a major street or community facility, and normally including the principal entrance street of a large subdivision, or group of subdivisions, and any principal circulation streets within such subdivisions.
  - (4) Minor: A street which, in the opinion of the Board, is being used or will be used primarily to provide access to abutting lots and which is designed to discourage its use by through traffic.
  - (5) Paper: Any way or right-of-way shown on a recorded plan or sketch but which has not been constructed or otherwise prepared for vehicular traffic.
- G. Subdivision:
- (1) The division of a tract of land into two or more lots which include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of a subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on:
    - (a) A public way or a way which the Town Clerk certifies is maintained and used as a public way; or

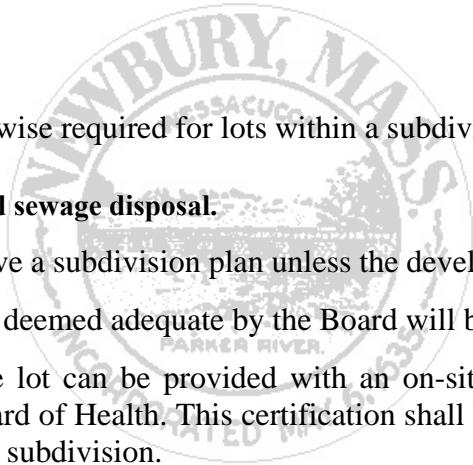
- 
- (b) A way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law; or
- (c) A way in existence when the subdivision control law became effective in Newbury, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.
- (2) Such frontage shall be of at least such distance as is then required by zoning or other ordinance or bylaw of Newbury for erection of a building on such lot. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land, on which two or more buildings were standing, (December 14, 1966) into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.
- H. Way or Right-of-Way: The full strip of land designated as a street consisting of the roadway, and any planting strips and sidewalks.
- I. Lot: An area of land in one ownership with definitive boundaries ascertainable from a recorded deed or recorded plan.
- J. Gravel: Gravel is defined as consisting of hard durable stone and coarse sand practically free from loam and clay uniformly graded and containing no stone having any dimensions greater than 3 1/2 inches. When spread on the road and rolled, it shall form a stable foundation. The grading shall conform to the following requirements: passing 3/8 inch sieve - 70% maximum; passing No. 10 sieve - 50% maximum; passing No. 200 sieve - 5% maximum. No stone used in the subgrade of a street shall have any dimension greater than 6 inches. The subdivider shall notify the agent of the Planning Board as to the source of the gravel.

#### **§ 117-4. Right to make a subdivision.**

No person shall make a subdivision, within the meaning of the Subdivision Control Law, of any land within the Town, or proceed with the improvements or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein, unless and until a plan has been endorsed "Planning Board Approval Not Required" or a Definitive Plan of such subdivision has been submitted to and approved and endorsed by the Board.

#### **§ 117-5. One dwelling on any lot.**

Not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the Town, without the consent of the Board, and such consent may be made conditional upon the providing of adequate ways furnishing access to each site for such building, in



the same manner as otherwise required for lots within a subdivision.

**§ 117-6. Water supply and sewage disposal.**

The Board will not approve a subdivision plan unless the developer's engineer certifies:

- A. That a water supply deemed adequate by the Board will be available; and
- B. That each buildable lot can be provided with an on-site disposal system deemed adequate by the Board of Health. This certification shall be based upon one or more test wells within the subdivision.

**§ 117-7. Waivers.**

The Board may waive strict compliance with any of these Regulations if it deems it in the public interest and if written record is kept of such waivers, and the reasons for them.

**§ 117-8. Compliance with Zoning Bylaw required.**

The Planning Board shall not approve or modify and approve any Subdivision plan of land unless all buildings, structures, and lots shown on said plan comply with the Zoning By Law of the Town of Newbury or unless a variance from the terms thereof has been granted by the Board of appeals.

**§ 117-9. Americans with Disabilities Act.**

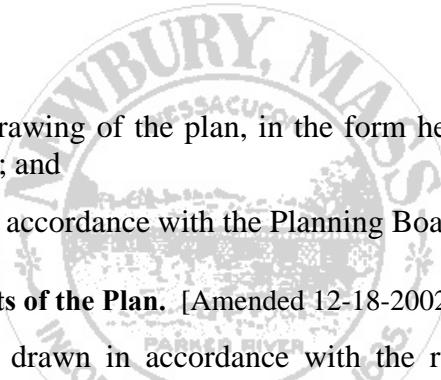
- A. Plans submitted shall be in conformity with all applicable provisions stipulated in the Americans with Disabilities Act of 1991, as amended.
- B. On the endorsement sheet of Plans submitted for approval, the applicant shall indicate compliance with the federal Americans with Disabilities Act Regulations.

**ARTICLE II**  
**Approval Under Subdivision Control Not Required**

**§ 117-10. Submission.** [Amended 12-18-2002]

Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan of land and who believes that his plan does not require approval under the Subdivision Control Law, shall:

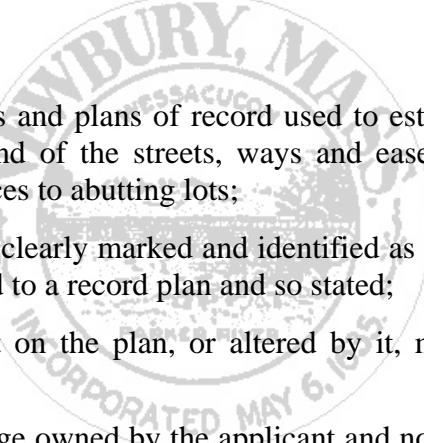
- A. File with the Board at a regularly scheduled meeting, an application in the form appended hereto marked Form A accompanied by the necessary evidence to show that the plan does not require approval. (Note: Written notice of such submission shall be given to the Town Clerk);
- B. File, by delivery or registered mail, postage prepaid, a notice with the Town Clerk stating the date of submission for such determination and accompanied by a copy of said application and plan. If the notice is given by delivery, the Town Clerk shall, if requested, give a written receipt therefor;

- 
- C. Submit an original drawing of the plan, in the form hereinafter set forth, and four contact prints thereof; and
  - D. Submit a filing fee in accordance with the Planning Board fee schedule.

**§ 117-11. Form and contents of the Plan.** [Amended 12-18-2002]

The plan shall be legibly drawn in accordance with the rules and regulations of the Register of Deeds or Land Court Manual of Instructions, as amended, and shall bear the original seal and signature of the professional land surveyor, registered in the State of Massachusetts, preparing the plan . The plan shall contain the following information:

- A. A title block, identifying the location of the land shown, the name of the owner of record and address, date and scale of the plan, and the name and address of the firm or individual preparing the plan;
- B. Identification of the plan by name of the owner of record, the names of abutters and location of the land in question. Location to be shown by means of an inset Locus, measuring a minimum of 2" by 2", using a scale of 2,000':1, or other reasonable scale.
- C. The statement "Approval under the Subdivision Control Law Not Required" and sufficient space for the date and endorsement of the Board together with a notation, below the signature block, that "The Planning Board's endorsement of the plan as not requiring approval under the Subdivision Control Law does not give lots or parcels any standing under the Zoning of the Town of Newbury nor any standing or determination under Title V";
- D. Zoning classification and location of any Zoning District boundaries which may lie with the locus of the plan.
- E. Sufficient data to determine location, width, direction and length of every roadway and street line, lot line and boundary line and to establish these lines on the ground, with areas of lots and lot numbers and street address. Information shall also include the status (private or public), widths of pavement and right-of-way of all streets and ways shown on the plan.
- F. Frontage and area of any remaining adjoining land owned by the applicant.
- G. The entire land area in which the division takes place shall be shown including all parcels affected by an increase or decrease in frontage, lot width, and area, which also includes the remaining land, if any, owned by the applicant;
- H. Reference to any prior decisions and/or conditions by the Zoning Board of Appeals, Board of Selectmen and/or Planning Board including, but not limited to, variances, special permits, or exceptions regarding the land or any structures thereon;
- I. Location of all known existing structures, both above and below ground, including but not limited to, buildings, wells, septic systems, cisterns, and cesspools, systems on the lot(s) or parcels including all required setback dimensions;

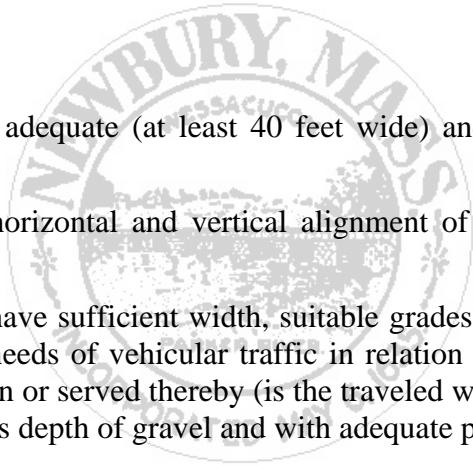
- 
- J. References to all deeds and plans of record used to establish the property lines of the lot(s) or parcels and of the streets, ways and easements shown on the plan, including deed references to abutting lots;
  - K. A north arrow shall be clearly marked and identified as to whether it is magnetic or true north or referenced to a record plan and so stated;
  - L. Evidence that each lot on the plan, or altered by it, meets one of the following criteria:
    - (1) Has all the frontage owned by the applicant and not by way of an easement in part or in whole required under zoning on:
      - (a) A public way; or
      - (b) A way which the Town Clerk certifies is maintained and used as a public way; or
      - (c) A way shown on a plan previously approved and endorsed by the Planning Board in accordance with the subdivision control law; or [Amended 6-2-2004]
      - (d) A way existing before December 14, 1966 which the Board finds adequate for the way's proposed use; or
      - (e) A way shown on a plan of a subdivision registered in the Land Court prior to December 14, 1966; or
    - (2) Has clearly marked on the plan to be joined to and made a part of an adjacent lot.
    - (3) Contains a building which existed prior to December 14, 1966; or
    - (4) Constitutes an existing parcel with no new lot divisions.
  - M. Representation of any geographic features on the ground that might restrict or prohibit access to a lot, or might affect its viability as a building lot; for example, but not limited to, existing right-of-ways and easements, water courses, wetlands, streams, brooks, waterbodies, Areas of Critical Environmental Concern (ACEC), grades over 35%, and location of vehicular access to the lot which must be across the lot's required lot frontage.

**§ 117-11.1. Determination of frontage.** [Added 12-18-2000]

In determining whether each and every lot shown on the plan has adequate frontage, the Board will determine first whether the lot directly abuts a public or private way and second, whether the lot has direct, practical access from the abutting way.

**§ 117-12. Determination of adequacy of way.** [Amended 12-18-2002]

In determining whether an existing way is adequate to qualify a plan as not constituting a subdivision, the Board may consider the following conditions, among others:

- 
- A. Is the right-of-way adequate (at least 40 feet wide) and of reasonable horizontal alignment?
  - B. Does the existing horizontal and vertical alignment of the roadway provide safe visibility?
  - C. Does the roadway have sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby (is the traveled way at least 18 feet in width, with at least 8 inches depth of gravel and with adequate provisions for drainage)?
  - D. If the road could ever serve 4 or more buildings and/or lots, is it bituminous surfaced or have provisions been made for such surfacing without cost to the Town?

**§ 117-13. Endorsement.** [Amended 12-18-2002]

If the Board finds that the plan does not require approval, it shall forthwith, without a public hearing, endorse the plan under the words "Approval Under the Subdivision Control Law Not Required." The Board may add to such endorsement a statement of the reason approval is not required. The plan will be returned to the applicant and the Board shall notify the Town Clerk of its action. If the Board determines that the plan does require approval under the Subdivision Control Law, it shall within 21 days of submission of said plan give written notice of its determination to the applicant and return the plan. The Board shall also notify the Town Clerk in writing of its action. If the Board fails to act upon a plan submitted under this section within 21 days after its submission, it shall be deemed to have found that approval under the Subdivision Control Law is not required.

**ARTICLE III**  
**Procedures for the Submission and Approval of Plans**

**§ 117-14. General.**

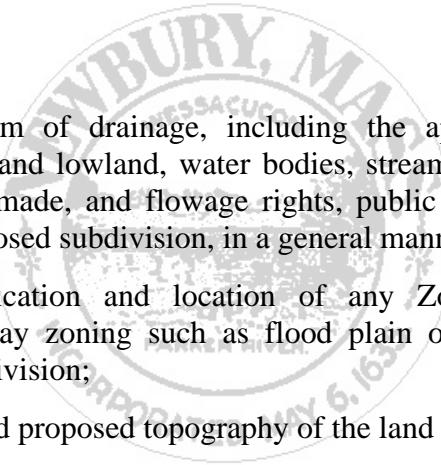
It is suggested that the subdivider first read these Rules and Regulations carefully and thoroughly and then meet informally with the Board with a sketch of the area of a proposed subdivision in order to obtain information about the subdivision requirements for the area. Any uncertainties and ambiguities about the Rules and Regulations should be raised during this initial consultation. Informal discussions with other Town officials would prove helpful at this point.

**§ 117-15. Preliminary plan.**

A Preliminary Plan of a residential subdivision may be, and of a nonresidential subdivision must be, filed for submission by the Applicant with the Planning Board and with the Board of Health, for discussion and approval, modification, or disapproval by each Board. The submission of such a Preliminary Plan will enable the subdivider, the Board, other municipal agencies and owners of property abutting the subdivision to discuss and clarify the problems of such subdivision before a Definitive Plan is prepared.

Therefore, it is strongly recommended that the Preliminary Plan be filed in every case.

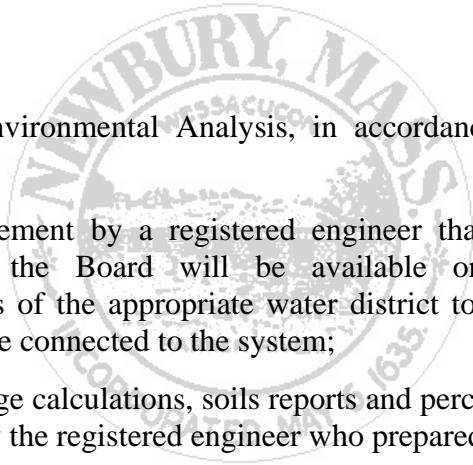
- A. Submission - Any person who desires approval of a Preliminary Plan for the subdivision of land shall:
  - (1) File with the Board, at a regularly scheduled meeting, and with the Board of Health, an application in the form appended hereto marked Form B and obtain acceptance of said application;
  - (2) Submit a preliminary draft of an Environmental Analysis including a soils map in accordance with the provisions of § 117-16D. It is understood that most issues can be discussed only qualitatively at this stage of design, and that input from abutters will not be complete;
  - (3) Submit an original Preliminary Plan, in the form hereinafter set forth, and six contact prints thereof to the Board and two contact prints thereof to the Board of Health; and
  - (4) File by delivery or by registered or certified mail, postage prepaid, a written notice with the Town Clerk accompanied by a copy of the completed application. If notice is given by delivery, the Town Clerk will, if requested, give a written receipt therefor.
  - (5) Submit, with the Preliminary Subdivision application, a check or money order, payable to the Town of Newbury, an application fee in accordance with the Town of Newbury Planning Board fee schedule. The applicant shall be responsible for additional costs incurred relating to the preliminary subdivision plan. These costs shall include, but not be limited to: legal advertising, notification of abutters by registered and/or certified mail and any review fees for technical consultants review of the plans. [Amended 1-8-2003]
- B. Form and contents of a Preliminary Plan - The Preliminary Plan shall be drawn on a reproducible transparency at a suitable scale and shall contain the following information:
  - (1) Proposed subdivision name or identifying title, boundaries, north point, date, scale, legend and title "Preliminary Plan," and block for approval;
  - (2) Name and address of record owner or owners, applicant, engineer, or surveyor or other designer of the preliminary layout, with professional stamp;
  - (3) Names and location of all abutters as they appear in most recent tax list, including names of owners and land separated from the subdivision only by a street or water body;
  - (4) Existing or proposed lines of streets, sidewalks, ways, lots, easements and public or common areas within the subdivision in a general manner;
  - (5) Names, approximate location and widths of streets adjacent to the subdivision;
  - (6) Approximate boundary lines of all proposed lots or divisions of land with their approximate areas and dimensions. Lots shall be numbered in sequence;

- 
- (7) Proposed system of drainage, including the approximate location of all swamp, marsh and lowland, water bodies, streams, open drain sand ditches, natural or manmade, and flowage rights, public and private, adjacent to or within the proposed subdivision, in a general manner;
  - (8) Zoning classification and location of any Zoning District Boundaries, including overlay zoning such as flood plain or wetlands, which may lie within the subdivision;
  - (9) The existing and proposed topography of the land at 2 ft. contour intervals;
  - (10) The volume of "earth" to be removed, if applicable, or a statement that no "earth" is to be removed from the subdivision in conjunction with construction;
  - (11) The location, boundary lines, area and dimensions of all wetlands (as defined in G.L., Chapter 131, Section 40, as amended) situated on each lot within the subdivision.
- C. Review of the Preliminary Plan - Upon acceptance of a Preliminary Plan application, the Board shall post one set of Preliminary Plans in the Town Hall for public review and shall forward one set of Preliminary Plans to the Conservation Commission, the Highway Department, the Board of Fire Engineers, and the applicable Water District Commission. Within 30 days of filing with the Board of Health or forwarding the Preliminary Plan, each agency shall report its findings and recommendations to the Planning Board.
- D. Approval, Modification or Disapproval - As soon as practicable after accepting the submission, the Board will study the Preliminary Plan and discuss it with the applicant. Within 45 days of submission the Board shall approve the Preliminary Plan with or without modifications suggested by it or agreed upon by the applicant, or shall disapprove the Preliminary Plan giving the reasons for such disapproval. The Board shall send notice of its action to the Town Clerk and the applicant. Approval of the Board does not constitute approval of a Subdivision but does facilitate the procedure in securing approval of a definitive Plan.

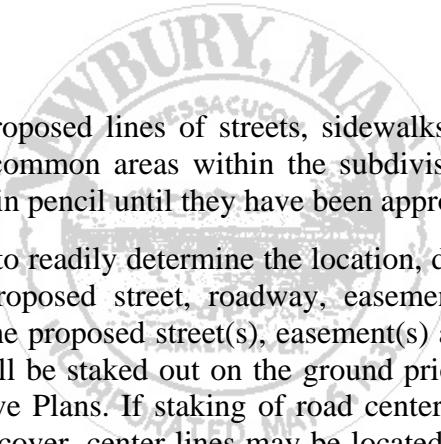
#### **§ 117-16. Definitive plan.**

- A. Submission - Any person who desires approval of a Definitive Plan for a subdivision of land shall:
- (1) File with the Board, at its regular meeting, and with the Board of Health, an application in the form appended hereto marked Form C and obtain acceptance of said application;<sup>1</sup>
  - (2) Submit an original Definitive Plan, in the form hereinafter set forth, with ten (10) contact prints thereof to the Board and two contact prints thereof to the Board of Health;

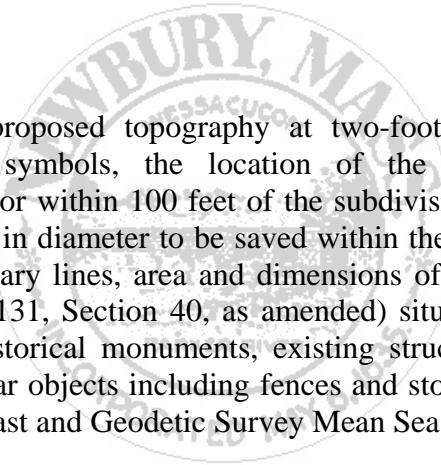
1. Editor's Note: Form C is located at the end of this chapter.

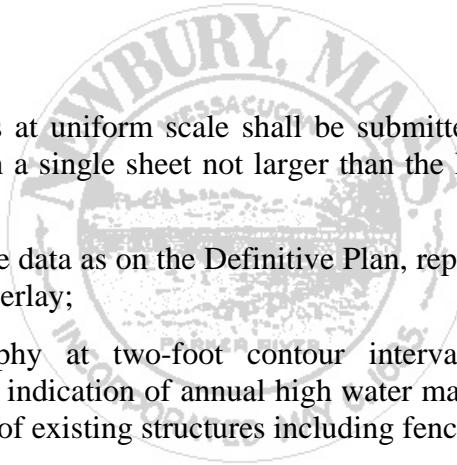
- 
- (3) Submit an Environmental Analysis, in accordance with the provisions of Subsection<sup>2</sup>;
- (4) Submit a statement by a registered engineer that a water supply deemed adequate by the Board will be available or a statement from the commissioners of the appropriate water district to the effect that the lots in question can be connected to the system;
- (5) Submit drainage calculations, soils reports and percolation test results for each lot certified by the registered engineer who prepared them;
- (6) Submit, with the Definitive Subdivision application, a check or money order, payable to the Town of Newbury, an application fee in accordance with the Town of Newbury Planning Board fee schedule. The applicant shall be responsible for additional costs incurred relating to the definitive subdivision plan. These costs shall include, but not be limited to: legal advertising, notification of abutters by registered and/or certified mail and any review fees for technical consultants review of the plans; [Amended 1-8-2003]
- (7) Submit a list of names, mailing addresses and assessor's parcel numbers for all abutters as they appear on the most recent local tax list, including property owners on the opposite side of any street or water body abutting the subdivision; and
- (8) File by delivery or by registered or certified mail, postage prepaid, a written notice, meeting the requirements of G.L. c.41, Sec. 81T, with the Town Clerk, accompanied by a copy of the completed application. If notice is given by delivery, the Town Clerk will, if requested, give a written receipt therefor.
- B. Form and contents of a Definitive Plan - The Definitive Plan shall be prepared in black India ink upon tracing cloth. Size shall be 24 x 36 inches. The drawing shall be at a scale of one inch to each forty feet or such other scale as the Board may approve. Where a plan is drawn on multiple sheets it must be accompanied by an index sheet showing the entire subdivision and in such case for ease of reading, matching lines and consecutive numbering shall be provided. The Definitive Plan shall contain the following information:
- (1) Subdivision name, boundaries, north point, date, scale, legend and title "Definitive Plan," block for approval and a key plan showing the subdivision location at a scale of one inch equals 1000 feet.
  - (2) Name and address of record owner or owners, applicant, engineer or surveyor and seal and signature of the registered professional engineer or registered land surveyor as appropriate to the data.
  - (3) Name and location of all abutters as they appear on the most recent tax list, including names of owners of land separated from the subdivision only by a street or water body.

2. **Editor's Note:** So in original.

- 
- (4) Existing and proposed lines of streets, sidewalks, ways, lots and easements and public or common areas within the subdivision (proposed street names shall be shown in pencil until they have been approved by the Board).
- (5) Sufficient data to readily determine the location, direction and length of every existing and proposed street, roadway, easement and boundary line. The center line of the proposed street(s), easement(s) and major boundaries of the subdivision shall be staked out on the ground prior to application and shown on the Definitive Plans. If staking of road center lines is not feasible due to forest or brush cover, center lines may be located approximately by flagging, so that the Board and other interested parties can adequately identify their route.
- (6) Location, area and dimensions of all proposed lots and common areas. Lot numbers shall be shown and enclosed in a circle.
- (7) Location of all permanent monuments, properly identified as to whether existing or proposed.
- (8) Zoning classification and location of any Zoning District Boundaries including overlay zoning such as flood plain or wetlands which may lie within the subdivision. If required by the Board, the plan shall show the setbacks, side yards and rear yards for each lot together with a potential house site, well location and an area which the Board of Health may deem suitable, based on soils examination and test pits, for a sewerage disposal system for such lot. The Board will require this information for subdivisions located in areas with relatively high percentages of areas in ledge or wetlands.
- (9) Existing and proposed drainage including drainage areas inside the subdivision, areas outside the subdivision which drain into it, and the route, for all existing and proposed drainage discharging from the subdivision, to the primary receiving watercourse or other body of water calculations shall be based on the modified soil cover complex method, or some other generally accepted method approved by the Board, using a 25-year storm frequency for cross culverts. Cross sections of each drainage ditch or pond shall be included.<sup>3</sup>
- (10) Size and location of existing and proposed water supply mains and their appurtenances, hydrants, sewer pipes and their appurtenances and sewage disposal systems, storm drains and their appurtenances, and easements pertinent thereto, and curbs and curb dimensions, and watercourse or easements for drainage needed, whether or not within the subdivision. If surface water drains will discharge onto adjacent existing streets or onto adjacent properties not owned by the applicant, the applicant shall clearly indicate what course the discharge will take, and shall present to the Board evidence from the Highway Department or the owner of adjacent property that such discharge is satisfactory and permitted by public or private ownership of adjacent street or property.

3. Editor's Note: See also Art. VIII.

- 
- (11) Existing and proposed topography at two-foot contour intervals and, in differentiating symbols, the location of the Base Flood Elevation if encountered in or within 100 feet of the subdivision; the location of all trees over six inches in diameter to be saved within the proposed right-of-way; the location, boundary lines, area and dimensions of all wetlands (as defined in MGL Chapter 131, Section 40, as amended) situated on each lot within the subdivision, historical monuments, existing structures (with sill elevations) and other similar objects including fences and stonewalls; all elevations shall refer to U.S Coast and Geodetic Survey Mean Sea Level Data.
  - (12) The size, location and type of trees required pursuant to § 117-41.
  - (13) The volume of "earth" to be removed if applicable or a statement that no "earth" is to be removed from the subdivision in conjunction with construction.
  - (14) Suitable space for endorsement by the Town Clerk and by the Planning Board, with spaces for annotating the date of approval and endorsement.
  - (15) Location of historic features or landmarks and wildlife habits and corridors.
  - (16) A determination of applicability from the Conservation Commission of the Town of Newbury concerning the effect of the planned subdivision on wetlands.
- C. Street plan profile and section - A Profile Plan at a horizontal scale of 40 feet to the inch and vertical scale of four feet to the inch showing:
- (1) Existing grades along the center and both side lines of the street.
  - (2) Proposed finished center line grades with elevations at every 50-foot station, location of vertical curves and gradients of even grades and tangents of vertical curves.
  - (3) The size and location of existing and proposed water mains, sewer lines, storm drains and their appurtenances within and adjacent to the subdivision, on the profile.
  - (4) The location and elevation of the starting bench mark and at least one other bench mark. All elevations shall refer to U.S. Coast and Geodetic Survey I Mean Sea Level Data.
  - (5) Typical sections of roadways showing widths and grades of street lines, roadway pavement, sidewalks, grass strips and side slopes, location and size of water, sewer, drain, and gas lines. The depth of roadway pavement, sidewalks, base courses and all underground utilities.
- D. Environmental analysis - An environmental Analysis shall be prepared by an interdisciplinary team headed by a land planner, registered landscape architect or similar professional approved by the Board. The team shall also include a qualified environmental biologist and a qualified soils scientist.

- 
- (1) A set of plans at uniform scale shall be submitted, encompassing the entire subdivision on a single sheet not larger than the Definitive Plan showing the following:
- (a) The same data as on the Definitive Plan, reproduced as a clear acetate or mylar overlay;
  - (b) Topography at two-foot contour intervals, with graphic drainage analysis; indication of annual high water mark, known high water mark, location of existing structures including fences and walls;
  - (c) Vegetative cover analysis including identification of general cover type (wooded, cropland, brush, wetland, etc.), location of all major tree groupings, plus other outstanding trees or other botanical features, important wildlife habitats, and identification of areas not to be disturbed by construction;
  - (d) Soil types, based on the U.S.D.A. Soil Conservation Service Soils Study, of the Town of Newbury, approximate ground water level, location and results of percolation tests or other subsurface examinations;
  - (e) Visual analysis, including analysis of scenic vistas, and locations of visual prominence;
  - (f) Location of surface water bodies, wetlands, aquifer or recharge areas for existing or potential drinking water supplies.
  - (g) The Board may waive this requirement on subdivision of 5 lots or less.
- (2) A narrative statement shall also be submitted, documenting the following, with references to the above maps as germane:
- (a) Impact upon surface water quality and level;
  - (b) Impact upon groundwater quality and level;
  - (c) Effects on important wildlife habitats, outstanding botanical features, scenic or historic sites or buildings;
  - (d) Capability of soils, vegetative cover and proposed erosion control measures to support proposed development without erosion, silting or other instability. This statement shall be a required part of the Definitive Plan whether or not the Board waives the balance of the Environmental Analysis requirements;
  - (e) Relationship to G.L. c. 131, s. 40, 40A, c. 130, s. 105.
- (3) The report shall also estimate: the proposed traffic flow in relation to the way(s) giving access to the subdivision; the number of inhabitants of the subdivision and the effect of the project on public services such as water, sewer, schools, police, fire and waste disposal.

**E. Review procedure.**

- (1) Board of Health - The Board of Health shall, within 30 days of filing, report to the Planning Board, in writing, with signatures of a majority of its members, its approval or disapproval of the plan, as required by G.L. c. 81, s. 81-U. Whereas the soils in Newbury have severe limitations for on-site disposal, such report shall include a statement that, based on the data provided under Subsections A(5) and B(8) above, the Board of Health has determined which lots have been deemed to have an adequate area for on-site disposal. If the Board of Health disapproved said plan or any part thereof, it shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefore in such report, and, where possible, shall make recommendations for the adjustment thereof.
- (2) Other agencies - Upon acceptance of a Definitive Plan application, the Board shall post forward one set of the Definitive Plan to the Conservation Commission, Highway Department, Board of Fire Engineers and the applicable Water District Commissioners. Each agency shall review the Plan to assess the Plan's compliance with the design standards herein and shall submit findings and recommendations to the Board in writing, within 45 days.
- (3) The Planning Board may require the applicant to design and make improvements to roads, utilities, or other services outside of the planned subdivision if they help to mitigate or lessen the impacts of the development or improve safety or services in the area.

**F. Public hearing.**

- (1) Before approval, modification or disapproval of the Definitive Plan is given, a public hearing shall be held by the Board. The hearing is open to the public so that the applicant may appear in his own behalf or be represented by an agent or attorney; the applicant or his agent shall be prepared to present the plans for his development and answer questions so that the Chairperson may allow all those in favor and in opposition to speak and ask questions, etc.
- (2) Notice of the time and place of such hearing shall be given by the Board at the expense of the applicant by advertisement in an official publication of, or in a newspaper of general circulation, in the Town of Newbury, once in each of two successive weeks, the first publication being not less than 14 days before the day of the hearing. A copy of said notice shall be mailed to the applicant and to all owners of land abutting upon the subdivision as appearing in the most recent tax list. Responsibility for this mailing shall rest with the applicant. The applicant shall provide the board with evidence that the mailing has been sent.

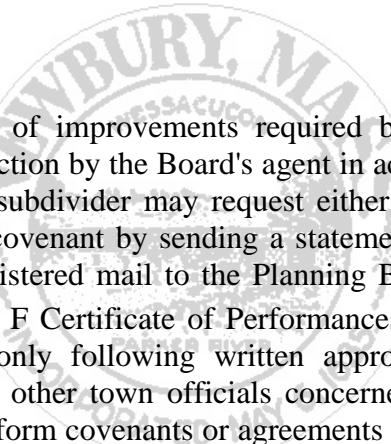
**G. Approval, modification or disapproval** - The Definitive Plan shall be approved, modified and approved, or disapproved with reason by the Board within 90 days if a Preliminary Plan has been submitted and acted upon, or 135 days if no

Preliminary Plan has been submitted, in the case of a residential subdivision or 90 days for a nonresidential subdivision after formal application and the Town Clerk and the applicant shall be notified of its action. The Board will send a brief summary of its action to any person interested, upon written request therefor, when request states the name and address of the person to whom the summary shall be sent.

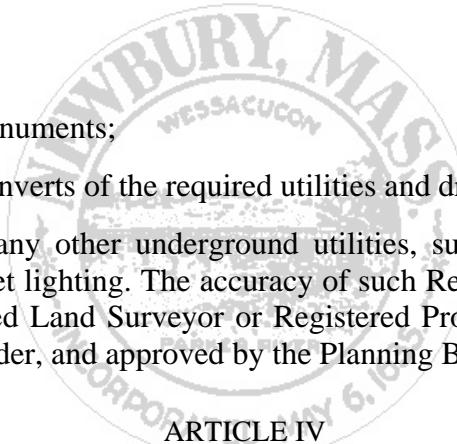
- (1) If the Conservation Commission finds that the Wetlands Protection Act is applicable, the Planning Board may make its final approval of the plan contingent on Conservation Commission approval.
  - H. Performance guarantee - Before endorsement of approval the Board will require provision for the completion of construction of ways and the installation of municipal services in accordance with the Rules and Regulations of the Board. The construction of ways and installation of municipal services within the period required by the Board shall be secured by one, or in part by one and in part by the other, of the following methods:
    - (1) By a proper performance bond or a deposit of money in the form appended hereto marked Form F<sup>4</sup> or negotiable securities, in an amount determined by the Board to be sufficient to cover the cost of such construction and such installation, each bond or deposit shall be contingent upon the construction and such installation within such period as the Board shall determine. Each bond filed shall be approved as to form, manner of execution and sureties by the Town Counsel and all deposit agreements shall be approved as to form and manner of execution by the Board.
    - (2) By a covenant in the form appended hereto marked Form D, which shall be executed, noted on the plans and recorded therewith by the owner of record, running with the land and stipulating that no lot of the land shown on the plan shall be built upon or conveyed by other than mortgage deed nor application for building permit made until the streets, services and conditions of approval have been completed.
  - I. Endorsement - Approval, if granted, shall be endorsed on the original drawing of the Definitive Plan by the Board but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the action of the Board with the Town Clerk and said Clerk has notified the Board that no appeal has been filed.
  - J. Copies of documents - Following plan approval, endorsement, and recording, the applicant shall provide the Board with one polyester film reproducible and five prints of the Definitive Plan and one copy of final covenants and restrictions, noting book, page number, and date of recording for each; and one polyester film reproducible and five prints of the Street Plan and Profiles.
    - (1) Prior to final approval by the Planning Board, the applicant shall submit two (2) copies of the approved version of the Definitive Plan in digital files on
4. **Editor's Note:** Form F is located at the end of this chapter.

electronic media to the Planning Board for review and approval. The version of the plan on digital files shall be identical, full size, and shall contain all information included on the printed plan. Each feature depicted in the subdivision plan shall have its own distinct data layer within the digital file (i.e., lines representing each side of a property parcel). Where property-parcels are depicted, the property parcel data layer shall be a distinct data layer within the system. Polygons representing property parcels MUST be closed and no other data layer shall be used to close the polygon. Data shall be produced and depicted using either the Massachusetts State Plane Coordinate System (1927 Datum in feet) OR the Massachusetts State Plane Coordinate System (1983 Datum in meters). Each digital file sheet shall have a minimum of 4 survey quality control points depicted on both the hard copy maps and the digital file. These control points shall be survey quality and accurate to plus or minus one centimeter. Layer names shall conform to Planning Board standards. Digital files shall be accompanied by information (or a text field) that defines and describes each layer contained within the submittal file(s). Digital files shall be provided in an IBM-PC (or compatible) format file system approved by the Planning Board at the time of submission. The list of approved versions of data files, which the Board may revise from time to time, will be available at the Office of the Planning Board. Applicants must request the list of approved versions of data files prior to application.

- (2) A letter from the Planning Board verifying receipt of the digital files and compliance with Planning Board standards shall be submitted to the applicant within ten (10) days. Failure to submit such digital files to the Planning Board, and to obtain a compliance letter may be cause for the Planning Board to rescind approval or not to endorse said plan.
  - (3) All digital files shall be high quality, free from any and all defects and viruses, and labeled as to their contents. Digital files shall be prepared with a back up and be sequentially numbered. The applicant shall provide to the Planning Board a descriptive list of all files submitted, which documents file contents and intended use.
- K. Layout and acceptance of streets and of ways - The approval of a Definitive Plan does not constitute the laying out or acceptance by the Town of streets shown on the plan. All streets and ways, drainage systems and utilities shall remain the responsibility of the owner until the same are accepted by the Town of Newbury. Prior to acceptance by the Town of Newbury of any such street the owner shall secure approval of the improvements by the Board together with the full and complete release of any performance guarantees.
- (1) The applicant will be responsible for maintaining and plowing the roads in order to ensure access of emergency equipment up until the time that the road is accepted by the town. In the event that the town assumes this responsibility, the applicant may be billed for the cost of said maintenance and plowing.
- L. Release of performance guarantee.

- 
- (1) Upon completion of improvements required by this regulation, and upon payment for inspection by the Board's agent in accordance with the provisions of § 117-42, the subdivider may request either partial or full release of his bond, deposit or covenant by sending a statement of completion and request for release by registered mail to the Planning Board and to the Town Clerk (Note: See "Form F Certificate of Performances" for lot releases<sup>5</sup>). Release will be granted only following written approval by the Planning Board Engineer and any other town officials concerned with the work performed. Copies of release form covenants or agreements regarding building or use and occupancy permits shall be sent by the Planning Board to the Inspector of Buildings.
  - (2) Partial release. The Board may grant partial release from such security for partial completion of improvements, arid payment of any outstanding invoices for inspection by the Planning Board's agent, provided that the, completed portion provides a reasonable system for circulation and utilities pending completion of the rest, and provided that appropriate arrangements have been made for completion.
  - (3) Security. The Board may release the applicant from the covenant upon receipt of an agreement executed by the applicant and by the holder of a first mortgage on the premises providing for retention of funds and their availability to the Town upon default (see ch. 41, GL., Sec. 81-U, 11th paragraph).
  - (4) The Board shall in all cases retain security in an amount equal to at least 15% of the total cost of improvements until the integrity of road pavement and drainage has been verified following a full winter in place, and an amount equal to at least 5% of the total cost until trees and other vegetation have been established, and the fee has been conveyed to the Town or three years have elapsed since completion of the improvements.
  - (5) Refusal of release. If the Planning Board determines that said construction or installation has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk the details wherein said construction and installation fails to comply with the requirements of this regulation.
- M. Record plans - Upon completion of construction, and before release of the full performance guarantee, the subdivider shall have prepared and submitted Record Plans at the same scale as the street plans, which shall indicate the actual location of all of the following:
- (1) Street lines;
  - (2) Roadway edges;
  - (3) Path locations;

5. **Editor's Note:** Form F is located at the end of this chapter.

- 
- (4) Permanent monuments;
  - (5) Location and inverts of the required utilities and drainage;
  - (6) Locations of any other underground utilities, such as electricity, telephone lines, and street lighting. The accuracy of such Record Plans shall be certified by a Registered Land Surveyor or Registered Professional Engineer retained by the subdivider, and approved by the Planning Board Engineer.

## ARTICLE IV Design Standards

### **§ 117-17. General.**

It is the intent of these standards to provide a sound basis for the design of new subdivisions which will add value and character to the Town. All streets in a subdivision shall be designed so that, in the opinion of the Board, they will provide safe vehicular and pedestrian travel. Due consideration shall be given by the subdivider to the natural resources and characteristics of the subdivision site, to its topographic and geologic conditions, to public convenience and safety and to the attractiveness of the proposed street's design on the site.

### **§ 117-18. Design purposes.**

Design and Construction shall reduce, to the extent possible, the following features:

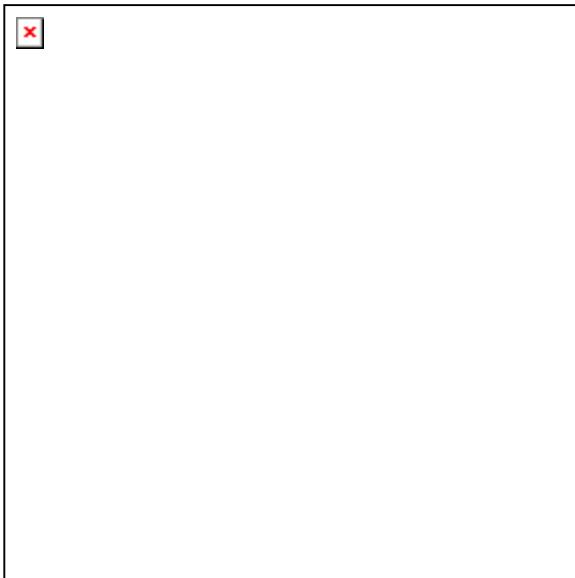
- A. Volume of cut and fill;
- B. Area over which existing vegetation will be disturbed, especially if within 100 feet of a river, wetland or water body or in areas having a slope of more than 15%;
- C. Number of trees removed having a diameter over six inch dbh;
- D. Extent of waterways altered or relocated;
- E. Dimensions of paved areas (including streets) except as necessary to safety and convenience, especially in aquifer and recharge areas;
- F. Design shall emphasize, to the extent possible, the following:
  - (1) Use of collector streets to avoid traffic on streets providing house frontages;
  - (2) Visual prominence of natural features of the landscape;
  - (3) Maintenance within the subdivision of runoff and vegetative cover equivalent to conditions before development.

### **§ 117-19. Streets - location and alignment.**

- A. All streets shall be designed so they will connect in a logical fashion with existing streets, provide for the convenient and safe movement of pedestrian and vehicular traffic and allow for the proper projection of streets or for access to adjoining property which is not yet subdivided.

- B. Provisions satisfactory to the Board shall be made for the proper projection of streets or access to adjoining property, which is not yet subdivided. Reserve strips prohibiting access to streets or adjoining property shall not be permitted.
- C. Street jogs with center line offsets of less than 125 feet shall be avoided.
- D. Streets shall be laid but so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than 60 degrees.
- E. Property lines at street intersections shall be rounded or cut back to provide for a curb radius of not less than 30 feet.

**§ 117-20. Classification of streets.**



**§ 117-21. General layout and dimensions.**

		<b>Minimum Sight Distance</b>		<b>Minium width of R-O-W (ft)</b>		<b>Minimum width of Road- way (ft)</b>	
		<b>Horizontal (ft)</b>	<b>Vertical (ft)</b>	<b>Maximum Length (ft)</b>	<b>Minimum Center-Line Radius (ft)</b>		
		<b>Minor</b>					
Dead End	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Prohibited							
Cul-de-sac	50	20	200	100	500	100	
Non-through		50	20	200	100	200	200
Through	50	22	200	100	n/a	200	
<b>Subcollector</b>							
Through Only		50	24	500	350	n/a	200
<b>Collector</b>							
Through Only		60	28	800	450	n/a	400

- A. The Board may in the case of residential streets authorize a reduction of the

minimum roadway width and authorize an increase in roadway length. Such reduction or extension shall only be authorized if the Board finds it is in the public interest and that the design of the overall subdivision will significantly enhance the character of the neighborhood and preserve to a greater extent the historical and natural features of the site. Approval of such reductions or exceptions if based in part on limiting the number of lots upon which buildings can be constructed shall be endorsed on the plan to which they relate or set forth in a separate instrument attached thereto and recorded therewith. The Board shall maintain in its files a written explanation of the reduction or exemption together with the reasons for its approval.

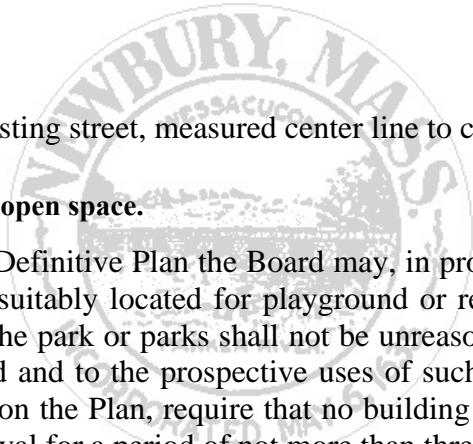
- B. Cul-de-sac streets shall be provided with a turnaround having an outside sideline diameter of at least 165 feet, an outside roadway diameter of at least 140 feet, a pavement width of 25 feet, and a center island. Streets with a center island of less than four acres shall be classified as cul-de-sacs. Streets with a center island of four or more acres shall be classified as non-through streets.
- C. Length of cul-de-sac streets shall be measured from the side line of its intersect with a through street along the center line of the cul-de-sac street to the rear most point of the sideline of the turnaround. Length of non-through streets shall be measured from the sideline of its intersection with a through street along the center line of the non-through street to the point on such center line which is most distant from the sideline of the through street.
- D. Grades of all streets shall be the reasonable minimum but not less than two percent nor more than seven percent on collector and subcollector streets or ten percent on minor streets.

**§ 117-22. Typical cross section.**

See the Typical Cross Section Diagram at the end of this chapter.

**§ 117-23. Easements.**

- A. Easements for utilities or for pedestrian access across lots or centered on rear or side lot lines shall be provided where necessary and shall be at least twenty feet wide.
- B. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, the Board may require that there be provided a storm water easement or drainage right-of-way of adequate width to conform substantially to the lines of such watercourse. The boundaries of said easement shall be no closer than five feet from the high water line, drainage way, channel or stream, and shall provide for construction or other necessary purposes.
- C. Where a street is projected, or the Board requires provision for access to adjoining property, an easement for all roadway purposes shall be granted.
- D. A proposed through street shall have at least 300' between its two new intersections which open onto an existing street, in cases where the proposed street has both its



openings on one existing street, measured center line to center line.

**§ 117-24. Public area and open space.**

Before the approval of a Definitive Plan the Board may, in proper cases, require the Plan to show a park or parks suitably located for playground or recreational purposes or for providing light and air. The park or parks shall not be unreasonable in area in relation to the land being subdivided and to the prospective uses of such land. The Board may, by appropriate endorsement on the Plan, require that no building be erected upon such park or parks without its approval for a period of not more than three years. Each area reserved for such purpose shall be of suitable area, dimensions, topography and natural character for the purpose of a park or playground. The area or areas shall be so located as to serve adequately all parts of the subdivision as approved by the Board. The Board may require that the area or areas reserved shall be located and laid out so as to be used in conjunction with similar areas of adjoining subdivisions or of probable subdivisions. The area or areas shall be made available for purchase by the Town. Failure by the Town to purchase said area(s) within three years from the date of acceptance of the subdivision's roads and utilities by the Town shall free the owner from these restrictions.

**§ 117-25. Flood plain.**

If any part of a proposed subdivision is at or below a base flood elevation, the design of the subdivision shall:

- A. Be consistent with the need to minimize flood damage;
- B. Provide for all public utilities and facilities such as sewer, gas, electrical and water systems to be located and constructed to minimize or eliminate flood damage; and
- C. Provide drainage systems adequate to reduce exposure to flood hazards.

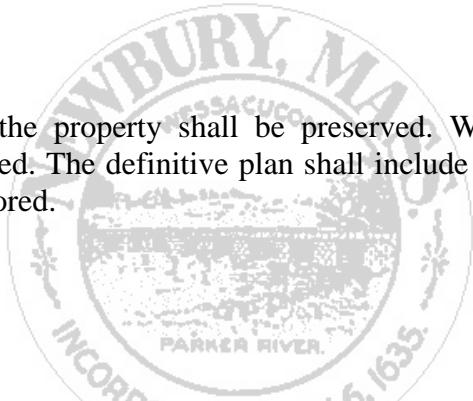
**§ 117-26. Wetlands.**

Under the Wetlands Protection Act, G.L. c. 131, Sec. 40 "no person shall remove, fill, dredge or alter any bank, freshwater wetland, beach, dune, flat, marsh, meadow or swamp bordering ... on any creek, river, stream, pond or lake, or any land under said waters without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment, at least sixty days prior to any such removing, filling, dredging or altering." Said notice shall be sent by certified mail to Conservation Commission. The Board may condition its approval of a Definitive Plan upon the issuance of an "Order of Conditions" by the Newbury Conservation Commission.

**§ 117-27. Subdivision signs.**

Permanent signs identifying the subdivision by name (other than street signs) are prohibited.

**§ 117-28. Preservation of stone walls.**



Stone walls throughout the property shall be preserved. Where this is not possible, stonewalls shall be restored. The definitive plan shall include a designation of any stone walls to be moved or restored.

**§ 117-29. (Reserved)<sup>6</sup>**

**§ 117-30. Fire protection.**

- A. In precinct I, the applicant is required to install 20,000 gal underground water storage tanks along the roadways of the subdivision at located a maximum of 700 feet apart. The tanks shall be installed and maintained in accordance with the NFPA Standards with the approval of the Newbury Board of Fire Engineers. After installation, it will be the applicant's responsibility to repair and maintain all fire fighting water storage facilities so that they are fire-fighter-ready for use at all times.
- B. In precinct II, applicants will be required to connect the subdivision to the water systems owned, operated and maintained by the Byfield Water District. Installation standards and specifications must comply with those of the Byfield Water District and the Newbury Board of Fire Engineers.

**ARTICLE V**  
**Specifications for Construction**

**§ 117-31. General.**

- A. The subdivider shall install all of the improvements itemized herein unless waived in writing by the Board. All work done in accordance with these specifications shall be accomplished only subject to the inspection of the Planning Board or the Board's Agent.
- B. No aforementioned bond or covenant shall be released until full approval in writing of all work done is received by the Planning Board from its Agent. Such approval shall be in a form mutually satisfactory to the Planning Board and the Board's agent and shall, at a minimum, cover those matters set forth in the Subdivision Inspection Checklist - Form G.<sup>7</sup>
- C. No loam, gravel or other earth materials of any kind shall be removed from its original position in any subdivision until such time as the performance guarantee has been submitted, accepted and approved by the Board. No removal of loam from the development shall be made until a six-inch thickness of compacted loam shall have been provided throughout the entire area of all lots and on the planting strips along the roadway. Only such areas designated as roadways, driveways, building sites and areas requiring filling may be excavated for construction purposes.

**§ 117-32. Streets and roadways.**

6. Editor's Note: Former § 117-29, Common driveways, was repealed 9-15-2004. For current requirements for common driveways, see Ch. 97, Zoning, Art. XIC, Common Driveways.

7. Editor's Note: Form G is located at the end of this chapter.

Unless otherwise specified, all construction shall be in accordance with the most recently amended "Standard Specifications for Highways and Bridges" of the Massachusetts Department of Public Works.

- A. Clearing and grubbing - Existing trees within the area of the right-of-way may be selected for preservation for aesthetic or other values by the Planning Board provided they shall be over six inches caliper and shall be located at least five feet from the edge of the finished roadway pavement. No trees shall be removed until said selection is made. Such trees to be preserved shall be protected from bruises and other abuses continuously throughout the construction of the subdivision in a manner satisfactory to the Planning Board. The developer shall give the Board fourteen days notice to allow the Board to select the trees to be saved. The entire area of each right-of-way shall then be cleared of all stumps, brush, roots, boulders and like material and all trees not intended for preservation.
- B. Excavation and subgrade preparation - All topsoil and other yielding material shall be removed for the full length and width of the paved roadway and from under the sidewalk location when sidewalks are required regardless of whether or not the finished grade is above the existing grade. With the roadway at the subgrade level, all pipes and underground services shall be laid. Backfill will be with clean, granular material, and shall be compacted in six-inch lifts with equipment satisfactory to the agent of the Board. All roadway fills will be constructed of earth free of stumps, brush, trash, organic material or other deleterious materials. Fill material shall be placed in six-inch maximum lifts. The moisture content shall be kept at optimum by means of water trucks (if dry) or blading the material (if wet). The road fills shall be compacted with rollers satisfactory to the Board to 95% standard AASHO compaction. Satisfactory compaction levels to be confirmed by compaction tests; such tests to be arranged and paid for by the developer, and results forwarded to the Board and its agent; which tests shall be by such method and by such testing company as shall be satisfactory to the Board.
- C. Gravel base and grading - After the roadway has been carefully graded to an elevation 16 inches below the finished grade as shown on the profile of the Definitive Plan, 12 inches of base gravel shall be spread and rolled with a roller of sufficient weight to achieve 95% compaction of gravel (AASHO T-99, Method C). Satisfactory compaction levels to be confirmed by compaction tests; such tests to be arranged and paid for by the developer, and results forwarded to the Board and its inspector; which tests shall be by such method and by such testing company as shall be satisfactory to the Board. The gravel shall be placed in two six-inch lifts, and rolled with a vibratory roller of at least 12 tons static weight. Gravel shall be in conformity with the most recent "Standard Specification for Highways and Bridges" of the Massachusetts Department of Public Works. When spread on the road and rolled, it shall form a stable foundation. All banks and curves must be established before the bottom course of wearing surface can be applied. The roadway crown shall have a minimum of one-quarter inch per foot of pitch.
- D. Pavement or wearing surface - The wearing surfaces shall consist of a four inch thickness, after compaction, of Class 1, Type 1-1 plant mixed bituminous concrete

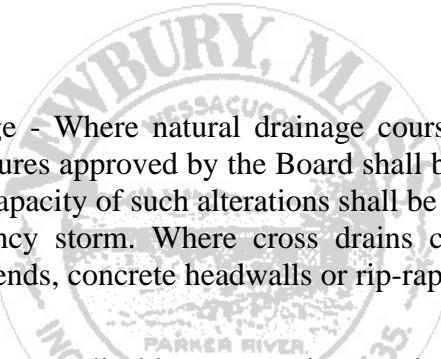
composed of materials and prepared in conformity with the "Standard Specifications for Highways and Bridges" of the Massachusetts Department of Public Works. It shall be spread and rolled in two courses, a two and one-half inch thickness standard bottom course and a one and one-half inch thickness top course in conformity with the Specifications aforementioned. The first course shall be swept clean prior to the putting down of the second course, and a tack coat must be applied to insure proper binding of the two courses. A leveling course may be required prior to the installation of the second course. Any patches to the wearing surface shall consist of 4-inch thickness, after compaction, and shall be applied in the same manner as the wearing surfaces as set forth above.

### **§ 117-33. Utilities.**

All required utilities exclusive of transformers shall be placed underground at the time of initial construction. Required utilities may include water, storm drainage, telephone, electricity, gas, wiring for street lights, fire alarm systems, and cable TV. All construction will be in accordance with Massachusetts Department of Public Works "Standard Specifications for Highways and Bridges" or the specification of the applicable utility company, unless otherwise specified by the Board. All utilities which are placed above ground, i.e.; poles and transformers, shall be placed outside the right of way so as not to interfere with the placement of the streets, roadways and/or sidewalks and the subdivider shall provide easements on lots within the subdivision for this purpose.

#### **A. Surface water drainage.**

- (1) Pipes, culverts and drains - Pipe for the construction of culverts and drains shall be reinforced concrete except where such culverts or drains pass under a roadway or driveway, in which case they shall be Concrete Pipe Institute Class V (or better) reinforced concrete. All pipe shall not be less than 12 inches in diameter. Pipe joints shall be carefully made so that the spigot is tightly butted to the seat of the bell and the spacing between the spigot is uniformly proportioned. The joints shall be filled with cement in all cases. All utility trenches shall be filled with bank gravel or clean excavated in-place material carefully compacted in six-inch lifts and shall be leveled with adjacent grades. All drains shall be laid to uniform grades and shall be carefully bedded so that the pipe is supported throughout its entire length with compacted earth. Shoulder or so-called French drains shall be located wherever underground water is present that may flow under proposed streets or roadways. Such drains shall be at least three feet in depth and two feet in width and otherwise sufficient to interrupt such flow of water and divert it from flowing under such proposed street or roadway.
- (2) Catch basins - Catch basins shall have a thirty inch sump. All catch basins shall discharge into manholes. The distance between two catch basins shall not exceed 300 feet. The Planning Board may require a lesser distance if deemed advisable by the Board because of unusual local conditions; catch basins shall be installed at all breaks in grade.

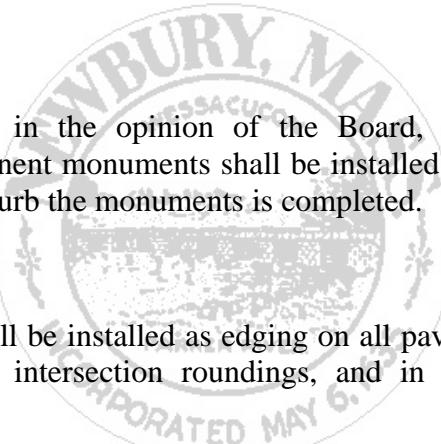
- 
- (3) Natural drainage - Where natural drainage courses are altered, cross drains and other structures approved by the Board shall be installed to restore natural drainage. The capacity of such alterations shall be determined on the basis of a 50-year frequency storm. Where cross drains carry flow of natural water courses, flared ends, concrete headwalls or rip-rap shall be installed to prevent erosion.
- B. Water mains - Where applicable, water pipes and related equipment, such as hydrants and main shut-off valves, shall be constructed to serve all lots on each street in accordance with the current specifications of the Newburyport Water Commission, the Old Town Water District or the Byfield Water District. Hydrants shall be provided and placed at intervals of not more than 500 feet along each street. Backfill shall be in accordance with Subsection A(1). Except where necessary to cross a street, all water pipes and related equipment shall be installed on one side of the street. Where only one sidewalk is required by the Planning Board, the water pipes and related equipment shall be placed on the other side of the street. All water pipes and related equipment shall be placed away from the paved roadway and any sidewalk so as to minimize the amount of roadway cutting or sidewalk cutting required in the future for repairs.

#### **§ 117-34. Sidewalks/bikeways.**

Unless the Board determines that pedestrian movement is otherwise provided for, sidewalks having a width of not less than five feet, a gravel base of eight inches, and a three-inch thick bituminous pavement (of which two inches shall be applied as the base and one-inch applied as the top wearing surface) in accordance with the provisions of § 117-32D shall be constructed between the roadway and the right-of-way line, as close to the latter as practicable, and generally parallel with the roadway. The application of the bituminous pavement shall be by mechanical spreader reasonably acceptable to the Planning Board or the Board's Agent Minor streets shall be provided with sidewalks on one side, secondary and principal streets with sidewalks on both sides. The inclusion of bicycle paths is encouraged. Pedestrian access other than by routes parallel with roadways may be permitted, provided easements are established.

#### **§ 117-35. Monuments.**

- A. Permanent monuments shall be granite, four feet in length and four inches square and shall be set at locations shown on the Definitive Plan. A 3/8-inch drill hole shall be placed in the top to indicate the point. The tops shall be set four-inches above the final grades of the adjoining ground. All permanent monuments shall be properly placed, backfilled and tamped with a good binding gravel and shall be adequately protected if placed before all construction is completed. Placement and location of monuments shall be certified by a registered land surveyor and shall be shown on the Record Plan.
- B. Monuments shall be installed at all street intersections and at all points of change in curvature of streets (at 1000-foot intervals maximum on tangents). Iron pipes shall be installed at the front two corners of individual lots within the subdivision and at



other points where, in the opinion of the Board, permanent monuments are necessary. No permanent monuments shall be installed until all construction which would destroy or disturb the monuments is completed.

**§ 117-36. Granite curbing.**

Sloped granite curbing shall be installed as edging on all paved roadways, at the back of catch basins, at roadway intersection roundings, and in other specific locations as determined by the Board.

**§ 117-37. Street signs.**

The subdivider shall furnish and erect street signs at the locations shown on the Definitive Plan to designate the name of each street in a subdivision and each intersecting street, prior to the occupancy of any house on the street. Each sign shall consist of a cast metal, double-faced, street nameplate mounted on a two-inch diameter pipe with a clearance of seven feet above the sidewalk or ground surface, said pipe being set at least 30 inches in the ground set in concrete and in such a position that it could not be easily struck by passing vehicles. Signs shall conform in color and in lettering style to the current Town standards.

**§ 117-38. Side slopes.**

The area outside the pavement (whether in cut or fill) shall be sloped at a rate not steeper than three horizontal to one vertical (3:1) until it intersects the finished grade of the abutting lots, except as may be required for sidewalks, all as shown on the typical street cross-section. All such slopes shall be loamed and seeded similar to the grass strips. Flatter slopes may be required by the Board depending on soil conditions.

**§ 117-39. Retaining walls.**

Retaining walls or other slope stabilization construction shall be required to eliminate all slopes less than the ratio of three horizontal to one vertical. The design, type and location of any wall or other construction shall conform to all State Building Code requirements and shall be submitted to the Board for approval.

**§ 117-40. Grass strips.**

All grass strips and other unpaved areas within the street right-of-way shall be covered with at least six inches of loam (depth after compaction) before seeding.

**§ 117-41. Trees.**

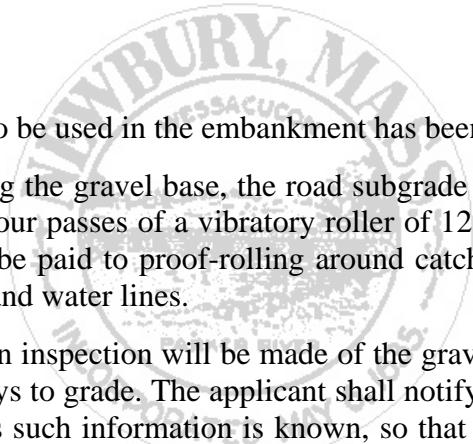
Every effort shall be made to preserve the existing trees on the right-of-way and on the lots to be sold. No tree in excess of six inches in diameter shall be removed within the rights-of-way of the proposed streets within a subdivision without the approval of the Planning Board. Filling and cutting of roadways shall be done in such a manner as to preserve the trees whenever possible. No fill shall be placed against the trunk of any tree to be retained. The Board shall require planting of trees when, in its opinion, existing

trees are insufficient to provide an attractive setting. Trees shall be provided by the subdivider in accordance with the Definitive Plan which shall specify the number of required trees and note the size, location and a type of stock compatible with site conditions for each planting. At any time prior to the release of the performance guarantee pursuant to § 117-16L hereof, the Planning Board may require that additional trees be planted when, in its opinion, such additional trees are required to provide an attractive setting. The Board shall provide the subdivider with the size, location, and type of stock which is compatible with site conditions for each planting. In no case shall trees of any type with less than a three-inch caliper be planted.

#### **§ 117-42. Inspection of required improvements.**

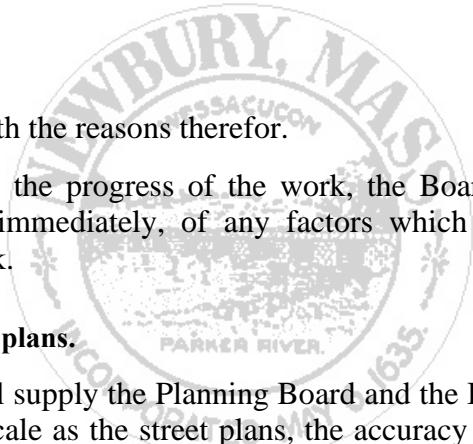
The following inspections of the required improvements will be made at the applicant's expense by the Board's Agent. Inspection will be in addition to any other inspections the Board may make or cause to be made. It should be noted that the construction process requires continuous although not necessarily full-time, inspection. Therefore, it is anticipated that several of the following inspections may be going concurrently on different parts of the subdivision. Prior to the beginning of any work in the subdivision, a pre-construction meeting will be held on site between the Board and/or its' Agent and the applicant.

- A. First inspection - An inspection will be made of the work upon completion of all clearing, grubbing and stripping and all work incidental thereto. No fill shall have been placed at the time of this inspection.
- B. Second inspection - An inspection will be made of the completed drainage system (without backfill) as required on the Definitive Plan. At the same time, or such other time as the work may be available, an inspection will be made of the completed underground utilities and municipal services (without backfill) as required. The inspection of required utilities and municipal services will be made by the agency responsible for the particular service. Each agency so involved will notify the Board's Agent of the results of its inspection.
- C. Third inspection - An inspection of the back filling and compaction of all drainage, sewer, water and other utility trenches as may be installed by utility companies and related work will be made in the manner required by these Rules and Regulations. It shall be the applicant's responsibility to ensure compliance with these requirements. If, in the opinion of the Board, the backfilling and compaction of utility trenches and the patching of the pavement, if required, has not been performed properly, the Board may not release the bond, surety or covenant applicable until such work has been performed to the satisfaction of the Board.
- D. Fourth inspection - An inspection will be made of the construction of road embankments up to the level of the bottom of the gravel base. No fill may be placed for such embankments until:
  - (1) The Agent has approved the conditions of the foundation soil under the fill with respect to adequacy of topsoil and vegetation removal, wet conditions, etc.

- 
- (2) The material to be used in the embankment has been approved by the Agent.
  - (3) Prior to placing the gravel base, the road subgrade will be proof-rolled with a minimum of four passes of a vibratory roller of 12 tons static weight. Special attention will be paid to proof-rolling around catch basins and manholes and over culverts and water lines.
- E. Fifth inspection - An inspection will be made of the gravel base as may be required to bring the roadways to grade. The applicant shall notify the Agent as to his source of gravel as soon as such information is known, so that samples may be taken and analyzed by the Engineer. The applicant is hereby advised not to proceed with this operation until such time as the Agent notifies the applicant that the gravel proposed for the fill is acceptable. If the applicant proceeds prior to such notice, he does so at his own risk. The applicant shall not use a gravel source other than the one designated without prior notice to the Agent.
- F. Sixth inspection - An inspection will be made of the completed binder course for the roadway pavement. Samples of the bituminous mix may be taken by the Agent for purposes of performing an extraction test in order to compare the sample with the job-mix formula previously submitted.
- G. Seventh inspection - An inspection will be made of the completed top course of the roadway pavement and the installation of curbing.
- H. Eighth inspection - An inspection will be made of all work as required on sidewalks, grass plots, street trees, side slopes, monuments and street signs.
- I. Ninth inspection - A final inspection will be made of all subsequent work as required herein or on the Definitive Plan to include the final cleanup. The developer's engineer shall furnish all data relative to base lines and grade stakes on the ground, stake sheets, ties and any other information which is needed in the opinion of the Board's Agent to accomplish the 9th inspection.
- J. Inspection before winter — Prior to winter, the site will be inspected and the Board will present the applicant of list of items that need to be addressed in order to make the site safe and functional prior to winter. Following the receipt of the letter, the applicant will have 30 days to address the items or appear before the Board.

**§ 117-43. Agent's report.**

- A. The Board's Agent will submit a completed report to the Board for each way in a subdivision. Such report may be in the form appended hereto marked Form G<sup>8</sup> and will be augmented by such additional information as is necessary or as the Board may require to describe any special problems or situations which may arise during the construction of the required improvements.
  - B. The Board's Agent and other responsible inspection agents will report to the Board that the work has been performed in accordance with these Rules and Regulations and the Definitive Plan, or its Agent and others will advise the Board that the work
8. **Editor's Note:** Form G is located at the end of this chapter.



is not acceptable with the reasons therefor.

- C. At any time during the progress of the work, the Board's Agent and others will advise the Board, immediately, of any factors which may adversely affect the progress of the work.

**§ 117-44. Interim as-built plans.**

- A. The subdivider shall supply the Planning Board and the Board's Agent with as-built plans at the same scale as the street plans, the accuracy of which shall be certified by a Registered Land Surveyor or Registered Professional Engineer retained by the subdivider and approved by the Planning Board, which as built plans shall indicate the actual location of all of the following:
  - (1) Locations of all underground utilities;
  - (2) Location of all pipes, culverts and drains;
  - (3) Location of all catch basins;
  - (4) Location of all natural drainage courses;
  - (5) Location of all water mains, water pipes and related equipment, such as hydrants and main shut-off valves; and
  - (6) Location of any stumps, brush, roots, boulders and like material placed within the subdivision.
- B. Such as-built plans shall be delivered to the Board and the Board's Agent prior to the application of the gravel base as required by § 177-32C. Such plans shall be provided on a timely basis so as to permit the Board and the Board's Agent time to review said plans and the subdivision site prior to the application of the gravel base on the roadway.

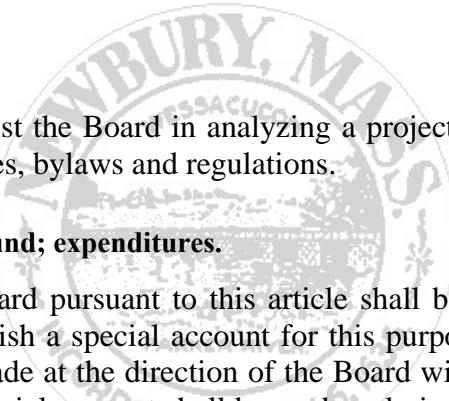
**ARTICLE VI**  
**Special Review Fees**

**§ 117-45. Consultant fees.**

When reviewing an application for approval of a subdivision Preliminary Plan or Definitive Plan for approval, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's impacts. The Board may require that the Applicant(s) pay, in addition to the general filing fee, a "review" fee [as defined in §§ 117-15A(5) and 117-16F] for the employment of outside consultative services(provided by either a public or private entity) engaged by the Board to assist in the review of an application.

**§ 117-46. Consultants authorized.**

In hiring outside public or private consultants, the Board may engage engineers, planners, traffic specialists, lawyers, urban designers, hydrologists, or other appropriate



professionals who can assist the Board in analyzing a project to insure compliance with all relevant laws, ordinances, bylaws and regulations.

**§ 117-47. Deposit of fees; fund; expenditures.**

Funds received by the Board pursuant to this article shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the Applicant. Failure of an Applicant to pay a review fee(s) shall be grounds for denial of the application.

**§ 117-48. Use of fees; interest; excess amounts.**

Review fees may only be spent for services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the Applicant or the Applicant's successor in interest. For the purpose of this article, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

**§ 117-49. Appeals.**

Any applicant may take an administrative appeal from the selection of an outside public or private consultant to the Board of Selectmen of the Town of Newbury. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection of the Planning Board shall stand.

**ARTICLE VII**  
**Administration**

**§ 117-50. Enforcement.**

The Board shall be the agency responsible for administration and enforcement for all matters arising hereunder.

**§ 117-51. Modify, amend or rescind approval.**

The Board on its own motion or on the petition of any interested party shall have the authority to modify, amend or rescind its approval of a Plan of a subdivision or to require a change in a Plan as a condition of its retaining the status of an approved plan after

notice and opportunity to the applicant to be heard in accordance with G.L. c. 41 Sec. 81-W.

**§ 117-52. Separability.**

If any section, paragraph, sentence, clause or provision of these Rules and Regulations shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of these Rules and Regulations shall be deemed valid and effective.

**§ 117-53. Amendments.**

- A. These Rules and Regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Board after a public hearing on its own motion or by petition.
- B. If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to the planning board for approval under the subdivision control law, and written notice of such submission has been given to the town clerk before the effective date of amendments to these rules and regulations, the land shown on such plan shall be governed by the applicable provisions of this bylaw in effect at the time of the first such submission and if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval.

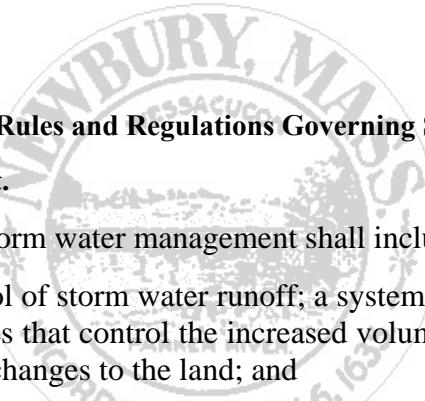
**§ 117-54. Forms.**

On the following pages are the official forms for the administration of these regulations. The administrative content of these forms may be revised from time to time by the Board apart from § 117-53 above. Copies of the forms are available from the Board or the Town Clerk.

**§ 117-55. Additional references.**

- A. Town of Newbury Bylaws.
- B. Zoning Bylaw for the Town of Newbury.
- C. Minimum Sanitation Standard for Private and Semipublic Water Supply - Newbury Board of Health.
- D. Operating Instructions for Sewage Disposal Facilities - Newbury Board of Health.
- E. State Environmental Code - Title 5.
- F. State Wetlands Protection Act.
- G. Newbury Earth Removal Bylaw.
- H. Flood Insurance Rate Map.

**ARTICLE VIII**



## **Newbury Planning Board Rules and Regulations Governing Storm Water Management**

### **§ 117-56. Purpose and intent.**

The purpose and intent of storm water management shall include:

- A. For quantitative control of storm water runoff; a system of native species vegetation and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; and
- B. For qualitative control of storm water runoff, a system of native species vegetation, structural and other measures, that reduce or eliminate pollutants that might otherwise be carried off by surface runoff.

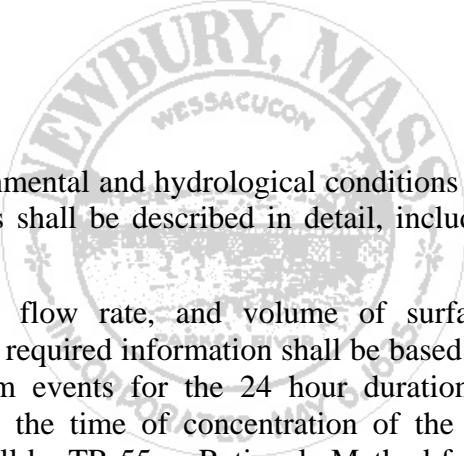
### **§ 117-57. Management policies and regulations.**

The applicant shall follow all regulations and policies for proper storm water management for the following activities:

- A. All new residential subdivisions;
- B. All new multifamily developments;
- C. Facilities or activities requiring or creating 20,000 square feet or more of total impermeable surface area, or resulting in fifteen percent (15%) or more of the project area being rendered impervious;
- D. All roadway construction and upgrading projects;
- E. Any activity within wetlands and a 300 foot buffer zone, "Area of Critical Environmental Concern" and a 300 foot buffer zone, Flood plain and Watershed Protection District, and Town Water Supply District, and involving any maintenance, alteration, use or improvement to an existing storm water management structure changing or affecting the quality, rate, volume, or location of surface water discharge.

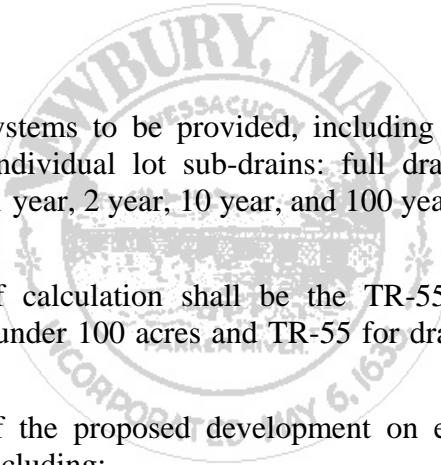
### **§ 117-58. Submission requirements.**

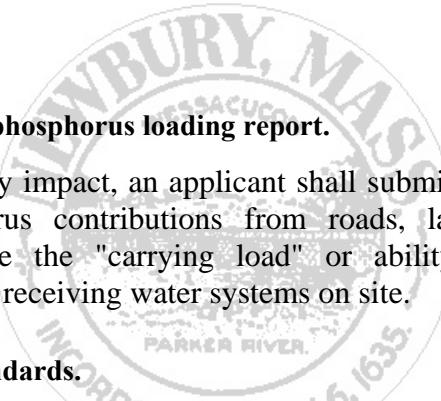
- A. The applicant shall submit all pertinent information in the preliminary planning stages for such facilities or activities. Certain informational requirements may not be applicable to the proposed activity, in such case the relevant sections may be waived by the Planning Board prior to or at the time of plan submission.
- B. It shall be the responsibility of the applicant to submit a Storm Water Management Plan containing sufficient information for the Planning Board to evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the proposed activity on the resource areas and districts as noted above, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts. The Storm Water Management Plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, calculations, plans showing construction details of all systems and structures, and citations to supporting references, as appropriate to communicate the information as required



by these regulations.

- C. The existing environmental and hydrological conditions of the site and or receiving waters and wetlands shall be described in detail, including but not limited to the following:
  - (1) The direction, flow rate, and volume of surface runoff under existing conditions: the required information shall be based on the 2 year, 10 year, and 100 year storm events for the 24 hour duration, and the duration which coincides with the time of concentration of the watershed: the method of calculation shall be TR-55 or Rationale Method for drainage areas under 100 acres and TR-55 for drainage areas of 100 acres or more;
  - (2) The location of areas of the site where storm water collects or percolates into the ground;
  - (3) A description of all surface watercourses, water bodies, and wetlands on or entering a site, or adjacent to the site, or into which storm water flows. Information regarding their water quality and current water quality classification shall be included;
  - (4) Depth to seasonal high groundwater levels;
  - (5) Location of flood plains as per the Town of Newbury Watershed and Flood plain Protection District Zoning Bylaw and Map on file with the Town Clerk's Office;
  - (6) Principal vegetation types;
  - (7) Topography described in full contour details, at 2 foot intervals, with areas of steep slopes (over 10%) highlighted;
  - (8) Soils, with an accompanying analysis of the best use potential of the soils and hydrological group classification; the soils map and use potentials analysis prepared by the US. Soil Conservation Service shall be used as the basis for this analysis.
- D. Proposed alterations of the site shall be described in detail, including but not limited to the following:
  - (1) Changes in topography, described in full contour details at two foot intervals;
  - (2) Areas where vegetation will be cleared or otherwise altered;
  - (3) Areas that will be covered with an impervious surface and a description of the surfacing material.
- E. The proposed development layout shall be described in detail, including but not limited to the following:
  - (1) The site arrangement, including the location of structures, roadway, parking areas, sewage disposal facilities, and undisturbed lands.

- 
- (2) All drainage systems to be provided, including the location and design of roadway and individual lot sub-drains: full drainage calculations shall be included, with 1 year, 2 year, 10 year, and 100 year storms used as the basis of design.
- (3) The method of calculation shall be the TR-55 or Rationale Method for drainage areas under 100 acres and TR-55 for drainage areas of 100 acres or more.
- F. Predicted impacts of the proposed development on existing conditions shall be described in detail, including:
- (1) Changes in water quality, included but not necessarily limited to ground and surface water;
  - (2) Changes in ground water levels;
  - (3) Changes in the incidence and duration of flooding on the site and upstream and downstream from it;
  - (4) Adverse impacts on wetlands;
  - (5) Impacts on vegetation.
- G. All components of the drainage system and any measure for the detention, retention, or infiltration of water, or for the protection of water quality shall be described in detail, including:
- (1) The channel, direction, volume, and rate of the flow, and quality of storm water that will be conveyed from the site, with a comparison to existing conditions, and to the extent practicable, pre-development conditions.
  - (2) Detention and retention areas and devices, including:
    - (a) Plans for discharge of contained waters, including the time to draw down from full condition, description of outlet structures;
    - (b) Maintenance plans: including maintenance schedule, an outline of responsible parties and owners, and all pertinent agreements to be executed to insure proper maintenance;
    - (c) An evaluation of the pollutant removal efficiency of such devices under the existing conditions.
  - (3) Areas of the site to be used or reserved for percolation including the depth to seasonal high ground water table, and prediction of the impact on ground water quality.
  - (4) Areas to be utilized in overland flow, the hydrological soil type of such areas, vegetation present, and the soil susceptibility to erosion.
  - (5) Any other information which the developer or the Planning Board believes is necessary for an evaluation of the development.



### **§ 117-59. Nitrogen and/or phosphorus loading report.**

For review of water quality impact, an applicant shall submit calculations of anticipated nitrogen and/or phosphorus contributions from roads, lawns, and septic systems. Applicant must determine the "carrying load" or ability to absorb nitrogen and phosphorous loading of all receiving water systems on site.

### **§ 117-60. Performance standards.**

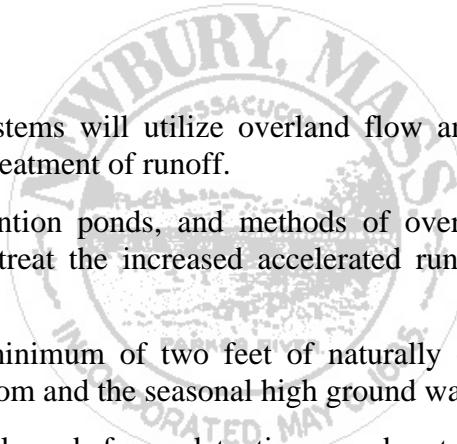
Storm water Management Plans submitted must demonstrate that the proposed development or activity has been planned and designed and will be constructed and maintained to meet each of the following standards:

- A. Ensure that after development, runoff from the site or activity approximated the rate of flow, velocity, volume, and timing of runoff that would have occurred following the same rainfall conditions under existing conditions;
- B. Maintain the natural hydrodynamic characteristics of the watershed;
- C. Protect or improve the quality of surface and ground waters;
- D. Protect, maintain, or improve water quality or existing water quality standards for all receiving waters, water courses and water bodies;
- E. Protect and maintain ground water levels;
- F. Protect the beneficial functioning of wetlands as areas for the natural storage of floodwaters, the chemical reduction and assimilation of pollutants and wildlife and fisheries habitat;
- G. Prevent increased flooding and damage that results from improper location, construction, and design of structures;
- H. Prevent reverse salt water intrusion;
- I. Protect the natural fluctuating levels of salinity to estuarine areas;
- J. Minimize alteration to flora and fauna and adverse impacts to fish and wildlife habitat;
- K. Otherwise further the objectives of the Storm Water Management Policies and Regulations.

### **§ 117-61. Design standards.**

The design, construction, and maintenance of storm water systems will be consistent with the following:

- A. Discharging runoff directly into rivers, streams, watercourses, or enlarging the volume, rate, or further degrading the quality of existing discharges/runoff is prohibited. Runoff shall be routed through vegetated swales and other structural and non structural systems designed to increase time of concentration, decrease velocity, increase infiltration, allow suspended solids to settle, and remove



pollutants; such systems will utilize overland flow and re-infiltration as priority techniques for the treatment of runoff.

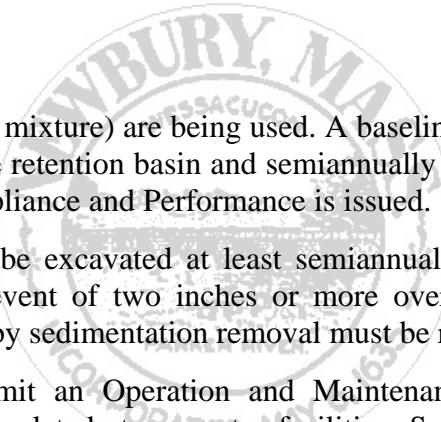
- B. Retention and detention ponds, and methods of overland flow may be used to retain, detain, and treat the increased accelerated runoff which the development generates.
- C. There shall be a minimum of two feet of naturally occurring soils beneath the detention basin bottom and the seasonal high ground water table.
- D. Water shall be released from detention ponds at a rate and in a manner approximating the natural conditions which would have occurred before development, incorporating the following standards:
  - (1) Peak flow discharges from a 1 year, 2 year, and 100 years storm shall not be increased or decreased by the development or activity.
  - (2) Ponds shall not be placed where their use poses concerns of ground water contamination through the recharging of pollutants from surface runoff.
  - (3) Retention ponds shall have a minimum containment time of 36 hours, a minimum sump depth of 3 feet, and whenever possible utilize permeable sides and/or bottoms so as to minimize outflow.
  - (4) Outflow from structural devices shall have flow proceed to native vegetated areas or native vegetated swales when discharging in proximity to watercourses, wetlands, and the estuary; such areas utilized for sheet flow should have hydraulic and vegetative characteristics adequate to insure that storm water reaching the watercourse, wetland, or estuary does so in a manner at pre-development or existing conditions.
- E. Natural watercourses shall not be dredged, cleared of vegetation, deepened, or otherwise altered. Water shall be retained or detained before it enters any natural watercourse in order to preserve the natural hydrodynamics of the watercourse and prevent siltation or other pollution.
- F. Intermittent watercourses such as swales, should be vegetated.
- G. The first one inch of runoff from impervious surfaces, such as rooftops and paved surfaces, shall be treated and re-infiltrated in the site of the development. Applicant shall quantify first one inch of runoff and specify how treatment and re-infiltration will be accomplished.
- H. Runoff from parking lots and roads shall be treated to remove oil and sediment.
- I. The use of drainage facilities and vegetated buffer zones as open space and conservation areas shall be encouraged.
- J. Neighboring properties shall not be adversely affected by flooding from excessive runoff.
- K. At least two (2) monitoring wells shall be installed and located as directed by the

Planning Board and/or their Consultant. However, one such monitoring well will be located at the outlet of any retention/detention basin.

- (1) Initial testing to establish a water quality baseline will be conducted for a period of three (3) months prior to any construction activity. Samples will be taken, as a minimum at least once every month from each of the monitoring wells. There shall not be more than 25 days span between sampling.
  - (2) Upon commencement of construction, sampling and testing will be continued at the frequency and with the same requirements as above. This sampling and testing will be continued until construction is completed and a request is made of and approved by the Planning Board to decrease this frequency of sampling and testing.
  - (3) Upon approval by the Planning Board the testing frequency will be reduced to a semiannual requirement which shall continue until the subdivision roads and improvements are accepted by the Town unless the Planning Board shall relieve the Applicant of this sampling testing requirement sooner.
  - (4) Samples shall be taken to a MA-approved testing laboratory and tested for the following parameters:
    - (a) Total and Fecal Coliforms.
    - (b) Total Phosphorous.
    - (c) Nitrate-Nitrogen.
    - (d) Sodium.
    - (e) Calcium.
    - (f) Chloride.
  - (5) Applicant shall notify the Planning Board and/or their Consultant at least 24-hours prior to sampling. Applicant shall submit copies of the testing laboratory results to both the Planning Board and their Consultant.
- L. The first one inch of runoff from impervious surfaces such as rooftops and paved surfaces shall be treated and re-infiltrated within the site of the development. Applicant shall specify how treatment and re-infiltration will be accomplished. For the purpose of quantifying the first one inch of runoff, Applicant shall calculate volume of one (1) inch of water over all existing proposed impervious site development surfaces. In addition, one (1) inch of water over all anticipated rooftop, patio and driveway areas shall be added. At a minimum, an area of 3,000 square feet shall be assumed as the minimum area per lot of impervious surface for rooftop and patio (house), garage and driveway.

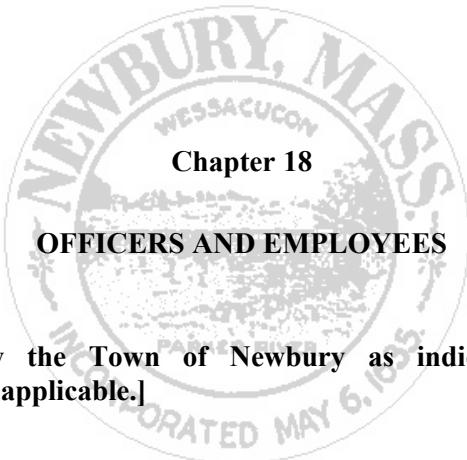
#### **§ 117-62. General requirements.**

- A. Monitoring wells will be installed at the outlet of the retention/detention basin to ensure that no chemical de-icers, fertilizers or pesticides (other than fertilizer



contained in the seed mixture) are being used. A baseline sample will be taken prior to construction of the retention basin and semiannually thereafter until such time as a Certificate of Compliance and Performance is issued.

- B. Sedimentation must be excavated at least semiannually from the pond and after every major storm event of two inches or more over any 24 hour period. Any vegetation uprooted by sedimentation removal must be replaced.
- C. Applicant shall submit an Operation and Maintenance Plan for retention and detention ponds and related storm water facilities. Said Plan shall address Basin Identification, Final Inspection, Operation, Inspection and Maintenance, Checklist, AS-BUILT Plans, and Town Acceptance.
- D. The applicant/developer shall secure future maintenance of the storm water system by a proper bond or by deposit of money of an amount as determined the Planning Board. Such bond or deposit must be secured to the satisfaction of the Board prior to release of any lots within the development and prior to receipt of a building permit.
- E. In the event that the developer does not follow maintenance procedures and programs as approved by the Board, the developer shall devise a plan to remedy the deficiencies. The Board shall approve, disapprove, or modify with approval the plan as required to bring the ground water test result back to at least the baseline conditions. The board shall have the authority to expend any portion of said bond or deposit to provide such maintenance.
- F. In the event that the storm water system is accepted by the town and therefore the town assumes the ownership of said system, any remaining portion of this bond or deposit will be refunded to the developer or homeowner's association.



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

ARTICLE I  
Selectmen

[Adopted by the Annual Town Meeting 3-3-1914 by Art. 21 as Chapter 4, Section 2]

**§ 18-1. Powers and duties.**

The Selectmen shall exercise a general supervision over all matters affecting the interest or welfare of the town.

ARTICLE II  
Inspector of Gas Piping and Gas Appliances  
[Adopted by the Special Town Meeting 3-21-1961 by Art. I]

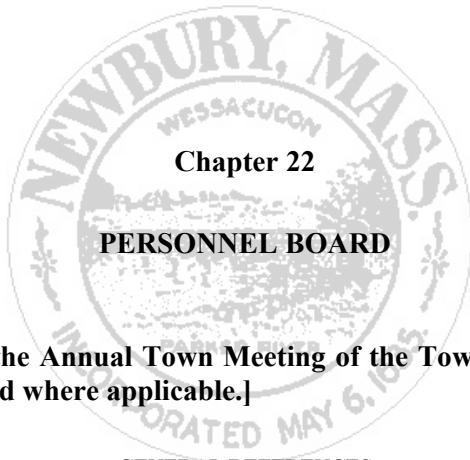
**§ 18-2. Appointment.**

The Selectmen shall annually appoint an Inspector of gas piping and gas appliances in buildings whose duty shall be the enforcement of rules and regulations adopted by the board established under Section twelve H of Chapter twenty-five of the General Laws.

ARTICLE II  
Town Administrator  
[Adopted by the Annual Town Meeting 5-26-20091 by Art. 22]

**§ 18-3 Duties and Responsibilities.**

The Town Administrator shall assume the duties of, or may designate a Chief Procurement Officer. The Chief Procurement Officer shall have all of the duties and authority as provided by Massachusetts General Law, including but not limited to, sole authority to execute any agreement procured under Chapter 30B, Chapter 149 or Chapter 30 §39M, provided, however, that for any agreement the value of which shall be \$25,000.00 or more, prior approval of the Board of Selectmen shall be required.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 3-19-1974 by Art. 22. Amendments noted where applicable.]

#### GENERAL REFERENCES

Officers and employees — See Ch. 18.  
Personnel policy — See Ch. 24.

#### § 22-1. Purpose.

The Town will vote to enact a By-Law under the provisions of Chapter 41, Section 108A and 108C, and establish a Personnel Board to be appointed by the Board of Selectmen to study the problem of compensation of all Town employees except those filled by popular election and professional positions under the direction and control of the School Committee and to prepare<sup>1</sup> a wage and classification plan and personnel policy plan, classifying all such employees into groups and classes doing substantially similar work or having substantially equal responsibilities. Such a plan to provide minimum and maximum salaries to be paid to such employees in positions so classified and for the attainment of such maximum salaries by periodical step rate increases, such salaries to be appropriately related, if possible, to salaries paid commercial and business establishments and by comparable municipalities as well as reliable cost-of-living index.

#### § 22-2. Employment of consultants; reports.

The Personnel Board to be authorized to employ professional consultants in connection with the foregoing if deemed desirable and to report its findings for a complete wage and classification plan and personnel policy plan to the next special or annual Town Meeting.

#### § 22-3. Composition; terms. [Amended 4-26-2005 ATM by Art. 23]

The Personnel Board to consist of seven members, three appointed for three years and four to be appointed for two years.

#### § 22-4. Compensation.

No member of the Personnel Board to receive compensation.

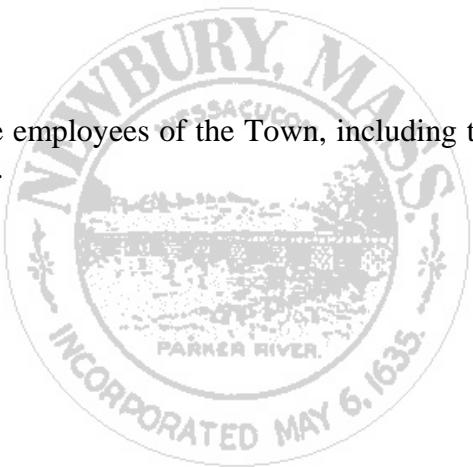
#### § 22-5. Vacancies; selection of members. [Amended 4-26-2005 ATM by Art. 23]

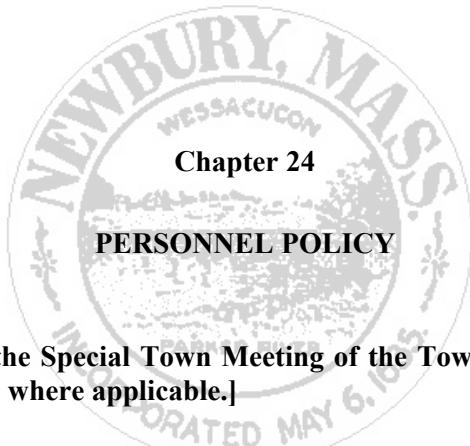
Vacancies to be appointed by the Selectmen. At all times one of the seven members shall be one who has been selected from a list of not less than three suggested members

---

1. Editor's Note: So in original.

submitted by the full-time employees of the Town, including the professional employees of the School Department.





## PERSONNEL POLICY

[HISTORY: Adopted by the Special Town Meeting of the Town of Newbury 9-16-1975 by Art. 3. Amendments noted where applicable.]

### GENERAL REFERENCES

Officers and employees — See Ch. 18.  
Personnel Board — See Ch. 22.

## ARTICLE I General Personnel and Leave Provisions

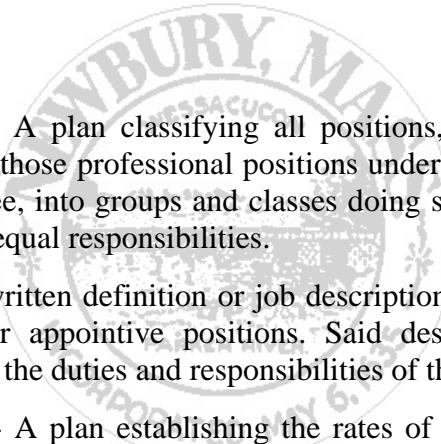
### § 24-1. Authorization and application.

- A. A Personnel By-law is hereby established for the Town of Newbury under the authority of Section 21B of Chapter 40 and Sections 108A and 108C of Chapter 41 of the General Laws of the Commonwealth of Massachusetts. The provisions of this By-law, except as is otherwise provided herein, shall apply to all employees of the Town, except professional employees under the direction and control of the School Committee and those positions filled by popular election. Non-academic employees of the school departments, however, may be covered with the approval of the School Committee. Nothing in the By-law shall be construed to conflict with any provisions of Chapter 31 or any other provisions of the General Laws.
- B. The contents of this By-law may be supplemented, as necessary, by a "Comprehensive Personnel Policy" to establish standards for interaction between Town employees and Town management, but which shall not be considered a legal instrument. [Amended 4-21-1992 ATM, Art. 15]

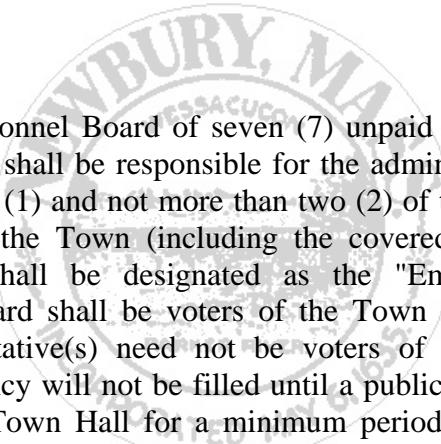
### § 24-2. Definitions.

As used in this By-law, unless otherwise expressly provided or unless a different construction is clearly required by the context or by the provisions of the General Laws, the following words and phrases shall have the meanings listed below:

- A. Administrative Authority - The elected official or Board or the appointed official having jurisdiction over a function or activity.
- B. Board - The Personnel Board as defined in § 24-3.
- C. Department - Any department, board, committee, commission or other agency of the Town employing persons who are subject to this By-Law.
- D. Department Head - The board, committee, commission or person having supervisory control over a department.

- 
- E. Classification Plan - A plan classifying all positions, other than those filled by popular election and those professional positions under the direction and control of the School Committee, into groups and classes doing substantially similar work or having substantially equal responsibilities.
- F. Job Description. A written definition or job description for every Town employee, including elective or appointive positions. Said description shall describe the essential character of the duties and responsibilities of the position.
- G. Compensation Plan - A plan establishing the rates of compensation to be paid to employees in positions established under the Classification Plan.
- H. Full-time Employee - A full-time employee is one who is employed to work on a regularly scheduled basis for not less than thirty (30) hours per week nor less than fifty-two (52) weeks per year. [Amended 4-19-1983 ATM, Art. 8; 4-21-1992 ATM, Art. 15]
- I. Employees — Less than full time [Amended 4-21-1987 ATM, Art. 36; 4-21-1992 ATM, Art. 15]
- (1) Permanent Part-Time Employees - A permanent part time employee is one who is employed to work on a regularly scheduled basis for not less than twenty (20) hours per week nor less than fifty-two (52) weeks per year.
  - (2) Part-Time Employee - A part-time employee is defined as one who maintains irregular service to the Town on an occasional or on an as-needed basis.
- J. Seasonal Employee - A seasonal employee is one who is employed in a position which is filled only on a seasonal basis.
- K. Continuous Employment - Full-time employment which is uninterrupted, except for absences of military leave, vacation leave, sick leave, court leave and other authorized leaves of absence provided for herein.
- L. Overtime - Hours worked by a full-time employee in excess of his regularly scheduled work period as defined in this plan.
- M. Holiday Pay - Pay authorized for holidays in accordance with the provisions of this By-law.
- N. Promotion - A change from a position of lower classification and compensation to a position of higher classification and compensation.
- O. Veteran - A person who is a veteran within the meaning of Section 21 Chapter 31 of the General Laws.
- P. Employee Organization - Any lawful association, organization or council having as a primary purpose the improvement of working conditions.
- Q. Town — Town of Newbury, Massachusetts, USA.

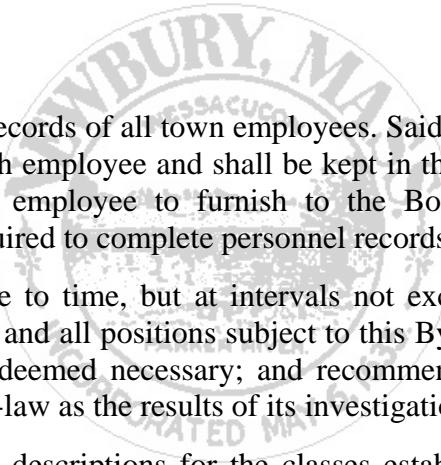
**§ 24-3. Personnel Board.**

- 
- A. Membership. A Personnel Board of seven (7) unpaid members, appointed by the Board of Selectmen, shall be responsible for the administration of this By-law. At all times at least one (1) and not more than two (2) of the seven (7) members shall be an employee of the Town (including the covered employees of the School Department), and shall be designated as the "Employee Representative(s)." Members of the Board shall be voters of the Town with the exception that the Employee Representative(s) need not be voters of the Town. Any Employee Representative vacancy will not be filled until a public notice of such vacancy has been posted at the Town Hall for a minimum period of ten (10) business days. Thereafter, members of the Personnel Board will process all applications for such vacancy and make a recommendation to the Board of Selectmen for appointment to fill such vacancy. [Amended 4-26-2005 ATM, Art. 23; 10-25-2005 STM, Art. 10]
  - B. Qualifications. In making appointments to the Board, the Board of Selectmen shall give preference to persons who are knowledgeable and experienced in the fields of personnel administration and labor relations and persons who will best represent the Town in carrying out the duties and responsibilities of the Board.
  - C. Term of office. Members of the Board will be appointed to either a term of three years or two years, as may be vacated. Each member of the Board shall serve until his successor has been appointed and sworn in. If any member of the Board shall resign or otherwise vacate his office before the expiration<sup>1</sup> of his term, his successor shall be appointed, as provided above, to serve for the balance of the unexpired term. [Amended 4-26-2005 ATM, Art. 23]
  - D. Organization. At the first meeting after the adoption of this By-law and annually thereafter, the Board shall organize by electing a Chairman and a Secretary, both of whom shall be members of the Board. The Board will meet monthly and additional meetings may be called by the Chairman as the need arises. Meetings shall also be held upon the request in writing of an employee or his representative.
  - E. Proceedings. The Board shall keep a record of its official proceedings and actions, and shall establish its own rules of procedures. Five (5) members shall constitute a quorum for the transaction of the business of the Board, and the affirmative vote of a majority of the Board present at that time shall be necessary for any official act of the Board. [Amended 4-26-2005 ATM, Art. 23]
  - F. Staff. The Board, subject to appropriation of funds therefore, may employ such professional and clerical assistance as it deems necessary for the performance of its duties.

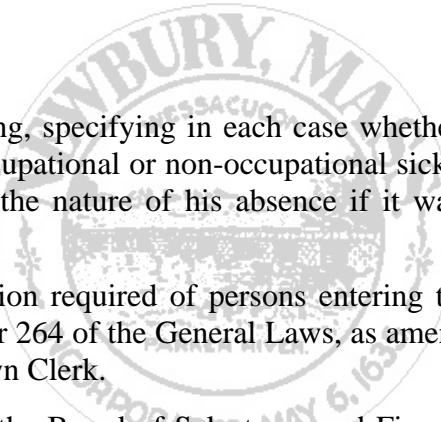
#### **§ 24-4. Duties of the Personnel Board.**

- A. Administer the provisions of this By-law, except for such duties as may be specifically assigned by statute or by Town By-laws to other Town Officials or Boards, and decide all questions relating to the interpretation and application of this By-law.

1. Editor's Note: So in original.

- 
- B. Maintain personnel records of all town employees. Said records shall contain all the vital statistics on each employee and shall be kept in the Town Hall. It shall be the duty of each Town employee to furnish to the Board upon its request, such information as is required to complete personnel records and reports.
- C. Investigate from time to time, but at intervals not exceeding three (3) years, the compensation of any and all positions subject to this By-law; hold hearings for that purpose if such are deemed necessary; and recommend such amendments to the provisions of this By-law as the results of its investigation and hearing shall permit.
- D. Maintain written job descriptions for the classes established in the Classification Plan. Such descriptions shall describe the essential nature of work and the characteristics that distinguish one class from another.
- E. Authorize, upon the recommendation of a Department Head and supported by evidence in writing of special reasons and exceptional circumstances satisfactory to the Board, an entrance rate for a position higher than the minimum, or any other variance to the Classification and Compensation Plans it may deem necessary for the proper functioning of the services of the Town, but no such variances shall become effective until approved by the Board of Selectmen and funds have been appropriated.
- F. Administer the Classification and Compensation Plans.
- G. Determine which class and job title under the Classification Plan is applicable to an employee.
- H. Reclassify a position found to be classified under an incorrect title, provided that the incumbent thereof has been given an opportunity to be heard and the recommendation of the Department Head has been obtained.
- I. Establish a job title and compensation rate for each new or changed position, subject to the receipt of explanatory and substantiating data relative to the content of the position in such form as the Board shall require. Any new classes or titles added to the Classification Plan as a result of the Board's action shall be subject to ratification by vote of the town at a Town Meeting.
- J. Recommend to the Town any changes in this By-law which it considers necessary<sup>2</sup> and desirable.
- K. Represent the Town in collective bargaining with employee organizations under the provisions of Chapter 149 of the General Laws.
- L. Make an annual report in writing to the Board of Selectmen prior to the closing of the warrant for the Annual Town Meeting; said report to be printed in the Annual Town Report for the information of the voters and employees of the Town.
- M. Each Department Head shall submit to the Town Accountant on Monday of each week, in such form as the Personnel Board shall prescribe, a report of all officers and employees of the department absent from duty during the calendar week

2. Editor's Note: So in original.



immediately preceding, specifying in each case whether absent on vacation leave, leave of absence, occupational or non-occupational sick leave, jury duty or military leave, or specifying the nature of his absence if it was not one of the foregoing reasons.

- N. The oath or affirmation required of persons entering the employ of the Town by Section 14 of Chapter 264 of the General Laws, as amended, shall be kept on file in the Office of the Town Clerk.
- O. Annually meet with the Board of Selectmen and Finance Committee to determine budget requirements for department salaries prior to January 1 of the coming year.

**§ 24-5. Classification Plan.<sup>3</sup>**

- A. Authority. This section establishes the Classification Plan of the Town within the meaning of Section 108A of Chapter 41 of the General Laws.
- B. Classification of existing positions. All postions<sup>4</sup> in the service of the Town, except those filled by popular election and those under the direction and control of the School Committee (Professionals), are hereby classified by titles in groups as set forth in Appendix A, which is attached hereto and made part hereof.
- C. Classification of new positions. Whenever a new position is established or the duties of an existing position are so changed as in effect to create a new position, the Board, upon receipt of satisfactory substantiating data, shall allocate such new or changed position to its appropriate class. No position shall be reclassified until the Board has determined that such reclassification will be consistent with the Classification and Compensation Plans.
- D. Title of class. The title of each class, as established by the Classification Plan, shall except as otherwise provided herein, be the official title of every position allocated to the class and the official title of each incumbent of a position so allocated, and shall be used to the exclusion of all others on payrolls, budget estimates and other official records and reports pertaining to the position Should a position be subject to the Civil Service Law, that Law's titles shall be used in lieu of the title established in the Classification Plan.
- E. Classification descriptions and qualifications. The Board shall establish, maintain and amend from time to time, as it deems necessary, written job descriptions for each class of positions established by the Classification Plan and for all elective and appointive positions in the Town service. Said descriptions shall describe the essential character of the duties and responsibilities of positions in each class of elected and appointed offices, with examples of work where desirable, setting forth the minimum qualifications for acceptance to positions of that category. Such descriptions shall not be restrictive, except as provided herein with respect to minimum qualifications. They shall serve to define the scope of the several classes

3. Editor's Note: At the 10-24-2006 STM, by Art. 9, the Town adopted Appendix A, establishing grades for classification of existing positions and salary ranges for those positions. Appendix A is on file in the Town offices.

4. Editor's Note: So in original.

and not to prescribe in detail the duties of any individual position, in the case of classes subject to the Civil Service Law, the minimum qualifications of employment shall be those approved by the Director of Civil Service. In the case of all other types of positions, the minimum qualifications for allocation thereto shall be prescribed by the Board and shall be based upon the following:

- (1) The minimum classification recommended to the Board for classification purposes by Department Heads.
- (2) An examination by the Board of the work content of positions allocated to the class.
- (3) The Board's study of comparable positions in private employment, in the service of other municipalities and in the State service.

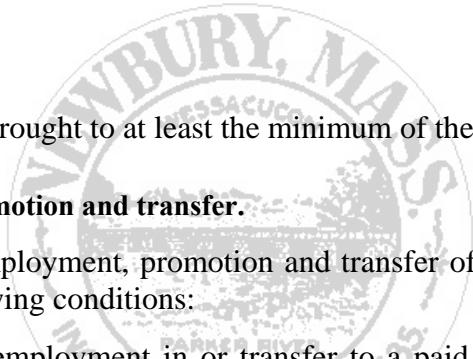
#### **§ 24-6. Compensation Plan.<sup>5</sup>**

- A. Authority - This section establishes the Compensation Plan of the Town within the meaning of Section 108A of Chapter 41 of the General Laws.
- B. Determination of Compensation - The Compensation of each employee of the Town, except for elected officials shall be determined in accordance with and shall conform to the wage schedules and rates of compensation and the effective dates thereof established for the different positions set forth in Appendix A.<sup>6</sup> The Board shall determine in accordance with the provisions of this section and said wage rates and schedules the rate of compensation of each such employee. [Amended 4-25-1995 ATM, Art. 24]
- C. Present employees - Each employee presently employed for whose position a wage schedule has not been established shall be paid at the rate of compensation established for the position in which he is employed. Each employee presently employed for whose position a wage schedule has been established shall be placed at the proper step on the wage schedule for the position in which he is employed.
- D. Step increases - step increases may be granted for job promotions, job upgrades, or general wage increases. said increases if granted shall be subject to § 24-7A(2) and (3). [Amended 4-21-1992 ATM, Art. 15; 4-26-1994 ATM, Art. 19; 4-25-1995 ATM, Art. 24]
- E. Creditable service for step increases and length of service payments - Service which is creditable in the computation of said fifty-two work weeks required before an employee is eligible for a step increase shall include the following:
  - (1) Continuous full-time paid employment, including periods of vacation leave, sick leave, or other leave with pay.
  - (2) Leave without pay or other periods of absence in a non pay status not to exceed the equivalent of thirty (30) workdays within said fifty-two (52) week

5. Editor's Note: At the 10-24-2006 STM, by Art. 9, the Town adopted Appendix A, establishing grades for classification of existing positions and salary ranges for those positions. Appendix A is on file in the Town offices.

6. Editor's Note: Said Appendix A is on file in the town offices.

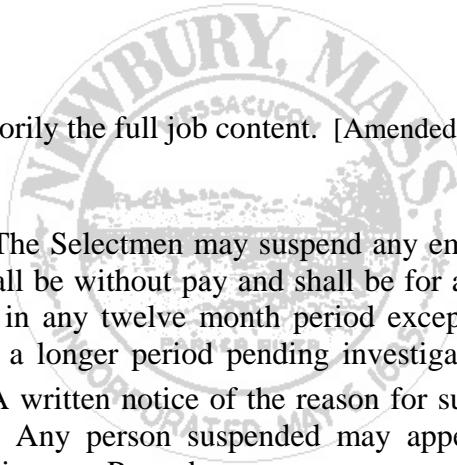
- period, the total of an employee's leave without pay or other absence in a non-pay status is in excess of said thirty (30) workdays, he must then serve in a pay status a number of days equal to the number of days leave without pay in order to meet the length of service requirements for a step increase.
- (3) Active military service when otherwise creditable service was interrupted.
  - (4) Length of service payments shall be made to full time employees as defined § 24-2H for continuous years of service as a paid employee of the Town as follows:] [Amended 4-21-1992 ATM, Art. 15]
    - (a) Upon completion of five (5) years but less than ten (10) years--\$250.
    - (b) Upon completion of ten (10) years but less than fifteen (15) years--\$500.
    - (c) Upon completion of fifteen (15) years and for duration of full time--\$750.
  - (5) Length of service payments shall be made to a permanent part time employee as defined by § 24-2I(1) at one half the full time rate. Part time employees as defined under § 24-2I(2) do not qualify. Elected officials are subject to § 24-6I and do not qualify.
- F. Effective date of length of service payments - longevity payments to qualified employees shall be made on December 1st each year only. [Amended 4-21-1992 ATM, Art. 15; 4-26-1994 ATM, Art. 20]
- G. New employees - Except as is otherwise provided herein, a new employee of the Town shall be paid at the minimum rate of the wage schedule for the position in which he is employed. Upon the recommendation of a Department Head, supported by evidence in writing of special reasons and exceptional circumstances satisfactory to the Board, the Board may authorize for a new employee an entrance rate higher than minimum for that position. Any new employee hired at the entry level rate shall, when qualified for permanent employee status, receive an automatic one step increase in pay. Employees hired at any rate above entry level shall be subject to the requirements of § 24-6D. Any new employee, regardless of entrance rate granted, shall be subject to § 24-7C. [Amended 4-21-1992 ATM, Art. 15; 4-26-1994 ATM, Art. 21]
- H. Promotion - In the event an employee is promoted from one position in the Classification Plan to another position in said plan, he shall be placed at the step on the wage scale for the position to which he is being promoted which provides him with an increase in compensation which is not less than the amount of the next step increase to which he would have been entitled had he remained in the position from which he was promoted.
- I. Elected officials - The compensation of elected officials shall<sup>7</sup> be established annually by vote of the Annual Town Meeting.
- J. Entrance into the plan - At the inception of the Personnel By-law all full time
7. Editor's Note: So in original.



employees will be brought to at least the minimum of their classification.

**§ 24-7. Employment, promotion and transfer.**

- A. Conditions. The employment, promotion and transfer of Town employees shall be subject to the following conditions:
  - (1) No full time employment in or transfer to a paid appointive position in the service of the Town shall take effect until the same has been approved by the Board as being in compliance with the Classification Plan, Compensation Plan and other provisions of this by-law. In the case of an emergency declared by the Board of Selectmen, a Department Head may, subject to the limitations of the department's appropriations and without prior approval of the Board, employ on a temporary or part time basis employees in positions at the minimum rate of the appropriate wage schedule.
  - (2) No employment or promotion hereunder shall become effective until such time as the appropriation or other funds out of which the compensation is to be paid shall be sufficient.
  - (3) All promotions or upgrades must be approved by the employees' department head and/or the appointing authority of the Town prior to approval by the Personnel Board. [Amended 4-25-1995 ATM, Art. 24]
  - (4) If any candidate for employment by the Town shall refuse to take the oath or affirmation required by Section 14 of Chapter 264 of the General Laws, as amended, the Personnel Board shall refuse to approve his employment.
- B. Physical examination of job applicants. Every applicant for full time employment by the Town shall, prior to his employment, be examined by a physician acceptable to the Town. Such physician shall report to the Board in such form as the Board shall determine, the applicant's physical fitness to perform the duties of the position for which he has made application and shall also report any physical condition of the applicant which might adversely affect the insurance coverage of the Town under the provisions of Chapter 152 of the General Laws or the group insurance coverage of other Town employees. If the Board deems such action necessary to the protection of the Town, it may require, in the same manner as for full time appointive employment, a physical examination for an applicant for temporary appointive employment. The cost of any physical examination required by this section shall be paid by the Town and be charged to the appropriation of the Department in which the proposed employment is to be made or to such special appropriation as the Town may make for the purpose of this section.
- C. Probationary employment period. The purpose of the probationary period is to provide both the employee and employer with an opportunity to determine whether the employee is able to carry out the duties and responsibilities of his/her position. Any employee hired to a permanent position shall be required to successfully complete a six (6) month probationary period. During this period an employee may be dismissed without recourse by his Department Head if he or she is not capable of

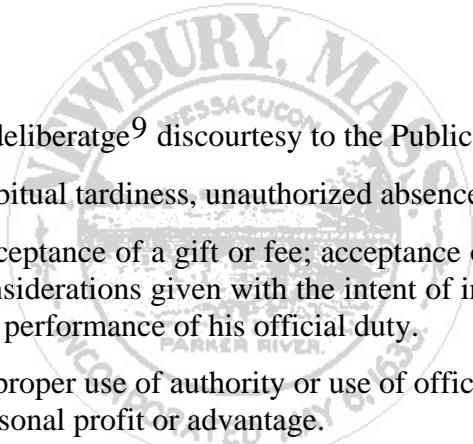


performing satisfactorily the full job content. [Amended 4-21-1992 ATM, Art. 15]

D. Disciplinary action.

- (1) Suspension - The Selectmen may suspend any employee for just cause. Such suspension shall be without pay and shall be for a period not to exceed thirty calendar days in any twelve month period except that an employee may be suspended for a longer period pending investigation or trial of any charges against<sup>8</sup> him. A written notice of the reason for suspension shall be furnished the employee. Any person suspended may appeal to the Personnel Board through the Grievance Procedure.
- (2) Dismissal. The Selectmen may dismiss an employee for any just and reasonable cause. Any employee who is dismissed shall be given written notice a minimum five days prior to the effective date of the dismissal, setting forth the reasons for such dismissal. Employees with at least six (6) months of employment with the Town who leave their employment with the Town for any reason shall be granted all vacation leave for which they are eligible at the time of their separation of employment. Employees who are dismissed for major violations of the rules or criminal action shall not be eligible for re-employment with the Town. Any dismissal may be appealed through the Grievance Procedure. [Amended 10-24-2006 STM, Art. 8]
- (3) Just cause for disciplinary action. The following are examples of just cause for dismissal: Insubordination; Refusal to comply with a proper order of an authorized supervisor Theft or destruction; Careless or willful destruction of Town property; Inadequate quantity or quality of work; Absence without official approval; Continual tardiness; Violation of or refusal to comply with pertinent laws and regulations when such conduct impairs the efficiency of the Town's services.
- (4) Intoxication, Use of Alcoholic Liquor or Disgraceful Conduct - Just Causes for Disciplinary Action.
  - (a) Intoxication or the use of drugs or alcohol, constituting a violation of the following rules may result in permanent dismissal from the Town Service.
    - [1] Rule #1: Employees while on duty will not drink or have in their possession alcoholic liquor in any form, including beer.
    - [2] Rule #2: No employees will report for duty under the influence of alcohol or drugs.
    - [3] Rule #3: An employee subject to emergency calls when off duty should not use alcohol or drugs to such an extent as to interfere with his ability to handle efficiently any emergency.
  - (b) Examples of disgraceful conduct are:

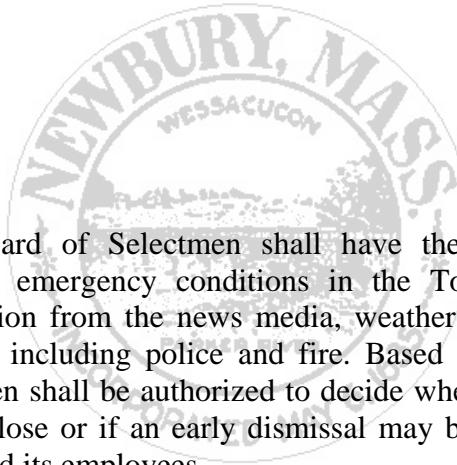
8. Editor's Note: So in original.

- 
- [1] A deliberate<sup>9</sup> courtesy to the Public.
  - [2] Habitual tardiness, unauthorized absence or abuse of sick leave.
  - [3] Acceptance of a gift or fee; acceptance of money or other valuable considerations given with the intent of influencing the employee in the performance of his official duty.
  - [4] Improper use of authority or use of official position of authority for personal profit or advantage.
- E. Political activities. Under no circumstances shall Town employees be appointed, transferred, receive pay raises, be demoted or retained on the basis of political activity. Employees shall have the right to exercise privileges and perogatives of their citizenship, as voters and public citizens.
- F. Advertising of vacancies. After approval by the Board of a vacancy to be filled, the Department Head shall advertise the vacancy to be filled. Said advertisement shall be placed in a newspaper having local distribution in the Town, and shall identify the vacancy to be filled, the rate and class of compensation thereof, a brief description of the duties of the position, and the minimum qualifications for appointment; and it shall set forth the time and place where and when such application may be filed. The provisions of this section shall not be in force during an emergency in the Town declared pursuant to the Civil Defense Act.

**§ 24-8. Hours of duty.**

- A. The administrative workweek for employees of the Town shall be established by the department head and/or the appointing authority. [Amended 4-25-1995 ATM, Art. 24]
- B. The starting and ending times of the daily work schedules of all employees shall be determined and fixed by the Department Head, and such schedules may be changed from time to time to meet changing conditions of operations.
- C. Each Department Head shall submit to the Town Auditor on Monday of each week in such form as the Board shall prescribe, a report of all employees in the department who were absent from duty during the preceding work week. Such report shall indicate for each employee whether the employee was absent on sick leave, vacation leave, court leave, military leave, leave without pay or other authorized leave, or was absent without leave. [Amended 4-25-1995 ATM, Art. 24]
- D. Emergency Closing of Town Departments [Added 10-25-2005 STM, Art. 11]
  - (1) Policy Statement - If an emergency exists within the Town, either as a whole or at or within a specific location or building, including severe weather conditions which may make travel hazardous, the Selectmen may decide in the interest of Town employee safety that those who are not involved in essential Town services may be excused from duty or allowed to leave work

9. Editor's Note: So in original.



early.

(2) Procedure -

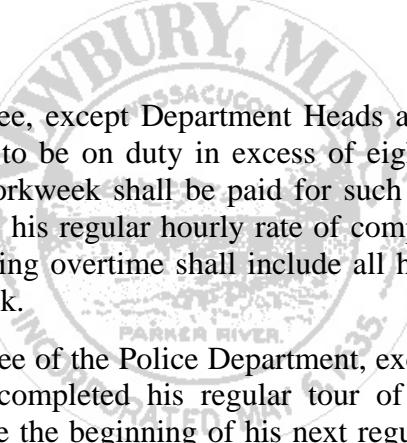
(a) The Board of Selectmen shall have the responsibility to monitor potential emergency conditions in the Town by obtaining frequent information from the news media, weather services, and public safety agencies including police and fire. Based upon such information, the Selectmen shall be authorized to decide whether a Town Department(s) should close or if an early dismissal may be in the best interest of the Town and its employees.

(b) Department Heads shall, upon notification from the Board of Selectmen authorizing closure or early dismissal, determine whether the department or office should close completely or whether it should continue to operate with reduced staffing and, if so, which employees are essential and must remain on duty, and which employees are nonessential and may be excused from duty. Department Heads shall be responsible for the notification of employees within his/her direction.

(c) Employees -

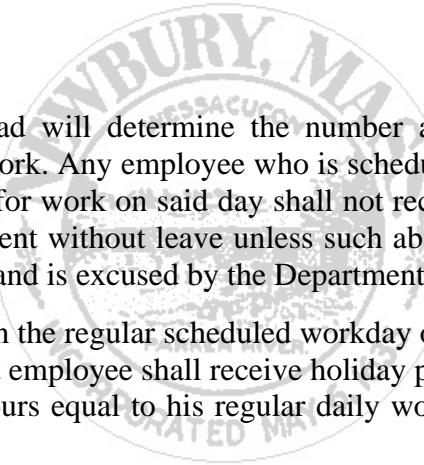
- i. An employee eligible to be released early may depart at the time announced. If compelling reasons necessitate an earlier departure time, the employee may leave prior to the authorized dismissal time. Factors such as travel arrangements, distance from home, or a disabling condition shall be taken into consideration. Each such situation must be reviewed and approved in advance by the appropriate Department Head.
- ii. An employee who is unable to report to work as scheduled due to an emergency situation will not be paid except upon the conditions set forth in sub-paragraph iv. below.
- iii. An employee dismissed from work early due to an emergency situation will be paid for hours actually worked prior to dismissal. Time lost due to early dismissal will not be paid except upon the conditions set forth in sub-paragraph iv. below.
- iv. Employees shall have the following options relative to time lost as a result of an emergency situation:
  - a. Use of accrued vacation time (if available), or
  - b. Make up the lost work hours during the same payroll period provided arrangements therefore are approved in advance by the employee's Department Head.

**§ 24-9. Overtime.**

- 
- A. Each full-time employee, except Department Heads and Police or Fire personnel, who shall be required to be on duty in excess of eight hours over and above his regularly scheduled workweek shall be paid for such overtime duty at the rate of one and one half times his regular hourly rate of compensation. Hours worked for the purpose of computing overtime shall include all hours the employee is in pay status for that workweek.
- B. In the event an employee of the Police Department, except the Chief, is called back to duty after he has completed his regular tour of duty and left his place of employment and before the beginning of his next regular workday, or in the event that such employee is called back to duty on one or both of his scheduled days off, he shall be provided with not less than three (3) hours of pay at the rate of one and one half times his regular hourly rate of compensation for each such callback, providing the hours are in excess of the limits established for the work period.
- C. Overtime work shall be required only when necessary operations cannot be performed by on-duty employees during their regular workweek. Overtime work shall be distributed on an equitable basis among employees qualified to do the work.
- D. Overtime work in excess of regular assigned hours but less than the ratio established by the Federal Fair Labor Standards Act (see Appendix B<sup>10</sup>) shall be paid at the regular hourly rate for a full-time Police employee and full-time Fire personnel. (Work period established by executive order of the Personnel Board on December 28, 1974)

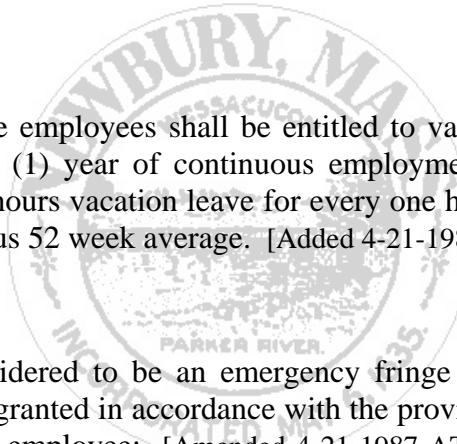
**§ 24-10. Holiday pay.**

- A. Designated holidays - All legal holidays as designated by Massachusetts General Laws Chapter 4, Section 7 that require closing of State and Municipal offices will be observed as a paid holiday. [Amended 4-17-1984 ATM, Art. 10]
- B. Each full-time or permanent part-time employee whose presence on duty is not required to maintain essential services shall be excused from duty on said holidays and shall receive holiday pay at his regular hourly rate for the number of hours equal to his regular daily work schedule. [Amended 4-26-1994 ATM, Art. 22]
- C. Each full-time or permanent part-time employee who is required to work on any of said holidays shall be paid, in addition to the holiday pay to which he is entitled as set forth in Subsection B above, his regular hourly rate for each hour worked not to exceed the number of hours in his regular daily work schedule. [Amended 4-26-1994 ATM, Art. 22]
- D. In the event any such employee's regular day off, vacation day or a day on which he is absent from duty because of injuries sustained in the line of duty falls on any of said holidays, he shall be granted an additional day off.
- E. To be eligible for holiday pay, an employee must be in a pay status on his scheduled workday immediately prior to and immediately after the holiday.
10. **Editor's Note:** Said Appendix B is on file in the town offices.

- 
- F. The Department Head will determine the number and categories of employees needed for holiday work. Any employee who is scheduled to work on a holiday and who does not report for work on said day shall not receive holiday pay but shall be charged as being absent without leave unless such absence is based on an extreme emergency situation and is excused by the Department Head.
  - G. If any holiday falls on the regular scheduled workday of any employee who works a regular schedule, that employee shall receive holiday pay at their regular hourly rate for the number of hours equal to his regular daily work schedule. [Amended 4-26-1994 ATM, Art. 23]

**§ 24-11. Vacation leave.**

- A. Vacation leave with pay will be granted in accordance with the provisions of this section to each employee commensurate with the length of his continuous employment with the Town. [Amended 4-25-1995 ATM, Art. 24]
- B. Full-time employees shall be entitled to vacation leave as follows:
  - (1) An employee with less than five (5) years of continuous employment with the Town shall be entitled to two (2) weeks of vacation time. [Amended 4-21-1987 ATM, Art. 37; 10-24-2006 STM, Art. 8]
  - (2) An employee with five (5) years of continuous service with the Town shall be entitled to an additional day of vacation after each additional year of employment, up to a maximum of 20 days of vacation time after fifteen (15) years of service. No employee shall be entitled to more than four (4) weeks of vacation time, regardless of service with the Town. [Amended 3-3-1981 STM, Art. 3; 4-21-1987 ATM, Art. 37; 10-24-2006 STM, Art. 8]
  - (3) Permanent part-time employees shall be entitled to vacation leave as follows: An employee with one (1) year of continuous employment with the Town shall be entitled to four (4) hours vacation leave for every one-hundred (100) hours worked or part thereof based on the previous fifty-two (52) weeks. [Amended 4-25-1995 ATM, Art. 24]
- C. The Department Head shall determine the time when an employee shall be granted their vacation leave. Equitable and considerate treatment of all employees as well as work requirements will be the determining factors in the granting of vacation leave. [Amended 4-25-1995 ATM, Art. 24]
- D. Employees will accrue their annual vacation leave allotment on a weekly basis. Vacation leave is not available for use until the employee has completed six (6) months of continuous employment with the Town, and is subject to approval of the appropriate Department Head or appointing authority as provided in Paragraph 24-11 C herein. Employees must use earned vacation days by the end of each fiscal year, except that an employee may carry over up to a maximum of three (3) earned but unused vacation days into the next fiscal year. At no time may any employee accumulate more than 3 vacation days beyond his or her annual allotment. [Amended 4-21-1987 ATM, Art. 38; 10-24-2006 STM, Art. 8]

- 
- E. Permanent part-time employees shall be entitled to vacation leave as follows: An employee with one (1) year of continuous employment with the Town shall be entitled to four (4) hours vacation leave for every one hundred (100) hours worked, based on the previous 52 week average. [Added 4-21-1987 ATM, Art. 39]

**§ 24-12. Sick leave.**

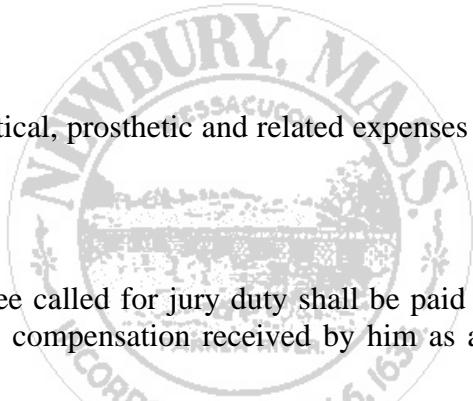
- A. Sick Leave is considered to be an emergency fringe benefit to be used only as needed and will be granted in accordance with the provisions of this section to each employee when the employee: [Amended 4-21-1987 ATM, Art. 40; 4-21-1992 ATM, Art. 15; 4-25-1995 ATM, Art. 24]
- (1) Is incapacitated for the performance of their duties by non-occupational sickness or injury, except any sickness or injury resulting in whole or in part from the voluntary use of intoxicating liquor, drugs or narcotics, and any injury which is incurred in gainful employment or self-employment other than as an employee of the Town.
  - (2) Is required to give care and attendance to their spouse, child, parent, or other member of his immediate family or household who is afflicted with a contagious disease.
  - (3) Would jeopardize the health of others by his presence on duty because of exposure to a contagious disease.
  - (4) Has notified his/her immediate supervisor or Department Head at least one (1) hour before the start of the regular work day, unless physically unable.
    - (a) Failure to do so will result in the forfeiture of pay.
    - (b) The Town reserves the right to request a doctors statement for any time missed due to illness.
    - (c) Illness for which sick leave may be granted is defined as actual personal illness or bodily injury.
- B. Each full time employee shall accrue sick leave at the rate of 1.25 days for each month of actual work performed for a total of 15 days per year. Sick leave shall be cumulative from year to year up to a limit of 120 work days. An employee who has unused sick leave to his credit at the time his employment with the town is terminated shall not be paid for such leave. [Amended 3-3-1981 STM, Art. 4; 4-21-1987 ATM, Art. 40]
- C. Notwithstanding the provisions of Subsection B of this section, an employee shall be entitled to sick leave only after being currently employed by the Town for a continuous period of ninety (90) calendar days. After completing said ninety day period, the employee shall be entitled to be credited with the sick leave that would have accrued to him during such period under Subsection B excepting for the provisions of this Subsection C.
- D. The Department Head is authorized to approve or disapprove sick leave. An

employee who is absent from duty on account of illness or injury shall notify the person authorized to approve sick leave of the reason for their absence before or at the beginning of their scheduled tour of duty. Sick leave not in excess of three (3) consecutive work days will ordinarily be approved without a medical certificate from the employee's attending physician. However, in those cases that indicate excessive absence on account of sickness or where there appears to be an abuse of the sick leave privilege, a medical certificate may be required for any absence attributable to sickness, stating that the employee was unfit to perform their duty. Absences in excess of three (3) consecutive work days must be supported by a medical certificate. In those cases where an employee's request for sick leave is not approved, their absence shall be considered to be unauthorized, and he shall receive no pay for the period of such absence. [Amended 4-25-1995 ATM, Art. 24]

- E. An employee who is unable to work because of an occupational injury, which is incurred in the course of his employment by the Town and which is compensable under the provisions of the Massachusetts Workmen's Compensation Act, Chapter 152 of the General Laws, shall, upon his written request to his Department Head, receive as a charge against his accrued sick leave the difference between his current salary and the amount he receives as workmen's compensation.
- F. Each said permanent part-time employee shall accrue sick leave at the rate of one (1) day for each thirty (30) days of actual work performed. Sick leave shall be cumulative from year to year up to a limit of one hundred twenty (120) work days. An employee who has unused sick leave to his credit at the time his employment with the Town is terminated shall not be paid for such sick leave. [Added 4-21-1987 ATM, Art. 41]

**§ 24-13. Personal injury sustained in line of duty.**

- A. Each employee, subject to the provisions of said Chapter 152 of the General Laws, who is incapacitated for duty by reason of an injury or illness arising from and in the course of his employment by the Town shall receive the benefits of said Chapter.
- B. Whenever a full-time Police Officer or Firefighter, or other employee is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own, he shall be granted leave without loss of pay for the period of that incapacity; provided, that no such leave shall be granted for any period after such employee has been retired or pensioned in accordance with law or for any period after a physician designated by the Board of Selectmen determines that such incapacity no longer exists.
- C. All amounts payable under Subsection B shall be paid at the same time and in the same manner as, and for all such purposes shall be deemed to be, the regular compensation of such employee.
- D. The Town shall indemnify a full-time Police Officer, full-time Firefighter, or other full-time employee in the manner and to the extent provided for in Chapter 41, section 100 of the General Laws for his reasonable hospital, medical, surgical,



nursing, pharmaceutical, prosthetic and related expenses incurred as the result of an injury.

**§ 24-14. Court leave.**

- A. A full-time employee called for jury duty shall be paid the difference between his regular pay and the compensation received by him as a juror, exclusive of travel allowances.
- B. An employee summoned as a witness on behalf of the Town shall be granted leave and shall be paid the difference between his regular pay and his witness fees, exclusive of travel allowances.
- C. An employee who is required to appear in court as a defendant or litigant shall be granted leave without pay for it.

**§ 24-15. Military leave.**

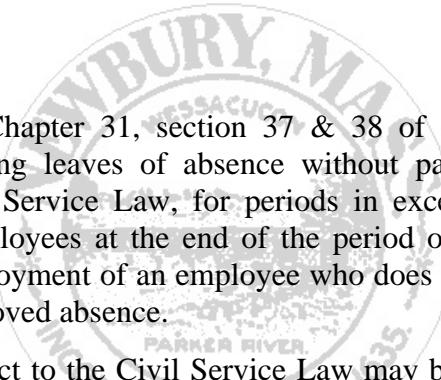
- A. A full-time employee, who has been employed by the Town for a period of six (6) months consecutively and who is ordered into temporary active duty with the Military Reserves or the National Guard shall be paid for a period not to exceed fourteen (14) days the difference between his regular pay and the pay which he receives from the Federal or State Government during the period of his temporary active duty. For any period of such absences in excess of fourteen days (14) such employee shall be granted leave without pay.
- B. A full-time employee who is inducted or enlists in any branch of the Armed Forces of the United States during any wartime emergency shall be granted a leave of absence without pay. Within sixty (60) days of his separation from the Armed Forces he shall be reinstated, if he so requests, to the same or a comparable position and will have restored to him all benefits as if his service had been continuous.

**§ 24-16. Bereavement leave.**

Full-time employees may be granted, at the discretion of the Department Head, leaves of absence without loss of pay for periods not in excess of three (3) consecutive work days in the event of a death in their immediate families. Immediate family shall include parents, brother, sister, husband, wife, child, father or mother-in-law, grandparent, sister or brother-in-law.

**§ 24-17. Leave of absence without pay.**

- A. A full-time employee, who is subject to the Civil Service Law, may be granted by the Board of Selectmen after prior approval by the Personnel Board, a leave of absence without pay for a period not to exceed three (3) months in any period of twelve (12) consecutive months. Requests for such leave of absence shall be submitted to the Board of Selectmen through the Department Head and then the Personnel Board and shall contain a detailed statement of the reasons for the request.

- 
- B. The provisions of Chapter 31, section 37 & 38 of the General Laws shall be followed in approving leaves of absence without pay for full-time employees, subject to the Civil Service Law, for periods in excess of three (3) months; in reinstating such employees at the end of the period of approved absence; and in terminating the employment of an employee who does not return to duty at the end of the period of approved absence.
- C. Employees not subject to the Civil Service Law may be granted leaves of absence without pay by the Department Head for periods not in excess of two (2) weeks. Requests for leaves of absence without pay for periods in excess of two (2) weeks shall be submitted to the Board of Selectmen after approval by the Personnel Board and shall contain a detailed statement of the reasons for the request.

**§ 24-18. Absence without leave.**

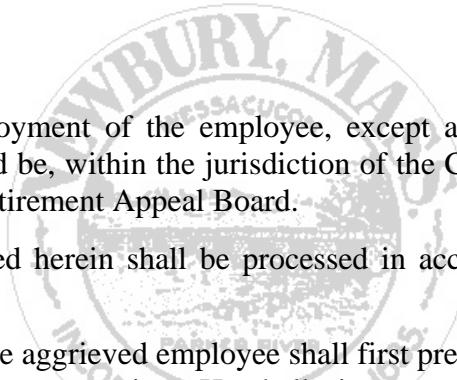
- A. When an employee is absent from duty without authorization he will be charged as being absent without leave and will receive no pay for the period of absence.
- B. In addition to receiving no pay for a period of absence without leave, an employee may be subject to disciplinary action for such unauthorized absence.

**§ 24-19. Grievance procedure.**

- A. The Board shall constitute the Personnel Relations Review Board of the Town and as such shall have the powers and duties and shall perform the functions assigned to Personnel Relations Review Boards under the provisions of Section 21B of Chapter 40 of the General Laws. The Board in performing its duties as the Personnel Relations<sup>11</sup> Review Board shall be subject to the limitations imposed by said Section 21B and the By-laws of the Town.
- B. When sitting as the Personnel Relations Review Board the Board shall keep a separate record of its proceedings which shall not be open to public inspection,<sup>12</sup> except as may otherwise be required by State Law.
- C. The grievance procedure established in this section shall apply to all employees of the Town, except officials and except employees represented by an employee organization for the purpose of collective bargaining and with which organization the Town has entered into a collective bargaining agreement containing a specific grievance procedure. The grievance procedure contained in such an agreement shall apply to all employees represented by the employee organization. The purpose of the grievance procedure set forth herein is to produce prompt and equitable solutions to those problems which from time to time may arise and effect the conditions of employment of employees.
- D. As used in this Section the word "grievance" shall be construed to mean any dispute between an employee and his supervisor or supervisors arising out of an exercise of administrative discretion by such supervisor or supervisors with respect to the

11. Editor's Note: So in original.

12. Editor's Note: So in original.

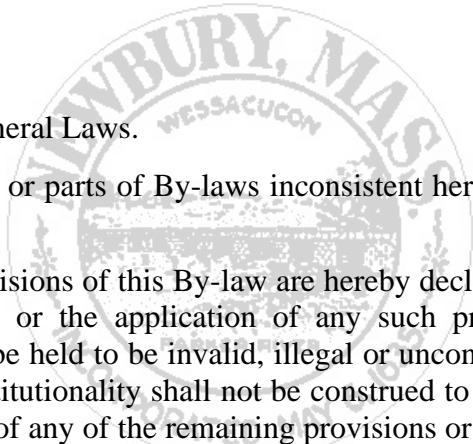


conditions of employment of the employee, except a dispute which is, or upon proper appeal would be, within the jurisdiction of the Civil Service Commission or the Contributory Retirement Appeal Board.

- E. Grievance as defined herein shall be processed in accordance with the following procedures:
  - (1) Level One. The aggrieved employee shall first present his grievance in writing to his immediate supervisor. He shall give a summary of the facts involved and the relief desired. The immediate supervisor shall advise the aggrieved employee in writing of his decision with respect to the grievance within five (5) working days after the grievance is presented.
  - (2) Level Two. If at the end of the five (5) working days next following the presentation at Level One the grievance shall not have been disposed of to the employee's satisfaction, the aggrieved employee may within five (5) working days thereafter submit his grievance in writing to the Department Head. The written grievance shall give a summary of the facts involved and the relief desired. Within ten (10) working days after receipt of the written grievance the Department Head shall meet with the aggrieved employee and his representative, if he elects to have one, in an effort to settle the grievance. Within ten (10) working days after the conclusion of said meeting, the Department Head shall advise the aggrieved of his or its decision in writing.
  - (3) Level Three. If at the end of the twenty (20) working days next, following the presentation of the grievance at Level Two, the grievance shall not have been disposed of to the employee's satisfaction, the aggrieved employee may within five (5) working days thereafter submit his grievance to the Board acting as the Personnel Relations Review Board. Within ten (10) working days after receipt of the written grievance, the Board shall meet with the aggrieved employee and his representative, if he elects to have one, in an effort to settle the grievance. The Board shall within ten (10) working days after the conclusion of said meeting advise the employee in writing of its decision. The decision of the Board with respect to said grievance shall be final.
- F. If at the end of twenty (20) working days next following the occurrence of any grievance or the date of first knowledge of its occurrence by an employee affected by it, the grievance shall not have been presented at Level Two of the procedures set forth above, the grievance shall be deemed to have been waived if the action required to present it at the next level in the procedure shall not have been taken within the time specified in the procedure.
- G. The time limits herein above specified for the bringing and processing of a grievance may be extended by mutual agreement of the parties.

**§ 24-20. Amendment, repeal and severance.**

- A. Amendment This By-law may be amended only at an Annual Town Meeting, unless amendment at an earlier time shall be clearly imperative by a specific



provision of the General Laws.

- B. Repeal All By-laws or parts of By-laws inconsistent herewith are hereby expressly repealed.
- C. Severance The provisions of this By-law are hereby declared to be severable, and if any such provision or the application of any such provision to any person or circumstance shall be held to be invalid, illegal or unconstitutional, such invalidity, illegality or unconstitutionality shall not be construed to affect the validity, legality or constitutionality of any of the remaining provisions or the application of said By-law to persons or circumstances other than those as to which it is held invalid, illegal, or unconstitutional.

## ARTICLE II

### Eligibility for Insurance Coverage

#### **§ 24-21. Eligible members.**

Chapter 32B and the Personnel by-law<sup>13</sup> of the Town of Newbury spells out many, but not all, requirements for insurance coverage. For purposes of clarification as to who and under what conditions employees and retirees may be covered, refer to the following:

**"APPROPRIATE PUBLIC AUTHORITY"** — Board of Selectmen A determination by the appropriate public authority that a person is eligible for participation in the plan of insurance shall be final. 32B Sec. 2-A & Sec. D

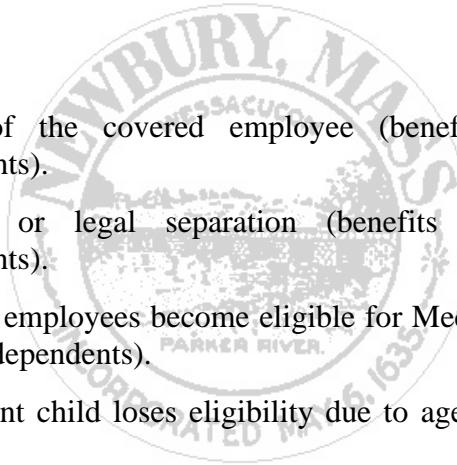
**"EMPLOYEE"** — Any person in the service of a government unit who receives compensation for such service or services whether such person be employed, appointed, or elected by popular vote, provided that the duties of such person require no less than twenty (20) hours regularly in the service of the governmental unit during the regular work week, and provided further, that no seasonal or emergency employees shall be included. Persons elected by popular vote may be considered eligible employees during the entire term for which they are elected regardless of the number of hours devoted to the service of the governmental unit. 32B Section D [For definition of Employees refer to Personnel by-law § 24-2H and I(1) and (2).]

**"INSURANCE ELIGIBILITY"** — Newly hired employees working no less than twenty (20) hours weekly on a regular basis shall be eligible to elect offered employee insurance coverage(s) after thirty (30) days of commencing employment with the Town or during an open enrollment benefit's offering from the Town or at the time of any verified loss of insurance coverage from another employer. [Added 5-23-2006 ATM by Art. 22]

#### **§ 24-22. Continuation of benefits (COBRA).**

- A. Eligible employees who have been participating in the plan on either an individual or family basis, are entitled under the COBRA Federal law of 4-7-86 to certain continuing benefits after the following qualifying events:
  - (1) 36 months of continued coverage after:

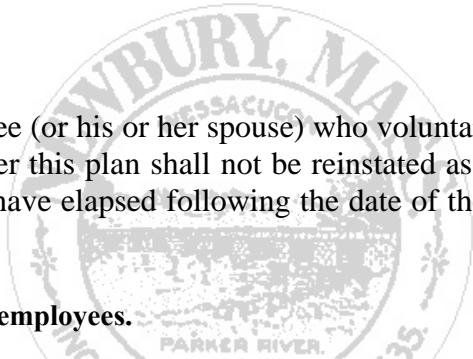
13. Editor's Note: See Art. I of this chapter.

- 
- (a) Death of the covered employee (benefits continue for spouses, dependents).
- (b) Divorce or legal separation (benefits continue for ex-spouses, dependents).
- (c) Covered employees become eligible for Medicare (benefits continue for spouse, dependents).
- (d) Dependent child loses eligibility due to age (benefits continue for that child).
- B. It shall be the policy of the Town not to provide continued benefits, other than to retirees and/or spouses, for any period longer than prescribed by the COBRA law. The Town may end these continued benefits only:
- (1) When the Town as employer no longer provides any group medical insurance plan to employees, or
  - (2) When the covered employee becomes qualified for any other group health plan, or eligible for Medicare.
- C. Premium charges for COBRA continuation are required to be paid at 102% by the employee, 45 days from the date the election form is signed or within the grace period of 31 days following. If premiums are not paid within this period, coverage will terminate.

#### **§ 24-23. Retiree benefits.**

- A. "RETIREE" Under terms of certain sections of Chapter 32B which have been accepted by the Town, an employee who retires from Town service at age 65 and who has qualified by a minimum of 10 years of service, shall be eligible for the supplemental group medical insurance plan (individual option only). His or her spouse shall be eligible for supplemental<sup>14</sup> group medical insurance plan (individual option only). Upon the death of a retired covered employee, the Town shall offer continued supplemental coverage (individual option only) to his or her surviving spouse if any.
- B. "RETIREMENT PRIOR TO AGE 65" An employee who retires from service to the Town prior to age 65 shall be eligible for insurance coverage, either:
- (1) After 20 years of consecutive service and shall have reached the age of 55.
  - (2) Over the age of 55 with at least 15 years of consecutive service.
  - (3) With a medical disability incurred during the time of employment by the Town and which prevents further employment at a normal work week of 20 hours or more.
- C. Premium costs for retirees shall be paid by the Town subject to all applicable Sections of Chapter 32B as approved by vote of the Town.

14. Editor's Note: So in original.

- 
- D. Any retired employee (or his or her spouse) who voluntarily and in writing elects to cease coverage under this plan shall not be reinstated as a participant in the plan if more than 90 days have elapsed following the date of the written notice of election to cease coverage.

**§ 24-24. Special coverage employees.**

- A. The appropriate Public Authority of the Town has designated that members of the Board of Selectmen and from time to time other specified Elected Officials may qualify for Town payment of premium costs at the same rate as has been established by vote of the Town. Coverage of costs will apply only during the employees term of office.
- B. Termination - Any official covered under Subsection A will qualify for COBRA coverage when service is terminated for any reason other than gross misconduct.
- C. Retirement - Any official who is retired from Town service shall qualify for continuation of coverage with payment of premiums as stated in Subsection A providing that he or she meet all requirements for retirement as may be specified by Sections of Chapter 32B MGL, the Essex County Retirement System, and appropriate sections of the Personnel Policy Amendment. Said covered officials are not required to be members of the E.C.R.S. System providing other requirements are met.

**§ 24-25. Group insurance for employees and retirees of the Town of Newbury and their dependents.**

- A. At the Town Election of March 25, 1967 the following sections of Chapter 32B were accepted: Section 10 - Acceptance of Chapter; Section 9A - Town pay 50% of insurance for Retirees; Section 11A - Purchase additional Life & Accident Insurance.
  - (1) SECTION 10 AS VOTED.

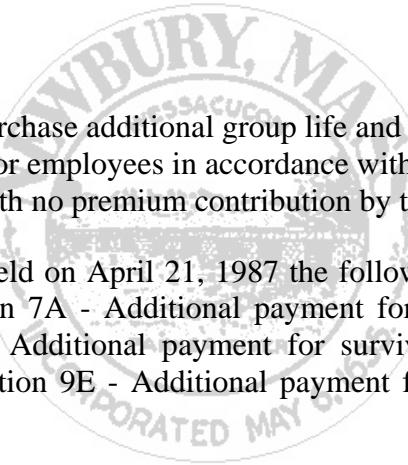
"Shall certain<sup>15</sup> provisions of Chapter 32B of the G.L.'s authorizing any County, City, Town or District to provide a plan of contributory group life insurance, group accidental death and dismemberment insurance, and group general or blanket hospital, surgical, medical, dental and other health insurance for certain persons in the service of such County, City, Town or District and their dependents be accepted by this Town".

- (2) SECTION 9A AS VOTED.

"Shall the Town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance".

- (3) SECTION 11A AS VOTED.

15. Editor's Note: So in original.



"Shall the Town purchase additional group life and group accidental death and dismemberment insurance for employees in accordance with the provisions of Chapter 32B of the General Laws with no premium contribution by the Town".

- B. At a Town Meeting held on April 21, 1987 the following sections of Chapter 32B were accepted: Section 7A - Additional payment for employees and dependents; Section 9D-9D 1/2 - Additional payment for surviving spouse of employee or retired employee; Section 9E - Additional payment for life and health of retirees and their dependents.

(1) SECTION 7A AS VOTED.

"Shall the Town, in addition to the payment of fifty per cent of a premium for contributory group life and health insurance for employees in the service of the Town and their dependents, pay a subsidiary or additional rate".

(2) SECTION 9D AS VOTED.

"Shall the Town pay one-half of the premium costs payable by the surviving spouse of an employee or retired employee for group general, or blanket hospital, surgical, medical, dental or other health insurance".

(3) SECTION 9D 1/2 AS VOTED.

"Shall the Town, in addition to the payment of fifty<sup>16</sup> per cent of premium costs payable by the surviving spouse of an employee or retired employee for group general or blanket hospital, surgical, medical and other health insurance, pay an additional or subsidiary<sup>17</sup> rate".

(4) SECTION 9E AS VOTED.

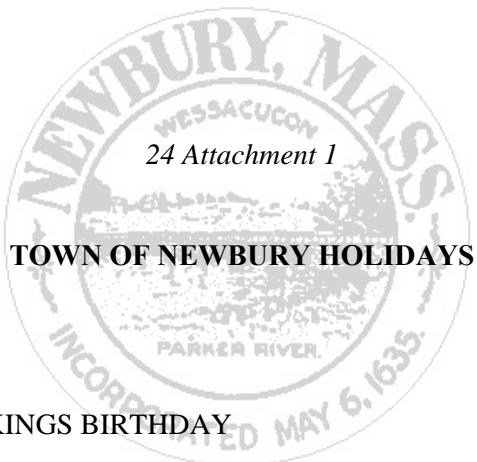
"Shall the Town, in addition to the payment of fifty per cent of a premium for contributory group life, hospital, surgical, medical, dental and other health insurance for employees retired from the service of the Town and their dependents pay a subsidiary or additional rate".

- C. At a Town Meeting held on April 21, 1987 the following article was voted:

(1) ARTICLE #14: To see if the Town will vote to increase its portion of the premiums it now pays for group life and health insurance for employees, retired employees, dependents and surviving spouses of employees or retired employees of the Town from 50% to 75%.

16. Editor's Note: So in original.

17. Editor's Note: So in original.



### **TOWN OF NEWBURY HOLIDAYS**

JANUARY:

NEW YEARS DAY

MARTIN LUTHER KINGS BIRTHDAY

FEBRUARY:

PRESIDENTS DAY

APRIL:

PATRIOTS DAY

MAY:

MEMORIAL DAY

JULY:

JULY 4th

SEPTEMBER:

LABOR DAY

OCTOBER:

COLUMBUS DAY

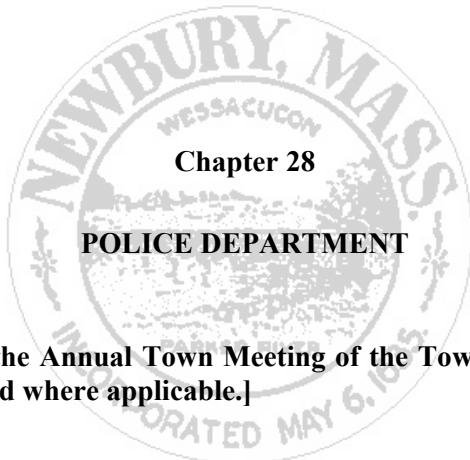
NOVEMBER:

VETERANS DAY

THANKSGIVING DAY

DECEMBER:

CHRISTMAS DAY



[HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 4-15-1980 by Art. 28. Amendments noted where applicable.]

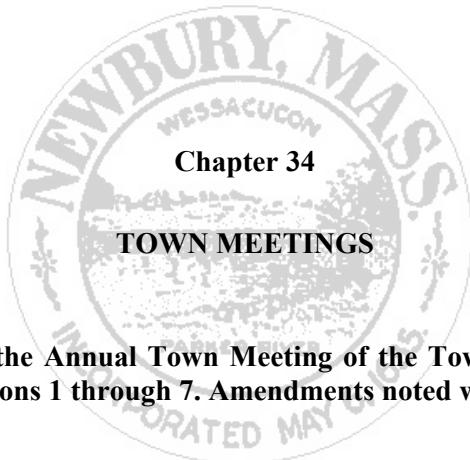
**§ 28-1. Department established; composition.**

In any town which accepts this section, ther<sup>1</sup> shall be a Police Department established by the Selectmen and such department shall be under the supervision of an officer to be known as the Chief of Police. The Selectmen of any such town shall appoint a chief of Police and such other officers as they deem necessary, and fix their compensation, not exceeding, in the aggregate, the annual appropriation therefore. In any such town in which such appointments are not subject to Chapter Thirty-one, they shall be made annually of for a term of years not exceeding three years, as the Selectmen shall determine, and the Selectmen may remove such Chief or other officers for cause at any time after a hearing. The Chief of Police in any such town shall from time to time make suitable regulations governing the police department, and the officers thereof subject to the approval of the selectmen; provided that such regulations shall become effective without such approval upon the failure of the selectmen to take action thereon within thirty days after they have been submitted to them by the Chief of Police. The Chief of Police in any such town shall be in immediate control of all town property used by the department, and of the police officers, whom he shall assign to their respective duties and who shall obey his orders. Section Ninety-seven shall not apply in any town which accepts the provisions of this section. Acceptance of the provisions of this section shall be by a vote at an annual town meeting. (See Chapter 41 Section 97A, MGL) (Accepted at Town Meeting 3-20-73)

**§ 28-2. Annual report.**

It shall be the duty of the Chief of Police to report in writing annually upon all matters pertaining to his department, with recommendations as to the same, to the Board of Selectmen.

1. Editor's Note: So in original.



[HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 3-3-1914 by Art. 21 as Chapter 1, Sections 1 through 7. Amendments noted where applicable.]

**§ 34-1. Meeting times designated.** [Amended 3-6-1917 ATM; 3-17-1925 ATM, Art. 16; 3-21-1978 ATM, Art. 15; 6-26-1979 STM, Art. 3; 4-26-1994 ATM, Art. 31; 5-22-2007 ATM, Art. 16]

The Annual Town Election shall be held on the second Tuesday in May and the Annual Town Meeting shall be held on the fourth Tuesday in May.

**§ 34-2. Financial requirements; reports.** [Amended 4-20-1993 ATM, Art. 17]

The Selectmen shall at each annual meeting submit a detailed estimate of the financial requirements of the town for the ensuing fiscal year and shall, subject to the requirements of Chapter 40, Sec. 49 MGL's, provide for the printing of such fiscal year reports within 90 days of the close of the fiscal year for the use of the inhabitants of the town, this annual report shall include, in addition to all reports required by law, any other material that the Selectmen, or any other officers or boards of the town may deem expedient to make.

**§ 34-3. Auditor to be chosen.**

An Auditor shall be chosen at each annual meeting, by ballot, who shall submit his report in writing.<sup>1</sup>

**§ 34-4. Highway moneys.**

The money appropriated for the highways shall be expended under the direction of the Selectmen.<sup>2</sup>

**§ 34-5. Warrant.** [Added 3-17-1936 ATM, Art. 11]

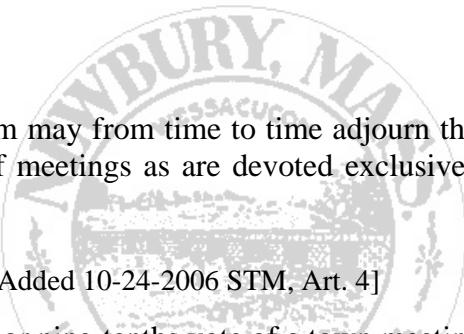
Every town meeting shall be called in pursuance of a warrant, under the hands of the Selectmen, notice of which shall be given by posting copies of the same in at least one public place in each voting precinct seven days at least before such meeting.

**§ 34-6. Quorum for town meetings.** [Added 3-17-1936 ATM, Art. 11]

Forty qualified voters shall constitute a quorum at Town Meetings; provided, that a

1. Editor's Note: Original Section 4, pertaining to salary, which originally followed this section, was repealed 3-27-1956 ATM, Art. 5.

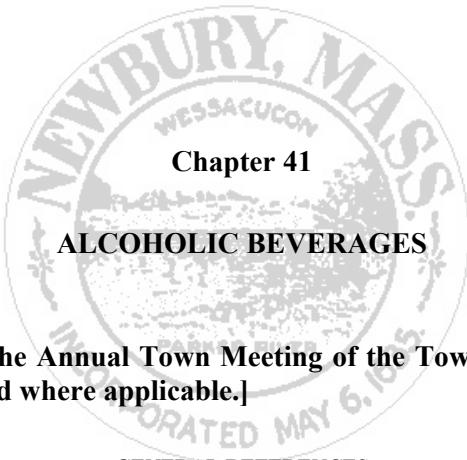
2. Editor's Note: Original Section 6, pertaining to pay of men and horses, which originally followed this section, was repealed 3-27-1956 ATM, Art. 5.



number less than a quorum may from time to time adjourn the same. This By-Law shall not apply to such parts of meetings as are devoted exclusively to the election of Town Officers.

**§ 34-7. Quantum of vote. [Added 10-24-2006 STM, Art. 4]**

If a two-thirds, four-fifths or nine-tenths vote of a town meeting is required by statute, the count shall be taken, and the vote shall be recorded in the records by the Clerk; provided, however, that if a two-thirds vote of a town meeting is required by statute, following a clear declaration of such intent, the Moderator need not take a count and the Clerk shall record the vote as declared by the Moderator unless a town meeting member orally objects to such declaration before the vote is recorded by the Clerk; and provided, further, that if the vote is unanimous, a count need not be taken, and the Clerk shall record the vote as unanimous.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 3-19-1974 by Art. 36. Amendments noted where applicable.]

#### GENERAL REFERENCES

Peace and good order — See Ch. 82.

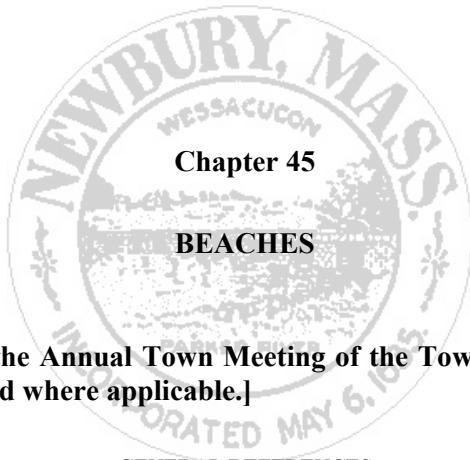
#### **§ 41-1. Use restricted.**

No person shall use or consume any alcoholic beverage, as defined in Chapter 138, Section 1 of the Massachusetts General Laws, while in or upon any public way or any way which the public has a right of access, or in any place where the public may be invitees or licensees; nor shall any person use or consume any alcoholic beverage in any park or playground; nor shall any person use or consume any alcoholic beverage in or upon any private land, building,<sup>1</sup> or structure without the consent of the owner or person in control thereof. Any alcoholic beverage used in violation of this By-Law shall be seized and safely held until final adjudication against the person or persons using such beverage, at which time it shall be returned to the person entitled to lawful possession.

#### **§ 41-2. Violations and penalties.** [Amended 4-15-1980 ATM, Art. 28]

Penalty for violation of this By-Law shall be a fine of not more than one hundred dollars (\$100.00) for each offense. Each arrest shall constitute one violation regardless of the number or amounts of alcoholic beverage consumed.

1. Editor's Note: So in original.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 4-15-1980 by Art. 28. Amendments noted where applicable.]

#### GENERAL REFERENCES

Dogs and other animals — See Ch. 56.

Peace and good order — See Ch. 82.

Vehicles and traffic — See Ch. 93.

#### **§ 45-1. Authority; enforcement.**

The following rules and regulations are hereby enacted in accordance with Chapter 40, Section 21, paragraph one, of the Massachusetts General Laws, and to be enforced non-criminally under Chapter 40, Section 21D of the General Laws, for the purpose of preserving peace and good order on that portion of the public beach at Plum Island that falls within the Towns jurisdiction.

#### **§ 45-2. Vehicles prohibited.**

No person shall operate or use any motor vehicle or motorized bicycle, except for emergency vehicles, on any part of the public beach.

#### **§ 45-3. Littering prohibited.**

No person shall descard<sup>1</sup> trash, rubbish, garbage, or any other litter on any part of the public beach.

#### **§ 45-4. Games restricted.**

All persons engaged in any sporting activities or games, including fishing and surfing shall do so only in areas designated by the lifeguards,<sup>2</sup> and shall discontinue such activity for public safety if instructed by the lifeguard<sup>3</sup> or a police officer.

#### **§ 45-5. Fires prohibited.**

No person shall start or manaintain<sup>4</sup> an open fire on any part of the public beach.

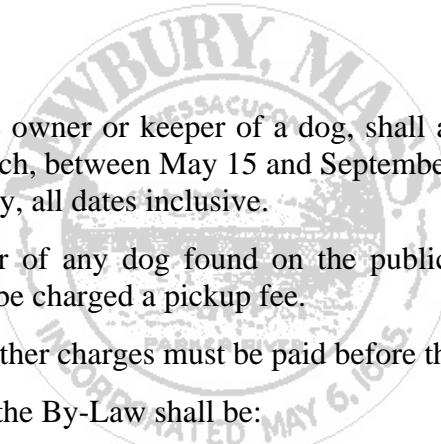
#### **§ 45-6. Animals restricted.** [Amended 4-21-1992 ATM, Art. 16]

1. Editor's Note: So in original.

2. Editor's Note: So in original.

3. Editor's Note: So in original.

4. Editor's Note: So in original.

- 
- A. No person, being the owner or keeper of a dog, shall allow said dog to be on any part of the public beach, between May 15 and September 15 of each year, from 8:30 a.m. to 5:30 p.m. daily, all dates inclusive.
  - B. The owner or keeper of any dog found on the public beach, in violation of the above By-Law, may be charged a pickup fee.
  - C. All pickup fees and other charges must be paid before the dog is released.
  - D. Fees for violation of the By-Law shall be:

1st offense	\$25.00
2nd offense	35.00
3rd & subsequent offense (all within one season)	50.00

**§ 45-7. Balls and other objects restricted.**

No person shall throw or cause to be thrown any ball, missile, projectile or other object, except in areas designated by the lifeguards<sup>5</sup> between May 15 and September 15 of each year, all dates inclusive.

**§ 45-8. Camping prohibited.**

No person may camp,<sup>6</sup> tent, or sleep on any part of the public beach between the hours of 11:00 p.m. and 6:00 a.m. of each day.

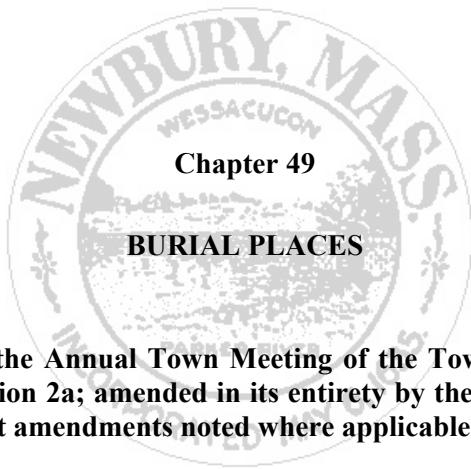
**§ 45-9. Violations and penalties.**

- A. Any person found violating the above rules and regulations shall be subject to a fine of \$100.00 for §§ 45-2 and 45-3; \$50.00 for §§ 45-4 and 45-5; and \$20.00 for §§ 45-6, 45-7 and 45-8. Each violation will constitute<sup>7</sup> a separate offense.
- B. Any person who fails to make his proper name and address known to a police officer of the Town of Newbury in request of his lawful duties under the By-laws, may be arrested without a warrant.

5. Editor's Note: So in original.

6. Editor's Note: So in original.

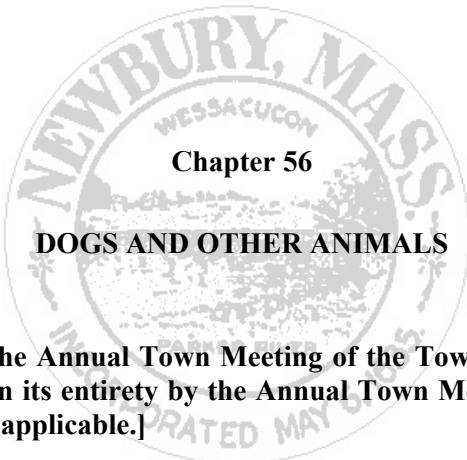
7. Editor's Note: So in original.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 3-3-1914 by Art. 21 as Chapter 4, Section 2a; amended in its entirety by the Special Town Meeting 8-7-1941 by Art. 2. Subsequent amendments noted where applicable.]

**§ 49-1. Funds; moneys and securities; investment.**

Funds, money or securities deposited with the Treasurer of the Town of Newbury for the preservation, care, improvement or embellishment of any public or private burial place within the Town of Newbury or of burial lots situated in such burial places may be received, held and applied. Such funds, money or securities shall be entered upon the books of the Treasurer of the Town and held in accordance with this by-law or, other ordinances or by-laws as from time to time adopted in accordance with Section 19 of Chapter 114 of the General Laws of Massachusetts (Tercentenary Edition,) or any amendments thereof or as otherwise authorized by law. The Town Treasurer shall invest all such funds, money or securities in accordance with the stipulations, if any, accompanying them and as ordered by the Selectmen and pay the income therefrom upon their order of with their approval.



## Chapter 56

### DOGS AND OTHER ANIMALS

[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 4-15-1986 by Arts. 9 and 10; amended in its entirety by the Annual Town Meeting 4-25-1995 by Art. 19. Amendments noted where applicable.]

#### GENERAL REFERENCES

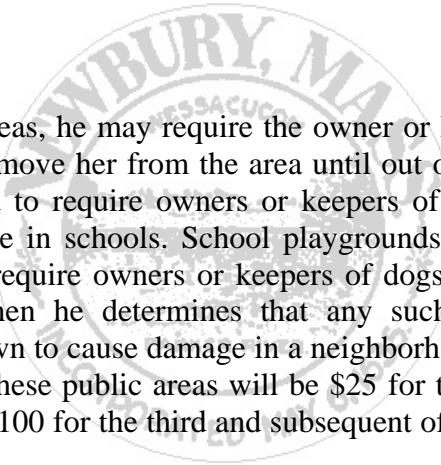
Animals — See Ch. 109.

#### § 56-1. Licensing.

- A. All dogs 4 months old or over must be licensed and tagged. Licensing will be done thru the Town Clerk's office the owner or keeper of an unlicensed dog after June 1st of each year will be fined \$10.00 per dog per month of violation.
- B. Licensing fees shall be \$10 per dog. New kennel licenses may be issued pending an informational meeting and with the approval of the ACO. Kennel fees: 4 dogs \$25, 10 dogs \$50, over 10 dogs \$100. Business kennel \$100. [Amended 4-27-1999 ATM, Art. 15]
- C. Anyone wishing to sell dogs not raised by them or to maintain a business kennel for the purpose of selling dogs of any age shall apply in writing to the Board of Selectmen. The selectmen shall hold a public hearing on the request. The petitioner must notify all abutters within 300' by registered mail and advertise the hearing in the Newburyport Daily News at least 10 days before the hearing date. Within 21 days after the hearing, the selectmen shall either deny the request or approve with any restrictions they deem necessary.
- D. Anyone maintaining such a business without a proper license shall be subject to a \$100 fine. Each day shall constitute a violation.
- E. The keeping of a female dog and occasionally having a litter of puppies shall not be considered a business.
- F. All monies collected for licenses and fines will be retained by the town in the dog fund. A review of these fees may be held by the selectmen, town clerk, and the animal control officer whenever deemed necessary.

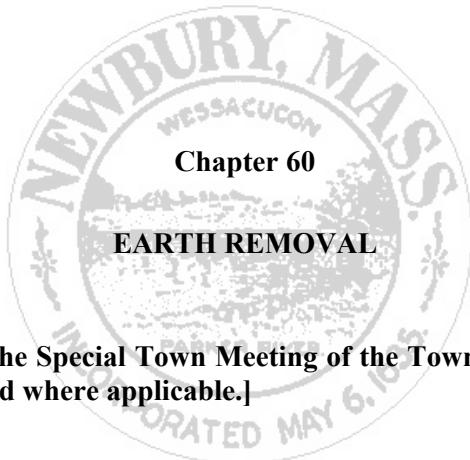
#### § 56-2. Enforcement.

- A. The Animal Control Officer shall attend to all complaints and other matters pertaining to dogs and may take whatever legal action he thinks is necessary.
- B. If the Animal Control Officer determines that a bitch in heat, even when confined, is attracting other dogs thus causing a disturbance or damage to neighboring



property or public areas, he may require the owner or keeper of said bitch to keep her in a kennel or remove her from the area until out of heat. The Animal Control Officer is authorized to require owners or keepers of dogs to restrain their dogs from running at large in schools. School playgrounds, parks or public recreation areas. He may also require owners or keepers of dogs to restrain their dogs from running at large when he determines that any such dog is an annoyance, is dangerous, or is known to cause damage in a neighborhood. The fee for violation of running at large on these public areas will be \$25 for the first offense, \$50 for the second offense and \$100 for the third and subsequent offenses. [Amended 4-27-1999 ATM, Art. 16]

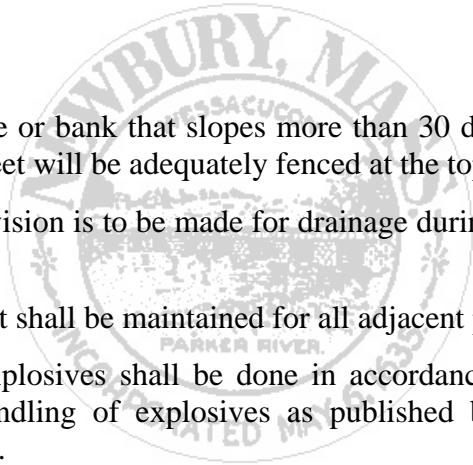
- C. The ACO is authorized to charge a fee of \$25 for any pick-up. A fee of \$50 will be assessed for each subsequent offense. [Added 4-27-1999 ATM, Art. 17]

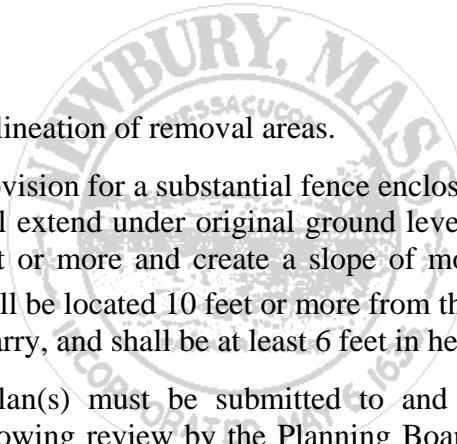


[**HISTORY:** Adopted by the Special Town Meeting of the Town of Newbury 12-28-1971 by Art. 11. Amendments noted where applicable.]

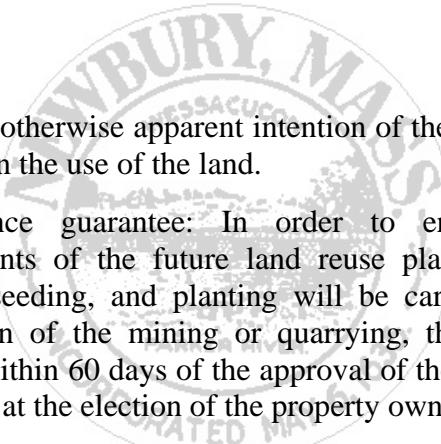
**§ 60-1. Removal of soil, loam, sand, gravel, quarry or other earth material.**

- A. The removal of soil, loam, sand, gravel, quarry or other earth material from any parcel of land not in public use in the Town of Newbury, except as hereinafter provided, shall be allowed only after a written permit therefor is obtained from the Board of Selectmen after a public hearing of which due notice is given.
- B. No permit shall be required for the continuous operation on any parcel of a sand or gravel pit in operation at the time this By-Law is adopted, provided such operation is not thereafter discontinued for more than one year and no permit shall be required for the removal of soil, loam, sand or gravel from any parcel of land when incidental to and, in connection with the construction of a building on the parcel.
- C. In issuing a permit under this By-Law, the Board of Selectmen may impose such conditions not specifically provided for herein as it may deem necessary for the adequate protection of the neighborhood and the Town. Any conditions imposed by the Board shall be attached to and made a part of the permit. The Board may, after a public hearing, on proof of violation of any condition, revoke any permits so issued. No permit shall be issued under the provisions of this By-Law for a period of more than three years.
- D. Regulations governing removal of sand, gravel, quarry or other earth materials. For the removal of sand, gravel, quarry or other earth materials including the processing and treating of raw materials (other than that which is incidental to and in connection with the construction of a building on a parcel) the following regulations shall govern: [Amended 3-20-1973 ATM, Art. 28]
  - (1) Removal and processing operations shall not be conducted closer than 50 feet to a public street.
  - (2) All equipment for sorting, washing, crushing, grading, drying, processing and treating, or other operation machinery, shall not be used closer than 100 feet from any public street or from any adjoining property line.
  - (3) One (1) off-street parking space will be provided for every two employees on the combined employment of the two largest successive shifts.
  - (4) Any access to excavated areas or areas in the process of excavation will be adequately posted with KEEP OUT- DANGER signs.

- 
- (5) Any work face or bank that slopes more than 30 degrees downward adjacent to a public street will be adequately fenced at the top.
- (6) Adequate provision is to be made for drainage during and after the completion of operations.
- (7) Lateral support shall be maintained for all adjacent properties.
- (8) The use of explosives shall be done in accordance with the regulations for storage or handling of explosives as published by the Commonwealth of Massachusetts.
- (9) All operations shall be conducted in such a manner so as to comply with the laws of the Commonwealth of Massachusetts regulating water pollution and air pollution.
- (10) Site plans shall be submitted to the Building Inspector in accordance with the following criteria:
- (a) Site plans shall be filed with the Building Inspector for any land which is used or intended to be used for the extraction of sand, gravel, rock, and associated earth materials.
  - (b) Site plans of the removal areas shall be prepared by a registered professional engineer at a scale of 200 feet to the inch and shall be in accordance with and include the following:
    - [1] Property lines.
    - [2] Adjacent public streets.
    - [3] Proper provisions for safe and adequate water supply and sanitary sewerage and for temporary and permanent drainage of the site.
    - [4] Regrading of all or parts of the slopes resulting from such excavation or fill; and
    - [5] Replacement of at least 4 inches of topsoil over all excavated, filled, or otherwise disturbed surfaces and seeding with a perennial cover crop, reseeded as necessary to assure uniform growth and soil surface stabilization. Also, the Building Inspector shall require a bond signed by the owner and applicant as principals, in an amount to be determined by the Building Inspector, to be posted to assure fulfillment of the conditions imposed, within such time as the Building Inspector may set.
    - [6] Submission of plan for lighting if night operation is contemplated.
    - [7] Proper provision for vehicular traffic, service roads, control of entrances and exits to highways.
    - [8] The relation of future building and operations machinery to the removal areas.

- 
- [9] Delineation of removal areas.
  - [10] Provision for a substantial fence enclosing the excavation or quarry will extend under original ground level or will have a depth of 10 feet or more and create a slope of more than 1 in 2. Such fence shall be located 10 feet or more from the edge<sup>1</sup> of the excavation or quarry, and shall be at least 6 feet in height.
  - (11) Land reuse plan(s) must be submitted to and approved by the Building Inspector, following review by the Planning Board subject to the regulations set forth in the following paragraphs:
    - (a) The Building Inspector may require up to three approved alternative future land reuse plans to be submitted for such land as is used for the extraction of sand, gravel, rock, and associated earth materials. It is recognized that land reuse of the removal areas is in the public interest.
    - (b) Said land reuse plan and its implementation applies to the conversion of the abandoned site and its planned reuse. It is, therefore, required that any land reuse plan correspond to a situation which could reasonably occur in the immediate future (0 to 5 years), and be revised as necessary as the existing physical character of the removal area changes.
    - (c) The land reuse plan will be developed in accordance with the following considerations:
      - [1] The harmony of the Land Reuse Plan with the zoning by-law and with the general purposes and intent of the Newbury Master Plan.
      - [2] The effect of the land reuse on neighboring properties.
      - [3] The estimated cost of accomplishing the land reuse.
      - [4] The existing character of the neighborhood.
      - [5] The effect upon future value of the land.
      - [6] The potential uses to which the land could be put.
      - [7] Sufficient amount of planting for prevention of erosion and for adequate screening.
      - [8] The Land Reuse Plan must meet all reasonable requirements which the Building Inspector, with advice from the Planning Board, may impose to protect the health, safety, and general welfare of the general public.
    - (d) The Land Reuse Plan or any part thereof which reasonably applies to an area which has been abandoned from removal use, shall be put into effect within one year of the abandonment of said operation. Abandonment for the purposes of this subsection shall be defined as the

1. Editor's Note: So in original.



visible or otherwise apparent intention of the owner and user of the land to abandon the use of the land.

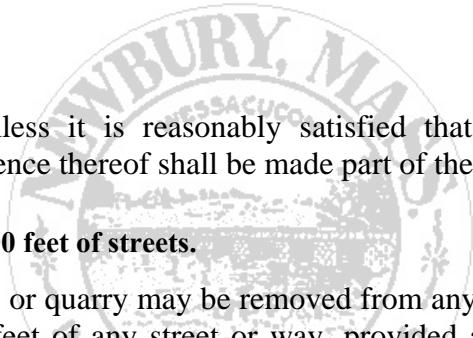
- (e) Performance guarantee: In order to ensure that all reasonable requirements of the future land reuse plan relating to safety, signs, fencing, seeding, and planting will be carried out immediately upon completion of the mining or quarrying, the Building Inspector shall require, within 60 days of the approval of the land reuse plan, one of the following at the election of the property owner:
- [1] A surety bond written by an insurance company authorized to do business in Massachusetts, or certified check shall be posted with the treasurer of the Town of Newbury in an amount determined by the Planning Board to be sufficient to cover the cost of carrying out the appropriate reuse plan requirement.
  - [2] An agreement shall be entered into and recorded on the land records whereby the Town of Newbury, in order to be put in an assured position to have the provisions of this section complied with, shall be given a lien on property within the mine or quarry site, and the amount of said lien shall be a sum determined by the Building Inspector as the reasonable cost of carryout of the proposed reuse. The property given by way of lien shall have a reasonable value, as determined by the Building Inspector, equal to the value of the cost of carrying out the reuse requirements.

**§ 60-2. Removal of sand and gravel or quarry.**

Sand and gravel or quarry may be removed from any parcel of land, except within 300 feet of a street or way, and the Board shall issue a permit therefor provided, however, that the Board shall impose such reasonable conditions as to the disposition of top soil and the re-establishment of ground levels and grades as it may deem necessary, consistent with the provisions of § 60-1.

**§ 60-3. Removal of soil or loam.**

- A. Soil or loam may be removed from any parcel of land within such parcel determined by the Board to be unsuited to agricultural use, and the Board may issue a permit for such removal; provided, however, that the Board shall in making such decision, obtain the recommendations of the appropriate Soil District Supervisor and the County Extension Director or Agent, or their successors, and their recommendation shall be made a part of the records of the Board. In issuing a permit, the Board may impose reasonable conditions as to the re-establishment of ground levels and grades, consistent with § 60-1.
- B. Notwithstanding the provisions of the above, the Board may issue a permit for the removal of soil or loam from any parcel of land in the Town where such removal is necessarily incidental to and in connection with the construction of a road or other facility involving a permanent change in the use of the land. The Board shall issue



no such permit unless it is reasonably satisfied that the construction will be completed and evidence thereof shall be made part of the records of the Board.

**§ 60-4. Removal within 300 feet of streets.**

Soil, loam, sand or gravel or quarry may be removed from any parcel of land within such parcel lying within 300 feet of any street or way, provided a permit therefor has been issued by the Board after satisfactory evidence that such removal will not be seriously detrimental or injurious to the neighborhood; provided further that the Board shall impose reasonable conditions as to the method of removal, and re-establishment of ground levels and grades and the planting of the area to suitable cover, as it may deem necessary. Removal of soil or loam under authority of this section shall be further subject to the provisions of § 60-3.

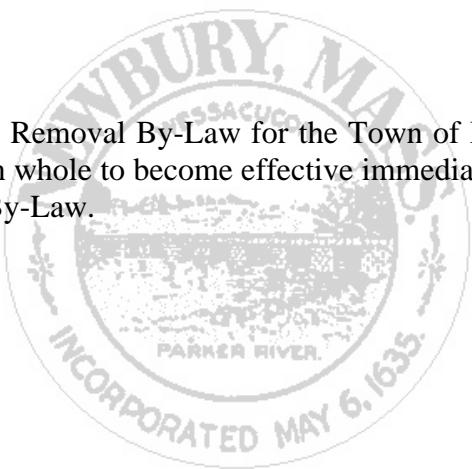
**§ 60-5. Administration and enforcement.**

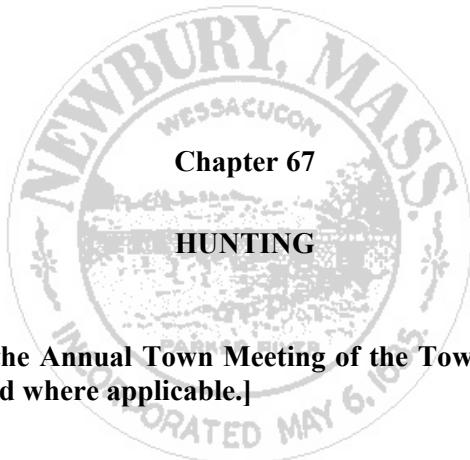
- A. Validity. The invalidity, unconstitutionality or illegality of any provision of this By-Law shall not have any effect upon the validity constitutionality, or legality of any other provision or section of this By-Law.
- B. Violations. The Building Inspector shall serve notice of violation and order to any owner or person who violates the provisions of this By-Law or is in violation of any approved plan, drawing, or information pertinent thereto; or in violation of a permit or certificate issued under the provisions of this By-Law, and such order shall direct the discontinuance of the unlawful action, use, or condition and the abatement of the violation within a time to be specified by the Building Inspector. Any owner who having been served with a notice and who ceases any work or other activity, shall not leave any structure or lot in such conditions as to be a hazard or menace to the public safety, health, morals, or general welfare. The Building Inspector shall have the power to require that such premises be put in such condition as he directs.
- C. Prosecution of violation.
  - (1) If the notice of violation and order is not complied with promptly and within 10 days, the Building Inspector shall request the Selectmen to institute the appropriate action or proceeding<sup>2</sup> at law or in equity to prevent any unlawful action, use, or condition and to restrain, correct, or abate such violation.
  - (2) Any person, trust, or other enterprize<sup>3</sup> who violates or refuses to comply with any of the provisions of this By-Law may on conviction be fined a sum of One Hundred Dollars (\$100.00) for each offense. Each day, or portion of a day that any violation is allowed to continue, shall constitute a separate offense.
- D. Building Inspector. It shall be the duty of the Building Inspector to administer and enforce the provisions of this By-Law.

2. Editor's Note: So in original.

3. Editor's Note: So in original.

- E. Repealer. The Earth Removal By-Law for the Town of Newbury adopted in 1954, is hereby repealed in whole to become effective immediately after the effective date of approval of this By-Law.





[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 3-19-1963 by Art. 13. Amendments noted where applicable.]

**§ 67-1. Consent required.**

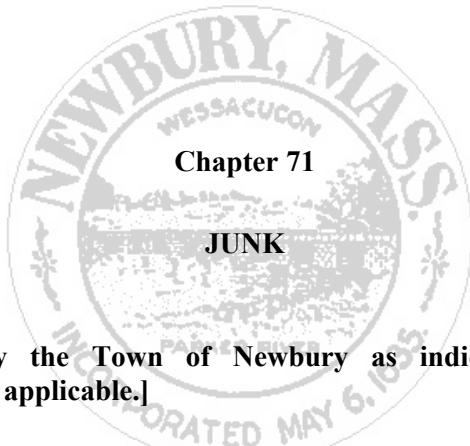
No person shall fire or discharge any firearms on any private property except with the written consent of the owner or the legal occupant thereof and such consent shall be carried at all times by any person hunting; and upon request shall be shown to any police officer, or officer of the Department of Conservation, or the property owner, or his agent.

**§ 67-2. Exemption.**

This by-law shall not be applied to the lawful defense of life or property or to any law enforcement officer in the defense of his duties.

**§ 67-3. Violations and penalties.**

Any person violating any provisions of this by-law shall be punished by a fine of not more than twenty dollars for each offense.



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

#### GENERAL REFERENCES

Streets, sidewalks and commons — See Ch. 88.

### ARTICLE I Junk Dealers and Collectors [Adopted by the Annual Town Meeting 3-3-1914 by Art. 21 as Chapter 4]

#### § 71-1. License required.

No person shall be a dealer or collector of junk, old metals, and second hand articles, from place to place in this town, without a license.

#### § 71-2. Issuance of licenses. [Amended 3-19-1940 ATM, Art. 24]

The Selectmen may license suitable persons to be collectors, or dealers in, or keepers of shops, yards or other premises for the purchase, sale, or barter, of junk, old metals, or second-hand articles, and including without limiting the foregoing, the Selectmen may issue motor vehicle junk licenses to any suitable persons whose principal business<sup>1</sup> is the buying of second-hand motor-vehicles for the purpose of remodeling, taking apart or rebuilding the same, or the buying or selling of parts of second hand motor vehicles or tires, or the assembling of second hand motor vehicle parts and may make such additional rules, regulations and restrictions as they deem proper, not inconsistent with the provisions of law or of these by-laws.

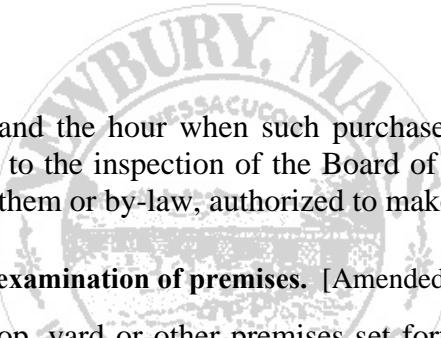
#### § 71-3. Application; notice. [Amended 3-19-1940 ATM, Art. 24]

Application for licenses for the purposes of carrying on within the town a business described in § 71-2 of this Chapter shall be advertised in a newspaper having a general circulation in the Town of Newbury, at least seven days before a public hearing is to be held by the Board having authority to grant said license. Notice of such hearing shall also be mailed at least seven days before the date of the hearing to all parties owing real estate abutting on the proposed location.

#### § 71-4. Record of purchases. [Amended 3-19-1940 ATM, Art. 24]

Every keeper of a junk shop, yard or other premises set forth in § 71-1 of this Chapter shall keep a book in which shall be written at the time, every purchase of any article mentioned in § 71-2, a description thereof, the name, age, and the residence of the person

1. Editor's Note: So in original.



from whom, and the day and the hour when such purchase was made, and such book shall, at all times, be open to the inspection of the Board of Selectmen and the Chief of Police or of any person by them or by-law, authorized to make such inspections.

**§ 71-5. Identification sign; examination of premises.** [Amended 3-19-1940 ATM, Art. 24]

Every keeper of a junk shop, yard or other premises set forth in § 71-2 of this Chapter shall display in a suitable and conspicuous place in his premises a sign having his name and occupation legibly inscribed thereon in large letters, and such shop and all articles and merchandise therein may, at all times, be examined by the Board of Selectmen and the Chief of Police, or by any person by them or by law, authorized to make such examination.

**ARTICLE II**  
**Junk Vehicles**

**[Adopted by the Annual Town Meeting 3-16-1965 by Art. 27]**

**§ 71-6. Storage of junk restricted.** [Amended 3-15-1966 ATM, Art. 12; 4-21-1987 ATM, Art. 33]

- A. No person shall store or place, or permit to be stored or placed, on premises which he ownes,<sup>2</sup> leases or occupies, any debris, junk, scrap metals or other waste materials or products, which in the opinion of the Board of Selectmen shall be considered detrimental to the public safety, health and good unless the same shall be within a building or area unexposed to the view of the public and abutters.
- B. Persons in violation may be punished by a fine not to exceed fifty (\$50.00) dollars for each offense. Each day that such violation continues shall constitute a separate offense.

**§ 71-7. Abandonment prohibited.** [Amended 4-21-1987 ATM, Art. 35]

No Person shall leave any partially dismantled non-operating, wrecked, junked or unregistered motor vehicle on any publicly maintained way within the Town.

**§ 71-8. Unregistered vehicles.** [Added 4-21-1987 ATM, Art. 35]

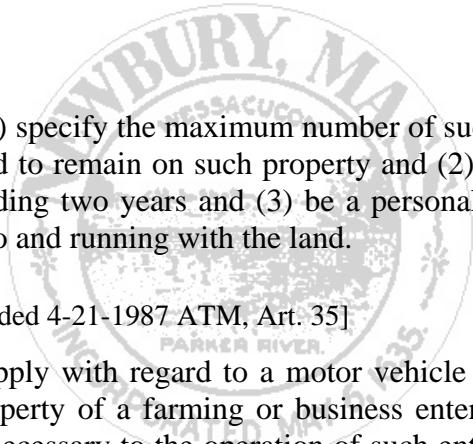
No person in charge or in control of any property within the Town, whether as owner, tenant, occupant, lessee, or otherwise shall allow more than one operative unregistered motor vehicle and no other unregistered motor vehicle to remain on such property, except as provided in §§ 71-9 and 71-11 of this By-Law.

**§ 71-9. Permit required.** [Added 4-21-1987 ]

The Board of Selectmen may issue a permit to keep, store, oATM, Art. 35r allow more than one such motor vehicle to remain on such property.

**§ 71-10. Permit contents.** [Added 4-21-1987 ATM, Art. 35]

2. **Editor's Note:** So in original.



Each such permit shall (1) specify the maximum number of such motor vehicles that may be kept, stored or allowed to remain on such property and (2) be limited to a reasonable period of time not exceeding two years and (3) be a personal privilege of the applicant and not a grant attached to and running with the land.

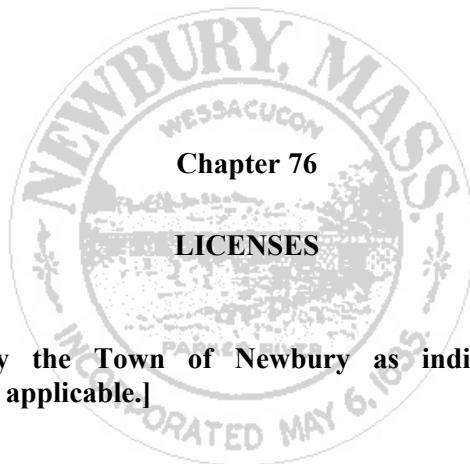
**§ 71-11. Exemptions.** [Added 4-21-1987 ATM, Art. 35]

This By-Law shall not apply with regard to a motor vehicle in an enclosed building; a motor vehicle on the property of a farming or business enterprise operated in a lawful place and manner when necessary to the operation of such enterprise; or a motor vehicle in an appropriate storage place depository maintained in a lawful place and manner by the Town.

**§ 71-12. Violations and penalties.** [Amended 4-21-1987 ATM, Art. 35]

Such permits or conditions granted may be revoked at the pleasure of the Board of Selectmen for any non-compliance of regulations or conditions of said permits and persons in violation may be punished by a fine not to exceed fifty (\$50.00) dollars for each offense. Each day that such violation continues shall constitute<sup>3</sup> a separate offense.

3. Editor's Note: So in original.



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

## ARTICLE I

### **Denial, Revocation or Suspension for Failure to Pay Taxes and Charges [Adopted by the Annual Town Meeting 4-19-1988 by Art. 34]**

#### **§ 76-1. Authority.**

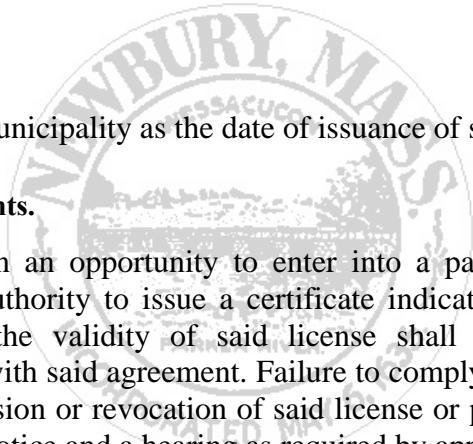
Notwithstanding the provisions of any Newbury By-law providing for local licensing of certain businesses, the Town, by its Board of Selectmen or other licensing authority, may deny an application for a license or suspend or revoke a current license, as hereinafter provided:

#### **§ 76-2. Delinquent tax list.**

The tax collector shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve (12) month period, and that such party has not filed in good faith a pending petition before the appellate tax board.

#### **§ 76-3. Hearings, notice, findings.**

The licensing authority may deny, revoke or suspend any license or permit including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector: provided, however, that written notice given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen (14) days after said notice. Said list shall be *prima facie* evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any finding 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. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal



charges, payable to the municipality as the date of issuance of said certificate.

**§ 76-4. Payment agreements.**

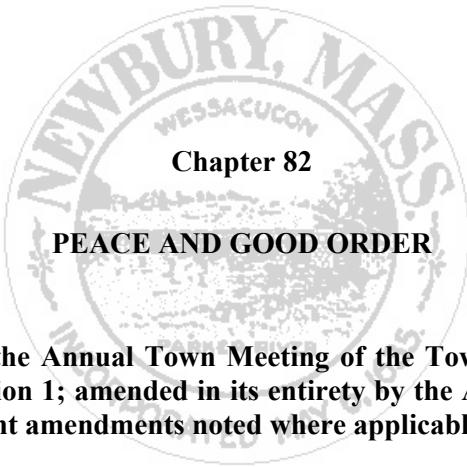
Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be ground 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.

**§ 76-5. Waiver.**

The Board of Selectmen may waive such, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stock holders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight in the business or activity conducted in or on said property.

**§ 76-6. Exceptions.**

This by-law shall not apply to the following licenses and permits; open burning sec. 13 of Chapt. 48; bicycle permits; sec. 11A of Chapt. 85; sales of articles for charitable purposes, sec. 33 of Chapt. 101; children work permits, sec. 69 of Chapt. 149; clubs, associations dispensing food or beverage license, sec. 21 of Chapt. 140; dog licenses, sec. 137 of Chapt. 140; fishing, hunting trapping license, sec. 12 of Chapt. 131; marriage licenses, sec. 28 of Chapt. 207 and theatrical events, public exhibition permits, sec. 181 of Chapt. 140.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 3-3-1914 by Art. 21 as Chapter 3, Section 1; amended in its entirety by the Annual Town Meeting 4-15-1980 by Art. 28. Subsequent amendments noted where applicable.]

#### **§ 82-1. Prohibited behavior.**

No person shall behave in a disorderly manner, or accost or annoy<sup>1</sup> persons of the opposite sex with an offensive or disorderly act or language; be lewd, wanton, and lascivious persons in speech or behavior; disturb the peace and good order of the Town. (See Chapter 272 Section 53 MGL).

#### **§ 82-2. Loitering and accosting prohibited.**

Whoever remains in a street or elsewhere in a town in willful violation of any by-law of the Town of Newbury, or of any other rule of regulation for the Government or use of any public park, common, public reservation, parkway or boulevard, made under the authority of law of any department, officer, or board in charge thereof, and whoever in a street or other public place accosts or addresses another person with profane or obscene language in willful violation of the Town By-Law, may be arrested without a warrant by a police officer or an officer authorized to serve criminal process, in the place where the offense is committed, if he is unknown to such officer, and kept in custody until he can be taken before a court having jurisdiction of the offense. (See Chapter 272 Section 59MG).

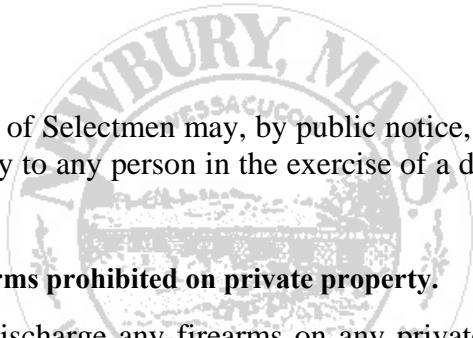
#### **§ 82-3. Littering prohibited.**

Whoever, in the presence of a police officer, or an officer authorized to serve criminal process, places on or throws into a public way, the sidewalk of a public way or a public alley, filth, rubbish, or other substance, and being requested by such officer forthwith to remove it, refuses or neglects so to do, and if the identity of such person is unknown to said officer, may<sup>2</sup> be arrested by such officer and detained in a safe place without a warrant until his identity is ascertained. Reasonable diligence shall be exercised by the arresting officer in ascertaining the identity of the offender and when identified, he shall be released unless a warrant has issued against him. (See Chapter 272 Section 60 MGL).

#### **§ 82-4. Discharge of firearms and fireworks prohibited on public ways.**

No person shall discharge any gun or firearm, or set fire to any material known as fireworks in any of the public ways or streets in the Town, except on such occasions and

1. Editor's Note: So in original.
2. Editor's Note: So in original.



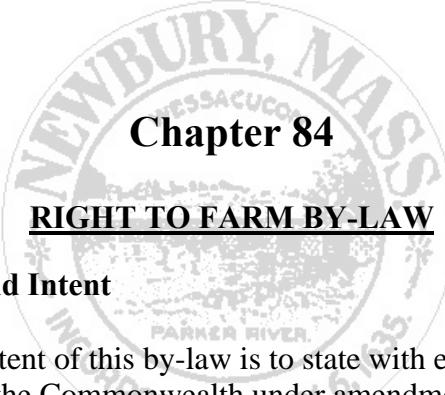
of such kind as the Board of Selectmen may, by public notice, permit; provided however, this section shall not apply to any person in the exercise of a duty required or justified by law.

**§ 82-5. Discharge of firearms prohibited on private property.**

No person shall fire or discharge any firearms on any private property except with the written consent of the owner of the legal occupant thereof and such consent shall be carried at all times by any person hunting, and upon request shall be shown to any police officer, or officer of the Department of Conservation, or the property owner, or his agent; provided however, this section shall not be applied to the lawful defense of life or property or to any law enforcement officer in the defense of his duties.

**§ 82-6. Violations and penalties.**

Whoever violates any of the sections under this chapter of these By-laws shall be punished by a fine not exceeding fifty dollars (\$50.00) for each offense.



## Chapter 84

### RIGHT TO FARM BY-LAW

#### C.84-§1. Purpose and Intent

The purpose and intent of this by-law is to state with emphasis the right to farm accorded to all citizens of the Commonwealth under amendment Article 97 of the Massachusetts Constitution and all statutes and regulations thereunder including but not limited to General Laws Chapter 40A, section 3; Chapter 90, Section 9; Chapter 111, Section 125A; and Chapter 128, Section 1A. We the citizens of Newbury restate and republish these rights pursuant to the Town's authority conferred under the Home Rule Amendment to the Massachusetts Constitution.

This by-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town boards and commissions. This by-law shall apply to all jurisdictional areas within the Town.

#### C.84-§2. Definitions

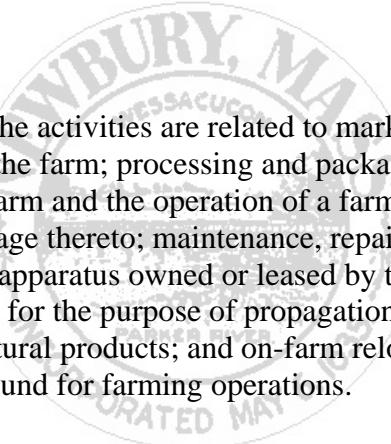
The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

farming in all its branches and the cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities; growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations; raising of livestock including horses; keeping of horses as a commercial enterprise; and keeping and raising of poultry, cattle, swine, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

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

operation and transportation of slow-moving farm equipment over roads within the Town; control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plants and animals; application of manure, fertilizers and pesticides; conducting agriculture-related educational and farm-based recreational activities, including agri-tourism,



provided that the activities are related to marketing the agricultural output or services of the farm; processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto; maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of agricultural products; and on-farm relocation of earth and the clearing of ground for farming operations.

### **C.84-§3. Right to Farm Declaration**

The right to farm is hereby recognized to exist within the Town of Newbury. The above-described activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming in the neighborhood, community, and society in general. The benefits and protections of this by-law are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this by-law shall be deemed as acquiring any interest in land, or as imposing any land use regulations, which is properly the subject of state statute, regulation, or local zoning.

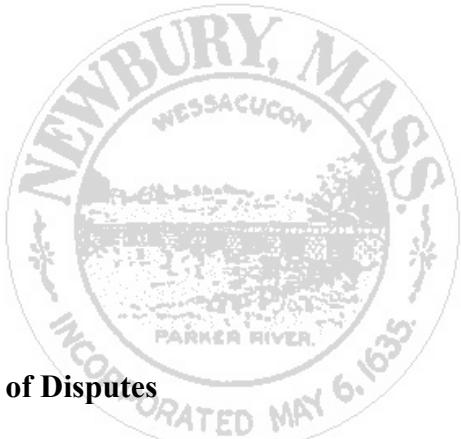
### **C.84-§4. Disclosure Notification [Amended Annual Town Meeting 5-26-2009 Art. 27]**

Immediately upon the execution of a purchase and sale agreement for the purchase of any real estate is entered into, or prior to the sale or exchange of real property if no purchase and sale agreement exists, for the purchase or exchange of real property, or prior to the acquisition of a leasehold interest or other possessory interest in real property, located in Newbury, the landowner shall present the buyer or occupant with a disclosure notification which states the following:

“It is the policy of Newbury to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, or other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that may cause noise, dust or odors. Buyers and occupants are also informed that the location of property within Newbury may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances.”

A copy of the disclosure notification shall be signed by the landowner prior to the sale, purchase, exchange or occupancy of real property. A copy of the disclosure notification must be filed with the Board of Selectmen prior to the sale, purchase, exchange or occupancy of such real property. In addition, the Town may mail a copy of this disclosure notification to all landowners once each fiscal year by inclusion in its mailing of real estate or excise taxes.

Any violation of this section shall be subject to a fine of \$300 and shall be enforced by the Board of Selectmen or its designee. The Town is authorized to enforce this section under the non-criminal disposition provision of G.L. c. 40, § 21D.



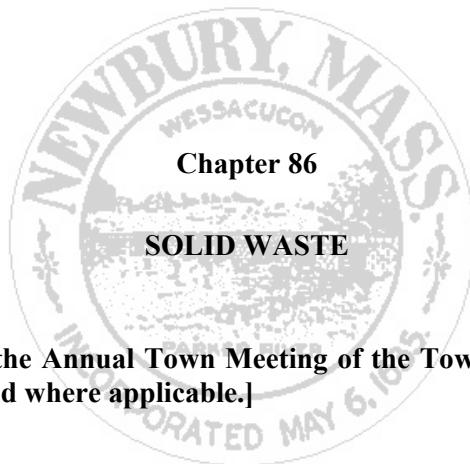
### **C.84- §5. Resolution of Disputes**

The Town hereby establishes an Agricultural Commission to serve as facilitator and advocate for encouraging the pursuit of farming and agriculture in Newbury, and to promote agricultural-based economic opportunities in the Town, which shall work with Town officials and boards to promote and protect agricultural interests. The Commission shall consist of five members appointed by the Board of Selectmen, two members to be initially appointed for a term of three years, two members for a term of two years, and one member for a term of one year, all reappointments thereafter to be for a term on three years. Up to three alternates may be appointed by the Board of Selectmen for one year terms.

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Board of Selectmen, the Zoning Enforcement Officer, or the Board of Health, depending on the nature of the grievance. The filing of a grievance does not suspend the time within which to pursue any other available remedies that the aggrieved person may have. The Board of Selectmen or Zoning Enforcement Officer shall forward a copy of the grievance to the Agricultural Commission which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring town officials. The Board of Health, except in cases of imminent danger or a public health risk, shall forward a copy of the grievance to the Agricultural Commission, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health.

### **C.84- §6. Severability Clause**

If any part of this by-law is for any reason held to be unconstitutional or invalid, such determination shall not affect the remainder of this by-law. The Town of Newbury hereby declares the provisions of this by-law to be severable;



[HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 4-19-1988 by Art. 30. Amendments noted where applicable.]

**§ 86-1. Disposal.**

No person shall place, throw, deposit or discard any filth, garbage, rubbish or other substances which were generated outside the Town of Newbury within any designated disposal facility of the Town without the expressed permission of the Board of Selectmen of the Town.

**§ 86-2. Violations and penalties.**

Whoever violates any condition of this By-Law shall be punished by a fine, as provided by Chapter 40, Sec. 21D, M.G.L.'s, not to exceed three hundred dollars (\$300.00). Each incident shall be considered a spearate<sup>1</sup> offense.

1. Editor's Note: So in original.

## **Chapter 87**

### **STORMWATER MANAGEMENT AND ILLICIT DISCHARGE AND EROSION CONTROL**

#### **(1) PURPOSE**

Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of Newbury to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town of Newbury, including the water bodies and groundwater. The purpose of this By-Law is to prevent or diminish these impacts by controlling runoff and preventing soil erosion and sedimentation resulting from site construction and development and to provide compliance with Newbury's NPDES Permit Number: MAR041212/MA DEP Transmittal Number: W 040791.

- (a) The harmful impacts of soil erosion and sedimentation are:
  - 01) impairment of water quality and flow into lakes, ponds, streams, rivers, coastal and marine waters and estuaries (314 CMR 4.00), wetlands and groundwater;
  - 02) contamination of drinking water supplies;
  - 03) alteration or destruction of aquatic and wildlife habitat;
  - 04) flooding; and
  - 05) overloading or clogging of municipal catch basins and stormwater drainage systems.
- (b) The objectives of this By-Law are:
  - 01) to prevent pollutants from entering the Town of Newbury municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
  - 02) to protect water resources;
  - 03) to prohibit illicit connections and unauthorized discharges to the MS4;
  - 04) to require the removal of all such illicit connections;
  - 05) to require practices that control the flow of stormwater from new and redeveloped sites into the Town of Newbury's MS4 in order to prevent flooding and erosion;
  - 06) to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;

- 07) to require practices that control wastes such as concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- 08) to require that new development, redevelopment, and all land conversion activities maintain runoff characteristics equal to or less than predevelopment runoff characteristics; provide groundwater recharge; reduce flooding, stream bank erosion, siltation, nonpoint source pollution and property damage; and maintain the integrity of streams, channels and aquatic and wildlife habitats;
- 09) to require site designs that minimize non-point source pollution from stormwater runoff which would otherwise degrade water quality;
- 10) to require site designs that incorporate “low-impact development” (LID) practices for the construction and use of structural stormwater control facilities that can be used to meet minimum construction/alteration and post-development stormwater management, stormwater site design practices or LID practices, such as reducing impervious cover and the preservation of open space and other natural areas, to the maximum extent practicable;
- 11) to require construction/alteration and post-development storm water management standards and design criteria for the regulation and control of stormwater runoff quality and quantity;
- 12) to require provisions for the long-term responsibility and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
- 13) to comply with state and federal statutes and regulations relating to stormwater discharges;
- 14) to establish the Town of Newbury as the legal authority to ensure and enforce compliance with the provisions of this By-Law through inspection, monitoring, and enforcement;
- 15) to establish decision-making processes relative to the land-disturbing development activities that protect the integrity of all surface and groundwaters, promote groundwater recharge and preserve the health of wetland and water resources; and
- 16) to establish provisions that ensure that there is an adequate funding mechanism, including surety, for the proper review, inspection, and long-term maintenance of stormwater facilities implemented as part of this By-Law.

## **(2) DEFINITIONS**

**ABUTTER:** The owner(s) of land abutting the activity.

**AGRICULTURE:** The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act G.L. c. 131, § 40, and its implementing regulations.

**ALTERATION OF LAND:** An activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater in the area.

**APPLICANT:** Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department or political subdivision of the Commonwealth or the Federal government, to the extent permitted by law, requesting a soil erosion and sediment control permit for proposed land-disturbance activity.

**AUTHORIZED ENFORCEMENT AGENCY:** The Planning Board, its employees or agents designated to enforce this By-Law.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that is recognized to be the most effective and practical means to reduce the quantity or improve the quality of stormwater runoff.

**COASTAL:** The Atlantic Ocean and all contiguous saline bays, inlets, and harbors within the jurisdiction of the Commonwealth, including areas where fresh and salt waters mix and tidal effects are evident, or any partially enclosed body of water where the tide meets the current of a stream or river (314 CMR 10.0).

**CONSTRUCTION AND WASTE MATERIALS:** Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter and sanitary waste at a construction site that may adversely impact water quality.

**CLEARING:** Any activity that removes the vegetative surface cover, including, but not limited to, grubbing.

**DEVELOPMENT:** The modification of land to accommodate a new use or expansion of use, usually involving construction.

**DISTURBANCE OF LAND:** Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

**ENFORCEMENT OFFICER:** Town's authorized agent to enforce construction and post construction stormwater run-off controls as specified in the Stormwater Management Rules and Regulations.

**EROSION:** The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

**EROSION AND SEDIMENT CONTROL PLAN:** A document containing narrative, drawings, and details which includes BMP's, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land

disturbances. The plan is required as part of the application for a Stormwater Management Permit.

**GRADING:** Changing the level or shape of the ground surface.

**GRUBBING:** The act of clearing land surface by digging up roots and stumps.

**ILLICIT CONNECTION:** A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drainage system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-Law.

**ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drainage system, that is not composed entirely of stormwater, except as exempted in §87-4 (d). The term does not include a discharge in compliance with a NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to §87-4 (d).

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops. Impervious surface also includes soils, gravel driveways, and similar surfaces with a high runoff coefficient (Rational Method), as determined by the Planning Board.

**LAND-DISTURBING ACTIVITY:** Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

**LOW IMPACT DEVELOPMENT (LID):** A Stormwater Management approach and set of practices incorporated into development or redevelopment designs to reduce runoff and pollutant loadings in the runoff as close to its source(s) as possible that protect downstream resources from adverse degradation while minimizing the extent of clearing and maximizing groundwater recharge.

**MASSACHUSETTS ENDANGERED SPECIES ACT:** (G.L. c. 131A) and its implementing regulations at (321 CMR 10.00) that prohibit the “taking” of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

**MASSACHUSETTS STORMWATER MANAGEMENT REGULATIONS:** The Regulations as contained within the Massachusetts Wetlands Protection Regulations (310 CMR 10.00) and Massachusetts 401 Water Quality Certificate Regulations (314 CMR 9.00).

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or municipal storm drain system:** The various systems of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Newbury.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT FOR DISCHARGES FROM LARGE AND SMALL CONSTRUCTION ACTIVITIES:** Permit required by the EPA for construction activities that disturb one acre or

more of land, either by itself or as part of a larger development. Permit requires a Notice of Intent (NOI) to be submitted to the EPA and the development of a Stormwater Pollution Prevention Plan (SWPPP).

**NPDES PHASE II REGULATED AREA:** The area within Newbury identified by the U.S. Environmental Protection Agency as “Designated MS4 Area” under the NPDES Phase II Stormwater Program. See map entitled, “NPDES Phase II Stormwater Program Automatically Designated MS4 Areas, Newbury, Massachusetts” as may be amended.

**NON-POINT SOURCE (NPS) POLLUTION:** Pollution of surface or groundwater supplies originating from land use activities and/or the atmosphere, having no well-defined point of entry.

**OPERATION AND MAINTENANCE PLAN:** A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

**OUTFALL:** The point at which stormwater flows from a discernible, confined and discrete point source into waters of the Commonwealth.

**OWNER:** A person with a legal or equitable interest in property.

**PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

**POINT SOURCE:** Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

**POLLUTANT:** Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter in whatever form, and whether originating at a point or introduced into any sewerage system, treatment works, wetlands or waters of the Commonwealth.

**PRE-CONSTRUCTION:** All activity in preparation for construction.

**PRIORITY HABITATS AND ESTIMATED HABITATS AND CERTIFIED VERNAL POOLS:** Estimated habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (c. 310 CMR 10.00), Priority Habitats, for use with the MA Endangered Species Act Regulations (c. 321 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

**REDEVELOPMENT:** Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

**RUNOFF:** Rainfall, snowmelt, or irrigation water flowing over the ground surface.

**SEDIMENT:** Mineral or organic soil material that is transported by wind or water from its origin to another location; the product of erosion processes.

**SEDIMENTATION:** The process or act of deposition of sediment.

**SITE:** Any lot, parcel of land, or area of property where land-disturbing activities are, were, or will be performed.

**SLOPE:** The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

**SOIL:** Any earth, sand, rock, gravel, or similar material.

**STABILIZATION:** The use, singly or in combination, of mechanical, structural, or vegetative methods to prevent or retard erosion.

**STORMWATER:** Rainfall runoff, snow melt runoff, and surface water runoff and drainage.

**STORMWATER MANAGEMENT PERMIT (SMP):** A permit issued by the Planning Board, after review of an application, plans, calculations, and other supporting documents designed to protect the environment of the Town from the deleterious affects of uncontrolled and untreated stormwater runoff.

**STORMWATER MANAGEMENT PLAN:** A plan required as part of the application for a Stormwater Management Permit. A document containing narrative, drawings and details that include best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation and illicit connections during pre-construction and construction related land disturbance activities.

**STRIP:** Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

**TOTAL SUSPENDED SOLIDS (TSS):** Material, including, but not limited to, silts, sediments and particulates suspended in stormwater runoff.

**VERNAL POOL:** A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species.

**WATERCOURSE:** A natural or man-made channel through which water flows, including a river, brook, stream, underground stream, pond or lake.

**WATER QUALITY:** Systematic application of standards to describe water pursuant to the Massachusetts Surface Water Quality Standards (314 CMR 4.00).

**WETLAND RESOURCE AREA:** Area specified in the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 and the Town's Wetlands By-Law (Chapter 95).

### **(3) AUTHORITY**

- (a) This By-Law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34
- (b) Nothing in this By-Law is intended to replace the requirements of any other By-Law that has been or may be adopted by the Town of Newbury.

#### **(4) APPLICABILITY**

- (a) This By-Law shall apply to all activities that result in the alteration or disturbance of one or more acres of land that drain to the Town of Newbury's MS4. Except as authorized by the Planning Board in a Stormwater Management Permit or as otherwise provided in this By-Law, no person shall perform any activity that results in disturbance of an acre or more of land.
- (b) In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the above activities that are subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Regulations as reflected in a final Order of Conditions issued by the Conservation Commission or the Department of Environmental Protection are exempt from compliance with this By-Law.
- (c) No person may alter or disturb any land equal to or greater than one acre, or less than one acre that is part of a larger common plan of development or sale, that will ultimately alter or disturb any land equal to or greater than one acre that drains into the Town of Newbury MS4 without a Stormwater Management Permit from the Planning Board.
- (d) Construction activities that are exempt are:
  - 01) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations 310 CMR 10.04 and MGL Chapter 40A, section 3;
  - 02) Maintenance of existing landscaping, gardens, or lawn areas associated with a single family dwelling provided such maintenance does not include the addition of more than 100 cubic yards of soil material, or alteration of drainage patterns;
  - 03) The construction of fencing that will not substantially alter existing terrain or drainage patterns;
  - 04) Normal maintenance of Town owned public land, ways, and appurtenances, including minor road repair, emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, or further maintenance activities as deemed necessary by the Planning Board.
  - 05) Activities that are subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Regulations as reflected in an Order of Conditions issued by the Conservation Commission;
  - 06) Water line flushing;

- 07) Construction activities that receive a waiver from EPA under the provisions of 40 CFR §122.26 (b) (15) (i) as included in Newbury's NPDES Permit identified above in (1) Purpose.
- 08) Construction of utilities other than drainage (e.g. gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns;
- 09) Emergency work to protect life, limb, or property.

## **(5) ADMINISTRATION**

- (a) The Planning Board shall administer, implement and enforce this By-Law. Any powers granted to, or duties imposed upon, the Planning Board may be delegated in writing by the Planning Board or its authorized agent to such individual or individuals as the Board or its agent may, from time to time, deem appropriate.
- (b) Waiver. The Planning Board may waive strict compliance with any requirement of this By-Law or the rules and regulations promulgated hereunder, where such action:
  - 01) is allowed by federal, state and local statutes and/or regulations;
  - 02) is deemed to be in the public interest; and
  - 03) is consistent with the purpose and intent of this By-Law.
- (c) Public Hearing. The Planning Board shall hold a public hearing within sixty-five (65) days of the receipt of a complete application and shall take final action within ninety (90) days from the time of the close of the hearing unless such time is extended by agreement between the applicant and the Permit Authority. Notice of the public hearing shall be given by publication and posting and by certified mail or certificates of mailing at the Applicant's expense to abutters at least fourteen (14) days prior to the hearing. The Planning Board shall make the application available for inspection by the public during business hours at the Newbury Town Hall.
- (d) Information requests. The applicant shall submit all additional information requested by the Planning Board to issue a decision on the application.
- (e) The Planning Board may:
  - 01) Approve the SMP (Stormwater Management Permit) Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this By-Law;
  - 02) Approve the Stormwater Management Permit Application and issue a permit with conditions, modifications or restrictions that the Planning Board determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this By-Law;

- 03) Disapprove the Stormwater Management Permit Application and deny the permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this By-Law.
- (f) Failure of the Planning Board to take final action. Failure of the Planning Board to take final action upon an Application within the time specified above shall be deemed to be approval of said Application. Upon certification by the Town Clerk that the allowed time has passed without the Planning Board's action, the Stormwater Management Permit shall be issued by the Town Clerk.

## **(6) RULES AND REGULATIONS**

- (a) The Planning Board shall adopt, and periodically amend rules and regulations to effectuate the purposes of this By-Law. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-Law. The Rules and Regulations shall include, at a minimum, Permits and Procedural Requirements; Stormwater Management Plan Requirements; Operation and Maintenance Plan Requirements, etc.

## **(7) FEE STRUCTURE**

- (a) Fees: Stormwater Management review 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 review by a consultant selected by the Town. The amount of fees shall be as listed in the Stormwater Management Rules and Regulations and administered in accordance with § 117-46 through § 117-48 of the Town's Regulations for the Subdivision of Land.

## **(8) ENFORCEMENT**

- (a) The Planning Board or its authorized agent shall enforce this By-Law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations, in accordance with the regulations.
- (b) Any person violating any provision of this By-Law may be fined \$300.00 for each offense. Each day such violation continues shall constitute a separate offense. Fines may be levied pursuant to G.L. c. 40, § 21, or, in the alternative, the Planning Board, its authorized agents, police officers, or any other person having police powers, may impose such specified penalties pursuant to the non-criminal disposition provisions set forth in G.L. c. 40, § 21D.

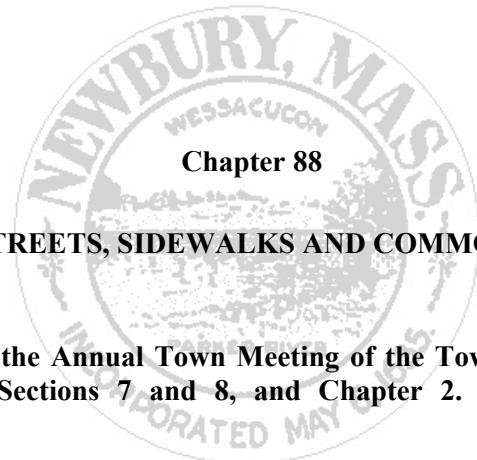
## **(9) SEVERABILITY**

- (a) If any provision, paragraph, sentence, or clause of this By-Law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

## **Appendix A**

NPDES Phase II Stormwater Program Automatically Designated MS4 Areas, Newbury,  
Massachusetts

Map Created: 11/18/02; US EPA – New England GIS Center



## STREETS, SIDEWALKS AND COMMONS

[HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 3-3-1914 by Art. 21 as Chapter 1, Sections 7 and 8, and Chapter 2. Amendments noted where applicable.]

### GENERAL REFERENCES

Vehicles and traffic — See Ch. 93.  
Zoning — See Ch. 97.  
Sewers — See Ch. 114.  
Subdivision of land — See Ch. 117.

**§ 88-1. Deposit of rubbish prohibited.** [Amended 4-15-1980 ATM, Art. 28; 4-23-1996 ATM, Art. 25]

No person shall place, throw, deposit, or discard any filth, garbage, rubbish, snow or other substances on any public way, sidewalk, public common, reservation or other public place within the Town.

**§ 88-2. Definitions.**

Wherever the word street or streets is used in these bylaws, it shall be understood as meaning to include lanes, alleys, courts, public squares and sidewalks, unless otherwise expressed.

**§ 88-3. Discharge of water.** [Amended 4-15-1980 ATM, Art. 28]

No person shall suffer his building to shed water upon any street or sidewalk in the Town, to the injury or inconvenience of passengers, nor allow impure water to run from any building or lot under his control, into any street, roadway, or public place.

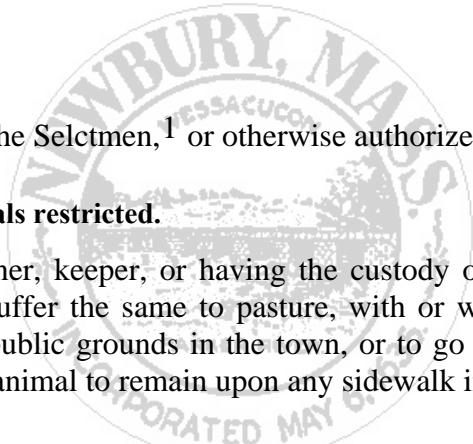
**§ 88-4. Frightening horses and games prohibited.** [Amended 4-15-1980 ATM, Art. 28]

No person shall by any means, or in any manner willfully frighten any horse, or play at any game in which a ball is used, or shoot with bows and arrows, fly kites, or throw stones, frisbees, or any other missiles on any street or sidewalk in the Town.

**§ 88-5. (Reserved)**

**§ 88-6. Sales on streets prohibited.** [Amended 4-15-1980 ATM, Art. 28]

No person shall continue to stand or remain in one place, in any street or public place, seeking to make sales or any articles or in the exercise or any other business without



expressed permission of the Selectmen,<sup>1</sup> or otherwise authorized by law.

**§ 88-7. Pasturing of animals restricted.**

No person being the owner, keeper, or having the custody of any horse, cow or other animal, shall permit or suffer the same to pasture, with or without a keeper, upon any street, sidewalk, or any public grounds in the town, or to go at large therein, nor suffer such horse, cow or other animal to remain upon any sidewalk in the town.

**§ 88-8. Vehicles on commons or sidewalks.** [Amended 4-15-1980 ATM, Art. 28]

- A. No person shall ride, or drive any bicycle, or a horse, or any other animal upon public commons within the Town, or upon any public sidewalks.
- B. No person shall operate, push, or tow any vehicle, motorized bicycle, or any other motorized machine, upon public commons within the town or upon any sidewalk, except for<sup>2</sup> the purpose of crossing said sidewalk.

**§ 88-9. Loitering prohibited.**

Unless otherwise authorized by law, no person shall continue to stand or remain in one place, in any street or public place, seeking to make sales of any articles or in the exercise of any other business, after being directed by a police officer to "move on."

**§ 88-10. Advertising prohibited.** [Amended 3-19-1940 ATM, Art. 25]

No person, shall, in any street, or public place, carry and display, for advertising purposes, any show card, placard, or sign, except in accordance with a permit so to do from the Selectmen.

**§ 88-11. Clothing required.** [Added 4-15-1986 ATM, Art. 32]

No person shall bathe or swim without personal covering in any public place; no person shall parade, run, walk, sit, or stand on any public or private way unless properly robed; no person shall disrobe in any vehicle, public way or place to which the public has the right of access or view.

**§ 88-12. Use of ramp restricted.** [Added 4-21-1987 ATM, Art. 42]

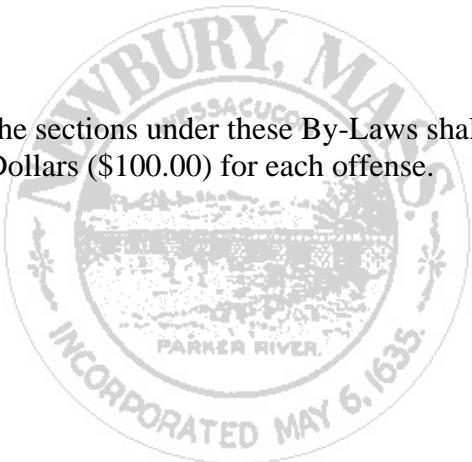
- A. No person shall use, or park any vehicle on, the Town Boat Ramp or the surrounding park area without the permission of the Board of Selectmen.
- B. Visual permits will be issued to qualified users.

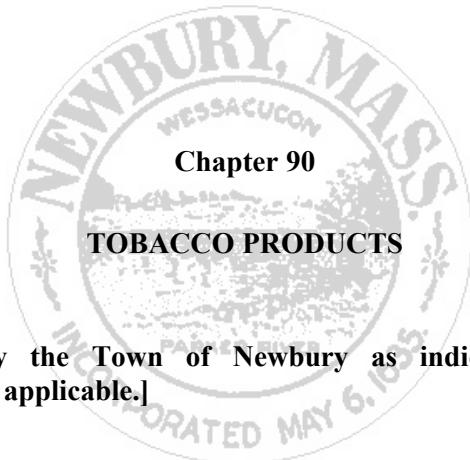
**§ 88-13. Violations and penalties.** [Added 3-18-1969 ATM, Art. 19; amended 4-15-1980 ATM, Art. 28; 4-21-1987 ATM, Art. 43]

1. Editor's Note: So in original.

2. Editor's Note: So in original.

Whoever violates any of the sections under these By-Laws shall be punished by a fine not exceeding One Hundred Dollars (\$100.00) for each offense.





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

ARTICLE I  
**School Property**

[Adopted by the Annual Town Meeting 6-27-2000 by Art. 9]

**§ 90-1. Possession or use prohibited.**

No person shall possess or use tobacco products of any type, by any means, within any school building, in any school facility, on school grounds or school buses.

**§ 90-2. Violations and penalties.**

Each violation of this by-law shall be punishable by a fine as follows:

- A. First violation: \$100.00, or the violator, at his option, may attend an approved tobacco education program in lieu of said fine and noncriminal disposition.
- B. Second and subsequent violations: \$100.00.

**§ 90-3. Noncriminal disposition.**

Prosecution of violations of this by-law shall be by noncriminal disposition as provided in G.L. c. 40, Section 21D, as may be amended from time to time, the provisions of which are incorporated herein by reference.

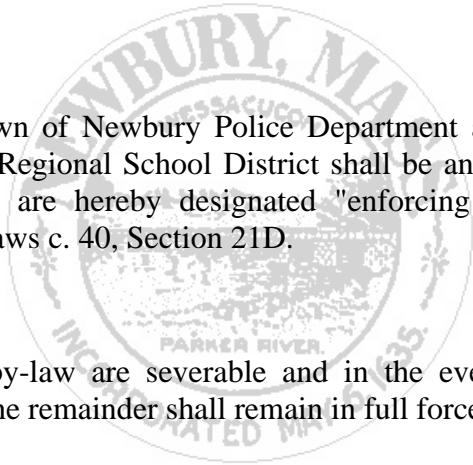
**§ 90-4. Notice to parent or guardian.**

If the violator is less than 19 years of age, the enforcing person shall cause a copy of the notice of violation to be sent to the violator's parent or legal guardian.

**§ 90-5. Notice of violation.**

The enforcing persons are authorized to take cognizance of any violation of this by-law and may give to any offender a written notice of violation. Said notice shall inform first time violators of their right to attend a tobacco education program in lieu of fine and noncriminal disposition. Said notice shall also direct the violator to appear before the clerk of the district court having jurisdiction over such violations at any time during office hours of said district court, not later than twenty-one days after the date of said notice, or set forth such other directions as required by G.L. c. 40, Section 21D.

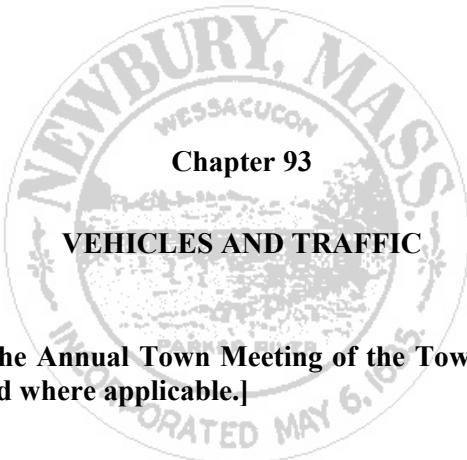
**§ 90-6. Enforcing persons.**



The members of the Town of Newbury Police Department and directors, officers and employees of the Triton Regional School District shall be and hereby are authorized to enforce this by-law and are hereby designated "enforcing person(s)" as defined in Massachusetts General Laws c. 40, Section 21D.

**§ 90-7. Severability.**

The provisions of this by-law are severable and in the event any portion thereof is deemed void or invalid, the remainder shall remain in full force and effect.



[**HISTORY:** Adopted by the Annual Town Meeting of the Town of Newbury 4-15-1980 by Art. 28. Amendments noted where applicable.]

## ARTICLE I Definitions

### § 93-1. Definitions.

For the purpose of these rules and orders, the works and phrases used herein shall have the following meanings except in those instances where the context clearly indicated a different meaning.

- A. "Street or Highway." The entire width between property lines of every way open to the use of the public for the purpose of travel.
- B. "Roadway." That portion of a street or highway between the regularly established curb lines or that part, exclusive of shoulders, improved and intended to be used for vehicular traffic.
- C. "Lane." A longitudinal division of a roadway into a strip of sufficient width to accommodate the passage of a single line of vehicles.
- D. "Vehicle." Every device in, upon, or by which any person or property is or may be transported or drawn upon a street or highway including bicycles when the provisions of these rules are applicable to them, except other devices moved by human power or used exclusively upon stationary rails or tracks.
- E. "Parking." The standing of a vehicle, whether occupied or not otherwise than temporarily for the purpose of and while actually engaged in leading or unleading,<sup>1</sup> or obedience to an officer or traffic signs or signals, or while making emergency repairs or, if disable, while arrangements are being made to move such vehicles.
- F. "Crosswalks." That portion of a roadway ordinarily included within the prolongation or connection or curb lines and property lines at intersections, or at any portion of a roadway clearly indicated for pedestrian<sup>2</sup> crossing by lines on the road surface or by other markings or signs.
- G. "Person." The word "person" shall mean and include any individual, firm, partnership, association, or corporation.
- H. "Official Traffic Signs." All signs, markings and devices, other than signals, not

1. Editor's Note: So in original.

2. Editor's Note: So in original.

inconsistent with these rules and orders, and which conform to the standards prescribed by the Department of public works of the commonwealth of Massachusetts and placed or erected by authority of a public body or official having jurisdiction, for the purpose of guiding, directing, warning or regulating traffic.

- I. "Officer." For the purpose of these rules and order an officer shall be construed to mean any officer, any investigator, examiner or inspector of the Registry of Motor Vehicles, any constable or special officer, provided he has his badge of office displayed over his left breast and upon his outer garment.
- J. "Traffic Control Area." Any area along any way, other than an intersecting way, at which drivers are to be controlled by traffic control signals.
- K. "Emergency Vehicles." Vehicles of the Fire Dept., police vehicles, ambulances and emergency vehicles of federal, state and municipal departments or public service corporations when the latter are responding to an emergency in relation to the police or fire departments.
- L. "Bus Stop." An area in the roadway set aside for boarding of or alighting from the parking of busses.<sup>3</sup>
- M. "Taxicab Stands." An area in the roadway in which certain taxicabs are required to park while waiting to be engaged.
- N. "Official Curb Marking." That portion of a curbing, the painting of which has been authorized by the Board of Selectmen and which has the written approval of the Department of Public Works, Commonwealth of Massachusetts.
- O. "Official Street Marking." Any painted line, legend, marking or marker of any description painted or placed upon any way which purports to direct or regulate traffic and which has been authorized by the Board of Selectmen and which has the written approval of the Department of Public Works, Commonwealth of Massachusetts.

## ARTICLE II Authority and Duties of Police

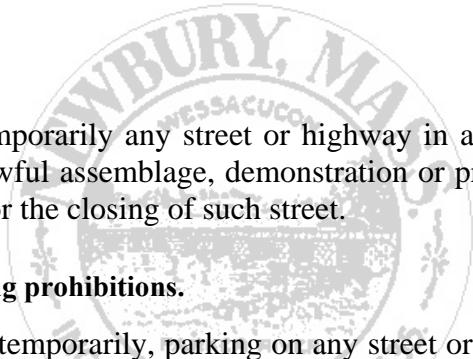
### **§ 93-2. Authority granted.**

It shall be the duty of the police department to enforce the provisions of these rules and orders. Officers of the Police Department are hereby authorized to direct all traffic in person or by means of visible or audible signal in conformance with the provisions of these rules and orders, provided that in the event of a fire or other emergency to expedite traffic or safeguard pedestrians, officers of the Police or Fire Department may direct traffic, as conditions may require, notwithstanding the provisions of these rules and orders.

### **§ 93-3. Closing of streets.**

---

3. Editor's Note: So in original.



The police may close temporarily any street or highway in an impending or existing<sup>4</sup> emergency, or for any lawful assemblage, demonstration or procession provided there is reasonable justification for the closing of such street.

**§ 93-4. Temporary parking prohibitions.**

The police may prohibit, temporarily, parking on any street or highway or part thereof in an impending<sup>5</sup> or existing emergency, or for a lawful assemblage, demonstration or procession provided there is reasonable justification for such prohibition. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of an officer.

**§ 93-5. Compliance required.**

Drivers of vehicles shall comply with any lawful or reasonable order, signal or direction of any officer.

**§ 93-6. Accident record file.**

Police are to keep and use an accident record file.

- A. The police shall maintain a suitable system of filing traffic accident reports. Accident reports or cards referring to them shall be filed alphabetically by location.
- B. As the accidents at any particular location become more numerous, the police shall study such accidents and inform the Selectmen of their findings and conclusions.

**§ 93-7. Annual traffic safety report.**

The police shall submit a traffic safety report annually in the month of January to the Selectmen covering:

- A. The number of traffic accidents, the number of persons killed or injured and other pertinent traffic accident data.
- B. The number of traffic accidents investigated, the number of hazardous<sup>6</sup> locations studied, and other pertinent data on the safety activities of the police.
- C. The plans and recommendations for future traffic safety activities.

**§ 93-8. Exemptions.**

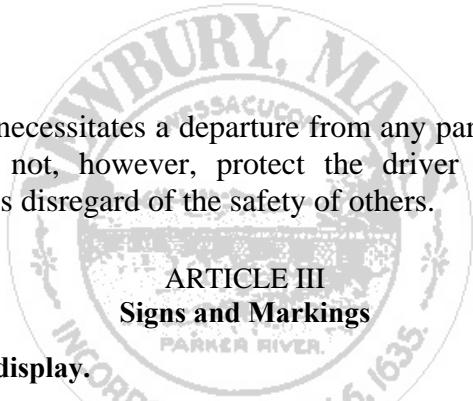
The provisions of these rules and orders shall not apply to operators actually engaged in work upon a street or highway closed to travel or under construction or repair, to officers when engaged in the performance of public duties nor to drivers or emergency vehicles while operating in an emergency and in performance of public duties when the nature of

---

4. Editor's Note: So in original.

5. Editor's Note: So in original.

6. Editor's Note: So in original.



the work of any of these necessitates a departure from any part of these rules and orders. These exemptions shall not, however, protect the driver of any vehicle from the consequences of a reckless disregard of the safety of others.

### ARTICLE III Signs and Markings

#### **§ 93-9. Signs authorized; display.**

- A. The Board of Selectmen is hereby authorized and as to those signs and signals required hereunder it shall be its duty, to place and maintain or cause to be placed and maintained all official<sup>7</sup> traffic signs, signals, markings and safety zones. All signs, signals, markings and safety zones shall conform to the standards as prescribed by the Department of Public Works of the Commonwealth of Massachusetts.
- B. Sections 93-3 and 93-4 of Article II and §§ 93-14D, E, G, H, N, O and Q of Article IV relating to Parking shall be effective only during such time as official signs are erected and maintained in each block designating the provisions of such sections and located so as to be easily visible to approaching drivers. Sufficient number of such signs must be provided so that a car cannot be parked in a limited or prohibited parking place without having the legend side of such sign, clearly setting forth the parking regulations thereat, visible from that location.

#### **§ 93-10. Unofficial signs prohibited.**

It shall be unlawful for any person to place or maintain or to display upon or in view or any street any unofficial<sup>8</sup> sign, signal or marking which purports to be or is an imitation of or resembles an official<sup>9</sup> traffic sign, signal, marking or device, or which attempts to direct the movement of traffic or which hides from view any official sign or signal. The Chief of Police hereby empowered to remove every such prohibited sign, signal or marking or cause it to be removed, without notice.

#### **§ 93-11. Destruction of signs.**

It shall be unlawful for any person to willfully deface, injure, move, obstruct or interfere with any official<sup>10</sup> traffic sign, signal or marking.

#### **§ 93-12. Location of certain uses; authority.**

The location of all bus stops, taxicab stands and service zones shall be specified by Chief of Police and in the case of taxicab stands the Chief of Police shall designate who may use them as such.

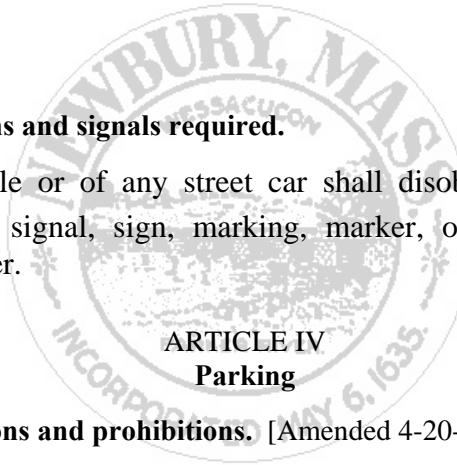
---

7. Editor's Note: So in original.

8. Editor's Note: So in original.

9. Editor's Note: So in original.

10. Editor's Note: So in original.



**§ 93-13. Obedience to signs and signals required.**

No driver off any vehicle or of any street car shall disobey the instructions of any official<sup>11</sup> traffic control signal, sign, marking, marker, or legend, unless otherwise directed by a police officer.

**ARTICLE IV  
Parking**

**§ 93-14. Parking regulations and prohibitions.** [Amended 4-20-1982 ATM, Art. 22]

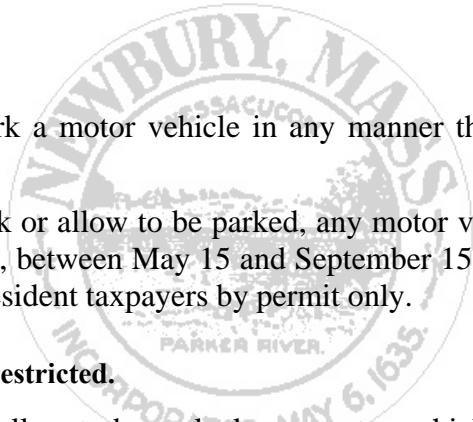
The following rules and regulations are hereby enacted in accordance with Chapter 40, Section 22 of the Mass. General Laws and are to be enforced according to Chapter 90, Sections 20A 1/2, 20C, 20D, and 20E, as amended on any Public Way, or Way to which the public has a right of access as invitees or licensees.

- A. No person shall park a motor vehicle on or within any part of a pedestrian crosswalk.
- B. No person shall park a motor vehicle within 10 feet of any fire hydrant.
- C. No person, shall park a motor vehicle and leave it unattended without stopping the engine of said motor vehicle and removing the ignition key.
- D. No person shall park a motor vehicle in any area over the time limit of said zone.
- E. No person shall park a motor vehicle in any zone posted as Bus or Taxi stand.
- F. No person shall park a motor vehicle with the right wheels more than one foot from any curb.
- G. No person shall park a motor vehicle on any way posted "No Parking".
- H. No person shall park a motor vehicle in any area posted "Restricted" to certain motor vehicle.
- I. No person shall park a motor vehicle blocking the entrance of any driveway whether posted or not without permission of the owner of said driveway.
- J. No person shall park a motor vehicle upon or across any sidewalk.
- K. (Reserved)
- L. No person shall park a motor vehicle within 20 feet of any intersection.
- M. No person shall park a motor vehicle against the flow of normal traffic.
- N. No person shall park a mototr<sup>12</sup> vehicle contrary to any signs or roadway markers.
- O. No person shall park a motor vehicle in any area where parking is limited to certain hours, except during said hours.

---

11. Editor's Note: So in original.

12. Editor's Note: So in original.

- 
- P. No person shall park a motor vehicle in any manner that would obstruct flow of traffic.
  - Q. No person shall park or allow to be parked, any motor vehicle on the beach side of Northern Boulevard, between May 15 and September 15, all dates inclusive; except residents and non-resident taxpayers by permit only.

**§ 93-15. Dates and times restricted.**

No person shall park, or allow to be parked, any motor vehicle between 12:00 midnight and 6:00 a.m. on any street whether posted or not, between December 1 and April 1, all dates inclusive, of each year. Selectmen shall post official notice each year. Dates and time may change at any time due to snow or other weather emergency.

**§ 93-16. Handicapped spaces restricted.** [Added 6-13-1989 ATM, Art. 20]

No person shall park a motor vehicle in any area designated and posted for use by the handicapped without handicap vehicle registration plates or a visible handicap placard issued by the registrar.

**§ 93-17. Tow zones.** [Added 6-13-1989 ATM, Art. 20]

No person shall park or allow to be parked any motor vehicle in any area posted as a tow zone.

**§ 93-18. Fire lanes.** [Added 6-13-1989 ATM, Art. 20]

No person shall park or allow to be parked, either attended or unattended, any motor vehicle in an area designated and posted as a fire lane.

**§ 93-19. Right-of-ways restricted.** [Added 6-13-1989 ]

No person shall park in or in any way block with ATM, Art. 20 a motor vehicle any area designated and posted as a legal right of way by dedicated use or right of easement.

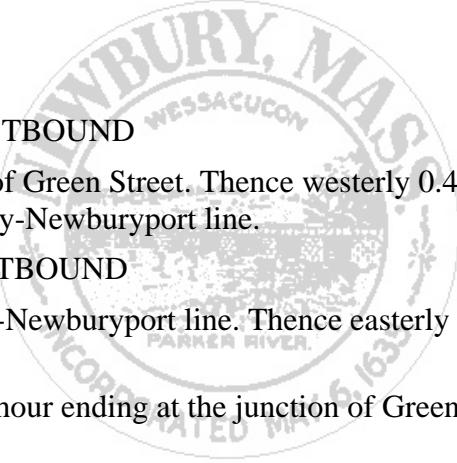
**§ 93-20. Violations and penalties.**

- A. Any vehicle so violating shall be fined \$20.00 for each offense. [Amended 4-20-1982 ATM, Art. 22; 4-24-2001 ATM, Art. 21]
- B. Any vehicle so violating the By-Law may be removed at the request of a police officer at the owner's expense.

**ARTICLE V**  
**D.P.W. Regulations**

**§ 93-21. Speed limits.**

- A. The following speed limits are established under law, at which motor vehicles may be operated in the areas described:



#### PARKER STREET - WESTBOUND

Beginning at the junction of Green Street. Thence westerly 0.49 miles at 35 miles per hour ending at the Newbury-Newburyport line.

#### PARKER STREET - EASTBOUND

Beginning at the Newbury-Newburyport line. Thence easterly 0.41 miles at 35 miles per hour

0.08 miles at 25 miles per hour ending at the junction of Green Street; the total distance being 0.49 miles.

#### HANOVER STREET - EASTBOUND

Beginning at the junction of Route 1. Thence easterly 0.90 miles at 30 miles per hour ending at the junction of Green Street.

#### HANOVER STREET - WESTBOUND

Beginning at the junction of Green Street. Thence westerly 0.90 miles at 30 miles per hour ending at the junction of Route 1.

#### NORTHERN BOULEVARD - NORTHBOUND

Beginning at the junction of Plum Island Boulevard. Thence northerly 0.82 miles at 25 miles per hour ending at the Newbury-Newburyport line.

#### NORTHERN BOULEVARD - SOUTHBBOUND

Beginning at the Newbury-Newburyport line. Thence southerly 0.82 miles at 25 miles per hour ending at the junction of Plum Island Boulevard.

#### ELM STREET - EASTBOUND

Beginning at the Newbury-Georgetown line. Thence easterly 0.29 miles at 30 miles per hour

0.40 miles at 35 miles per hour

0.29 miles at 30 miles per hour

0.47 miles at 40 miles per hour

0.47 miles at 35 miles per hour

0.09 miles at 25 miles per hour

ending at the junction of Newburyport Turnpike; the total distance being 2.01 miles.

#### ELM STREET - WESTBOUND

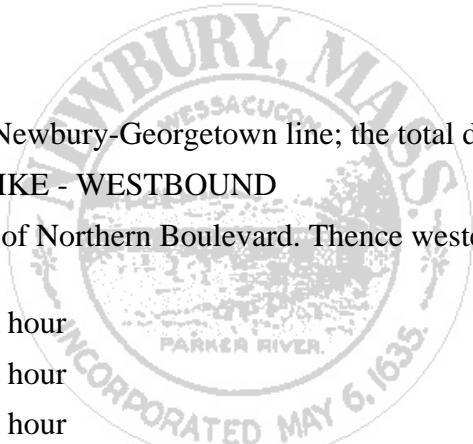
Beginning at the junction of Newburyport Turnpike. Thence westerly 0.56 miles at 35 miles per hour

0.47 miles at 40 miles per hour

0.29 miles at 30 miles per hour

0.40 miles at 35 miles per hour

0.29 miles at 30 miles per hour



ending at the junction of Newbury-Georgetown line; the total distance 2.01 miles.

**PLUM ISLAND TURNPIKE - WESTBOUND**

Beginning at the junction of Northern Boulevard. Thence westerly 0.28 miles at 30 miles per hour

1.35 miles at 40 miles per hour

0.10 miles at 30 miles per hour

0.19 miles at 40 miles per hour

ending at the junction of Newbury-Newburyport line; the total distance being 1.92 miles.

**PLUM ISLAND TURNPIKE - EASTBOUND**

Beginning at the junction of Newbury-Newburyport line. Thence easterly 0.19 miles at 40 miles per hour

0.10 miles at 30 miles per hour

1.42 miles at 40 miles per hour

0.21 miles at 30 miles per hour

ending at the junction of Northern Boulevard; the total distance being 1.92 miles.

**SCOTLAND ROAD - EASTBOUND**

Beginning at the junction of Interstate 95. Thence easterly 1.82 miles at 40 miles per hour

0.19 miles at 30 miles per hour

ending at the Newbury-Newburyport line; the total distance being 2.01 miles.

**MIDDLE ROAD - NORTHBOUND**

[Added by the Board of Selectmen 10-28-2003]

Beginning at the junction of Elm Street, thence northerly on Middle Road

0.47 miles at 25 miles per hour

1.53 miles at 30 miles per hour

1.34 miles at 35 miles per hour

ending at the junction of Route 1: the total distance being 3.34 miles.

**MIDDLE ROAD - SOUTHBOUND**

[Added by the Board of Selectmen 10-28-2003]

Beginning at the junction of Route 1, thence southerly on Middle Road

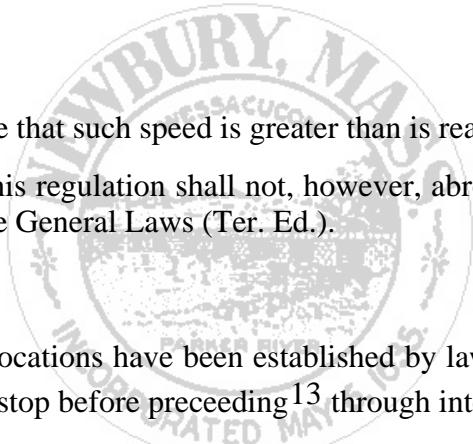
1.34 miles at 35 miles per hour

1.53 miles at 30 miles per hour

0.47 miles at 25 miles per hour

ending at the junction of Elm Street: the total distance being 3.34 miles.

B. Operation of a motor vehicle at a rate of speed in excess of these limits shall be



prima facie evidence that such speed is greater than is reasonable and proper.

- C. The provisions of this regulation shall not, however, abrogate in any sense Chapter 90, Section 14 of the General Laws (Ter. Ed.).

**§ 93-22. Stop signs.**

The following stop sign locations have been established by law, at which motor vehicles must come to a complete stop before proceeding<sup>13</sup> through intersection:

- A. Corner of High Road and Parker Street
- B. Corner of High Road and Green Street
- C. Corner of High Road and Hanover Street
- D. Corner of Hanover Street and Green Street (north side)
- E. Corner of Hanover Street and Green Street (south side)
- F. Corner of Green Street and Hay Street
- G. Corner of Anchors Way and Rolfe's Lane
- H. Intersection of Middle Road and Orchard Street (3-way stop). [Added by the Board of Selectmen 1-9-2001]
- I. Intersection of Graham Avenue, South Pond Street and Anchor Way (4-way stop). [Added by the Board of Selectmen 8-14-2001]
- J. Intersection of Morgan Avenue and South Pond Street. [Added by the Board of Selectmen 5-23-2002]

**ARTICLE VI**  
**Enhanced 911 Service**  
**[Added 4-20-1993 ATM, Art. 16]]**

**§ 93-23. House and building numbers required; design requirements.**

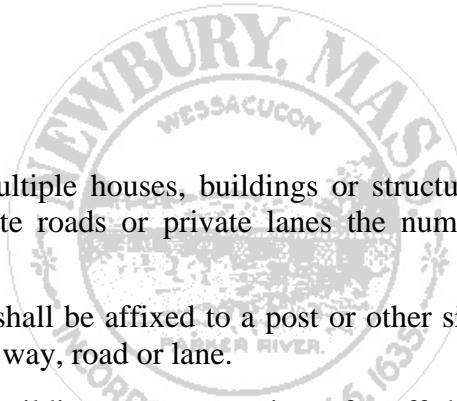
It shall be the duty of every owner and/or occupant of each house, building and/or structure within the Town of Newbury to place thereon the number of said house, building or structure. The size, color, location and visibility of said numbers shall be as follows:

- A. The minimum height of said number shall be three (3) inches.
- B. In order to be visible from the road, street or way the number shall be a contrasting color and shall be reasonably visible to persons approaching from either direction upon said road, street or way.
- C. The number shall be affixed to the front door or as close to the front door as

---

13. Editor's Note: So in original.

14. Editor's Note: So in original.



possible.

- D. Where there are multiple houses, buildings or structures located off the road on private ways, private roads or private lanes the numbers shall be placed at the following locations:
- (1) The numbers shall be affixed to a post or other similar object at the entrance to said private way, road or lane.
  - (2) If the house, building or structure is so far off the private way, road or lane causing the numbers to be unidentifiable from the private way, then a post or similar object with the numbers affixed thereto shall be placed at the entrance of the driveway leading to the house, building or structure.
  - (3) Each new building shall be identified in accordance with the BY-LAW before a Certificate of Use and Occupancy is issued therefor.

**§ 93-24. Violations and penalties.**

- A. The penalty for any violation of this By-law shall be:
- (1) First offense: Warning.
  - (2) Second and subsequent offense: \$35.00.
- B. Upon notice of a violation, an owner and/or occupant shall correct such violation within thirty (30) days. Each thirty (30) day period of non-compliance shall be deemed a separate offense.

**§ 93-25. Authority.**

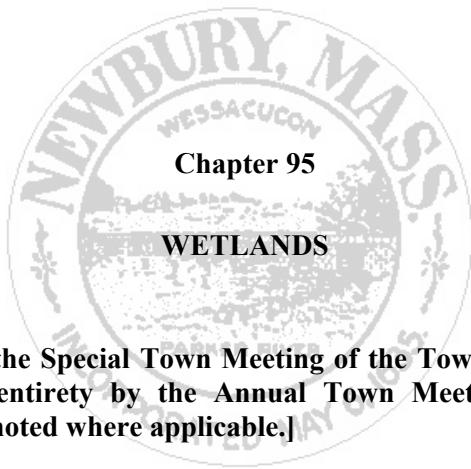
The forgoing rules and regulations are hereby enacted in accordance with requirements of Chapter 291 Acts of 1990, Chapter 40 Section 21, paragraph one, of the MGL and are to be enforced non-criminally under Chapter 40 Section 21D of the General Laws.

**ARTICLE VII**  
**Vehicle Weight Limits**  
**[Added by the Board of Selectmen 1-8-2002]**

**§ 93-26. Vehicle weight restrictions.**

Vehicle weight restrictions are as follows:

Name of Street	Hours	Exclusion Days	Type	Alternate Route
Coleman Road	24	All	Carrying capacity or over 2 1/2 tons	Elm Street and Route 1



[HISTORY: Adopted by the Special Town Meeting of the Town of Newbury 9-25-2001 by Art. 2; amended in its entirety by the Annual Town Meeting 4-26-2005 by Art. 14. Subsequent amendments noted where applicable.]

#### GENERAL REFERENCES

Zoning — See Ch. 97.

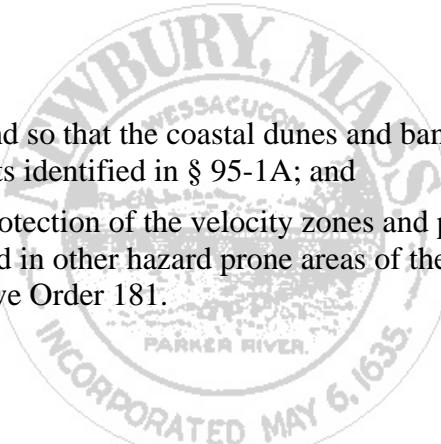
#### § 95-1. Purpose.

A. **Purpose of the Massachusetts Wetlands Protection Act.** The State Wetlands Protect Act, G.L. c. 131, § 40, is intended to further the following purposes:

1. protection of groundwater supply;
2. protection of public and private water supply;
3. flood control;
4. storm damage prevention
5. prevention of pollution;
6. protection of land containing shellfish;
7. protection of fisheries; and
8. protection of wildlife habitat.

B. **Special Purpose of this Wetlands Bylaw.** This Bylaw is intended to utilize the Town of Newbury's Home Rule authority to protect additional resource areas, for additional values, with additional standards and procedures stricter than those set forth in the State Wetlands Protection Act, G.L. c. 131, § 40 and, specifically, to provide enhanced protection to the Plum Island Barrier Beach for the following purposes.

1. To prevent storm damage including coastal storm flowage and to minimize environmental damage, loss of life, resulting from storms' flooding and erosion;
2. To minimize public health threats resulting from storm damage, including prevention of water pollution and protection of water quality;
3. To prevent loss or diminution of the beneficial functions of the values of storm and flood damage prevention or reduction and pollution prevention provided by wetlands, beaches, dunes, barrier beaches, and coastal banks;
4. To maintain vegetative buffers to wetlands and water bodies so as to reduce and/or eliminate runoff and other non-point discharges of pollutants to protect public health and preserve environmental resources; and
5. To maintain vegetative cover so that the integrity and stability of coastal dunes and



banks are maintained and so that the coastal dunes and banks can fulfill their functions and promote the interests identified in § 95-1A; and

6. To provide enhanced protection of the velocity zones and primary dunes of the Plum Island Barrier Beach and in other hazard prone areas of the Plum Island Barrier Beach, consistent with Executive Order 181.

## § 95-2. Jurisdiction.

Except as permitted in writing by the Commission or as provided in this Bylaw, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, discharging into or otherwise altering or degrading any barrier beach as defined in 310 CMR 10.00 et seq., as the same may be amended, and lands subject to tidal action and coastal storm flowage or flooding.

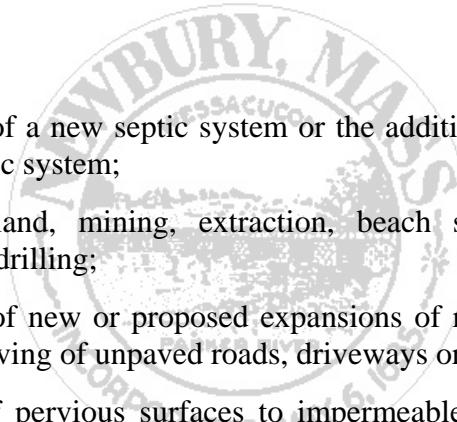
This Bylaw is intended to utilize the Town's Home Rule authority to provide additional protection to the barrier beach and to land subject to coastal storm flowage to further the purposes identified in § 95-1B above and to provide additional performance standards that are more specific and more stringent than those set forth in the State Wetlands Protection Act, G.L. c. 131, § 40 and the accompanying regulations, 310 CMR 10.00 et seq.

Written application shall be filed with the Commission to perform activities on the portion of the Plum Island Barrier Beach located within the Town of Newbury and no activities affecting the portion of the Plum Island Barrier Beach located within the Town of Newbury shall commence without the applying for, obtaining and complying with an Order of Conditions or Determination of Applicability in accordance with the performance standards set forth in this Bylaw. Except as expressly permitted pursuant to a Variance granted in accordance with § 95-5, the Commission shall issue Orders of Conditions or Determinations of Applicability in accordance with the performance standards set forth in this Bylaw.

## § 95-3. Definitions.

The following definitions shall apply in the interpretation and implementation of this Bylaw.

- A. **Building shall** mean a combination of any materials, whether portable or fixed, having a roof enclosed within exterior walls or firewalls built to form a structure for the shelter of persons, animals or property. Roof shall include an awning or any similar covering, whether or not permanent in nature. The term Building includes bathhouses, sheds and garages.
- B. **Development** shall include the following activities:
  - (1) Construction of a *New Building or Structure* on a vacant lot including without limitation a shed, garage, coastal engineering structure, shear wall, vertical wall or solid fence;

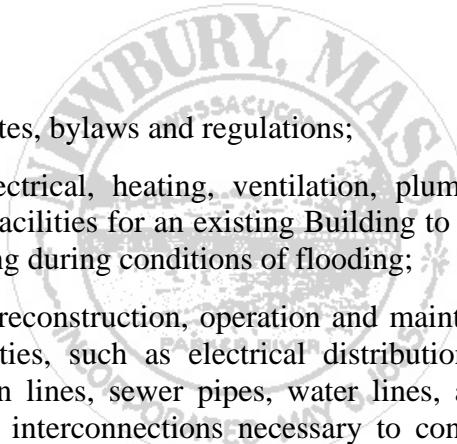
- 
- (2) Construction of a new septic system or the addition of flow to an existing or upgraded septic system;
  - (3) Clearing of land, mining, extraction, beach scraping, dredging, filling, excavation or drilling;
  - (4) Construction of new or proposed expansions of roads, driveways or parking lots, and/or paving of unpaved roads, driveways or parking lots; and
  - (5) Conversion of pervious surfaces to impermeable surfaces and/or paving of existing unpaved roads, driveways or parking lots.

C. ***Redevelopment*** shall include the following activities:

- (1) Increase in the footprint of a Building or Structure, including without limitation, a coastal engineering structure, a shear wall, vertical wall, a shed, a garage, and/or a solid fence, that would result in the sum of the footprints of all Buildings or Structures on the lot exceeding 20% of the area of the lot;
- (2) Conversion of Porches, Carports and Decks to Usable Interior Space below the first dwelling floor;

D. ***Development and Redevelopment*** shall not include the following activities:

- (1) Bringing the electrical and/or plumbing system into compliance with current regulatory requirements;
- (2) Construction, repair, or replacement of unpaved elevated pedestrian walkways supported on open pilings and designed to minimize the disturbance to the vegetative cover and traditional bird-nesting habitat and the form and volume of the coastal dune, coastal beach, or coastal bank;
- (3) Construction, repair or replacement of sand fencing, designed to increase dune development, provided the fencing does not constitute a barrier to wildlife movement or the lateral movement of a coastal dune or coastal beach;
- (4) Repair or replacement of open pilings for an existing Building;
- (5) Modification, maintenance, or repair of existing Buildings or Structures within the limits of existing foundations, which do not result in any addition to, or modification of the foundation itself, or the footprint of Buildings or Structures, additionally, additions or enclosures added above the first dwelling floor shall be allowed pursuant to FEMA guidelines.
- (6) Construction, repair, or replacement of decks on open pilings, with at least two feet above grade to allow sand transport by wind or water;
- (7) Planting of native species that are indigenous to Plum Island and that are compatible with the natural vegetative cover excluding turf lawns;
- (8) Conversion of impervious to vegetated surfaces, provided that erosion and sedimentation controls are implemented, and that the impervious surface removed is disposed of off-site in accordance with all applicable federal, state,

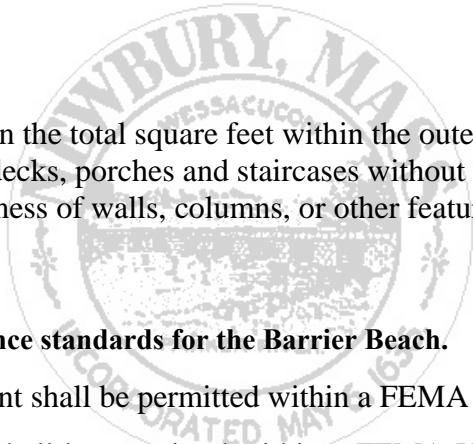
- 
- and local statutes, bylaws and regulations;
- (9) Relocating electrical, heating, ventilation, plumbing, air conditioning and other service facilities for an existing Building to prevent water from entering or accumulating during conditions of flooding;
  - (10) Construction, reconstruction, operation and maintenance of underground and overhead utilities, such as electrical distribution lines, transmission lines, communication lines, sewer pipes, water lines, and gas lines, including all structures and interconnections necessary to construct, reconstruct, operate, provide, and maintain electrical, communication, water, sewer, and gas service;
  - (11) Assessment activities that are temporary in nature, have negligible impacts and are necessary for the planning and design of otherwise permittable projects, such as the installation of monitoring wells, exploratory borings, and natural gas service;
  - (12) Temporary storage for not more than thirty days of construction and/or demolition materials on non-vegetated portions of the barrier beach, provided that best management practices are used to minimize the adverse impacts of such storage and to protect the interests identified in this Bylaw;
  - (13) Placing an existing Building on open pilings; repairing and/or replacing open pilings for an existing Building;
  - (14) Elevating above flood elevation an existing Building with a structurally sound foundation. In applying this subparagraph, the Commission may require a certification from a professional engineer or architect stating that the foundation is structurally sound;
  - (15) Replacement of an existing Building with a New Building that is placed on open pilings and that is located as far landward of the existing Building as possible given the requirements of the Plum Island Overlay District, provided that: (a) the sum of the footprints of all Buildings or Structures on the lot not exceed 20% of the area of the lot; (b) the New Building complies with all applicable federal, state, and local regulations, including without limitation, the Plum Island Overlay District and the Performance Standards set forth in the Commission's Regulations;
  - (16) For only those properties that do not have an existing parking area or parking area of lesser size, construction of two parking spaces that are no more than 9 feet by 18 feet per space provided that there is no other area for parking on the property, and provided further that the surface of the parking area is pervious and that the construction complies with all the Performance Standards set forth in the Commission's Regulations and 310 CMR 10.00;
  - (17) Removal of stone groins, bulkheads, or other coastal engineering structures;
  - (18) Repair, restoration, modification or relocation of existing stone groins or jetties

- E. The Flood Zone boundaries delineated on the Newbury Flood Insurance Rate Map, Community Panel Number 250096 0005 C, Panels of 10, and 9 of 10, revised July 2, 1992 shall apply.

Whenever FEMA delineates new boundaries, those flood boundaries shall be presumed to depict accurately the boundaries of the FEMA V Zone, the FEMA AO Zone, and the FEMA AH Zone within the Land Subject to Coastal Storm Flowage. This presumption may be overcome only by credible evidence such as engineering calculations consistent with the best available FEMA guidance performed by a registered engineer or other qualified professional expert in coastal wetlands delineation.

**Subject to and consistent with the preceding paragraphs, for purposes of this Ordinance/Bylaw:**

- (1) **FEMA V -Zone** shall mean those portions of Land Subject to Coastal Storm Flowage that are coastal high hazard areas or areas of special flood hazard within the 100 year floodplain
- (2) **FEMA AO Zone** shall mean those portions of land Subject to Coastal Storm Flowage that are subject to inundation by moving water (usually sheet flow on sloping terrain) where average depths are between one and three feet in height. AO Zones are commonly associated with over wash and generally border on the landward side of the V-Zone.
- (3) **FEMA AH Zone** shall mean those portions of Land Subject to Coastal Storm Flowage that are subject to shallow ponding where average water depths are between one and three feet.
- (4) **New Development** shall mean the construction of a new Structure or Building on a vacant lot.
- (5) **Structure** shall mean a combination of materials to form a configuration and includes, but is not limited to buildings, platforms, radio towers, storage bins, signs, swimming pools, septic systems, coastal engineering structures, and fences.
- (6) **Substantial Improvement** shall mean any reconstruction, rehabilitation, addition, or other improvement of a Structure or Building, the cost of which equals or exceeds 50 percent of the value of the Structure or Building before the "start of construction" of the improvement. This term includes Structures or Buildings which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:
  - a.) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, building or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or shall mean the total square feet within the outermost dimensions of a building including decks, porches and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.
  - b.) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".

- 
- (7) ***Footprint*** shall mean the total square feet within the outermost dimensions of a building including decks, porches and staircases without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

#### **§ 95-4. Specific performance standards for the Barrier Beach.**

- A. No new Development shall be permitted within a FEMA V-Zone or AO-Zone.
- B. No redevelopment shall be permitted within a FEMA V-Zone or AO-Zone except that Structures or Buildings may be redeveloped/repaired only in accordance with current local, state and federal regulatory standards. In all instances, reconstruction, renovation or repairs to Structures or Buildings shall be authorized as stated herein, provided that the sum of the footprint of all structures or buildings would not exceed 20% of the area of the lot;
- C. In all other areas of the Plum Island Barrier Beach outside of the V-Zone and AO-Zone, all new Buildings and<sup>1</sup> shall comply with State Building Code Regulations for elevation and flood proofing. All existing Buildings with Substantial Improvements, and all horizontal expansions of the existing footprint, shall comply with State Building Code Regulations for elevation and flood proofing.
- D. In all areas of the Plum Island Barrier Beach, electrical, heating, ventilation, plumbing and air conditioning and other service facilities shall be designed to avoid or minimize impacts to coastal beaches and coastal dunes.
- E. In all areas of the Plum Island Barrier Beach, Development or Redevelopment on or within 200 feet landward of the top of a coastal bank or dune shall have no adverse impact on the height, stability or function of the bank or dune to fulfill the purposes set forth in § 95-1B.
- F. In all areas of the Plum Island Barrier Beach, in areas where there are coastal banks or primary or frontal dunes, all new Buildings and Structures, excluding replacement of existing Building and Structures, shall be set back from the beach dune interface at a distance equal to thirty times the average yearly historical erosion as shown by the most current CZM shoreline change map.
- G. In all areas of the Plum Island Barrier Beach, no activity shall increase the elevation or velocity of flows in a floodplain.
- H. Within the FEMA V Zone, A Zone, or AO Zone, as defined in § 95-3 above, new or reconstructed Structures or Development that alters vegetation, interrupts sediment supply and/or changes the form or volume of a dune or beach, shall comply with the specific performance standards in this Bylaw and in the regulations promulgated pursuant hereto.

#### **§ 95-5. Variance.**

---

1. Editor's Note: So in original.

A. The Conservation Commission may grant a variance from the Performance Standards provided in this Bylaw and in any Regulations promulgated by the Commission to implement this Bylaw only where the Commission finds after conducting a public hearing that:

1. there are no reasonable conditions or alternatives that would allow the project to proceed in compliance with this Bylaw; and
2. mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the wetland resource areas located on the barrier beach; and
3. the variance is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

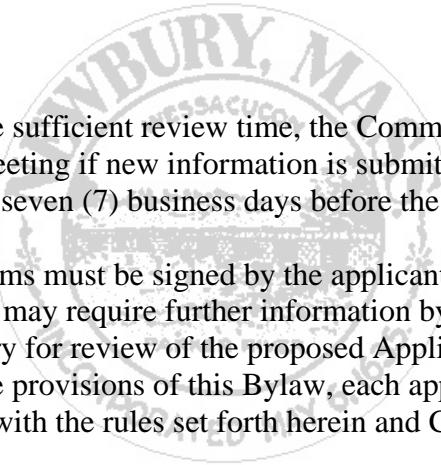
This variance procedure does not authorize the Commission to waive any requirement of the State Wetlands Protection Act, but is intended only to authorize the Commission to waive, under unusual circumstances, the additional requirements imposed by this Bylaw.

B. A request for a variance shall be made in writing and shall include, at a minimum the following information:

1. a description of alternatives explored that would allow the project to proceed in compliance with this Bylaw and an explanation of why each is unreasonable;
2. a description of the mitigating measures to be used to contribute to the protection of the wetland resources located on the barrier beach; and
3. evidence that an overriding public interest is associated with the project which justifies waiver of these requirements or evidence that the decision on this permit application so restricts the use of the land that it constitutes an unconstitutional taking without compensation.

#### **§ 95-6. Applications.**

A. All applications to perform activities in the Town's resource areas on the Plum Island Barrier Beach shall be either in the form of a Request for Determination, a Notice of Intent, or an Abbreviated Notice of Resource Area Delineation. The Commission in an appropriate case may accept as the application and plans under this Bylaw the application and plans (i.e., Notice of Intent, Request for Determination of Applicability) under the State Wetlands Protection Act. Such applications shall contain data and plans as specified in the Commission's regulations, and shall be submitted in complete written form to the Commission. The Commission or its designee shall be authorized to make determinations of completeness for applications submitted to the Commission and reject those applications that do not meet the minimum submittal requirements of this Bylaw.



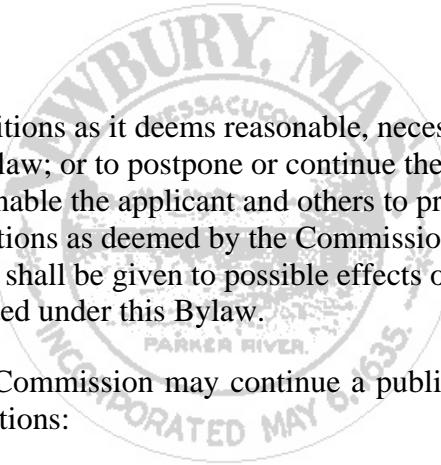
In order to provide sufficient review time, the Commission may continue a public hearing or public meeting if new information is submitted by the applicant, or applicant's agent, less than seven (7) business days before the scheduled public hearing or public meeting.

The applicable forms must be signed by the applicant or applicant's agent where required. The Commission may require further information by regulation, guideline, or as otherwise deemed necessary for review of the proposed Application by the Commission. In order to comply with the provisions of this Bylaw, each application must be complete as filed, and must comply with the rules set forth herein and Commission's regulations.

#### **§ 95-7. Hearings.**

- A. **Commencement.** The Commission shall commence the public hearing or meeting within 21 days from receipt of a completed application unless the applicant authorizes an extension in writing.
- B. **Combination with State Law Hearing.** The Commission, in its discretion, may hear any oral presentation under this Bylaw at the same public hearing or public meeting required to be held under the provisions of the Wetlands Protection Act, G.L. c. 131, § 40. Notice of the time and place of such hearing(s) shall be given as required below.
- C. **Notice.** For a public hearing, written notice of the time and place of the hearing shall be given at the applicant's expense, not less than seven (7) calendar days prior to the public hearing, by publication in a newspaper of general circulation in Newbury, and by hand delivering or mailing, by certified mail return receipt requested, at the mailing addresses shown on the most recent applicable tax list of the assessors, a copy of such notice to all abutters within one hundred feet of the property line of the land on which the work is proposed, including, but not limited to, owners of land directly opposite said proposed work on any public or private street or way, and in another municipality or across a body of water. Proof of such notification, with a copy of the notice mailed or delivered, shall be filed with the Commission. All publications and notices shall contain the name of the applicant, a description of the area where the activity is proposed by street-address, if any, or other adequate identification of the location of the area or premises which is the subject of the notice, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of the action or relief requested, if any. Public notice requirements for continued public hearings under this Bylaw shall be the same as the notification requirements set forth in 310 CMR 10.05(5)(b)3.
- D. **Proof.**

The applicant shall have the burden of proving by a preponderance of credible evidence that the activity proposed in the Request for Determination of Applicability or the Notice of Intent will not have a significant or cumulatively detrimental effect upon the interests and values protected by this Bylaw. Failure to provide to the Commission adequate evidence for it to determine that the proposed activity will not cause such impacts shall be sufficient cause for the Commission to deny permission or to grant



permission with such conditions as it deems reasonable, necessary, or desirable to carry out the purposes of this Bylaw; or to postpone or continue the hearing or public meeting to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

Due consideration shall be given to possible effects of the proposal on all interests and values protected under this Bylaw.

**E. Continuances.** The Commission may continue a public hearing or public meeting in the following situations:

1. With the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
2. Without the consent of the applicant, to a specific date within 21 days of the hearing/meeting at which the continuance was made for the reasons stated at the hearing/meeting, including but not limited to receipt of additional information from the applicant or others.

**F. Investigations.** The Commission, its agents, officers, and employees, may enter upon privately owned land for the purpose of carrying out its duties under this Bylaw and may make or cause to be made such examination or survey as deemed necessary, subject to the Constitutions of both the United States and the Commonwealth.

#### **§ 95-8. Orders and decisions.**

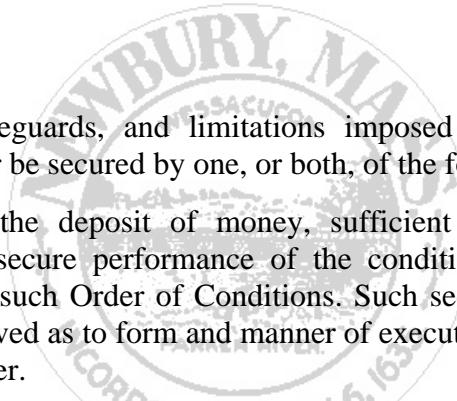
##### **A. Orders and Decisions.**

If the Commission determines that the proposed activity does not require the imposition of conditions to preserve and protect the interests of this Bylaw, the applicant shall be so notified in writing.

If, after the hearing, the Commission determines that the proposed activity is significant to one or more interests and values of this Bylaw, the Commission shall vote to issue written Orders of Conditions within 21 days of the close of the public hearing. The Order of Conditions may describe such conditions, safeguards, and limitations on time and use upon such activity in the event that the Commission finds that necessary to protect those interests and values. The Commission may require the Applicant to hire an appropriate technical expert to monitor the project to ensure compliance with the order of Conditions.

The Commission may choose to issue an Order of Conditions denying a project if it finds that the interests and values of this Bylaw cannot be preserved and protected by the imposition of such conditions, safeguards, or limitations. The Commission shall state the reasons for such denial in the Order of Conditions.

**B. Security to Assure Performance.** The Commission may, as a part of its Order of Conditions, require that, in addition to any security required by any other Town or State Board, Commission, agency, or officer, the performance and observance of



the conditions, safeguards, and limitations imposed under this Bylaw on the applicant and owner be secured by one, or both, of the following methods:

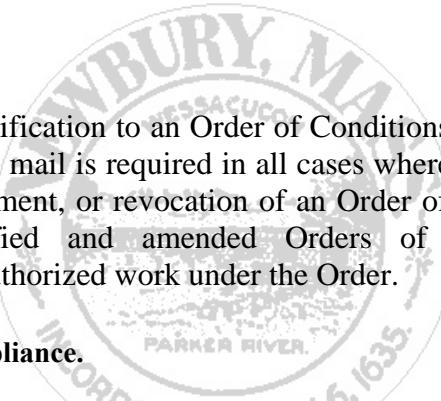
- (1) **Deposit.** By the deposit of money, sufficient to complete the work as proposed, to secure performance of the conditions and observance of the safeguards of such Order of Conditions. Such security, if filed or deposited, shall be approved as to form and manner of execution by Town Counsel or the Town Treasurer.
- (2) **Land Restrictions(s).** By an executed and properly recorded (or registered, in the case of registered land) conservation restriction, easement, or other covenant running with the land. This method shall be used only with the consent of the applicant.

#### C. Duration of Orders.

All Orders of Conditions shall expire three (3) years after the date of issuance. The Commission shall extend an Order for one (1) period of three (3) years, upon the request of the applicant. The request for an extension of an Order of Conditions shall be made to the Commission at least 30 days prior to expiration of the Order of Conditions. The Commission may grant only two (2) extensions for an individual Order of Conditions.

No activity governed by an Order of Conditions shall be performed unless and until all permits, approvals, and variances required by the Bylaw of the Town shall have been obtained, such Order of Conditions or notification shall have been recorded or registered at the Southern Essex District Registry of Deeds or in the Southern Essex District of the Land Court Department, and all applicable appeal periods have expired. The Commission shall have the right to record or register its Order of Conditions with said Registry or Registry District. In the event that an Order of Conditions issued pursuant to this Bylaw is identical to a final Order of Conditions issued pursuant to the provisions of the Act, only one such order need be recorded or registered.

**D. Modifications, Amendments, Revocations.** The Commission shall have the power (on its own motion or upon the petition of the applicant, or any person interested) to modify, amend, or revoke an Order of Conditions. In revoking an Order of Conditions, the Commission shall officially notify the interested parties through certified mail and hold a public hearing within 21 days of the notification date. A modification is a minor or insignificant change that will not result in an adverse impact to wetland resource areas and/or interests protected by this Bylaw. An amendment is a change of significant magnitude that will require the imposition of additional conditions to ensure adequate protection of wetland resource areas and/or interests protected by this Bylaw. In the case of an amendment to an Order of Conditions, the Commission shall have the discretion to decide if a public hearing is warranted. This decision shall be based on the potential impact of the proposed work and its effect on the ability of the identified wetland resource areas to provide those interests as defined under the Act and Bylaw. If the Commission determines that a public hearing is warranted, the Applicant shall comply with the publication and abutter notification requirements as required for new filings. No public hearing



is required for a modification to an Order of Conditions. Written notification to the applicant by certified mail is required in all cases where the Commission initiates a modification, amendment, or revocation of an Order of Conditions. The Applicant shall record modified and amended Orders of Conditions prior to the commencement of authorized work under the Order.

#### **§ 95-9. Certificates of compliance.**

The Commission or its designee shall, upon receiving a written request, inspect the resource areas where the activity governed by an Order of Conditions was carried out and issue a Certificate of Compliance (or Partial Certificate of Compliance) to the owner of the property, applicant, or applicant's representative, in a form suitable for recording or registering, if it shall determine that all of the activity(ies), or portions thereof, limited thereby have been completed in accord with said Order. If the Order contains conditions that continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which of the conditions shall continue. The Applicant shall record Certificates of Compliance.

If the Commission determines that the work was not performed in compliance with the Order, it may refuse to issue a Certificate of Compliance. The written refusal shall be issued within 21 days of the receipt of a request for a Certificate of Compliance and shall specify the reasons for denial.

The Certificate of Compliance shall be recorded or registered at the Southern Essex District Registry of Deeds or in the Southern Essex District of the Land Court Department. Certification of recording shall be sent to the Commission.

#### **§ 95-10. Responsibility for compliance.**

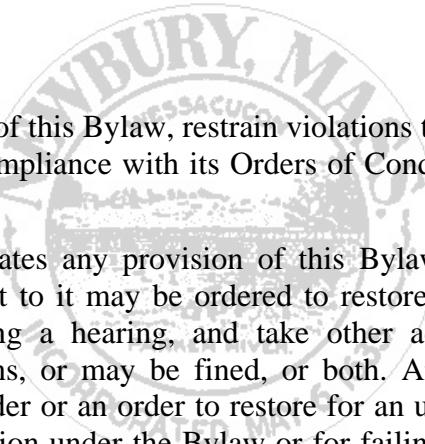
After the recording of a Notice of Violation or Order, any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any Order issued under the Bylaw shall forthwith comply with any such Order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

#### **§ 95-11. Rules and regulations.**

After public notice and public hearingâ€¢the Commission may promulgate rules and regulations to administer and enforce the Bylaw. Failure by the Commission to promulgate such rules and regulations, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of this Bylaw.

#### **§ 95-12. Enforcement, investigations, violations.**

In accord with the provisions of G.L. c. 40, §§ 21D and 31 as well as every other authority and power that may have been or may hereafter be conferred upon it, the Town



may enforce the provisions of this Bylaw, restrain violations thereof, and seek injunctions and judgments to secure compliance with its Orders of Conditions. Without limiting the generality of the foregoing:

- A. Any person who violates any provision of this Bylaw or of any condition or a permit issued pursuant to it may be ordered to restore the property to its original condition after holding a hearing, and take other action deemed necessary to remedy such violations, or may be fined, or both. Any person may be fined or issued a stop work order or an order to restore for an unauthorized alteration of an area subject to protection under the Bylaw or for failing to restore illegally altered land to its original condition or failing to comply with an order issued pursuant to the Bylaw. Fines may be levied pursuant to G.L. c. 40, § 21. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition violated shall constitute a separate offense. This Bylaw may be enforced pursuant to G.L. c. 40, § 21D, by a Town police officer, other persons having police powers, Conservation Commissioners, or the Conservation Administrator. The penalties for violations of this Bylaw or regulations promulgated hereunder may be assessed as follows:

Violation Penalty/ Violation/Day

Alteration of any wetland resource area Up to \$100

Violation of any Order of Conditions Up to \$100

- B. In the event of a violation of this Bylaw or of any order issued there under, the Commission or its agents may issue a stop work order to the owner, the applicant, or the applicant's agent by certified mail, return receipt requested, or by posting the same in a conspicuous location on said site. Any person who shall violate the provisions of a stop work order shall be deemed in violation of the Bylaw; but the failure of the Commission to issue a stop work order for any reason shall not prevent the Town from pursuing any other legal remedy at law or in equity to restrain violations of this Bylaw or promulgated regulations and to secure compliance with its Orders.
- C. The Town shall be the beneficiary of all fines imposed on account of the violation of this Bylaw or promulgated regulations in order to defray the expense of enforcing the same.
- D. Upon request of the Commission, the Selectmen and Town Counsel may take such legal action as may be necessary to enforce this Bylaw or promulgated regulations and permits issued pursuant to it.
- E. Upon recommendation of the Commission, the Selectmen may employ Special Counsel to assist the Commission in carrying out the legal aspects, duties, and requirements of this Bylaw and promulgated regulations.

**§ 95-13. Consultant services.**

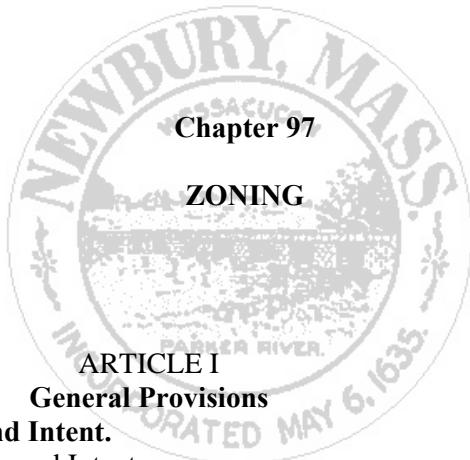
- A. Upon receipt of an application for a Notice of Intent, Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation or at any time

proceeding the Commission's issuance of a Certificate of Compliance, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee." Consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydro geologic and drainage analyses and monitoring; and researching environmental or land use law. The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision.

- (1) If a revolving fund for consultant fees is authorized, the applicant's fee shall be put into such revolving fund and the Commission may draw upon that fund for specific consultant services approved by the Commission.
- (2) The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.
- (3) The Commission shall waive the consultant fee for a permit application filed by the Town.

**§ 95-14. Captions and severability.**

The captions used herein are for convenience only and are expressly intended to have no legal or binding significance. The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions or decisions that have previously become final.



**Page  
Number**

**ARTICLE I  
General Provisions**

<b>§ 97-1. Purpose and Intent.</b>	97:5
A. The Purpose and Intent	97:5

**ARTICLE II  
Use Districts**

<b>§ 97-2. Establishment of Use Districts</b>	97:7
A. Types of Use Districts	97:7
B. Location of Districts	97:7
C. Overlay Districts	97:9
D. Location of Overlay Districts	97:10

**ARTICLE III  
Regulations of Use Districts**

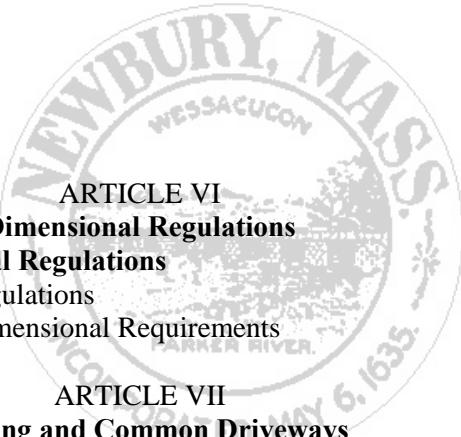
<b>§ 97-3. Regulations of Use Districts</b>	97:11
A. General	97:11
B. Written Description of Regulations	97:11
C. Agricultural-Residential District	97:11
D. Parker River Residential	97:12
E. Residential-Limited Business	97:12
F. Business	97:14
G. Commercial Highway	97:15
H. Commercial Highway-A	97:17
I. Industrial	97:19

**ARTICLE IV  
Regulations of Overlay Districts**

<b>§ 97-4. Regulations of Overlay Districts</b>	97:21
A. General	97:21
B. Water Supply Protection	97:21
C. Wireless Communications Services Overlay District	97:27
D. Plum Island	97:35
E. Flood Zone	97:39
F. Adult Entertainment	97:42

**ARTICLE V  
Special Permits General**

<b>§ 97-5. Special Permits General</b>	97:45
A. General	97:45
B. Bed and Breakfast	97:45
C. Open Space Residential Development	97:45



**Page  
Number**

**ARTICLE VI**

**Dimensional Regulations**

**§ 97-6. Dimensional Regulations**

- |                                      |       |
|--------------------------------------|-------|
| A. General Regulations               | 97:57 |
| B. Table of Dimensional Requirements | 97:57 |

**ARTICLE VII**

**Parking and Common Driveways**

**§ 97-7. Parking, Loading and Access**

- |                                       |       |
|---------------------------------------|-------|
| A. General                            | 97:59 |
| B. Parking Requirements Table         | 97:59 |
| C. Additional Parking Requirements    | 97:60 |
| D. Common Driveways by Special Permit | 97:61 |

**ARTICLE VIII**

**Signs**

**§ 97-8. Sign Regulations**

- |  |       |
|--|-------|
| A. Purpose   | 97:65 |
| B. Definitions   | 97:65 |
| C. Prohibitions  | 97:66 |
| D. Permits   | 97:67 |
| E. General Requirements  | 97:67 |
| F. Exempt Signs  | 97:68 |
| G. Agricultural-Residential and Parker River Residential Districts | 97:69 |
| H. Commercial Highway and Commercial Highway A                     | 97:69 |
| I. Business Districts  | 97:70 |
| J. Industrial Districts  | 97:71 |
| K. Exceptions by Special Permit                                    | 97:71 |
| L. Maintenance   | 97:72 |
| M. Sign Removal  | 97:72 |
| N. Nonconforming Signs   | 97:72 |

**ARTICLE IX**  
**Special Regulations**

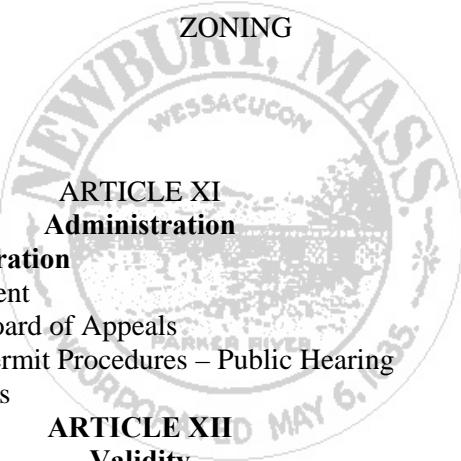
**§ 97-9. Special Regulations**

- |                     |       |
|---------------------|-------|
| A. Site Plan Review | 97:73 |
|---------------------|-------|

**ARTICLE X**  
**General Regulations**

**§ 97-10. General Regulations**

- |  |       |
|--|-------|
| A. Nonconforming Uses (Except Plum Island Overlay District)      | 97:77 |
| B. Grandfathering  | 97:77 |
| C. Customary Home Occupations                                    | 97:77 |
| D. Accessory Apartments in the Agricultural-Residential District | 97:78 |



	Page Number
<b>ARTICLE XI</b>	
<b>Administration</b>	
<b>§ 97-11. Administration</b>	
A. Enforcement	97:81
B. Zoning Board of Appeals	97:81
C. Special Permit Procedures – Public Hearing	97:81
D. Definitions	97:82
<b>ARTICLE XII</b>	
<b>Validity</b>	
<b>§ 97-12. Validity</b>	97:89
A. General	97:89
<b>Zoning Overlay Districts Map</b>	Appended
<b>Zoning Use Districts Map</b>	Appended

[HISTORY: Adopted by the Special Town Meeting of the Town of Newbury 10-8-1959 by Art. 1, as amended through the Annual Town Meeting 4-27-1999 by Art. 25; reorganized 5-22-2007 ATM by Art. 23. Subsequent amendments noted where applicable.]

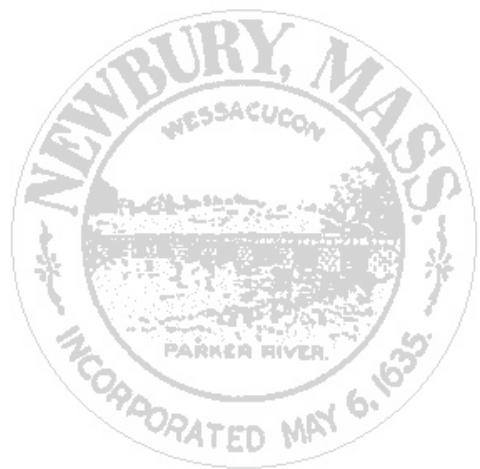
#### **GENERAL REFERENCES**

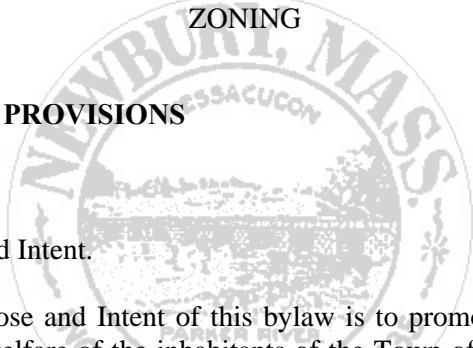
**Earth removal** — See Ch. 60.

**Wetlands** — See Ch. 95.

**Subdivision of land** — See Ch. 117.

**Waterways** — See Ch. 122.



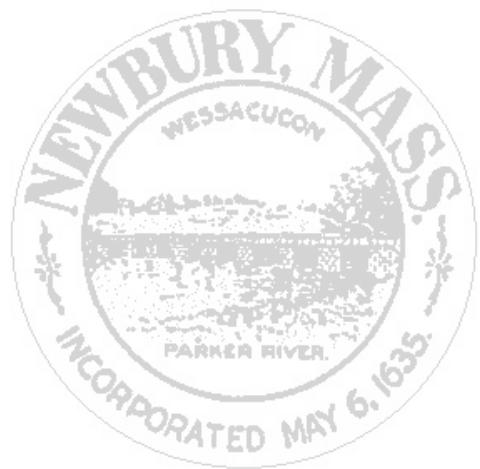


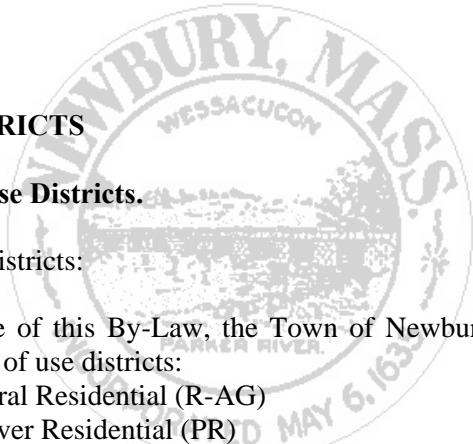
## ARTICLE I – GENERAL PROVISIONS

### § 97-1. Purpose and Intent

#### A. The Purpose and Intent.

- (1) The purpose and Intent of this bylaw is to promote the health and safety and general welfare of the inhabitants of the Town of Newbury, including without limitation to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent over-crowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provisions of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town, and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.





## ARTICLE II – USE DISTRICTS

### § 97-2. Establishment of Use Districts.

#### A. Types of Use Districts:

For the purpose of this By-Law, the Town of Newbury is hereby divided into the following types of use districts:

- (1) Agricultural Residential (R-AG)
- (2) Parker River Residential (PR)
- (3) Residential-Limited Business (R-LB)
- (4) Business (B)
- (5) Commercial Highway (CH)
- (6) Commercial Highway A (CHA)
- (7) Industrial (I)

#### B. Location of Districts.

- (1) Zoning Map. The Planning Board of the Town of Newbury shall prepare and periodically update as required, a Zoning Map, which Zoning Map shall show all zoning use districts within the Town in a manner sufficient for identification.<sup>1</sup> The Zoning Map shall be a part of this By-Law; provided, however, that in the event of any inconsistency between the written provisions of this By-Law and said Zoning Map, the written provisions of this Zoning By-Law shall prevail.

- (2) Written Description of Use Districts:

- (a) Agricultural – Residential districts shall include all portions of the Town not otherwise classified;
    - (b) Parker River Residential.

This district shall constitute a certain parcel of land situated east of High Road and north of the Parker River in the Town of Newbury, bounded and described as follows:

Beginning at a point in the easterly sideline of High Road at the northwesterly corner of the said parcel of land at the southwesterly corner of land of or formerly of The Society for the Preservation of New England Antiquities, said point being about 885 feet south of the southerly intersection of the sidelines of High Road and Cottage Road

Thence running: Easterly about 210 feet by said land of, or formerly of, The Preservation of New England Antiquities to a corner,

Thence running: Northerly about 135 feet by said land of, or formerly of, The Preservation of New England Antiquities to a corner of land of, or formerly of, Joan Hoysradt,

Thence Running: Easterly about 1120 feet by said land of, or formerly of, Joan Hoysradt, by land of or formerly of James D. Pearson, and by land of, or formerly of Rita E. Direnzo and Patricia D. Daigle to a corner,

---

<sup>1</sup> Editor's Note: The Zoning Maps are included at the end of this chapter.

Thence running: Northerly about 64 feet by said land of, or formerly of, Rita E. Direnzo and Patricia D. Daigle to a point in the southerly sideline of Cottage Road,

Thence running: Easterly about 1230 feet by the said southerly sideline of Cottage Road to a point,

Thence running: Northerly about 40 feet across Cottage Road to a point in the northerly sideline of Cottage Road at the southeasterly corner of land of, or formerly of John D. and Sharon Protopapas, said point being about 176 feet westerly of the northeasterly corner of Cottage Road,

Thence running: Northerly about 210.69 feet by said land of John D. and Sharon Protopapas to a point at land of, or formerly of the Trustees of Reservations,

Thence running: Easterly about 1150 feet by said land of, or formerly of the Trustees of Reservations, by land of or formerly of Joseph II, Nancy, and Peter Story, and by land of, or formerly of the Parker River National Wildlife Refuge to a corner,

Thence running: Southerly about 900 feet by said land of or formerly of the Parker River National Wildlife Refuge to a corner at the northerly side of the Parker River,

Thence running: Westerly about 3500 feet by the Parker River to a point in the easterly sideline of High Road,

Thence running: Northerly about 530 feet by the said easterly sideline of High Road to the point of beginning.

(c) Residential-Limited Business:

Beginning at a point on the easterly corner of said premises at an Iron Stake: Thence northerly by land now or formerly of Ross Gadd to a stone wall and land now or formerly of George Adams, John Thurston and others: Thence easterly by a stone wall 300 feet to an Iron Stake and land now or formerly of said Ross Gadd to Orchard Street to the point of beginning.

(d) Business:

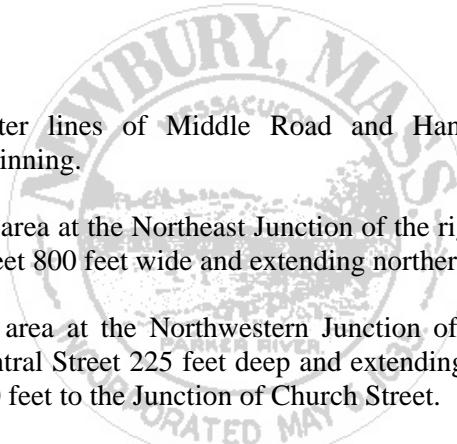
An area bounded by the center lines of Lunt, Main and Central Streets in Byfield.

An area bounded by the center lines of Lunt, Main, Central and Church Streets in Byfield.

An area in Byfield west of Main Street bounded on the east by the center line of Main Street, on the north by a line 125 feet southerly of the center line of Grove Street and parallel to said line, on the west by a line 225 feet from the center line of Main Street and parallel to said line, and on the south by the center line of Forest Street.

(e) Commercial Highway:

Beginning at a point on the center line of Hanover Street 1,000 feet easterly from the center line of U.S. Route #1, thence by a line parallel to said center line of U.S. #1 and 1,000 feet east of it to a point 500 feet south of the center line of Boston Road thence westerly to a point 500 feet west of the center line of U.S. #1 and 500 feet south of the center line of Boston Road; thence northerly by a line parallel to the center line of U.S. #1 and 500 feet west of said line to a point on the center line of Middle Road 500 feet west of the center line of U.S. #1, thence by the



center lines of Middle Road and Hanover Street to the point of beginning.

An area at the Northeast Junction of the right-of-way of I-95 and Central Street 800 feet wide and extending northerly 400 feet.

An area at the Northwestern Junction of the right-of-way of I-95 and Central Street 225 feet deep and extending westerly along Central Street 300 feet to the Junction of Church Street.

An area located at the Northeast Junction of U.S. Rt. #1 and Hanover Street bounded on the east by the B & M Railroad right-of-way, on the south by the center line of Hanover Street and on the west by the center line of U.S. Rt. #1.

An area located on the northerly side of Scotland Road bounded on the west by the right-of-way of U.S. Rt. 95, on the south by Scotland Road, on the east and northeast by the easterly property line of Lot 1 Assessors' Map R-44, now or formerly of Bartlett, and on the north by the City Line of Newburyport and the Town Line of West Newbury.

(f) Commercial Highway District A:

An area at the Southwest Junction of the right-of-way of I-95 and Central Street, 500 feet wide and extending southeasterly to the Parker River.

(g) Industrial:

A 500 foot strip along the south bank of the Parker River in Precinct 1 extending for a distance of 1,000 feet west and 1,000 feet east of the Parker River Bridge on U.S. Route 1A, less any portion of Lot #78 Assessors' Map R-11.

A 500 foot strip along the south bank of the Parker River extending from Main Street to Route 95.

That portion of Precinct 1 bounded on the north by Newburyport line, on the east by a line 1,000 feet east of the parallel to the right-of-way of the Boston and Maine Railroad, Main Line, on the south by Hanover and Middle Streets, and on the west by Highfield Road and Scotland Road. Except that section which is bounded on the east by the B & M Railroad right-of-way, on the south by the center line of Hanover Street, and the west by the center line of U.S. Rt. #1.

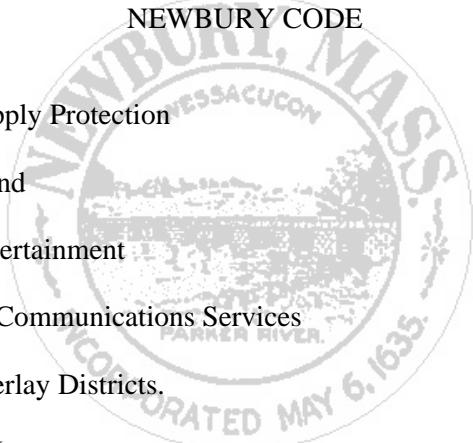
(h) Upper Green Business: [Amended Art. 30 ATM 5-26-09]

An area to the east and north of the Upper Green on High Road encompassing Lots 1, 2, 3, 31, 34, 48, and 49 on Assessors' Map U-06 and Lot 42 on Assessors' Map U-07 and as shown on the Town of Newbury Zoning Map as amended.

C. Overlay Districts.

The following special districts are superimposed over specific parts of the Town (as described within each overlay district), and may establish requirements over and above those described in the respective underlying districts. All applicable regulations, whether Federal, State, or local, if more restrictive, shall also apply.

(1) Flood Zone

- 
- (2) Water supply Protection
  - (3) Plum Island
  - (4) Adult Entertainment
  - (5) Wireless Communications Services

**D. Location of Overlay Districts.**

**(1) Zoning Map:**

The Planning Board of the Town of Newbury shall prepare and periodically update as required, a Zoning Map, which Zoning Map shall show all zoning overlay districts within the Town in a manner sufficient for identification.<sup>2</sup> The Zoning Map shall be a part of this By-Law; provided, however, that in the event of any inconsistency between the written provisions of this By-Law and said Zoning Map, the written provisions of this Zoning By-Law shall prevail.

**(2) Flood Zone:**

Applicable as indicated on the special Federal Insurance Administration's Flood Insurance Rate Maps (FIRM), effective July 17, 1986.

**(3) Water Supply Protection:**

Shall include all lands within the Town of Newbury lying within the watersheds of groundwater aquifers which now or may in the future provide public water supply. The boundaries of the Water Supply Protection District are shown on a map entitled "Water Resources, Town of Newbury," dated March 31, 2003, and on file in the office of the Town Clerk.

**(4) Plum Island:**

Shall include all lands shown on a map entitled "Plum Island Overlay District, Town of Newbury", dated December 20, 2000, prepared by the Merrimack Valley Planning Commission, said map hereby incorporated as part of this By-law and on file in the office of the Town Clerk.

**(5) Adult Entertainment:**

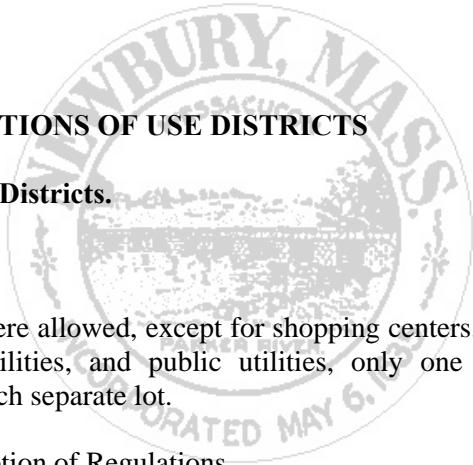
That portion of Precinct 1 bounded on the north by Newburyport line, on the east by a line 1,000 feet east of the parallel to the right-of-way of the Boston and Maine Railroad, Main Line, on the south by Hanover and Middle Streets, and on the west by Highfield Road and Scotland Road. Except that section which is bounded on the east by the B & M Railroad right-of-way, on the south by the center line of Hanover Street, and the west by the center line of U.S. Rt. #1.

**(6) Wireless Communications Services:**

All lands located within the boundaries of the Commercial Highway District and the Industrial District.

---

<sup>2</sup> Editor's Note: The Zoning Maps are included at the end of this chapter.



## ARTICLE III – REGULATIONS OF USE DISTRICTS

### § 97-3. Regulations of Use Districts.

#### A. General.

In all zones where allowed, except for shopping centers, farms, industrial complexes, community facilities, and public utilities, only one principal structure shall be permitted on each separate lot.

#### B. Written Description of Regulations.

No building, structure or land shall be used, constructed, erected, placed, or converted, in whole or in part, for any purpose or in any manner other than for one or more of the uses set forth in § 97-3. Exceptions: These regulations shall not prohibit, regulate, or restrict the use of land, buildings, or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth of Massachusetts or any of its agencies, subdivisions, or bodies politic, or by a religious sect or denomination, or by a non-profit educational corporation.

#### C. Agricultural – Residential District.

##### (1) Allowed Uses:

- (a) Single and two family residences;
- (b) Agricultural uses;
- (c) Customary home occupation as provided for in section 97-10C;
- (d) Church or other religious purpose;
- (e) Educational purpose which is non-profit or public;
- (f) Uses customarily accessory to allowed uses.

##### (2) Prohibited Uses:

- (a) Any use not herein expressly allowed shall be prohibited.

##### (3) Uses By Special Permit:

- (a) Bed & Breakfast establishments as provided for in § 97-5B;
- (b) In appropriate cases and subject to appropriate conditions, safeguards and limitations on time or use, the Selectmen may grant an applicant a special permit to make use of the land or erect and maintain buildings or other structures thereon in accordance with the provisions of Chapter 40A of General Laws, if such use, buildings or other structures are in harmony with the general purpose and intent of this By-Law and with the provisions stipulated in § 97-10.C(1)(c)(d) & (e) for the purpose of municipal uses; A library; a nursing or rest home; a hospital; a private club; or a doctor's, lawyer's, or similar professional office; provided the Selectmen find, after a Public Hearing of which due notice is given to any party in interest as defined in Section 11, of Chapter 40A of the General Laws, that the proposed use, building or structure is for the best

interest of the Town, is not injurious or obnoxious to the neighboring properties, will satisfy a community need or convenience not otherwise being served, will not affect abutting and nearby properties by increasing traffic and on-street parking, and that nothing connected with the use, buildings or structure, such as machinery, vehicles, material, supplies, equipment and waste materials shall be stored between the street line and the front line of the structure or building, nor be visible from the street.

(4) Other District Specific Applicable Regulations: (Reserved for future use)

D. Parker River Residential.

(1) Allowed Uses:

- (a) Single family residences;
- (b) Structures customarily accessory to single family residences;
- (c) Church or other religious purpose;
- (d) Educational purpose which is non-profit or public;

(2) Prohibited uses:

- (a) Any use not herein expressly allowed shall be prohibited

(3) Uses By Special Permit:

- (a) None.

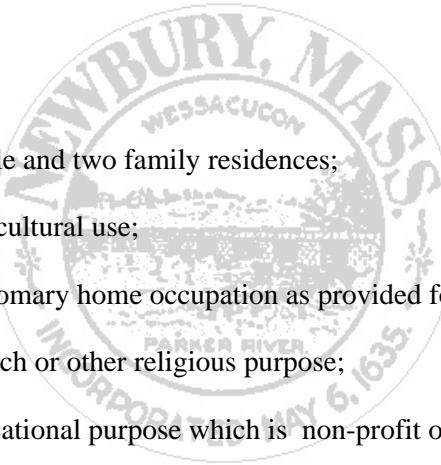
(4) Other District Specific Applicable Regulations:

- (a) Any structure constructed within the Parker River Residential District shall comply with all provisions required for lots within the Agricultural/Residential Use District;
- (b) Notwithstanding any provision of this By-Law to the contrary, any piece or parcel of land, lying within the Parker River Residential District designated as a separate tax lot on the Tax Map of the Town of Newbury (available in the Town Clerk's office) as of the date of enactment of Subsection A above and upon which one single one family residence and such structures normally accessory to such single one family residence exist as of the date of the enactment of Subsection B shall nevertheless be deemed to comply with the provisions of the Zoning By-Laws so long as such single one family residence remains on such lot.

E. Residential – Limited Business.

(1) Allowed Uses:

- (a) Limited business;

- 
- (b) Single and two family residences;
  - (c) Agricultural use;
  - (d) Customary home occupation as provided for in section 97-10C;
  - (e) Church or other religious purpose;
  - (f) Educational purpose which is non-profit or public;
  - (g) Uses customarily accessory to allowed uses.

(2) Prohibited Uses:

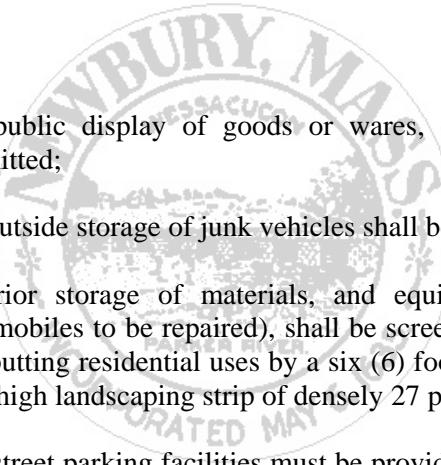
- (a) Any use not herein expressly allowed shall be prohibited.

(3) Uses By Special Permit:

- (a) In appropriate cases and subject to appropriate conditions, safeguards and limitations on time or use, the Selectmen may grant an applicant a special permit to make use of the land or erect and maintain buildings or other structures thereon in accordance with the provisions of Chapter 40A of General Laws, if such use, buildings or other structures are in harmony with the general purpose and intent of this By-Law and with the provisions stipulated in § 97-10.C(1) (c) (d) & (e) for the purpose of municipal uses; A library; a nursing or rest home; a hospital; a private club; or a doctor's, lawyer's, or similar professional office; provided the Selectmen find, after a Public Hearing of which due notice is given to any party in interest as defined in Section 11, of Chapter 40A of the General Laws, that the proposed use, building or structure is for the best interest of the Town, is not injurious or obnoxious to the neighboring properties, will satisfy a community need or convenience not otherwise being served, will not affect abutting and nearby properties by increasing traffic and on-street parking, and that nothing connected with the use, buildings or structure, such as machinery, vehicles, material, supplies, equipment and waste materials shall be stored between the street line and the front line of the structure or building, nor be visible from the street.

(4) Other District Specific Applicable Regulations: Limited Business uses shall be defined as auto body repair shop, glass sales and repair shop, business or professional office, provided that:

- (a) None of the contiguous lots shall be used for a limited business use as defined;
- (b) Not more than five (5) persons are regularly employed thereon;
- (c) No offensive noise, odors, glare or unsightliness is produced;

- 
- (d) No public display of goods or wares, except for such signs as are permitted;
- (e) No outside storage of junk vehicles shall be permitted;
- (f) Exterior storage of materials, and equipment (including goods and automobiles to be repaired), shall be screened from view from the street or abutting residential uses by a six (6) foot high opaque fence or six (6) foot high landscaping strip of densely 27 planted<sup>3</sup> evergreen trees;
- (g) Off-street parking facilities must be provided to accommodate customers and employees in connection with any permitted use; and
- (h) Hours of operation shall be limited to 8:00 A.M. to 5:00 P.M. Monday through Saturday. No hours of operations on Sunday.

F. Business.

(1) Allowed Uses:

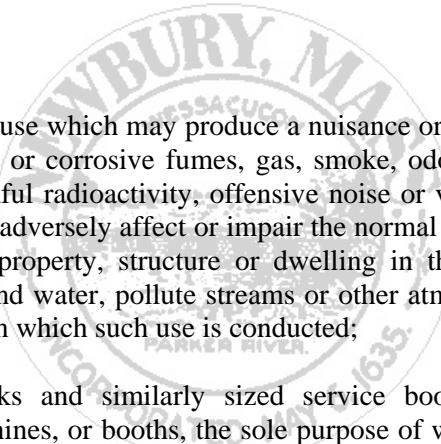
One and two-story residences which meet all of the requirements of the nearest residential district

- (a) Store, showroom, sales room for the conduct of retail business, including but not limited to, a neighborhood grocer, hardware, clothing, drug, or general store, a florist, gift, stationery, or antiques shop or photographer's studio.
- (b) Personal service establishments such as a barber shop or beauty parlor, and collection agency for a laundry or dry cleaner. Shops for custom work by a dressmaker, furrier, interior decorator, milliner or tailor.
- (c) Indoor eating establishment.
- (d) Bank or similar financial institution.
- (e) Real estate, professional or similar offices.
- (f) Roadside stand for sale of principally local farm produce.
- (g) Theater, craft shop, or other arts related business.
- (h) Religious or educational establishment.
- (i) Home occupations as provided for in § 97-10C.

(2) Prohibited uses:

---

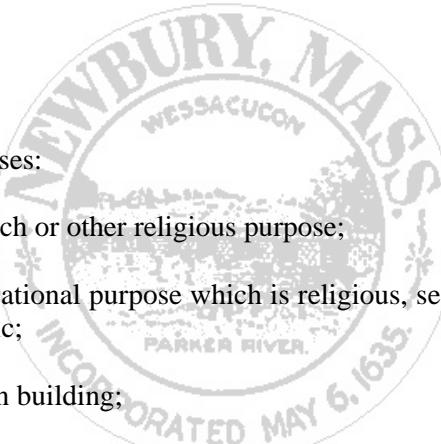
<sup>3</sup> Editor's Note: So in original.

- 
- (a) Any use which may produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapors, harmful radioactivity, offensive noise or vibration, or other activity that may adversely affect or impair the normal use and peaceful enjoyment of any property, structure or dwelling in the neighborhood, contaminate ground water, pollute streams or other atmospheric pollutant beyond the lot on which such use is conducted;
  - (b) Kiosks and similarly sized service booths and detached structures, machines, or booths, the sole purpose of which is to dispense or provide products, services, or entertainment, including, but not limited to financial information or transaction services;
  - (c) Drive-in retail establishments regularly serving food or dispense<sup>4</sup> merchandise from inside a building to persons seated in their automobiles on the premises;
  - (d) Wholesale establishment, the principal activities of which shall be the preparation, storage, and transfer or distribution of goods (such as building materials or auto parts);
  - (e) Outdoor storage of fuel supplies and fuel products;
  - (f) Public parking garage or storage of commercial vehicles and used car sales and/or used car storage.
- (3) Uses By Special Permit:
- (a) Bed & Breakfast establishments as provided for in § 97-5B.
- (4) Other District Specific Applicable Regulations:
- (a) Building materials and style should be in keeping with the historic and rural character of the area. Dumpsters and other storage shall be fenced or otherwise out of view;
  - (b) In the case of non-residential uses, every effort shall be made to retain and protect existing trees, shrubs, and other landscaping on a site. A three (3) foot wide (minimum) landscaping strip shall be provided along the foundation walls of each building. A five (5) foot strip of densely planted green space shall be provided on all property boundaries. In cases where a business abuts a residential property, this buffer must be a minimum of ten (10) feet;
  - (c) These regulations are intended to preserve the historical and rural character of the area while allowing business enterprises that serve the needs of the local residents.

## G. Commercial Highway.

---

<sup>4</sup> Editor's Note: So in original.

- 
- (1) Allowed Uses:
- (a) Church or other religious purpose;
  - (b) Educational purpose which is religious, sectarian, non-denominational or public;
  - (c) Town building;
  - (d) Historical association or society;
  - (e) Street, bridge, tunnel or railroad;
  - (f) Public utility except power plant, water filter plant, sewage treatment plant, and refuse facility;
  - (g) Agriculture, salt marsh haying, horticulture and floriculture;
  - (h) Greenhouse or stand for retail sale of agricultural or farm products raised primarily on the same premises;
  - (i) Stores usually selling a combination of two or more of the following: dry goods, apparel and accessories, furniture and home furnishings, small wares, hardware and food;
  - (j) Establishments primarily selling food and drink;
  - (k) Establishments selling new and/or used automobiles and trucks, tires and other accessories, aircraft, boats, motorcycles and trailers;
  - (l) Hotel and motels;
  - (m) Personal service establishments;
  - (n) Funeral home or mortuary establishments;
  - (o) Miscellaneous business offices and services;
  - (p) Airport and landing strip;
  - (q) Commercial parking lot or structure;
  - (r) A single family residence as an accessory use for the owner of or the security personnel employed by the commercial enterprise located thereon.
- (2) Prohibited uses:
- (a) Any use not herein expressly allowed shall be prohibited.

(3) Uses By Special Permit:

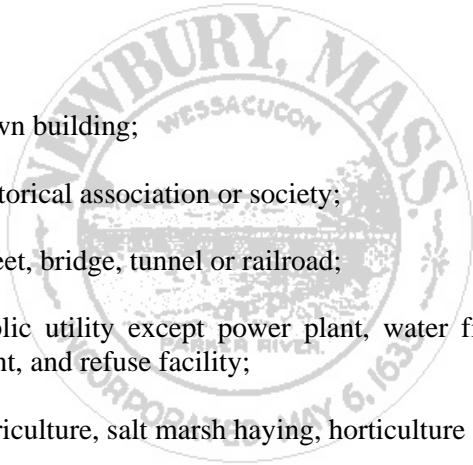
- (a) Non-profit recreational facility and/or Recreational facilities for gainful business are allowed only by special permit from the Board of Selectmen according to the provisions of Chapter 40A of the General Laws, provided the Selectmen find, after a Public Hearing of which due notice is given, that the proposed recreational use, building or structure is: For the best interest of the Town; is not injurious or obnoxious to the neighboring properties and will not adversely affect the surrounding area; will satisfy a community need or convenience not otherwise being served; that the parking, loading and dimensional control requirements of this ordinance are met; and that the recreation business is in the interest of the common good. The plan must be reviewed and a recommendation made to the Board of Selectmen by the Planning Board, the Board of Fire Engineers, Public Safety, and the Board of Health;
- (b) Town Cemetery;
- (c) Sales by vending machines;
- (d) Automotive repair, automobile services and garages (not including a junk yard or open storage of abandoned automobiles or other vehicles);
- (e) Miscellaneous repair services;
- (f) Communication and television towers as provided for in § 97-4C.;
- (g) Boat marina;
- (h) Filling of land or watercourse, water body or wetlands;
- (i) Construction of drainage facilities or damming up or relocating a watercourse, water body or wetlands;
- (j) Trucking service or warehousing;
- (k) Other transportation services;
- (l) Wholesale trade.

(4) Other District Specific Applicable Regulations: (Reserved for future use)

H. Commercial Highway – A.

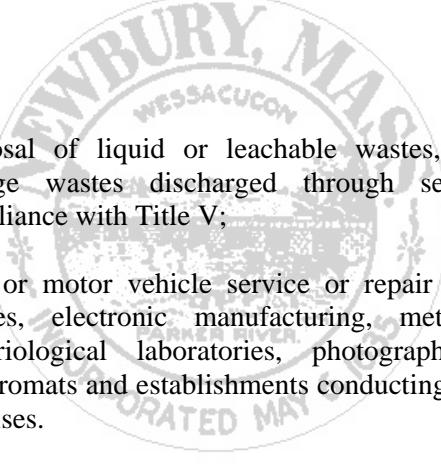
(1) Allowed Uses:

- (a) Church or other religious purpose;
- (b) Educational purpose which is religious, sectarian, non-denominational or public;

- 
- (c) Town building;
  - (d) Historical association or society;
  - (e) Street, bridge, tunnel or railroad;
  - (f) Public utility except power plant, water filter plant, sewage treatment plant, and refuse facility;
  - (g) Agriculture, salt marsh haying, horticulture and floriculture;
  - (h) Greenhouse or stand for retail sale of agricultural or farm products raised primarily on the same premises;
  - (i) Stores usually selling a combination of two or more of the following: dry goods, apparel and accessories, furniture and home furnishings, small wares, hardware and food;
  - (j) Establishments primarily selling food and drink;
  - (k) Hotel and motels;
  - (l) Personal service establishments;
  - (m) Miscellaneous business offices and services;
  - (n) Commercial parking lot or structure;
  - (o) A single family residence as an accessory use for the owner of or the security personnel employed by the commercial enterprise located thereon.

(2) Prohibited uses:

- (a) Solid waste disposal facilities, including, without limitation, landfills and junk and salvage yards;
- (b) Storage of petroleum or petroleum products, including without limitation, gasoline, waste oil, heating oils, diesel fuel and other liquid hydrocarbons, except within buildings which the product will heat and in quantities for normal use in the facility in which it is kept;
- (c) Storage of road salt or other deicing chemicals in quantities greater than that necessary for normal use at that facility;
- (d) Manufacture, use, storage or disposal of toxic or hazardous materials;
- (e) Storage or disposal of hazardous wastes, including, without limitation, chemical wastes, radioactive wastes, and waste oil;
- (f) Industrial uses which discharge process liquids on site;

- 
- (g) Disposal of liquid or leachable wastes, except normal non-process sewage wastes discharged through sewage disposal systems in compliance with Title V;
  - (h) Boat or motor vehicle service or repair shops, animal feed lots, car washes, electronic manufacturing, metal plating, commercial or bacteriological laboratories, photographic processing laboratories, laundromats and establishments conducting dry cleaning activities on the premises.

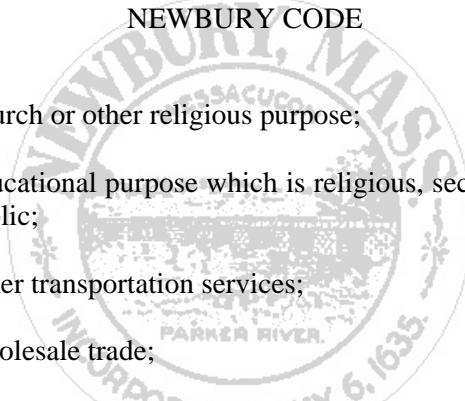
(3) Uses By Special Permit:

- (a) Sales by vending machines;
- (b) Non-profit recreational facility and/or Recreational facilities for gainful business are allowed only by special permit from the Board of Selectmen according to the provisions of Chapter 40A of the General Laws, provided the Selectmen find, after a Public Hearing of which due notice is given, that the proposed recreational use, building or structure is: For the best interest of the Town; is not injurious or obnoxious to the neighboring properties and will not adversely affect the surrounding area; will satisfy a community need or convenience not otherwise being served; that the parking, loading and dimensional control requirements of this ordinance are met; and that the recreation business is in the interest of the common good. The plan must be reviewed and a recommendation made to the Board of Selectmen by the Planning Board, the Board of Fire Engineers, Public Safety, and the Board of Health.

(4) Other District Specific Applicable Regulations: (Reserved for future use)

I. Industrial.

- (1) Allowed Uses:
  - (a) Manufacturing;
  - (b) Trucking service and warehousing;
  - (c) Street, Bridge, tunnel, railroad;
  - (d) Public utility including power plant, water filtration plant, sewage treatment plant, and refuse facility;
  - (e) Agriculture, salt marsh haying, horticulture and floriculture except a greenhouse or stand for retail sale;
  - (f) Commercial forestry and growing of all vegetation;
  - (g) Clamming or fishing including a processing plant;

- 
- (h) Church or other religious purpose;
- (i) Educational purpose which is religious, sectarian, non-denominational or public;
- (j) Other transportation services;
- (k) Wholesale trade;
- (l) A single family residence as an accessory use for the owner of or the security personnel employed by the commercial enterprise located thereon.
- (2) Prohibited uses:
- (a) Any use not herein expressly allowed shall be prohibited.
- (3) Uses By Special Permit:
- (a) Town building including equipment garage;
- (b) Temporary (not to exceed erection or use for a period exceeding 6 months in any calendar year) greenhouse or stand for retail sale of agricultural or farm products raised primarily on the same premises;
- (c) Automotive repair, automobile services and garages (not including a junk yard or open storage of abandoned automobiles or other vehicles);
- (d) Communication and television towers as provided for in Article IV;  
**[Amended 4-24-2001 ATM, Art.26]**
- (e) Airport and landing strip;
- (f) Filling of land or watercourse, water body or wetlands;
- (g) Construction of drainage facilities or damming up or relocation of any watercourse, water body or wetlands;
- (h) Mining, quarrying.
- (4) Other District Specific Applicable Regulations:
- (a) No business or industry shall be located which would be detrimental or offensive or tend to reduce property values in the same or adjacent districts, by reason of dirt, odor, fumes, smoke, gas, sewerage, refuse, noise, excessive vibration or danger of explosion or fire.

J. Upper Green Business. [Amended Art. 30 ATM 5-26-2009]

(1) Allowed Uses:

- (a) Town building;
- (b) Single and two family residences;
- (c) Store, showroom, sales room for the conduct of retail business, including but not limited to, a neighborhood grocer, hardware, clothing, drug, or general store, a florist, gift, stationery, or antiques shop or photographer's studio;
- (d) Personal service establishments such as a barber shop or beauty parlor, and collection agency for a laundry or dry cleaner. Shops for custom work by a dressmaker, furrier, interior decorator, milliner or tailor;
- (e) Indoor eating establishment;
- (f) Bank or similar financial institution;
- (g) Real estate, professional or similar offices;
- (h) Roadside stand for sale of principally local farm produce;
- (i) Theater, craft shop, or other arts related business;
- (j) Religious or educational establishment;
- (k) Child day care center or school-aged child care program;
- (l) Home occupations as provided for in § 97-10C;
- (m) Mixed use structures.

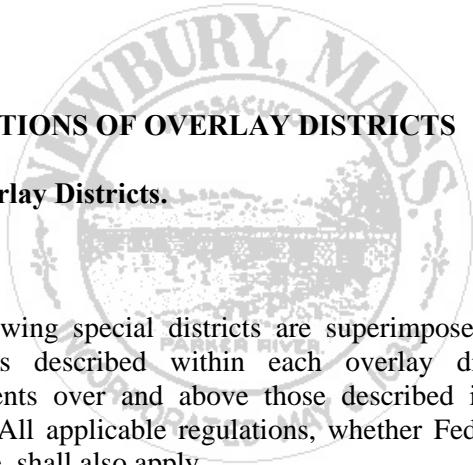
(2) Prohibited uses:

- (a) Any use which may produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapors, harmful radioactivity, offensive noise or vibration, or other activity that may adversely affect or impair the normal use and peaceful enjoyment of any property, structure or dwelling in the neighborhood, contaminate ground water, pollute streams or other atmospheric pollutant beyond the lot on which such use is conducted;
- (b) Kiosks and similarly sized service booths and detached structures, machines, or booths, the sole purpose of which is to dispense or provide products, services, or entertainment, including, but not limited to financial information or transaction services;
- (c) Drive-in retail establishments regularly serving food or dispensing merchandise from inside a building to persons seated in their automobiles on the premises;

- (d) Wholesale establishment, the principal activities of which shall be the preparation, storage, and transfer or distribution of goods (such as building materials or auto parts);
  - (e) Outdoor storage of fuel supplies and fuel products;
  - (f) Public parking garage or storage of commercial vehicles and used car sales and/or used car storage.
- (3) Uses by Special Permit:
- (a) Bed & Breakfast establishments as provided for in §97-5B.
  - (b) Multi-family dwellings, up to a limit of four units.
- (4) Other District Specific Applicable Regulations:
- (a) Building materials and style shall be in keeping with the historic and rural character of the area. Dumpsters and other storage shall be fenced or otherwise out of view;
  - (b) The surrounding area shall be protected from the proposed use on the site by provision of adequate surface water drainage, buffers against light, sight, sound, vibration, odors, dust and other air pollution and the preservation of adequate light and air;
  - (c) The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas and public ways shall be provided for;
  - (d) Environmental features of the site and surrounding areas shall be protected;
  - (e) The site plan shall be consistent with the Master Plan;
  - (f) The proposed building scale and/or site development plan is consistent with the surrounding neighborhood;
  - (g) All signs shall be in accordance with the sign regulations for the pertinent district and materials used shall be in keeping with the historic character and public spaces of the Upper Green;
  - (h) All variances or special permits required from the Board of Appeals have been granted;
  - (i) These regulations are intended to preserve the historical and rural character of the area while allowing business enterprises that serve the needs of the local residents.
  - (j) Notwithstanding the above, regulation of uses and structures referred to in G.L. c. 40A, § 3 (exemptions from zoning) shall be limited to the extent allowed under said section of the General Laws.

3. Insert in Article VI, §97-6.B. Table of Dimensional Requirements:

**UGB**, Lot area – 20,000<sup>1</sup> s.f. , frontage – 100 feet, Property Line Setback – 10 feet, Street Setback – 20 feet, Footprint – no limitation, Maximum Lot Coverage – 25%, Height – 35 feet.



## ARTICLE IV – REGULATIONS OF OVERLAY DISTRICTS

### § 97-4. Regulations of Overlay Districts.

#### A. General:

- (1) The following special districts are superimposed over specific parts of the Town (as described within each overlay district), and may establish requirements over and above those described in the respective underlying districts. All applicable regulations, whether Federal, State, or local, if more restrictive, shall also apply.

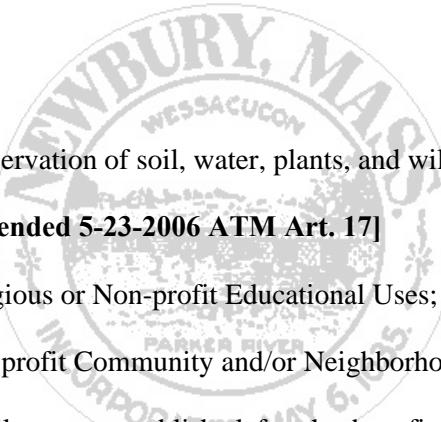
#### B. Water Supply Protection

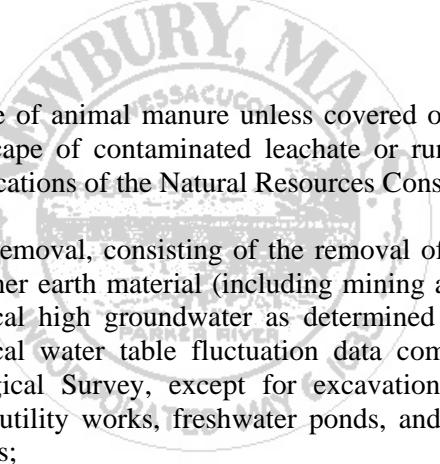
##### (1) Purpose:

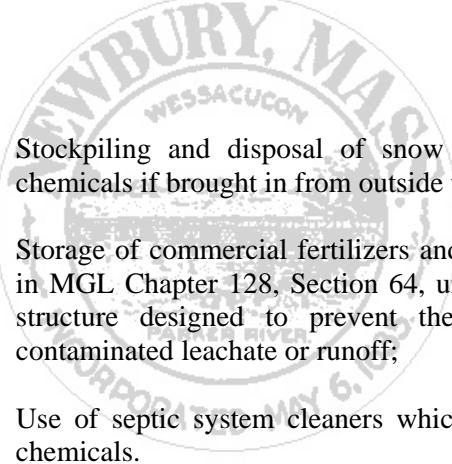
- (a) To promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Newbury;
- (b) To preserve and protect existing and potential sources of drinking water;
- (c) To conserve the natural resources of the Town of Newbury; and
- (d) To prevent temporary and permanent contamination of the environment.

##### (2) Allowed Uses:

- (a) Residential development, subject to § 97-3C(2) (Prohibited Uses) and § 97-3C(3) (Uses and Activities by Special Permit);
- (b) Maintenance, repair, and enlargement of any existing structure, subject to § 97-3C(2) (Prohibited Uses) and § 97-3C(3) (Uses and Activities by Special Permit);
- (c) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to § 97-3C(2) (Prohibited Uses) and § 97-3C(3) (Uses and Activities by Special Permit);
- (d) Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply, and conservation devices;
- (e) Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels. Underground storage tanks related to these activities are not categorically permitted;
- (f) Foot, bicycle, and/or horse paths, and bridges;
- (g) Nature study and outdoor recreation, including play areas, boating, fishing, swimming, and hunting where otherwise legally permitted;

- 
- (h) Conservation of soil, water, plants, and wildlife;
- [Amended 5-23-2006 ATM Art. 17]**
- (i) Religious or Non-profit Educational Uses;
- (j) Non-profit Community and/or Neighborhood Centers;
- (k) Retail stores, established for the benefit and convenience of the local general public provided such use is a permitted use in the underlying zoning district;
- (l) Restaurants without “drive-thru” facilities or taverns provided such use is a permitted use in the underlying zoning district;
- (m) Business, professional and general offices provided such use is a permitted use in the underlying zoning district.
- (3) Prohibited Uses:
- (a) Landfills and open dumps as defined in 310 CMR 19.006;
- (b) Storage of liquid petroleum products, except for the following:
- 01) Normal household use, outdoor maintenance, and heating of a structure;
- 02) Waste oil retention facilities required by MGL Chapter 21, Section 52A;
- 03) Emergency generators required by statute, rule, or regulation;
- 04) Treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters, provided that storage, listed in items § 97-4B(3)(b) 01) through § 97-4B(3)(b) 04) above is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container’s total storage capacity.
- (c) Landfills receiving only wastewater residuals and/or septage (wastewater residuals “monofills”) approved by the Department pursuant to MGL. c. 21, section 26 through 53; MGL. c. 11 section 17; MGL. c. 83, sections 6 and 7, and any regulations promulgated hereunder;
- (d) Storage of de-icing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

- 
- (e) Storage of animal manure unless covered or contained so as to prevent the escape of contaminated leachate or runoff in accordance with the specifications of the Natural Resources Conservation Services;
- (f) Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within 6 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, roads, utility works, freshwater ponds, and individual sewage disposal systems;
- (g) Facilities that generate, treat, store, or dispose of hazardous waste subject to MGL Chapter 21C and 310 CMR 30.00, except the following:
- 01) Very small quantity generators as defined under 310 CMR 30.00;
  - 02) Household hazardous waste collection centers and events operated pursuant to 310 CMR 30.390;
  - 03) Waste oil retention facilities required by MGL Chapter 21, Section 52A;
  - 04) Water remediation treatment works approved under 314 CMR 5.00 for the treatment of contaminated ground or surface waters;
- (h) Automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1;
- (i) Truck terminals, truck maintenance terminals, bus maintenance terminals, commercial car washes;
- (j) Discharge to the ground of non-sanitary waste water including industrial and commercial process waste water except:
- 01) 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;
  - 02) Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated ground or surface water operating in compliance with 314 CMR 5.05(3) or 5.05(13);
  - 03) Storage of liquid hazardous materials, as defined in MGL Chapter 21E, unless in a free-standing container within a building or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity;
  - 04) Industrial and commercial uses which discharge process wastewater on site;

- 
- 05) Stockpiling and disposal of snow and ice containing de-icing chemicals if brought in from outside the District;
  - 06) Storage of commercial fertilizers and soil conditioners, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated leachate or runoff;
  - 07) Use of septic system cleaners which contain toxic or hazardous chemicals.

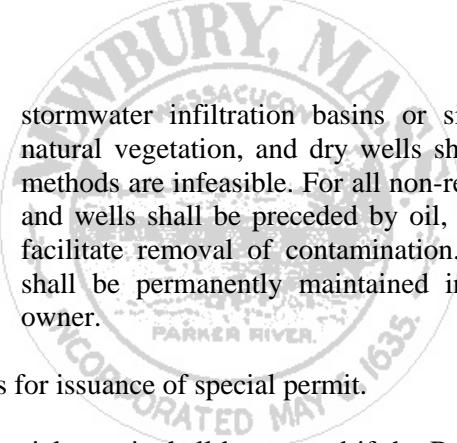
(4) Uses and Activities By Special Permit

(a) District boundary disputes:

- 01) If the location of the District boundary in relation to a particular parcel is in doubt or dispute, resolution of the boundary dispute shall be through a Special Permit application to the Zoning Board of Appeals. Any application for a special permit for this purpose shall be accompanied by adequate documentation;
- 02) The burden of proof shall be upon the owner(s) of the parcel in question to show where the bounds should properly be located. At the request of the owner(s), the Town may engage a professional civil or sanitary engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the District with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation;
- 03) The determination of the location and extent of Zone II shall be in conformance with the criteria set forth in 310 CMR 22.00 and in the DEP's Guidelines and Policies for Public Water Systems.

(b) The following uses and activities are allowed only upon the issuance of a Special Permit by the Board of Selectmen under such conditions as the Board may require:

- 01) Enlargement or alteration of existing uses that do not conform to the Water Supply Protection District;
- 02) Construction of dams or other water control devices, ponds, pools, or other changes in water bodies or courses, created for swimming, fishing, or other recreational uses, agricultural uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity;
- 03) 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 non-residential uses, recharge shall be by



stormwater infiltration basins or similar systems covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

(5) Procedures for issuance of special permit.

- (a) A special permit shall be granted if the Board of Selectmen determines, in conjunction with the Board of Health, the Conservation Commission, the Board of Water Commissioners, and the Planning Board, that the intent of this bylaw, as well as its specific criteria, are met. The Board of Selectmen shall not grant a special permit under this section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The Board of Selectmen shall document the basis for any departures from the recommendations of other Town boards in its decision.
- (b) Upon receipt of the special permit application, the Board of Selectmen shall transmit one copy each to the Board of Health, the Conservation Commission, the Board of Water Commissioners, and the Planning Board for their written recommendations. Failure to respond in writing within 35 days of receipt shall indicate approval or no desire to comment by said agencies. The requisite five (5) copies of the special permit application shall be furnished by the applicant.
- (c) The Board of Selectmen may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in § 97-11C of this bylaw, and any regulations or guidelines adopted by the Board of Appeals. The proposed use must:
  - 01) In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Supply Protection District; and
  - 02) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- (d) The Board of Selectmen may adopt specific requirements to govern design features of projects. Such requirements shall be consistent with all subdivision regulations adopted by the Planning Board.
- (e) The applicant shall file five (5) copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the Board of Appeals and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and

its attachments shall include, at a minimum, the following information where pertinent:

- 01) A non-refundable application fee of \$500, plus \$1000 or sufficient funds, as determined by the Board of Appeals, to ensure review of the plan as needed by independent engineers or other professions as provided in MGL Chapter 44 Section 53G. Said review fees shall be used only for engineering or other professional services related to the review of the permit application.
  - 02) 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.
  - 03) For those activities using or storing such hazardous materials, a Hazardous Materials Management Plan shall be prepared and filed with the Board of Health and Fire Chief. The Plan shall include:
    - a) 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;
    - b) Provisions for indoor, secured storage of hazardous materials and wastes on impervious floor surfaces;
    - c) Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30.00, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection;
- (f) Proposed down-gradient location(s) for groundwater monitoring well(s), should the Board of Selectmen deem the activity a potential groundwater threat;
- (g) The Board of Selectmen shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within 65 days after the filing of the application and after the review by the Town Boards, Departments, and Commissions. Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in MGL Chapter 40A, Section 11. The decision of the Board of Selectmen and any extension, modification, or renewal thereof shall be filed with the Board and Town Clerk within 90 days following the closing of the public hearing. Failure of the Board to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by said Section 11;

(h) Written notice of any violations of this Section shall be given by the Building Inspector 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. A copy of such notice shall be submitted to the Board of Health, Conservation Commission, Water Department, and Planning Board. The cost of containment, cleanup, or other action of compliance shall be borne by the owner and operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the Water Supply Protection District, the Building Inspector, the Board of Health, or their agents, may order the owner or operator of the premises to remedy the violation. If said owner and/or operator fails to comply with said order, the Building Inspector, the Board of Health, or their agents, if authorized to enter upon such premises under the terms of the special permit or otherwise, may act to remedy the violation. The cost of remediation shall be the sole responsibility of the owner and operator of the premises.

C. Wireless Communications Services Overlay District. [Added 4-24-2001 ATM Art. 26; amended 6-26-2001 STM Art. 7]

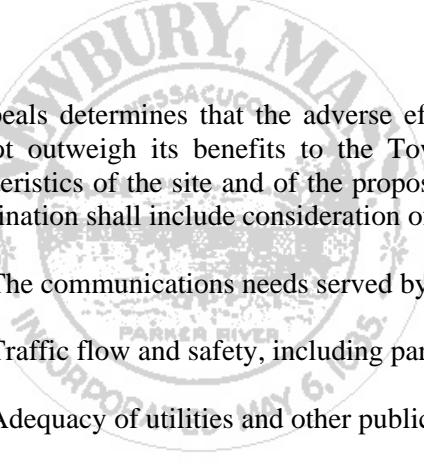
(1) Purpose:

(a) The purpose of this Zoning Bylaw is to establish a district in which wireless communications services may be provided while preserving and protecting the public health, safety and general welfare. For the purposes of this Zoning Bylaw it is anticipated that such services will be provided via wireless communications facilities that may include a tower, one or more antennas and one or more accessory structures. Specifically, the Wireless Communications Services District has been created to:

- 01) Protect the general public from hazards associated with wireless communications facilities;
- 02) Minimize visual impacts from wireless communications facilities;
- 03) Protect the scenic, historic, natural and human-made resources of the Town;
- 04) Protect property values.

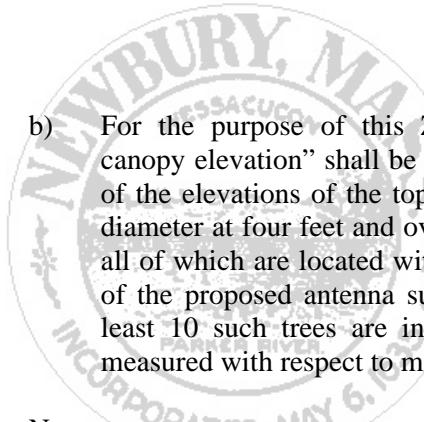
(2) Use Restrictions.

(a) A wireless communications facility may be erected by special permit in the Industrial and commercial highway districts by the Zoning Board of Appeals pursuant to the Town of Newbury Zoning Bylaws and subject to site plan approval as set forth in this Zoning Bylaw, if the Zoning Board



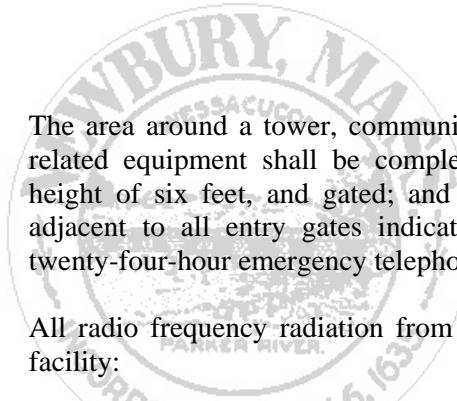
of Appeals determines that the adverse effects of the proposed facility will not outweigh its benefits to the Town in view of the particular characteristics of the site and of the proposal in relation to the site. Said determination shall include consideration of each of the following:

- 01) The communications needs served by the facility;
  - 02) Traffic flow and safety, including parking and loading;
  - 03) Adequacy of utilities and other public services;
  - 04) Impacts on neighborhood character, including aesthetics;
  - 05) Impacts on the natural environment, including visual impacts;
  - 06) Potential fiscal impacts, including impacts on Town services, tax base and employment;
  - 07) Potential human health hazards due to radio signal radiation, to the extent not contrary to federal law.
- (b) In addition, such facility may be erected in said district, subject to the following conditions:
- 01) To the extent feasible, all service providers shall collocate their antennas on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) technically practicable;
  - 02) New towers shall be considered only upon a finding by the Zoning Board of Appeals that existing or approved towers cannot accommodate the antennas planned for the proposed tower;
  - 03) Any new wireless communications facility tower shall be of the monopole type only; no lattice or guy-wire towers and no teleports shall be permitted, and the Zoning Board of Appeals may allow and/or limit the use and size of parabolic antennas and of repeaters;
  - 04) The highest point of any antenna support structure or of any antenna or any component thereof or attachment thereto shall not exceed 10 feet above the lesser of the preexisting significant tree canopy elevation or the proposed post-construction significant tree canopy elevation, as defined in section 97-4.C(2)(b)04)b) below;
    - a) If there is no significant tree canopy elevation, as defined in section 97-4C(2)(b)04)b) below, the maximum height of any antenna support structure or any antenna or any component thereof or attachment thereto shall not exceed 65 feet above finished grade of ground elevation.



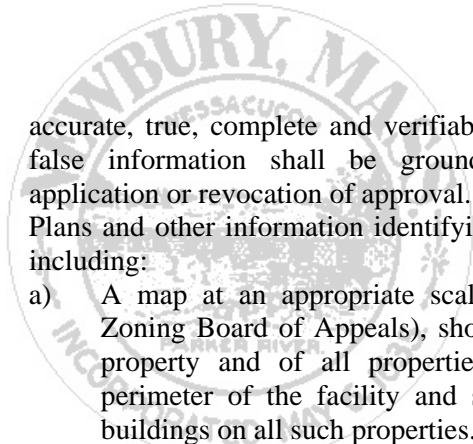
b) For the purpose of this Zoning Bylaw, "significant tree canopy elevation" shall be defined as the arithmetic average of the elevations of the tops of all trees at least 6 inches in diameter at four feet and over 20 feet tall in a stand of trees, all of which are located within a 150-foot radius of the base of the proposed antenna support structure, provided that at least 10 such trees are in said stand. Elevations shall be measured with respect to mean sea level datum.

- 05) No antenna, nor any support structure, nor any antenna or any component thereof or attachment thereto shall be located at a height in excess of 65 feet, unless there is such a significant tree canopy elevation, as defined in § 97-4C(2)(b)04)b) above.
- 06) Finished grades shall not be distorted above the preexisting natural grades as a way to achieve additional height.
- 07) A wireless communications facility shall not be erected nearer to any property line than a distance equal to the vertical height of the wireless communications facility, measured at the mean finished grade of the tower base.
- 08) To the extent feasible, all network interconnections from the wireless communications facility made via land lines shall be via underground lines.
- 09) Existing on-site vegetation shall be preserved to the maximum extent practicable.
- 10) The wireless communications facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Zoning Board of Appeals may impose reasonable conditions to ensure this result, including painting and lighting standards.
- 11) Traffic associated with the wireless communications facility shall not adversely affect abutting ways.
- 12) The applicant shall obtain written, legally valid and binding authorization for the use of each facility site from the owner thereof; and, where applicable, from the utility companies whose facilities are used; and from the Board of Selectmen with respect to public ways and Town-owned facilities.
- 13) Any antenna for use as a wireless communications facility shall not be installed, nor mounted on, nor attached to a new monopole tower or existing structure in any location that is within 900 feet of a lot line defining a parcel on which exists a dwelling, a school, a day-care center, a nursing home or an assisted or independent living facility.

- 
- 14) The area around a tower, communication equipment shelters and related equipment shall be completely fenced for security to a height of six feet, and gated; and a sign shall be posted on or adjacent to all entry gates indicating the facility owner and a twenty-four-hour emergency telephone number.
  - 15) All radio frequency radiation from any wireless communications facility:
    - a) Shall comply with Federal Communications Commission (FCC) Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation;
    - b) Shall comply with standards of the Massachusetts Department of Public Health (MDPH), the National Council for Radiation Protection and the American National Standards Institute, insofar as such standards are more strict or limiting as to permissible human exposure than are the FCC Guidelines and may lawfully be applied;
    - c) Shall be controlled and limited as to frequency and power so as not to cause interference, by inter-modulation or otherwise, with any Town facility or amateur facility;
  - 16) Noise generated by any wireless communications facility, including auxiliary generators, shall not exceed 50 db at ground level at the property line at any public way on which it is located.

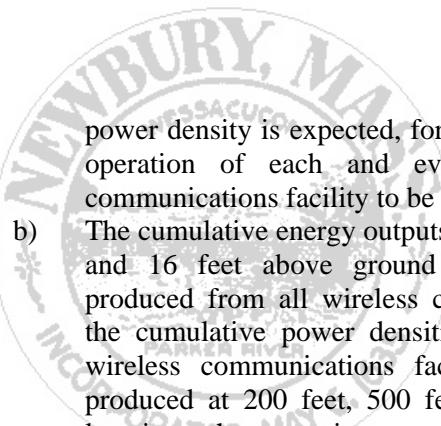
(3) Submittal requirements.

- (a) As part of any application for a special permit, applicants shall submit, at a minimum, the information required for site plan approval as set forth herein. Applicants shall also describe the capacity of any tower, including the number and types of antennas, number and types of radios and of channels per radio that it can accommodate, and the basis for the calculation of capacity and shall describe any accessory structures.
- (b) In addition, applicants shall submit:
  - 01) The name and address of the applicant and all agents of the applicant and of all legal and beneficial owners of the site or sites proposed for a wireless communication facility, copies of all instruments, options, contracts or encumbrances affecting ownership of the site or sites, together with the opinion of an attorney concerning the state of the title thereto, a copy of the applicant's FCC license, and an instrument executed by all persons or entities owning property at the site or sites agreeing that the applicant is authorized by them to make the application and agreeing to comply with provisions of this Zoning Bylaw.
  - 02) A statement signed by the applicant, on oath and under penalties of perjury, that all information included in the submittal is materially

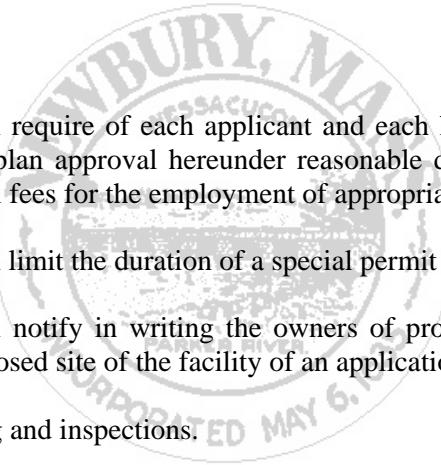


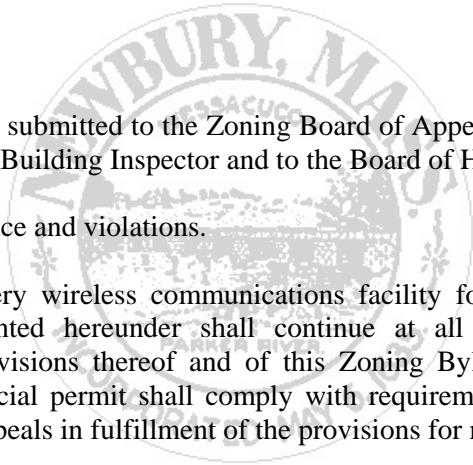
accurate, true, complete and verifiable. Inaccurate, misleading or false information shall be grounds for disapproval of the application or revocation of approval.

- 03) Plans and other information identifying the site or sites proposed, including:
  - a) A map at an appropriate scale (to be determined by the Zoning Board of Appeals), showing lot lines of the subject property and of all properties within 2,000 feet of the perimeter of the facility and showing the footprint of all buildings on all such properties.
  - b) Specification on a copy of the Town Maps of the zoning district, including any overlay district, applicable to such properties.
  - c) The heights of all existing buildings and structures on such properties and the height of any proposed new structure on the subject property.
  - d) Average height of existing free cover on such properties, specifying heights and principal species.
- 04) A map of the Town of Newbury, including all towns to a distance of five miles from Newbury boundaries, showing the locations of:
  - a) All existing wireless communications facilities.
  - b) All proposed wireless communications facilities the applicant expects to install and reasonably knows will be installed by other providers within the next 24 months following the submittal of the application.
- 05) A map showing:
  - a) The location of tree cover within 500 feet of the proposed facility.
  - b) Dominant tree species for each area of tree cover within 500 feet.
  - c) Topography contour lines at two-foot intervals to a distance beyond the proposed facility to be determined by the Zoning Board of Appeals, but not to exceed 1,000 feet, with reference contours to mean sea level datum.
- 06) True copies of all applications [to include any Massachusetts Notification of Non-ionizing Radiation Source, and/or any Massachusetts Combined Request for Approval under 105 CMR 122.000 (et seq.) and Massachusetts Employer Notification under 453 CMR 5.000, (et seq.), and the like] and information submitted to the Massachusetts Department of Health (MDPH) Radiation Control Program, or any other subdivision of the MDPH, approval letter and any other notice from said Department or subdivisions and any revisions thereof; and true copies and any revisions thereof of all similar applications, notices, etc., submitted to the FCC.
- 07) A complete specification certified by a radio frequency engineer licensed by the Commonwealth of Massachusetts of:
  - a) The energy outputs at ground level and at six feet and 16 feet above ground level, actual and potential, and the power densities at ground level and at six feet and 16 feet above ground level, actual and potential, produced at 200 feet, 500 feet and 1,000 feet and at the location where maximum



- power density is expected, for each antenna sector, from the operation of each and every proposed new wireless communications facility to be added.
- b) The cumulative energy outputs at ground level and at six feet and 16 feet above ground level, actual and potential, produced from all wireless communications facilities, and the cumulative power densities from the operation of all wireless communications facilities, actual and potential, produced at 200 feet, 500 feet and 1,000 feet and at the location where maximum power density is expected, for each antenna sector, from the operation of all wireless communications facilities, including any proposed new wireless communications facility.
  - c) With respect to such actual energy outputs and power densities, the data contained in such specification shall be from actual field measurements made within 30 days before the applicant submits the special permit/site plan review and approval application.
- 08) The beam widths at ground level for the energy outputs from each antenna sector and the degree of down-tilt of each antenna.
  - 09) A complete description, including, but not limited to, data, drawings, catalogs, brochures, manufacturers' specifications, photographs and all other pertinent information relevant to the proposal describing antennas, equipment mounts and all other equipment and structures proposed for the site or related to the proposal; plus all of the information required by By-law.
  - 10) Data as to noise, certified by an acoustical engineer, specifying in decibels Ldn (logarithmic scale) both existing or ambient noise at each proposed site and the maximum noise to occur, comprising the aggregate of that existing and that resulting from the proposed wireless communications facility.
  - 11) An environmental assessment meeting the standards set forth in § 97-4C(2)(b)(16), and the environmental assessment requirements of the FCC, together with evidence that the same has been submitted to and approved by the FCC.
- (4) Review and action by the Zoning Board of Appeals. The Zoning Board of Appeals shall review and act upon an application for a special permit and site plan review and approval for a wireless communications facility in accordance with applicable provisions of MGL c. 40A, §§ 9 and 11; and in accordance with this Zoning Bylaw; and:
- (a) Shall make such investigation as it deems appropriate to determine whether the application meets the requirements of § 97-4C(2) and § 97-4C(3);
  - (b) May engage a radio frequency engineer, an acoustic engineer and such other professional consultants as it deems necessary to assist and advise it in its investigation and determination, whose services will be paid for by the applicant;

- 
- (c) Shall require of each applicant and each holder of a special permit and site plan approval hereunder reasonable deposit for and reimbursement of all fees for the employment of appropriate consultants;
- (d) Shall limit the duration of a special permit to three years;
- (e) Shall notify in writing the owners of properties within 900 feet of the proposed site of the facility of an application for a special permit.
- (5) Monitoring and inspections.
- (a) The applicant shall be required to float a balloon or use a crane test at the location of a proposed tower or antenna to show its height and visibility. Such test shall be conducted two weeks prior to the public hearing and shall be advertised at the applicant's expense in a newspaper of general circulation in Newbury at least one week prior to the test. Written notice of the test shall also be given to the owners of property within 900 feet of the proposed site.
- (b) Photo documentation after construction of the facility and just prior to becoming operational shall be required.
- (c) Prior to beginning operation of the wireless communications facility, background levels of electromagnetic frequency radiation shall be monitored for each antenna sector at ground level and at six feet and sixteen feet above ground level for points that are at 200 feet, 500 feet and 1,000 feet from the facility and at the locations where maximum power density is predicted, as listed in the application.
- (d) After operation of the facility has commenced, random monitoring of radio frequency and acoustic emissions shall be required. Electromagnetic frequency radiation shall be monitored for each antenna sector at ground level and at six feet and 16 feet above ground level for points that are at 200 feet, 500 feet and 1,000 feet from the facility, at the locations where maximum power density was predicted, as listed in the application, and at the locations where maximum power density occurs.
- (e) Inspection of the structural integrity and safety of all towers and equipment attached thereto shall be required. Monopoles shall be inspected every five years. Structures mounted on or attached to existing towers shall be inspected every three years. Any modification of an existing facility that includes changes to tower dimensions or antenna numbers or type shall require a new structural inspection.
- (f) All required monitoring and inspections shall be performed by appropriate independent consultants selected by the Zoning Board of Appeals and paid for by the applicant/owner. Said consultants shall use monitoring and inspection protocols as outlined in applicable wireless communication facilities regulations or, in the absence of such regulations, as specified by the Zoning Board of Appeals. Reports of all monitoring and inspection results shall be prepared by the consultants



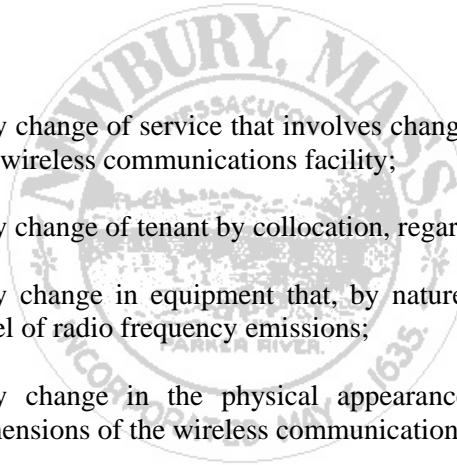
and submitted to the Zoning Board of Appeals, to the Planning Board, to the Building Inspector and to the Board of Health.

(6) Compliance and violations.

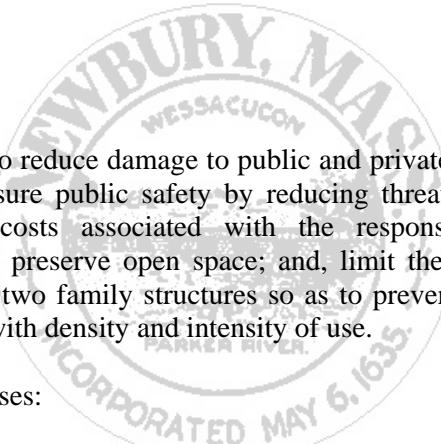
- (a) Every wireless communications facility for which a special permit is granted hereunder shall continue at all times to comply with the provisions thereof and of this Zoning Bylaw; and the holder of such special permit shall comply with requirements of the Zoning Board of Appeals in fulfillment of the provisions for monitoring herein.
- (b) Every wireless communications facility and every application for a special permit for such facility shall comply with all other applicable provisions of this Zoning Bylaw, including, without limitation, requirements with respect to:
  - 01) The permit application;
  - 02) Special permits;
  - 03) Signs and exterior lighting;
  - 04) Site plan approval.
- (c) Wireless communications facilities shall comply with such standards applicable thereto as may from time to time be imposed by the Board of Health, to the extent that such standards are not contrary to federal or state laws.
- (d) The applicant shall be bound in the special permit and site plan approval processes and thereafter by the energy outputs and power densities at the locations as set forth in the special permit and site plan review and approval application and also with respect to the information contained in the application to the Radiation Control Program of the MDPH.
- (e) If a wireless communications facility is determined to be in violation of any of the provisions of the special permit and/or site plan approval or any other applicable law or regulation, the Zoning Board of Appeals shall cause to be served on the operator of the facility and the owner of the land on or from which the violation is caused notice of such violation.

(7) Modifications. Any changes or modifications to an already approved wireless communications facility shall be made through the special permit/site plan review and approval process. All such changes or modifications shall include:

- (a) Any change of personal wireless services as defined in the Federal Communications Act of 1996, other than allowed under an existing special permit;

- 
- (b) Any change of service that involves changing the physical appearance of the wireless communications facility;
- (c) Any change of tenant by collocation, regardless of the type of service;
- (d) Any change in equipment that, by nature of the change, increases the level of radio frequency emissions;
- (e) Any change in the physical appearance, physical characteristics or dimensions of the wireless communications facility;
- (f) Any change in or deviation from the existing special permit;
- (g) Written notice to owners of abutting properties within 900 feet of an application to modify an existing permit.
- (8) Liability insurance; removal and removal bond.
- (a) The special permit shall include a condition that any wireless communications services provider that operates a wireless communications facility in the Town of Newbury shall provide, for each such wireless communications facility, a certificate of insurance for bodily injury, in a form acceptable to the Zoning Board of Appeals, with coverage limits of not less than \$5,000,000. For good cause, and after notice and a public hearing, the Zoning Board of Appeals may, from time to time, require the owner to increase the limits of such coverage.
- (b) If a wireless communications facility is not substantially in commercial operation for a period of one year, it shall be removed, and the site shall be returned to its preexisting condition by the owner of the facility and/or by the owner of the site within 180 days of notice by the Town. As part of an application for any wireless communications facility, a plan shall be submitted detailing how the site will be returned to its preexisting conditions, including planting of replacement trees, grading and removal of all structures and waste and any other work that may be required by the Zoning Board of Appeals, with a bond to be held by the Town, the amount of which shall be determined by the Zoning Board of Appeals. If the facility is not removed within said 180 days, the Town shall be empowered to use said bond for the removal of said facility.
- (9) Exemption.
- (a) The following type of wireless communications towers are exempt from this Zoning Bylaw: amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, provided that the tower is not used or licensed for any commercial purpose.
- (b) Wireless communications facilities constructed by the Town of Newbury for municipal public safety communications purposes.

D. Plum Island.



(1) Purpose: To reduce damage to public and private property resulting from flood waters; ensure public safety by reducing threats to life and personal injury; eliminate costs associated with the response and cleanup of flooding conditions; preserve open space; and, limit the expansion of nonconforming single and two family structures so as to prevent the exacerbation of existing problems with density and intensity of use.

(2) Allowed Uses:

- (a) Municipal uses owned or operated by the Town of Newbury;
- (b) Single family dwellings, subject to the dimensional requirements set forth in the table below:

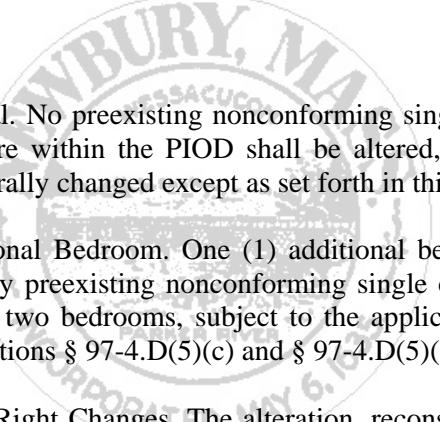
01)	Maximum Building Height	35 feet*
02)	Maximum Number of Stories	2
03)	Maximum Floor Area Ratio	0.25
04)	Maximum Lot Coverage by Buildings	20%

\* See height definition section 97-11D.

- (3) Prohibited uses: Any use not set forth in § 97-4D(2) is prohibited in the PIOD.
- (4) Nonconforming uses and structures, excluding single and two-family structures: The provisions of the PIOD shall not apply to pre-existing nonconforming structures or uses lawfully in existence as of [date of enactment].<sup>5</sup> Nonconforming uses and structures within the PIOD shall not be enlarged or extended; provided, however, that the following types of changes or alterations to nonconforming uses or structures may be authorized upon a finding by the Board of Appeals in the PIOD:
  - (a) Change of a pre-existing nonconforming use;
  - (b) Change of a pre-existing nonconforming use to another, less detrimental, nonconforming use;
  - (c) Reconstruction or structural change to a nonconforming structure;
  - (d) Alteration of a nonconforming structure to provide for a substantially different purpose or for the same purpose in a substantially different manner.
- (5) Non-conforming single and two-family residential structures.

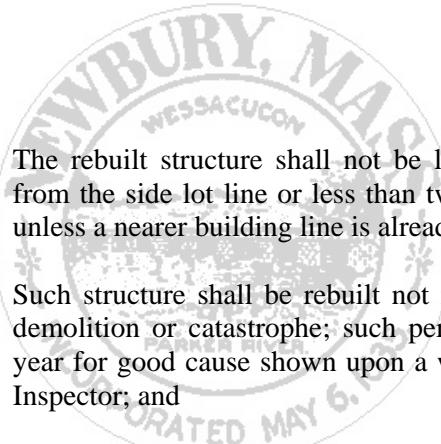
---

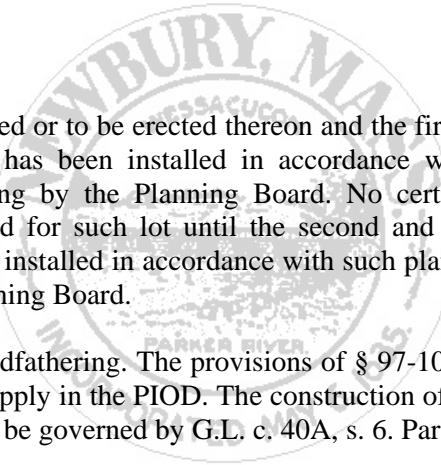
<sup>5</sup> Editor's Note: So in original. This chapter was last amended 4-27-1999 ATM by Art. 25; reorganized 5-22-2007 ATM by Art. 23.

- 
- (a) General. No preexisting nonconforming single or two-family residential structure within the PIOD shall be altered, reconstructed, extended, or structurally changed except as set forth in this § 97-4D(5).
- (b) Additional Bedroom. One (1) additional bedroom may be created in a lawfully preexisting nonconforming single or two-family structure with one or two bedrooms, subject to the applicable regulations set forth in Subsections § 97-4.D(5)(c) and § 97-4.D(5)(d).
- (c) As of Right Changes. The alteration, reconstruction, or extension of, or change to such structures may be authorized upon the issuance of a building permit where the Building Inspector determines that such alteration, reconstruction, extension or change shall:
- 01) Not increase the footprint of the existing structure; and
  - 02) Not exceed the height of the existing structure, or 35 feet (See height definition section 97-11D), whichever is lower.
- (d) Special Permit. The alteration, reconstruction, extension of, or change to such structures to an extent other than that authorized by Subsection § 97-4D(5)(c), may be authorized upon a finding by the Board of Appeals that such alteration, reconstruction, extension, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood or the PIOD. The Board of Appeals shall not make a positive finding for any alteration, reconstruction, extension of, or change to such structures that would cause such structure to be located less than ten (10) feet from the side lot line or less than twenty (20) feet from the street unless a nearer building line is already established by existing buildings or would add bedrooms in excess of the provisions of § 97-4D(5)(b).
- (e) Catastrophe or Demolition: Rebuilding As of Right. A nonconforming single or two-family residential structure may be demolished and rebuilt or rebuilt after<sup>6</sup> destroyed or damaged by a catastrophe; provided, however, that
- 01) The rebuilt structure shall not exceed the total volume of all demolished or destroyed structures on the locus; and
  - 02) The rebuilt structure shall not exceed the height of the tallest demolished or destroyed structure on the locus; and
  - 03) The rebuilt structure shall not contain more than the total number of bed rooms in all demolished or destroyed structures on the locus; provided, however, that one (1) additional bedroom may be created where the total number of bedrooms before the catastrophe or demolition was one or two and a bedroom had not been added under §97-4D(5)(b); and

---

<sup>6</sup> Editor's Note: So in original.

- 
- 04) The rebuilt structure shall not be located less than ten (10) feet from the side lot line or less than twenty (20) feet from the street unless a nearer building line is already by existing buildings; and
- 05) Such structure shall be rebuilt not more than two years after the demolition or catastrophe; such period may be extended for one year for good cause shown upon a written request to the Building Inspector; and
- 06) Any such rebuilding shall be subject to the provisions of § 95-4 A and § 95-4 B of the Newbury Wetlands By-Law; and
- 07) structures within the FEMA V-Zone or AO Zone are not eligible for such findings under the provisions of § 95-4 A and § 95-4 B; of the Newbury Wetlands By-Law.
- (f) Catastrophe or Demolition: Rebuilding after a Finding. A nonconforming single or two-family residential structure may be demolished and rebuilt or rebuilt after destroyed or damaged by a catastrophe so as to exceed the total volume of all demolished or destroyed structures on the locus and/or exceed the height of the tallest demolished or destroyed structure on the locus upon a finding by the Board of Appeals.
- 01) Such structure shall be rebuilt not more than two years after such finding; such period may be extended for one year for good cause shown upon a written request to the Building Inspector.
- 02) Such finding shall be made only upon the determination that the proposed alteration to the nonconforming structure or use shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood or the PIOD.
- 03) The rebuilt structure shall not contain more than the total number of bedrooms in all demolished or destroyed structures on the locus; provided, however, that one (1) additional bedroom may be created where the total number of bedrooms before the catastrophe or demolition was one or two and a bedroom had not been added under § 97-4D(5)(b).
- (g) Frontage: No building permit for a single family residential structure within the PIOD shall be issued unless the lot to be built upon has frontage on a street.
- (h) Unconstructed ways: No building permit shall be issued for a lot with frontage on an unconstructed way which does not qualify as a "street" until the Planning Board approves a plan, prepared by the applicant, demonstrating that the proposed way has sufficient width and suitable grades to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the building

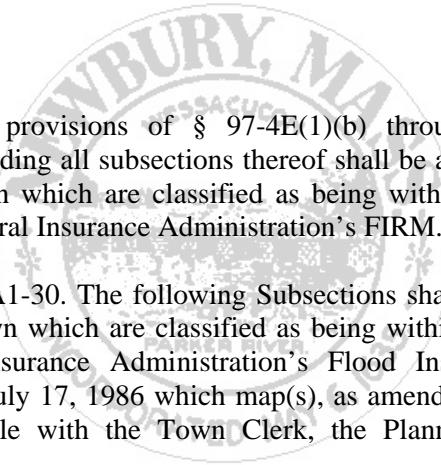


erected or to be erected thereon and the first course of pavement for such way has been installed in accordance with such plan, as certified in writing by the Planning Board. No certificate of occupancy shall be issued for such lot until the second and final course of pavement has been installed in accordance with such plan, as certified in writing by the Planning Board.

- (i) Grandfathering. The provisions of § 97-10B of the Zoning By-Law shall not apply in the PIOD. The construction of single residences in the PIOD shall be governed by G.L. c. 40A, s. 6. Para. 4.
- (j) The Board of Appeals may grant use variances within the PIOD provided the Board of Appeals finds that the proposed use is not more detrimental than the current use.

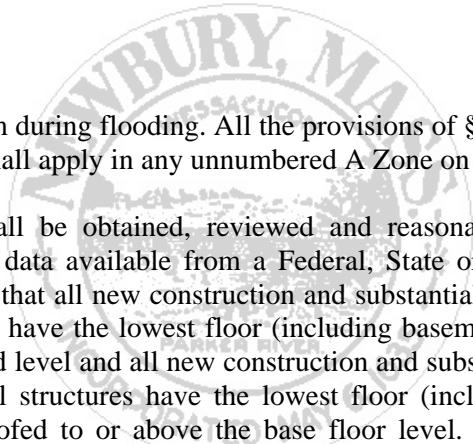
E. Flood Zone.

- (1) In all zones V1-30. The following Subsections shall be applicable in all districts of the Town which are classified as being within Zones V1-30 (coastal high hazard area) on the special Federal Insurance Administration's Flood Insurance Rate Maps(FIRM), effective\* July 17, 1986\* which map(s), as amended from time to time, shall be kept on file with the Town Clerk, the Planning Board and the Building Inspector, the following subsections shall be applicable:
  - (a) With respect to all new or substantially improved structures, the application and plans for the building permit shall provide the elevation (in relation to mean sea level) of the lowest habitable floor (including basement), whether or not such structures contain a basement and, if the structure is to be or has been flood-proofed, provide the elevation (in relation to mean sea level) to which the structure is or has been flood-proofed;
  - (b) All new construction shall be located landward of the reach of mean high tide;
  - (c) (Reserved)
  - (d) (Reserved)
  - (e) The use of fill for structural support of buildings or other structures shall be prohibited;
  - (f) The placement of mobile homes or house trailers shall be prohibited;
  - (g) Man-made alterations of sand dunes and/or mangrove stands which would increase potential flood damage shall be prohibited;

- 
- (h) The provisions of § 97-4E(1)(b) through § 97-4.E.1.C inclusive,<sup>7</sup> including all subsections thereof shall be applicable in all districts of the Town which are classified as being within Zone V1-30 on the special Federal Insurance Administration's FIRM. 4-15-86;
- (2) In Zones A1-30. The following Subsections shall be applicable in all districts of the Town which are classified as being within Zones A1-30 on the special Federal Insurance Administration's Flood Insurance Rate Maps (FIRM), effective July 17, 1986 which map(s), as amended from time to time, shall be kept on file with the Town Clerk, the Planning Board and the Building Inspector:
- (a) (Reserved)
  - (b) (Reserved)
  - (c) (Reserved)
  - (d) (Reserved)
  - (e) Until such time as a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development when combined with all other existing and anticipated development, will not increase the water surface elevation of the base more than 1 foot at any point with the Town of Newbury.
  - (f) (Reserved)
  - (g) (Reserved)
- (3) More restrictive regulations to apply. Where the flood area regulations set forth in § 97-4E., including all sections thereof, impose greater or lesser restrictions or requirements than those of other applicable By-Laws or regulations, whether Federal, State or local, the more restrictive restrictions or requirements shall be applicable.
- (4) Applicability; data; texts and maps. The provisions of this sub-section shall apply in all unnumbered A Zones, Zones A1-30 and Zones VI-30. All proposed developments shall be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and all new and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and on-site waste disposal systems shall be located to avoid impairment to them or contamination

---

<sup>7</sup> Editor's Note: So in original.



from them during flooding. All the provisions of § 97-4E(2) and all subsections thereof shall apply in any unnumbered A Zone on the FIRM.

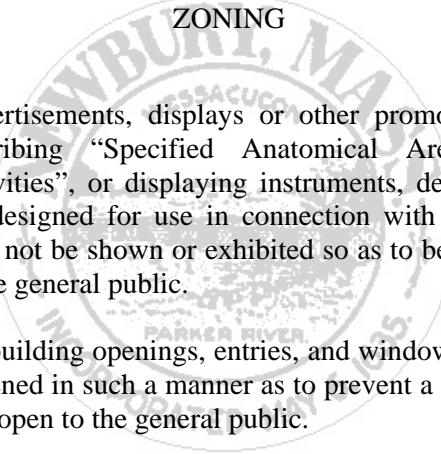
- (5) There shall be obtained, reviewed and reasonably utilized any base flood elevation data available from a Federal, State or other source as criteria for requiring that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood level and all new construction and substantial improvements of non-residential structures have the lowest floor (including basement) elevated or flood-proofed to or above the base floor level. The building Inspector shall obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, obtain, if the structure had been flood-proofed, the elevation to which it has been flood-proofed, and shall maintain a record of all such information.
- (6) Texts and maps may be inspected at the Town Hall, 25 High Road, Newbury, Massachusetts.
- (7) Floodway provisions. In the floodway, designated on the FIRM and the Floodway Maps the following provisions shall apply:
  - (a) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood;
  - (b) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code;
  - (c) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, is prohibited in the floodway.
- (8) Flood Zone Variances.
  - (a) The Permit Granting Authority may grant a variance from the requirements of Article VIII including all sections thereof, subject to the requirements of Massachusetts General Laws, Chapter 40A, § 97-11B of this By-law and upon the following conditions and restrictions:
  - (b) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or on a State Inventory of Historic Places without regard to the procedures hereinafter set forth;
  - (c) No variance shall be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;
  - (d) Variances may be issued only for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level;
  - (e) Variances shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variances would result in exceptional hardship to the applicant and a determination that the granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expenses, create

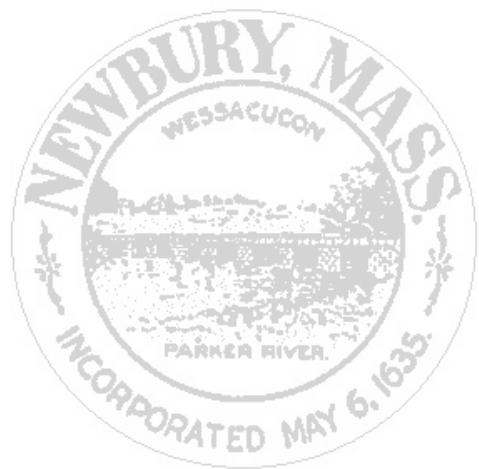
nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances, other than the provisions of § 97-4E, together with all sections thereof, of this By-Law;

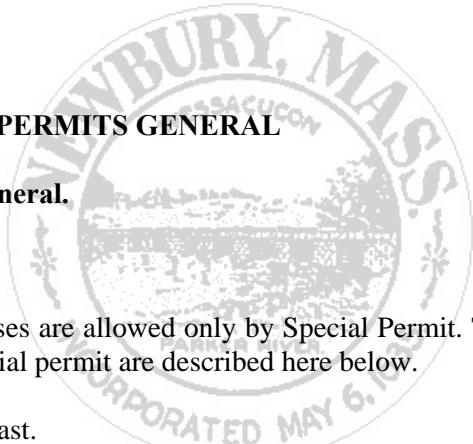
- (f) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford the relief requested;
- (g) The Permit Granting Authority shall notify the applicant for a variance in writing over the signature of the Chairman of the Permit Granting Authority that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and such construction below the base flood level increased risks to life and property. Such notification shall be maintained with the records of all variance actions maintained pursuant to requests for variances from the provisions of § 97-4E, together with all sections thereof.

F. Adult Entertainment.

- (1) Nothing herein contained is intended or shall be construed to prohibit and/or limit the use of the land within this district for those uses permitted in an Industrial District.
- (2) Location limitations of Adult Entertainment Businesses. No person shall establish or cause or permit to be established an Adult Entertainment Business within One Thousand Five Hundred feet (1500') of any other building or structure containing another Adult Entertainment Business nor within Seven Hundred Fifty feet (750') of any public or private school, public or private park or recreation area, public or private buildings with programs for minors, or religious institution, elder housing, library, hospital or emergency medical treatment clinic nor within Five Hundred feet (500') of an existing residence or residential use.
- (3) Requirements. No person shall establish or cause or permit to be established an Adult Entertainment Business without fulfilling each of the following requirements:
  - (a) Special use permit – In appropriate cases and subject to appropriate conditions or safeguards and limitations on time and use, the Board of Selectmen may grant a Special Permit to conduct an Adult Entertainment Business within the Industrial District A. Such Special Permit must be renewed annually.
  - (b) License and/or permit requirement – No person shall conduct an Adult Entertainment Business without first obtaining any and all necessary licenses and permits.
- (4) Conditions and Standards. Adult Entertainment Businesses shall comply with all of the following conditions and standards:

- 
- (a) Advertisements, displays or other promotional materials depicting or describing "Specified Anatomical Areas", or "Specified Sexual Activities", or displaying instruments, devices, or paraphernalia which are designed for use in connection with "Specified Sexual Activities" shall not be shown or exhibited so as to be visible from other areas open to the general public.
- (b) All building openings, entries, and windows shall be located, covered, or screened in such a manner as to prevent a view into the interior from any area open to the general public.
- (c) All entrances shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.
- (d) No loudspeakers or sound equipment shall be used for the amplification of sound to a level discernible by the public beyond the walls of the building in which the use is conducted.
- (e) All exterior areas, including buildings, landscaping and parking areas, shall be maintained in a clean and orderly manner.
- (f) An Adult Entertainment Business shall not remain open for business, or permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of 1:00 AM. and 10:00 AM of any particular day. These hours of operation may be further restricted in the conditions approving the Special Use Permit.
- (5) No Adult Entertainment Business shall be established:
- (a) On any lot of less than 60,000 square feet with a frontage of not less than 200 feet. Not more than 20% of the minimum lot area (example: 12,000 sq. ft. of a 60,000 sq. ft. lot) shall be in wetlands. Such wetlands are defined in M.G.L., Chapter 131, Section 40 as amended, and include without limitation bogs, swamps, marshes, wet meadows, and areas of flowing or standing water, sometimes intermittent, and are characterized by their distinctive soils, including but not limited to peat or muck or by the existence of plant communities which require the presence of water at or near ground surface for the major portion of the year. Such plant communities are those described in M.G.L., Chapter 131, Section 40, as amended;
- (b) Any building utilized for an Adult Business shall be set back from its street line not less than 100 feet and from its side or rear boundaries not less than 50 feet nor shall exceed 35 feet in height as measured from the mean level of the established grade to the mean height of the roof, nor shall occupy more than 25% of the lot area;
- (c) Parking shall be in accordance with Parking Requirements Table 97-7B.





## **ARTICLE V – SPECIAL PERMITS GENERAL**

### **§ 97-5. Special Permits General.**

#### **A. General.**

- (1) Certain uses are allowed only by Special Permit. The specific requirements for each special permit are described here below.

#### **B. Bed and Breakfast.**

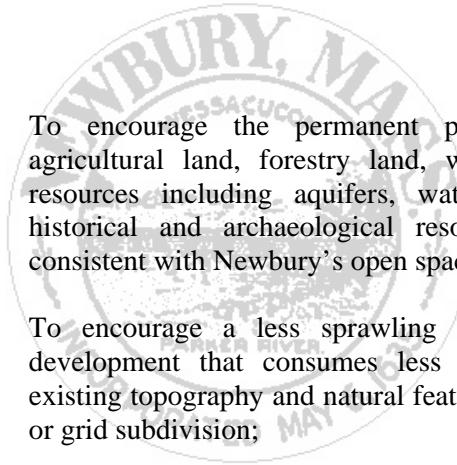
- (1) Requirements. After an initial Public Hearing and with a special permit granted from the Board of Selectmen, to be renewed annually, an owner-occupied and operated dwelling of residential character may be used as a Bed and Breakfast for the lodging of overnight guests provided such dwelling and the operation thereof meets all of the following conditions:
  - (a) Said Bed and Breakfast shall not have more than four bedrooms (excluding the owner's private quarters).
  - (b) Guest rooms shall contain no individual cooking facilities.
  - (c) Breakfast may be provided to guests from a central kitchen and shall be limited to those who are permanent residents and paying overnight guests.
  - (d) The use of said Bed and Breakfast shall be clearly incidental to the primary residential use of the dwelling.
- (2) The purpose of this By-Law is to allow the use of larger homes as a Bed and Breakfast, but the intent is not to allow structural or appearance changes to facilitate this use.
- (3) The applicant must demonstrate that no visible exterior alterations will occur; that adequate parking can be provided; and that the structure and use conform to all pertinent Board of Health and Board of Fire Engineers Regulations, and to the Regulations of any other body that may have jurisdiction

#### **C. Open Space Residential Development.**

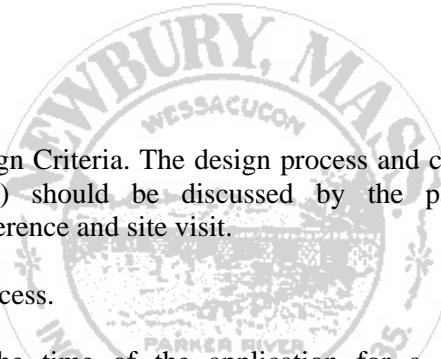
**[Added 4-24-2001 ATM, Art. 27; amended 4-22-2003 ATM Art. 6]**

- (1) Purpose and intent.

- (a) The Primary Purposes for the Open Space Residential Development (OSRD) bylaw are the following:
    - 01) To allow for greater flexibility and creativity in the design of residential developments.

- 
- 02) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical and archaeological resources in a manner that is consistent with Newbury's open space plan;
- 03) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
- 04) To minimize the total amount of disturbance on the site;
- 05) To further the goals and policies of the open space plans;
- 06) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.
- (b) The Secondary Purposes for OSRD are the following:
- 01) To preserve and enhance the community character;
- 02) To protect the value of real property;
- 03) To provide for a diversified housing stock;
- 04) To provide affordable housing to persons of low and moderate income.
- (2) Eligibility.
- (a) Any development that will create more than four lots or units shall submit an application for OSRD to the Planning Board. The applicant shall have the option of development under the conventional subdivision process or under the OSRD.
- (b) Contiguous Parcels. To be eligible for consideration as an OSRD, the tract shall consist of a parcel or set of contiguous parcels.
- (c) Land Division. To be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, §81P provided, however, that an OSRD may also be permitted where intended as a condominium on land not so divided or subdivided.
- (3) Special permit required. The Planning Board may authorize an OSRD pursuant to the grant of a special permit. Such special permits shall be acted upon in accordance with the following provisions.
- (4) Pre-application.

- (a) Conference. The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the preapplication review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the applicant and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD special permit.
- (b) Submittals. In order to facilitate review of the OSRD at the preapplication stage, applicants are strongly encouraged to submit the following information:
- 01) Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.
  - 02) Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature un-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict;
  - 03) Other Information. In addition, applicants are invited to submit the information set forth in § 97-5C(5) in a form acceptable to the Planning Board.
- (c) Site Visit. Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate preapplication review of the OSRD. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission.

- 
- (d) Design Criteria. The design process and criteria set forth in § 97-5C(5) should be discussed by the parties at the pre-application conference and site visit.

(5) Design process.

- (a) At the time of the application for a special permit for OSRD in conformance with § 97-5C(6)(a), applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a multidisciplinary team of which one member must be a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

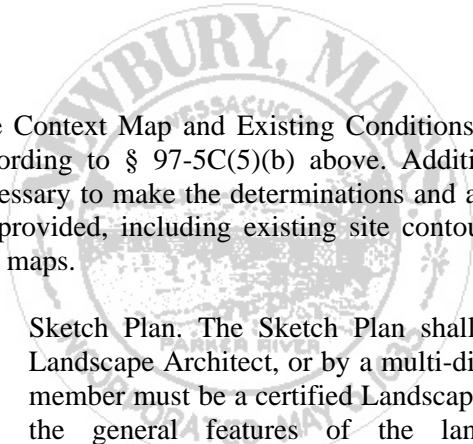
- 01) Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.
- 02) Step Two: Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns. The number of homes or units if<sup>8</sup> a condominium proposal enjoying the amenities of the development should be maximized.
- 03) Step Three: Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
- 04) Step Four: Draw in the lot lines, if not treated as a condominium.

(6) Procedures.

- (a) Application. An application for a special permit for an OSRD shall be submitted on the form(s) provided by the Planning Board in accordance with the rules and regulations of the Board. Applicants for OSRD shall also file with the Planning Board eight copies of the Concept Plan. The Concept Plan shall include a Sketch Plan and a Yield Plan [see Subsection -1 and -2 of this section]. The applicant shall submit both the

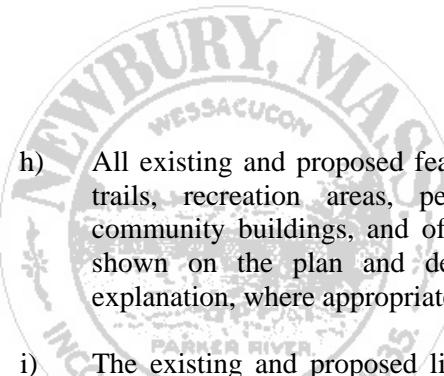
---

<sup>8</sup> Editor's Note: So in original.

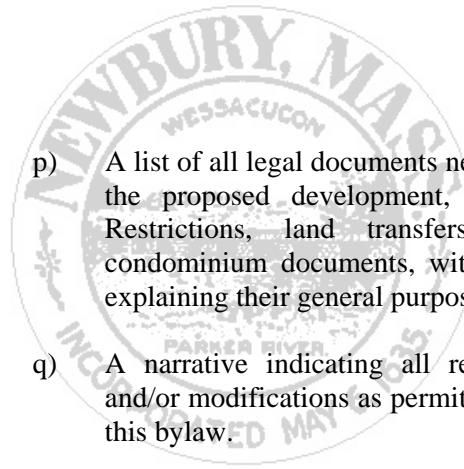


Site Context Map and Existing Conditions/Site Analysis Map prepared according to § 97-5C(5)(b) above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

- 01) Sketch Plan. The Sketch Plan shall be prepared by a certified Landscape Architect, or by a multi-disciplinary team of which one member must be a certified Landscape Architect, and shall address the general features of the land, and give approximate configurations of the lots, of unit placements if treated as a condominium, of open space, and roadways. The Sketch Plan shall incorporate the Four-Step Design Process, according to § 97-5C(5) above, and the Design Standards, according to § 97-5C(10) below, when determining a proposed design for the development. The Sketch Plan shall include the following:
  - a) The subdivision name, boundaries, north point, date, legend, title “Concept Plan,” and scale;
  - b) The name and address of the record owner or owners, the applicant, and the Landscape Architect or other designer that prepared the plan;
  - c) The names, approximate location, and widths of adjacent streets;
  - d) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referred to mean sea level;
  - e) The location of existing landscape features, including forests, farm fields, meadows, wetlands, riverfront areas, waterbodies, archaeological and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major land views, forest glades, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified as primary and secondary resources according to § 97-5C(5)(a). Proposals for all site features to be preserved, demolished, or moved shall be noted on the Sketch Plan;
  - f) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan;
  - g) Lines showing proposed private residential lots, as located during Step Four, § 97-5C(5)(d), with approximate areas and frontage dimensions, or unit placements and proposed common areas;



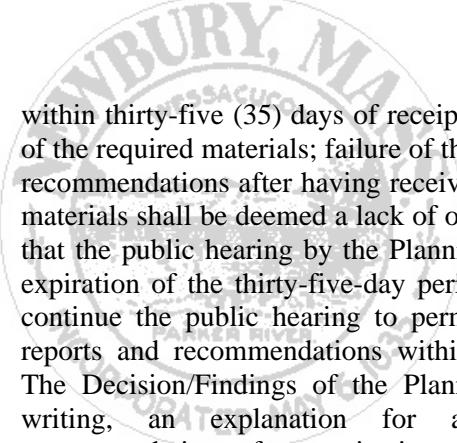
- h) All existing and proposed features and amenities, including trails, recreation areas, pedestrian and bicycle paths, community buildings, and off-street parking areas shall be shown on the plan and described in a brief narrative explanation, where appropriate;
- i) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or unit development, or parcels of land or lots to be used for any purpose other than private residential shall be so designated within the subdivision in a general manner;
- j) Proposed roadway grades;
- k) Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the Planning Board. However, a narrative explanation shall be prepared by a certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized;  
**[Amended 6-22-2004 STM, Art. 7]**
- l) A narrative explanation prepared by a certified Professional Engineer proposing systems for stormwater drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether soft or hard engineering methods will be used and the number of any detention/retention basins or infiltrating catch basins; it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan;
- m) A narrative explanation prepared by a certified Professional Engineer, detailing the proposed drinking water supply system;
- n) A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan;
- o) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative;



- p) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds or condominium documents, with an accompanying narrative explaining their general purpose;
  - q) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.
- 02) Yield Plan. Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to § 97-5C(7), Basic Maximum Number (of lots/units).
- 03) Relationship between Concept Plan and Definitive Subdivision Plan. The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:
- a) An increase in the number of building lots and/or units;
  - b) A significant decrease in the open space acreage;
  - c) A significant change in the lot layout or unit placement;
  - d) A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
  - e) Significant changes to the stormwater management facilities; and/or
  - f) Significant changes in the wastewater management systems.

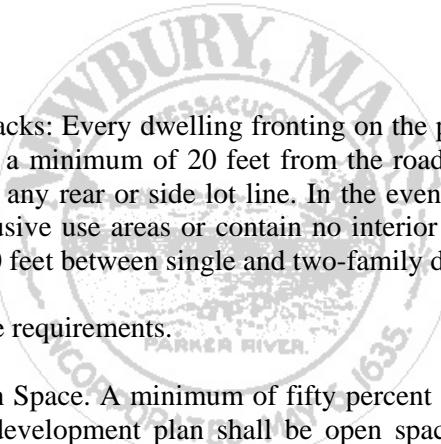
(b) Procedures.

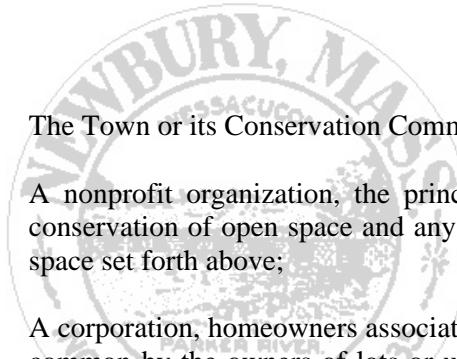
- 01) Whenever an application for an OSRD special permit is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation, to the Board of Health, Conservation Commission, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board

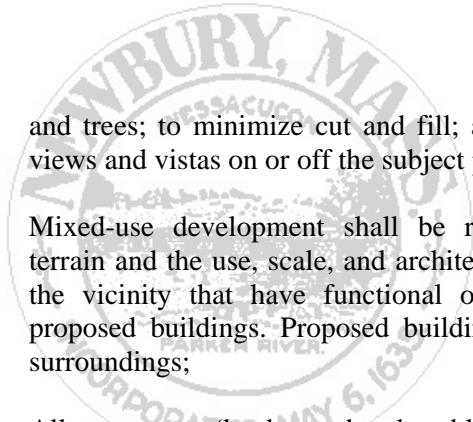


within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty-five-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

- (c) Site Visit. Whether or not conducted during the pre-application stage, the Planning Board shall conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.
  - (d) Other Information. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for an OSRD with the public hearing required for approval of a definitive subdivision plan.
- (7) Basic maximum number of lots. The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The Yield Plan shall contain the information required for a Sketch Plan as set forth above in § 97-5C(6). The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots resulting from the design and engineering specifications shown on the Yield Plan.
- (8) Reduction of dimensional requirements. The Planning Board encourages applicants to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:
- (a) Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw;
  - (b) At least 50% of the required setbacks for the district shall be maintained in the OSRD unless a reduction is otherwise authorized by the Planning Board. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet;
  - (c) Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage;

- 
- (d) Setbacks: Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In the event that dwellings are located on exclusive use areas or contain no interior lot lines, a minimum distance of 20 feet between single and two-family dwellings shall be required.
- (9) Open space requirements.
- (a) Open Space. A minimum of fifty percent (50%) of the upland shown on the development plan shall be open space. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a permanent conservation or agricultural preservation restriction in accordance with G.L. c. 184 § 31, approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes. Any proposed open space that does not qualify for inclusion in the Conservation Restriction or that is rejected from inclusion in the Conservation Restriction by the State of Massachusetts will be subject to a Restrictive Covenant, that shall be approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town. **[Amended 6-22-2004 STM, Art. 7]**
- 01) The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing noncontiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.
- 02) The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, agriculture, horticulture, suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD.
- 03) Wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.
- (b) Ownership of the Open Space. The open space shall, at the Planning Board's election, be conveyed to:

- 
- 01) The Town or its Conservation Commission;
  - 02) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
  - 03) A corporation, homeowners association or trust owned jointly or in common by the owners of lots or units within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot and unit. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such homeowners association, trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded;
  - 04) A private owner for agricultural, horticultural or forestry.
- (c) Maintenance of Open Space. In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance.
- (10) Design standards. The following Generic and Site Specific Design Standards shall apply to all OSRD's and shall govern the development and design process.
- (a) Generic Design Standards:
- 01) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainageways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme;
  - 02) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks,



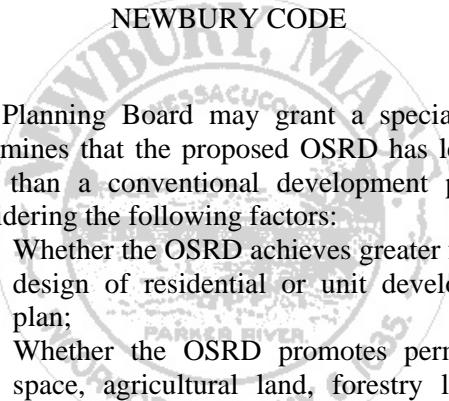
and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel;

- 03) Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings;
- 04) 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;
- 05) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

(b) Site Specific Design Standards.

- 01) Mix of Housing Types. The OSRD may consist of any combination of single-family and two-family structures. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board if they serve the purpose and intent of the Open Space Residential Development Bylaw, as stated in section § 97-5C(1). [Amended 6-22-2004 STM, Art. 7];
- 02) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation;
- 03) Drainage. The Planning Board shall encourage the use of “soft” (nonstructural) stormwater management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate;
- 04) Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan;
- 05) On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate;
- 06) Disturbed Areas. Every effort shall be made to minimize the area of disturbed areas on the tract. A disturbed area is any land not left in its natural vegetated state.

(11) Decision of the Planning Board.

- 
- (a) The Planning Board may grant a special permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:
- 01) Whether the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;
  - 02) Whether the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including waterbodies and wetlands, and historical and archaeological resources;
  - 03) Whether the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
  - 04) Whether the OSRD reduces the total amount of disturbance on the site;
  - 05) Whether the OSRD furthers the goals and policies of the open space and master plans;
  - 06) Whether the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
  - 07) Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.

(12) Increases in permissible density.

- (a) The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the OSRD shall not, in the aggregate, exceed fifty percent (50%) of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:
- 01) For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded.
  - 02) For every (1) one dwelling unit restricted to occupancy for a period in perpetuity by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, one (1) dwelling unit may be added as a density bonus. **[Amended 6-22-2004 STM, Art. 7]**
  - 03) For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added as a density bonus.

**§97-5.D. Common Driveways – By special permit only. [Added 4-22-2003 ATM, Art. 7]**

[Amended Art. 34 ATM 5-26-2009]

- (1) Purpose and intent. The purpose of the Common Driveway by-law is to provide an alternative to individual driveways that would allow the preservation and protection of natural features, the reduction of impacts to wet lands and the retention of the rural quality of Newbury while providing safe vehicular travel from the access point of the public way, reducing curb cuts, improving sighting distances and providing adequate access for emergency vehicles. It is not the intent of this by-law to subvert the subdivision regulations, but to offer an option to the installation of individual driveways.
- (2) Eligibility. Up to three single-family lots or two duplex lots or one duplex lot and on single-family lot are eligible under the provisions of this by- law. All lots are required to have adequate and viable frontage, which complies with the Newbury Protective Zoning By-law, and shall be located on a public way.
- (3) Special Permit required. The Planning Board shall make the following findings relative to the common driveway special permit:
  - (a) The use requested is noted in the Zoning By-law as a special permit in the district for which the application is made;
  - (b) The requested use is essential and/or desirable to public convenience or welfare;
  - (c) The requested use will not create undue traffic congestion or unduly impair pedestrian safety;
  - (d) The requested use will not overload public water, drainage, sewer systems or any municipal systems to such an extent that the requested use or any developed use in the immediate area or any other area of the town will be unduly subjected to hazards affecting the health, safety and general welfare of the community;
  - (e) Any special requirements for use set forth are fulfilled; and
  - (f) The requested use will not impair the integrity or character of the district or adjoining districts nor be detrimental to the health, safety or welfare of the immediate residents or the residents of the community.
- (4) Design standards.
  - (a) Application requirements:
    - 01) Application fee in accordance with the Planning Board fee schedule;
    - 02) Overall plan showing all lots involved and abutting lots; abutters' names; wetlands; topography (two-foot contour interval); edge of pavements (proposed and existing); conceptual or existing location of dwellings and septic systems; natural features of the land including large trees, rock outcroppings, stone walls and other features;
    - 03) Plan of Land prepared by a Registered Land Surveyor, showing easements and property lines, suitable for recording at the Registry;
    - 04) Grading plan and profile at 40 scale, prepared by a Professional Engineer, showing drainage, proposed and existing contours, with a common driveway cross section;
    - 05) Proposed signage and proposed location of signs;
    - 06) Certified list of abutters;
    - 07) Legal documentation of easements and other legal instruments prepared by an attorney.
  - (b) Common Driveway Specifications:
    - 01) Minimum width shall be 16 feet and shall provide adequate access for emergency vehicles;
    - 02) Materials: A minimum of 12 inches compacted gravel base;
    - 03) Maximum center line slope shall be 15%;
    - 04) Driveway shall be crowned, so drainage is not crossing driveway surface. When drainage must cross drive, it shall be done in a closed culvert minimum 12-inch diameter under the road. Drainage

for drive and lots shall be controlled on site (or adequate provisions and easements made for off-site control of drainage);

- 05) The minimum width of easement shall be 30 feet;
- 06) The acute angle of the intersection of the driveway and the street shall not be less than 60 degrees;
- 07) The general layout and alignment shall blend with the existing topography and landscaping of the area.

(c) Easements and maintenance agreements. Prior to Planning Board endorsement of the plan and issuance of the Common Driveway Permit, Town Counsel shall review and approve the following:

- 01) Deed requirements. All deeds of ownership of lots served by a common driveway shall require that the owners of said lots shall be members of an association or homeowners agreement, whose purpose is to provide for the maintenance of the common driveway in order to perpetually provide safe continuous access for the owners of said lots and the Town in case of an emergency. Each lot served by the common driveway must have permanent access to the common driveway by easements recorded at the registry of deeds. Such easements shall include the rights for motor vehicles to freely pass and re-pass. Such easements shall include the right to install, repair and maintain drains, culverts, roadway surface and other utilities located under, across and/or along the common driveway. The deed shall state that the common driveway is not a Town road and shall not be considered a Town road in the future; therefore, Town maintenance is not an obligation of the Town;
- 02) Owners and/or Association Agreement. The Owners/Association Agreement must impose upon the members the obligation of repair, maintenance and snow removal so as to cause the driveway, including the drainage serving the driveway and the sight lines to the intersecting public way, to be repaired or maintained in such a manner as to insure the continuous year-round access to each lot by the owners of said lots, fire, police, ambulance and other vehicles, the adequate delivery of public and private utilities to the lots served by the driveway, and so that the initial specifications (or improved specifications) of the common driveway are maintained.

(d) Procedures and decision of the Planning Board.

- 01) Common driveway permitting process. The Newbury Planning Board shall follow the procedures noted in § 97-11C of the Newbury Zoning By-law. Three copies of the application package and plans shall be submitted to the Planning Board at a regularly scheduled meeting;
- 02) Decision of the Planning Board. The Newbury Planning Board may condition the special permit decision so as to meet the intent of the by-law and to insure the health, safety and welfare of the applicants as well as the residents of the community. As a condition of the approval, the Planning Board may condition the special permits so that no certificate of occupancy shall be issued until the common driveway has been constructed in accordance with these rules and regulations as deemed by the Newbury Planning Board. No certificate of occupancy shall be issued until plans and association documents are properly recorded.

**§97-5.E. Large Wind Energy Facilities.** [Amended Art. 32 ATM 5-26-2009]

(1) Purpose.

The purpose of this Article is to provide by special permit for the construction and operation of on-site and utility-scale wind facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, give consideration to impacts on scenic, natural and historic resources of the town and provide adequate financial assurance for decommissioning.

(2) Applicability: This section applies to wind energy facilities greater than 60 kilowatts of rated name plate capacity. It does not apply to small wind energy systems that fall under the requirements of §97-10.E. Small Wind Energy Systems of Newbury's zoning by-laws.

(3) General Requirements:

(a) Special Permit Granting Authority: The Planning Board is hereby established as the Special Permit Granting Authority (SPGA) for the issuance of special permits to construct and operate wind facilities. No wind facility shall be erected, constructed, installed or modified as provided in this section without first obtaining a permit from the SPGA. The construction of a wind facility shall be permitted in any zoning district subject to the issuance of a Special Permit and provided that the use complies with all requirements set forth in Sections 3, 4, 5 and 6 herein. All such wind facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No special permit shall be granted unless the SPGA finds in writing that:

- (i) the proposed use is in harmony with the purpose and intent of this By-Law;
- (ii) the proposed location is appropriate on the site;
- (iii) the use will be sited, designed, and operated in a manner that adequately addresses the potential impacts to the neighborhood and the community;
- (iv) the use will not pose a significant adverse impact to the health or public safety of the neighborhood and the surrounding area; and
- (v) there is not expected to be any significant hazard to pedestrians or vehicles from the use.

Wind monitoring or meteorological towers shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure and subject to reasonable regulations concerning the bulk and height of structures and determining yard-size, lot area, setbacks, open space, parking, and building coverage requirements

(b) Compliance with Laws, By-laws and Regulations: The construction and operation of all such proposed wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

- (c) Proof of Liability Insurance: The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility as determined by the SPGA
  - (d) Site Control: At the time of its application for a special permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.
- (4) General Siting Standards:
- (a) Height: Wind facilities shall be no higher than 400 feet above the current grade of the land, provided that wind facilities may exceed 400 feet if:
    - (i) the applicant demonstrates by substantial evidence that such height reflects industry standards for a similarly sited wind facility;
    - (ii) such excess height is necessary to prevent financial hardship to the applicant
    - (iii) the additional benefits of the higher tower outweigh any increased adverse impacts; and
    - (iv) the facility satisfies all other criteria for the granting of a special permit under the provisions of this section.
  - (b) Setbacks:
    - (i) The minimum distance from the base of any wind turbine tower to any property line and private or public way shall be 1.5 times the overall blade tip height of the wind turbine.
- (5) Design Standards:
- (a) Visual Impact. The proponent shall demonstrate through project siting and proposed mitigation that the wind facility adequately addresses impacts on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering, lighting and cable layout.
  - (b) Color and Finish: The wind facility shall be a neutral, non-reflective exterior color designed to blend with the surrounding environment.
  - (c) Lighting:
    - (i) Wind turbines shall be lighted only if required by the Federal Aviation Administration (FAA). The proponent shall provide a copy of the FAA's determination to establish the required markings and/or lights for the structure.

- (ii) Lighting of other parts of the wind facility, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.
  - (d) Signage: Signs on the wind facility shall comply with the requirements of the Town's sign regulations, and shall be limited to:
    - (i) Those necessary to identify the property and the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
    - (ii) Educational signs providing information about the facility and the benefits of renewable energy.
    - (iii) All signs shall comply with the plans approved and incorporated by reference in the special permit granted under this section.
  - (e) Advertising: Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
  - (f) Utility Connections: Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
  - (g) Appurtenant Structures: All appurtenant structures to such wind facilities shall be subject to regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. To the extent practicable, structures should be shielded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.
  - (h) Support Towers: Monopole towers are the only allowable form of support for the Wind Energy Facilities.
- (6) Safety, Aesthetic and Environmental Standards:
- (a) Emergency Services: The applicant shall provide a copy of the project summary and site plan to the local fire and police departments, as designated by the SPGA. Upon request the applicant shall cooperate with local police and fire in developing an emergency response plan.
  - (b) Unauthorized Access: Wind turbines or other structures part of a wind facility shall be designed to prevent unauthorized access.
  - (c) Wetlands: Wind facility shall be located in a manner consistent with all applicable local and state wetland regulations.

- (d) Stormwater: Stormwater run-off and erosion control shall be managed in a manner consistent with applicable state and local regulations.
- (e) Shadow/Flicker: Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant must demonstrate that this effect will not have any significant adverse impact on neighboring or adjacent uses through either siting or mitigation.
- (f) Noise: Wind Energy Facilities and associated equipment shall conform to the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10). A source of sound will be considered to be in violation of these regulations if the source:
  - (i) Increases the broadband sound level by more than 3 dB(A) above ambient, or
  - (ii) Produces a "pure tone" condition – when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited off-site residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time.

- (g) Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations, and by-laws.
- (h) Hazardous Materials: No hazardous materials or waste shall be discharged on the site of any wind facility. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste. An enclosed containment area, designed to contain at least 110 percent of the volume of the hazardous materials or waste stored or used on the site may be required to meet this requirement.

(7) Monitoring and Maintenance

- (a) Facility Conditions: The applicant shall maintain the wind facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The project owner shall be responsible for the cost of maintaining the wind facility and any access road, unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.
- (b) Modifications: All material modifications to a wind facility made after issuance of the special permit shall require approval by the SPGA as provided in this section.

- (c) Contact Person: The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
  - (d) Change of Ownership: Notice shall be provided to the Town of any change in ownership of the facility.
- (8) Abandonment or Decommissioning
- (a) Removal Requirements: Any above ground components of a wind energy facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind energy facility is scheduled to be decommissioned, the applicant shall notify the Town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored to the state it was in before the facility was constructed or any other legally authorized use. More specifically, decommissioning shall consist of:
    - (i) Physical removal of all above-ground components from the site, including, but not limited to, wind turbines, structures, equipment, security barriers and transmission lines.
    - (ii) Disposal of all solid and hazardous waste in accordance with local and state waste disposal regulations.
    - (iii) Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
  - (b) Abandonment: Absent notice of a proposed date of decommissioning, the wind facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the SPGA. The SPGA shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the applicant fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town shall have the authority to enter the property and physically remove the facility.
  - (c) Financial Surety: The SPGA shall require the applicant for large wind energy facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the facility, of an amount and form determined to be reasonable by the SPGA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the SPGA. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment.
- (9) Application Process & Requirements

- (a) Application Procedures
  - (i) General: The application for a wind energy facility shall be filed in accordance with the rules and regulations of the SPGA concerning special permits.
  - (ii) Application: Each application for a special permit shall be filed by the applicant with the city or town clerk pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws.
- (b) Required Documents
  - (i) General: The applicant shall provide the SPGA with 9 copies of the application. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:
    - a) Name, address, phone number and original signature of the applicant and any co-applicants. Co-applicants may include the landowner of the subject property or the operator of the wind facility.
    - b) If the applicant or co-applicant will be represented by an agent, the name, address, and telephone number of the agent, as well as a written document with original signature of the applicant and co-applicant(s) authorizing the agent to represent them;
    - c) Documentation of the legal right to use the wind facility site, including the requirements set forth in (9)(c)(ii)(a) of this section.
- (c) Siting and Design: The applicant shall provide the SPGA with a description of the property which shall include:
  - (i) Location Map: Copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed facility site, including turbine sites, and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included; however a copy of a zoning map with the parcel identified is suitable.
  - (ii) Site Plan: A one inch equals 40 feet plan of the proposed wind facility site, with contour intervals of no more than 10 feet, signed and sealed by a Registered Professional Engineer or Licensed Land Surveyor showing the following:
    - a) Street address and tax map and parcel number of the subject property;
    - b) Zoning district designation for the subject property;
    - c) Property lines for the site parcel and adjacent parcels within 300 feet.
    - d) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the wind facility to each building shown.

- e) Location of all roads, public and private on the site parcel and adjacent parcels within 300 feet, and proposed roads or driveways, either temporary or permanent.
  - f) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.
  - g) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.
  - h) Location of viewpoints referenced below in 10.3.3 of this section.
- (iii) Visualizations: The SPGA shall select between three and six sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:
- a) A sight-line representation shall be drawn from representative locations that show the lowest point of the turbine tower visible from each location. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings, both existing and proposed. There shall be at least two sight line representations illustrating the visibility of the facility from surrounding areas such as the closest habitable structures or nearby public roads or areas.
  - b) Existing (before) condition photographs. A color photograph of the current view shall be submitted from at least two locations to show the existing situation.
  - c) Proposed (after) condition. Each of the existing condition photographs shall have the proposed wind facility superimposed on it to accurately simulate the proposed wind facility when built and illustrate its total height, width, and breadth.
  - d) Representations shall include a description of the technical procedures followed in producing the photographs and the visualization (distances, angles, lens, etc.).
- (d) Landscape Plan: A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and, except as required by the FAA, shall be directed downward with full cut-off fixtures to reduce light pollution.
- (e) Elevations: Siting elevations, or views at-grade from the north, south, east, and west for a 50-foot radius around the proposed wind facility. Elevations shall be at one quarter inch equals one foot and show the following:
- (i) Wind facility and, if applicable, the security barrier and associated equipment, with total elevation dimensions of all parts of the facility.

- (ii) Security barrier. If the security barrier will block views of the wind facility, the barrier drawing shall be cut away to show the view behind the barrier.
  - (iii) Any and all structures on the subject property.
  - (iv) Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
  - (v) Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.
- (f) Materials:
- (i) Specifications for the proposed wind facility shall be provided for all equipment and attendant facilities.
  - (ii) Materials of the proposed wind facility specified by type and specific treatment. These shall be provided for the wind turbine tower and all other proposed equipment/facilities.
  - (iii) Colors of the proposed wind facility represented by a color board showing actual colors proposed.
- (g) Lighting Plan: If lighting of the site or turbine is proposed (other than FAA lights), the applicant shall submit a manufacturer's computer-generated point-to-point printout, indicating the horizontal foot-candle levels at grade, within the property to be developed and 25 feet beyond the property lines. The printout shall indicate the locations and types of luminaires proposed.
- (h) Noise Filing Requirements: The applicant shall provide a statement from a qualified acoustical engineer listing the existing noise levels and the maximum future projected noise levels from the proposed wind facility, measured in decibels, for the following:
- (i) Existing, or ambient: The measurement of existing noise at the property boundaries, building of abutters and nearest inhabited residence.
  - (ii) Existing plus proposed wind facility: Maximum estimate of noise from the proposed wind facility plus existing noise environment. Such statement shall be certified and signed by a qualified engineer, stating that noise projections are accurate and meet the noise standards of this By-Law and applicable state requirements.
- (i) Operation & Maintenance Plan: The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility.
- (j) Compliance Documents: If required under previous sections of this By-Law, the applicant will provide with the application:
- (i) description of financial surety that satisfies 8(c) of this section,
  - (ii) proof of liability insurance that satisfies Section 3(c) of this section,
  - (iii) certification of height approval from the FAA,
  - (iv) a statement that satisfies Section 6(f), listing existing and maximum projected noise levels from the wind facility.

- (k) Independent Consultants: Upon submission of an application for a special permit, the SPGA will be authorized to hire an outside technical expert/consultant to review and verify information presented by the applicant. The cost for such a technical expert/consultant will be at the expense of the applicant(s), pursuant to Massachusetts General Laws, Chapter 40A, Section 9, and Massachusetts General Laws, Chapter 44, Section 53G.

## ARTICLE VI – DIMENSIONAL REGULATIONS

### § 97-6. Dimensional Regulations.

#### A. General Regulations.

- (1) Any building, structure, or part thereof, converted, constructed, altered, or moved shall conform with the requirements for lot area, frontage, yards, floor area ratio (FAR), lot coverage, and height as set forth in this table unless otherwise specified elsewhere in this bylaw.

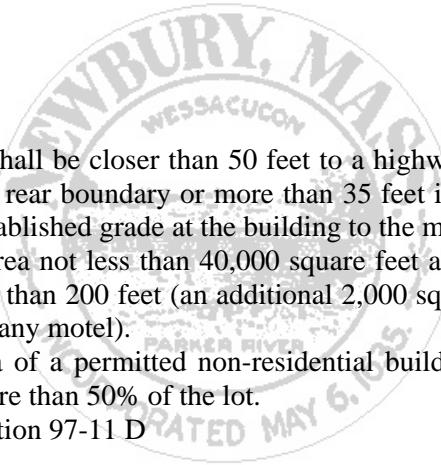
#### B. Table of Dimensional Requirements.

TABLE OF DIMENSIONAL REQUIREMENTS							
Zoning District	Minimum Dimensions				Maximum Dimensions		
	Lot Area (sft)	Frontage (ft)	SetBacks		Footprint (sft)	Lot Coverage (%)	Height* (ft)
			Property line (ft)	Street (ft)			
<b>R-AG</b> <b>Single Family Residence</b>	40,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>Two Family Residence – Served by a public water supply</b>	60,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>Two Family Residence – all other</b>	80,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>PR</b>	40,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>R-LB</b>	80,000 <sup>(1)</sup>	125	10 <sup>(2)</sup>	20 <sup>(2)</sup>	—	—	35
<b>B</b>	10,000 <sup>(1)</sup>	100	10	20	2,500 <sup>(5)</sup>	50	35
<b>CH</b>	40,000 <sup>(4)</sup>	200	25	50	—	50	35
<b>CHA</b>	40,000 <sup>(4)</sup>	200	25	50	—	50	35
<b>I</b>	40,000 <sup>(1)</sup>	200	25 <sup>(3)</sup>	50 <sup>(3)</sup>	—	50	35

#### Notes:

<sup>(1)</sup> Required contiguous upland. Regardless of the actual lot size, at least 80% of the minimum lot area for the district shall be contiguous in uplands and shall not be in wetlands or in the Parker River-Essex Bay Area of Critical Environmental Concern. Such wetlands are defined in M.G.L. Chapter 131, Section 40 as amended, and include without limitation bogs, swamps, marshes, wet meadows, and areas of flowing or standing intermittent, and are characterized by their distinctive soils, including but not limited to peat or muck, by the existence of plant communities which require the presence of water at or near ground surface for the major portion of the year. Such plant communities are those described in M.G.L., Chapter 131, Section 40 as amended. [Amended 6-26-2001 STM, Art. 8; 6-24-2003 STM, Art. 15] [Added 6-24-2003 STM, Art. 17] [Added 6-24-2003 STM, Art. 16]

<sup>(2)</sup> No part of any building on lots in said district may stand less than 10 feet from a property line or less than 20 feet from a street unless a nearer building line is already established by

- 
- (3) existing buildings.
  - (4) No building on any lot shall be closer than 50 feet to a highway or watercourse or less than 25 feet from any side or rear boundary or more than 35 feet in height as measured from the mean sea level of the established grade at the building to the mean height of the roof.
  - (4) Each lot shall have an area not less than 40,000 square feet and shall have a frontage on an accepted way of not less than 200 feet (an additional 2,000 square feet of gross area shall be required for each unit in any motel).
  - (5) Maximum footprint area of a permitted non-residential building shall neither exceed 2500 square feet nor cover more than 50% of the lot.
- \* See height definition section 97-11 D

## **ARTICLE VII – PARKING**

### **§ 97-7. Off Street Parking, Access, and Loading [Amended Art. 35 ATM 5-26-2009]**

#### **A. Purpose.**

The purpose of this Article is to establish standards ensuring the availability and safe use of parking areas. It is intended that any use of land involving the arrival, departure, or temporary storage of motor vehicles, and all structures and uses requiring the delivery or shipment of goods as part of their function, be designed and operated to:

- (1) Promote traffic safety by assuring adequate places for storing of motor vehicles off the street, and for their orderly access and egress to and from the public street;
- (2) Prevent the creation of surplus amounts of parking spaces contributing to unnecessary development and additional generation of vehicle trips, resulting in traffic congestion and traffic service level deterioration on roadways;
- (3) Reduce hazards to pedestrians and increase pedestrian connectivity between and within sites;
- (4) Reduce unnecessary amounts of impervious surface areas from being created;
- (5) Protect adjoining lots and the general public from nuisances and hazards such as:
  - a) noise, glare of headlights, dust and fumes resulting from the operation of motor vehicles;
  - b) glare and heat from parking lots; and
  - c) lack of visual relief from expanses of paving.
- (6) Increase the mobility and safety for bicyclists; and
- (7) Reduce other negative impacts such as carbon output.

#### **B. Applicability.**

No building permit or certificate of occupancy shall be issued for the erection of a new building, the enlargement or increase in the net floor area of an existing building, the development of a use not located in a building, or the change from one type of use to another, unless off-street parking spaces, loading bays and bicycle parking are provided in accordance with this bylaw.

- (1) Exception: Where the net floor area of an existing single or two-family residence is increased, no change in existing parking will be required if

the building inspector determines that the increase is minor and will not affect the parking requirement.

#### C. Access

- (1) Driveways for single and two-family residences shall have a minimum width of 9 feet.
- (2) Driveways for all other uses shall have a minimum width of twelve (12) feet for one-way traffic, and eighteen (18) feet for two-way traffic, and shall meet the following requirements:
  - (a) Clearance: Traveled way shall have a two (2) foot shoulder on each side, and the entire way shall be maintained clear of any obstructions (e.g.; light poles, mailboxes, trees and limbs, shrubs, etc.).
  - (b) Grades: Centerline grade shall be no less than one (1) per cent nor greater than fifteen (15) percent, except that no grade change shall exceed ten (10) percent over a distance of twenty (20) feet. Side shoulder grade shall not exceed five (5) percent, and shall slope away from the traveled way to direct water to the sides.
  - (c) Curves: Minimum centerline radius shall be not less than one hundred (100) feet.
  - (d) Overhead Clearance: The space thirteen (13) feet, nine (9) inches above the driveway shall be maintained clear of wires, branches, or any other obstructions.

#### D. Parking

- (1) One- and Two-Family Residential Parking
  - (a) A minimum space of eight (8) feet by eighteen (18) feet shall be provided for each vehicle.
  - (b) Required minimum parking spaces:

<b>TYPE OF RESIDENCE</b>	<b>MINIMUM NUMBER OF SPACES</b>
One- & two-family	2 per dwelling unit
Accessory apartment	1 per unit
Bed & Breakfast	1 per rental unit/guest room plus 2 spaces per dwelling unit

- (c) For parking associated with developments requiring a special permit, the Planning Board by special permit may reduce the minimum required number of parking spaces by a maximum of twenty-five (25%) percent, based on a determination that the specific style of development requires fewer spaces than otherwise required by the general standards set out above.

(2) General Parking

- (a) On site and off street parking and loading shall be provided in accordance with the table below, unless otherwise specified by special permit or elsewhere in this By-Law:

<b>GENERAL PARKING AND LOADING REQUIREMENTS</b>		
<b>USE<sup>1</sup></b>	<b>PARKING SPACES</b>	<b>LOADING</b>
	<b>Minimum</b>	<b>Minimum</b>
<b>Assembly:</b>	0.3 per 1,000 s.f. Gross Floor Area (GFA) unless otherwise noted (u.o.n.) <sup>2</sup>	See Note 3 below
a) Restaurant, nightclub, banquet hall, meeting hall, adult entertainment club, tavern and bar	0.3 per seat rated capacity, plus 1 per employee	
b) Church/places of worship, auditorium, theater	1 per 5 seats rated capacity	
c) Health Club	6 per 1,000 s.f. GFA	
<b>Business:</b>	0.3 per 1,000s.f. GFA u.o.n.	See Note 3 below
a) Animal hospital/veterinary clinic	1 per doctor plus 1 for each employee plus 1 per examining room	
b) Bank	1 per 400 s.f. GFA	
c) Barber and beauty shop	2 per each practitioner plus 1 for each additional employee	
d) Civic administration	1 per 400 s.f. GFA	
e) Educational (above 12 <sup>th</sup> grade)	1 per 400 s.f. GFA	
f) Medical/dental office	1 per doctor, plus one per employee, plus 1 per examining room	
g) Professional services office (attorney, architect, engineer, etc.)	1 per 400 s.f. GFA	
h) Motor vehicle repair/service station	1 per employee plus 3 per bay	
<b>Educational:</b>		See Note 3 below
a) Nursery School/Daycare	1 per 5 students, plus 1 per teacher and/or staff	
b) K-8	1.5 per classroom	
c) 9-12	0.2 per student plus 1 per staff	
<b>Factory and Industrial:</b>	2 per 1,000 s.f. GFA	See Note 3 below

<b>Institutional:</b>		See Note 3 below
a) Nursing homes/ Rehabilitation Facilities	1 per 2 employees plus 1 per doctor plus 1 per 2 beds	
b) Adult care facility	1 per staff plus 1 per 2 residents	
c) Police Station/Fire Station	1 per staff on largest shift plus 2 per each official vehicle	
<b>Mercantile/Retail:</b>	0.3 per 1,000 s.f. GFA u.o.n.	See Note 3 below
a) Drug stores	3 per 1,000 s.f. GFA	
b) Markets	3 per 1,000 s.f. GFA	
c) Retail or wholesale stores	3 per 1,000 s.f. GFA	
d) Showrooms	0.5 per 1,000 s.f. GFA	
<b>Residential (other than one- and two-family dwellings):</b>		See Note 3 below
a) Hotel/motel/inn	1 per guest room or suite plus 1 per employee on largest shift, plus 50% of spaces required for accessory uses	
b) Multi-family dwellings	2 per dwelling unit for the first 2 units and 1.5 per unit for all subsequent units	
c) Dormitories	1 per teacher and staff plus 1 parking space for each sleeping room	
d) Assisted living residence	1.5 per unit	
<b>Warehouse/Storage:</b>	1 per each employee on the largest shift	See Note 3 below
<b>Utility and Miscellaneous:</b>	1 per 1,000 s.f. GFA	See Note 3 below
<b>Uses Not Otherwise Specified in this Table</b>	Spaces sufficient to accommodate on site all users of the facility, as established through documentation submitted to satisfy special permit or site plan review, which ever may apply, or if no such requirements apply, documentation to the satisfaction of the Building Inspector	See Note 3 below
1.	For purposes of this table, Use refers to Use and Occupancy classifications in accordance with Massachusetts 780 CMR 3.00, Seventh Edition.	
2.	Parking calculated per person or per Gross Floor Area (GFA) unless otherwise noted.	
3.	Loading spaces: All uses indicated above and other uses with regular delivery and/or shipping activity shall provide loading spaces according to the following:	

5,000-20,000 s.f. GFA	1 space
20,001-50,000 s.f. GFA	2 spaces
50,001-100,000 s.f. GFA	3 spaces
Every additional 100,000 s.f. GFA	1 space

(b) Maximum numbers of parking spaces

No maximum limits have been included in the table in § D.(2).(a); above; however development plans which actively seek to keep both parking spaces and associated impervious surfaces to a functional and sufficient minimum will be strongly encouraged in order to reduce run off and heat retention. See §97-7.A.(1) and –A.(4) above.

(c) Other parking area design

The following shall apply:

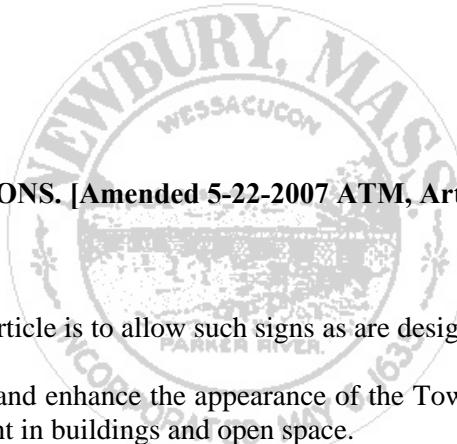
- (01) Parking spaces: Each parking space shall be provided direct access to an aisle or driveway. Parking spaces shall each provide space adequate to park an automobile, plus means of access, with dimensions meeting standards for standard and compact automobiles established by the Planning Board in the Rules and Regulations which accompany this bylaw. Spaces shall be clearly delineated by signage, wheel stops, or lines on the pavement (if paved).
- (02) Size: Standard parking spaces shall be a minimum of 9 feet wide by 18 feet long.
- (03) All weather usability: All areas used for required parking and vehicular travel shall be provided with a base and surface that will support the intended use for all weather conditions, or unless, in performing Site Plan Review (see §97-9.A), the Planning Board determines that, because of seasonal or otherwise limited use, an alternative surface will adequately prevent dust, erosion, water accumulation or unsightly conditions.
- (04) Location: All required parking shall be provided onsite, or in the same zoning district within 250' and in the same ownership of the subject property.
- (05) Backing prohibited: No parking space shall be located to require backing to or from a street.
- (06) For Parking Lots for ten (10) or more vehicles, the parking area design shall be subject to Site Plan Review (see §97-9.A) and to the Stormwater Management By-Law (see §87)
- (07) Lighting: all lights illuminating a parking area shall be designed and located so as to direct light away from any street and

adjacent property, shall be limited to no more than 10,000 lumens per fixture, and shall be restricted in height to a maximum of twenty (20) feet. No low- pressure sodium vapor lighting shall be permitted.

- (08) Grades: No area used for required parking shall exceed two (2) percent in grade in any direction.
- (09) Computation: When unit of measurement determining number of required parking spaces result in a fraction of a space, any fraction over one-half shall require an additional space.
- (10) For parking associated with uses requiring a special permit, the Planning Board by special permit may reduce the required number of parking spaces by a maximum of twenty-five (25%) percent, based on a determination that the specific use requires fewer spaces than otherwise required by the general standard.
- (11) Snow storage: One or more areas abutting the parking area(s) shall be provided, at the rate of forty (40) square feet per parking space, for the storage of plowed snow.
- (12) Multiple uses: When a lot includes more than one principle use, parking shall be provided in an amount equal to the sum of the requirements of the individual uses, except where shared spaces may be possible in the case of distributive use times.
- (13) Handicapped parking shall comply with Massachusetts 521CMR and all applicable Federal laws and regulations which require additional or higher standards of compliance than Mass. 521CMR.

#### **E. Loading**

- (1) Loading spaces: for provision of required spaces see table in D.(2) above.
  - (a) Each loading space shall measure a minimum of ten (10) feet in width by forty (40) feet in length; shall not be an area designated for parking or other use; and shall not be located within twenty (20) feet of any single or two-family residential property or street.
  - (b) Other Loading Requirements: All loading shall be on the same lot as the principle use.
  - (c) Backing prohibited: No loading space shall be located to require backing to or from a street.



## ARTICLE VIII – SIGNS

### § 97-8. SIGN REGULATIONS. [Amended 5-22-2007 ATM, Art. 24]

#### A. Purpose.

The purpose of this Article is to allow such signs as are designed to:

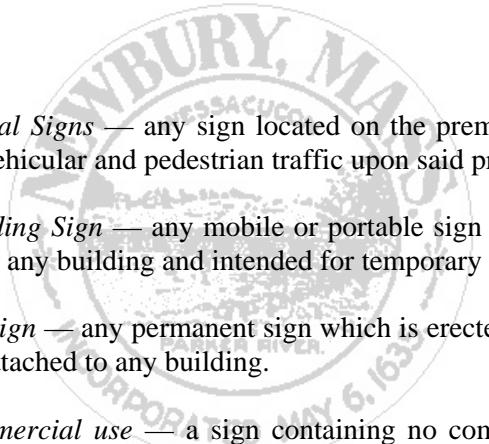
- (1) Preserve and enhance the appearance of the Town of Newbury and protect our investment in buildings and open space.
- (2) Encourage sound signing practices for business identification and public information.
- (3) Prohibit excessive and confusing sign displays.
- (4) Eliminate potential hazards to motorists and pedestrians created by distracting and inappropriate sign displays.
- (5) Provide commercial signing which is used primarily as identification and not as advertising.

#### B. Definitions.

The term “sign” shall include any fabricated or outdoor display structure consisting of any logo, letter, character, design, reading matter, or illuminating device; constructed, fastened or manufactured so that the same shall be used for the attraction of the public to any place, firm, public performance, or merchandise and displayed for advertising purposes.

As used in this section, the following words and terms shall have the following meanings:

- (1) *Advertising Display Area* — the copy area encompassed within any simple geometrical figure which would enclose all parts of the sign. It shall not include any structural supports for the sign except to provide a frame for it, and provided that no copy is included on such supports. In the case of two sided ground signs or freestanding signs only 50% of the total of the two sides shall count as part of the allowed sign area permitted in the applicable zone.
- (2) *Animated Sign* — any sign which attracts attention by movement, changing colors, flashing or revolving. It shall not include time-temperature signs.
- (3) *Agricultural Sign* — A sign which has wording to advertise products raised or grown principally on the premises and signs advertising these products which may be changed periodically
- (4) *Awning or Canopies* — All lettering or graphics on awnings or canopies shall require a sign permit and count as part of allowed sign area. No awning or canopy shall be illuminated in such a way that the light from such illumination is directly visible through the canopy or awning.

- 
- (5) *Directional Signs* — any sign located on the premises to provide for the safe flow of vehicular and pedestrian traffic upon said premises.
  - (6) *Freestanding Sign* — any mobile or portable sign not securely attached to the ground or any building and intended for temporary purposes.
  - (7) *Ground Sign* — any permanent sign which is erected on supports in the ground and not attached to any building.
  - (8) *Non-commercial use* — a sign containing no commercial message or intent, such as a “no trespassing” sign; or a sign qualifying under a “freedom of speech” provision (e.g. a sign expressing a belief or sentiment).
  - (9) *Roof Sign* — any sign which is erected so as to project higher than the cornice of the building on which it is erected.
  - (10) *Off-Premise Sign* — any sign erected to advertise or give directions to an establishment or merchandise which is not sold, produced, manufactured or furnished at the property on which the sign is located.
  - (11) *Projecting Sign* — any sign attached to a building which projects more than twelve (12) inches from a building wall and is intended to be read from the side.
  - (12) *Wall Sign* — any sign painted or permanently attached to and parallel with the wall of a building and extending not more than twelve (12) inches from the wall of the building.
  - (13) *Window Sign* — any sign installed on or attached to a window of a building and intended to be viewed from the outside of the building.

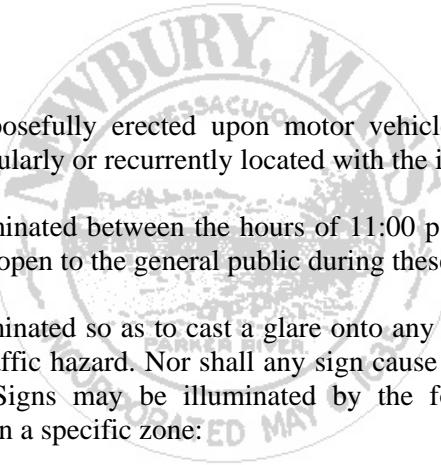
### C. Prohibitions.

The following types of sign are not allowed:

- (1) Animated signs
- (2) Roof signs
- (3) Off-Premise sign, except as follows: signs indicating locations of places of public assembly or interest such as churches, schools, museums, libraries, fraternal or civic organizations; provided they are otherwise in conformity with this bylaw.

Off-Premise Agricultural Purpose signs are permitted subject to the rules and regulations contained in “A Guide to Highway Signage for Agricultural Purposes in the Town of Newbury” –see Section 97-8.B(6)

- (4) Signs containing red or green lights, except for holiday signs.

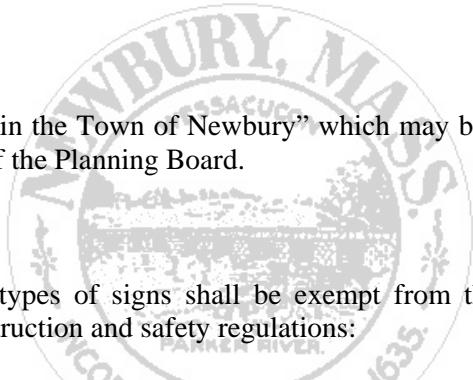
- 
- (5) Signs purposefully erected upon motor vehicles, trailers, or other movable objects regularly or recurrently located with the intent of fixed display.
  - (6) Signs illuminated between the hours of 11:00 p.m. and 7:00 a.m., unless such premise is open to the general public during these hours.
  - (7) Signs illuminated so as to cast a glare onto any portion of a way which would create a traffic hazard. Nor shall any sign cause direct illumination of adjacent property. Signs may be illuminated by the following means unless noted otherwise in a specific zone:
    - (a) Externally, by a steady, stationary white light shielded and directed solely at the sign.
    - (b) By interior lighting of reasonable intensity.
  - (8) Signs erected within the right of way of any street except for traffic control and as specified in 97-8. B. (3) above.
  - (9) No sign of any kind shall be attached to a public utility pole.

**D. Permits.**

- (1) No sign shall be erected until Sign Permit has been issued by the Building Inspector, except for those exempt signs described in Section 97-8.F of this Bylaw.
- (2) Site Plan Review if required in the district in which the sign will be located, shall show building location and height, entrances and exits. Parking arrangements, loading areas, sign location and height, and a detailed drawing of the proposed sign shall accompany application.
- (3) All Sign Permits issued under this Bylaw shall be retained at all times on the premises.

**E. General Requirements.**

- (1) No sign in any district shall exceed 25 feet in height or be higher than the main roof line of the building, whichever is greater.
- (2) No sign shall project over or extend beyond the property line.
- (3) No sign shall be erected so as to obstruct the vision of vehicular traffic entering or exiting the premises.
- (4) In all districts, ground signs shall be set back a minimum of 10 feet from the traveled way or from the property line.
- (5) Agricultural Purpose Signs: in all districts, the placement, size and type of sign shall conform to Section 97-8.I, Business Districts, and to the rules and regulations set forth in "A Guide to Highway Signage for Agricultural



Purposes in the Town of Newbury" which may be amended from time to time by vote of the Planning Board.

**F. Exempt Signs:**

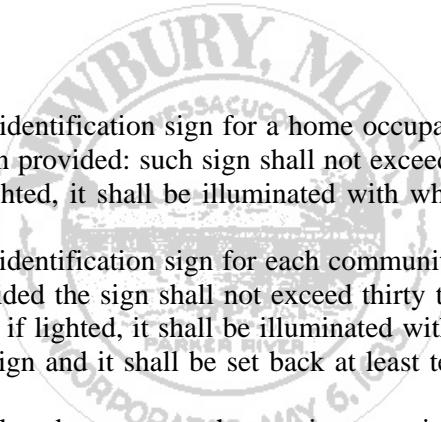
The following types of signs shall be exempt from the provisions of this bylaw, except for construction and safety regulations:

- (1) Public Signs: Signs of a non-commercial nature and in the public interest erected by, or on the order of, a public official in the performance of his public duty, such as safety signs, danger signs, trespassing signs, traffic signs, street signs, memorial plaques, signs of historical interest, signs designating a public project or improvement program and the like.
- (2) Integral Sign: Names of buildings, dates of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent-type construction and made an integral part of the structure.
- (3) Identifying signs used for 911 purposes.
- (4) Any sign of a non-commercial use. Such a sign shall not exceed 6 square feet in area.
- (5) Holiday signs.
- (6) Temporary signs: A maximum of three (3) temporary signs plus 1 for each additional separately identifiable unit over one (1) shall be allowed per lot. All temporary signs shall not exceed six (6) feet in height and shall not exceed six (6) square feet each. Temporary signs shall be set back at least ten (10) feet from the edge of the traveled way, except where insufficient setback exists; in such cases, signs shall be attached to a building wall facing the traveled way.

All temporary signage shall be removed within 14 days of the completion of any specific event or election to which they may be related

The following types of signs do not require a permit but will count toward the total number of allowed signs on a lot:

- (a) Construction signs: Signs identifying architects, engineers, contractors and tradesmen involved with the construction, and signs announcing the purpose for which the building is intended.
- (b) Real estate signs: Signs which advertise the sale, rental or lease of the premises or part of the premises on which the signs are displayed.
- (c) Political campaign signs: Signs announcing political positions or candidates seeking public office and other data pertinent thereto.
- (d) Temporary signs may be erected on Town owned property upon application to the Selectmen, provided all such signs are removed within fourteen (14) days of the conclusion of the event or events. Such signs shall respect the purposes set out in Section A of this bylaw and obey the prohibitions set out in Section B of this bylaw.
- (7) Agricultural-Residential and Parker River Residential: Permits are not required in these zones for the following:
  - (a) One identification sign for each dwelling unit provided: such sign shall not exceed two (2) square feet in surface area; if lighted, it shall be illuminated with a white light directed solely at the sign.

- 
- (b) One identification sign for a home occupation that is registered with the Town provided: such sign shall not exceed 6 square feet in surface area; if lighted, it shall be illuminated with white light directed solely at the sign.
  - (c) One identification sign for each community facility or public utility use, provided the sign shall not exceed thirty two (32) square feet in surface area; if lighted, it shall be illuminated with white light directed solely at the sign and it shall be set back at least ten (10) feet from the street lot line.
  - (8) All signs that do not meet the requirements in this section (Section 97-8.F) must apply for a Special Permit from the Zoning Board of Appeals.

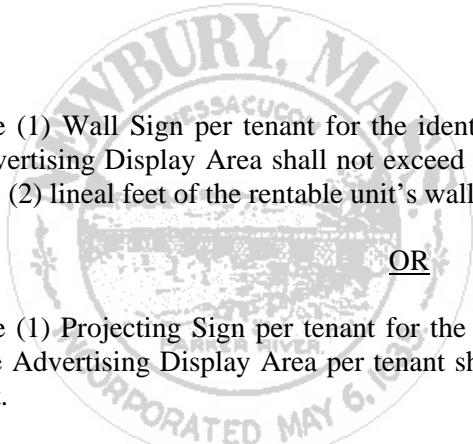
#### **G. Agricultural-Residential and Parker River Residential Districts.**

- (1) The following signs are allowed in all Residential Districts subject to the provisions of Section 97-8.E. of this bylaw:
  - (a) One Ground Sign for the permanent identification of a housing development of twelve (12) or more dwelling units. The Advertising Display Area shall not exceed twenty (20) square feet.

#### **H. Commercial Highway and Commercial Highway A.**

The following signs are allowed in these two districts subject to the provisions of Section 97-8.E. of this Bylaw.

- (1) One (1) Freestanding Sign pertaining to the sale, lease or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed eighteen (18) square feet.
- (2) One Ground Sign for identification purposes and the advertising of goods and services available. The Advertising Display Area shall not exceed thirty-six (36) square feet.
- (3) One (1) Wall Sign for identification purposes. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of building wall to which it is attached.
- (4) Opaque window signs shall not cover more than a maximum of thirty six (36) square feet of the window glass area in which it is located.
- (5) In mixed use or multi-tenant buildings, sign usage shall conform to the following:
  - (a) One (1) Ground Sign per lot for identification purposes of the building and rentable unit located therein. The Advertising Display Area shall not exceed thirty (30) square feet plus an additional four (4) square feet for each tenant located therein.

- 
- (b) One (1) Wall Sign per tenant for the identification of such tenant. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of the rentable unit's wall to which it is attached.

OR

One (1) Projecting Sign per tenant for the identification of such tenant. The Advertising Display Area per tenant shall not exceed six (6) square feet.

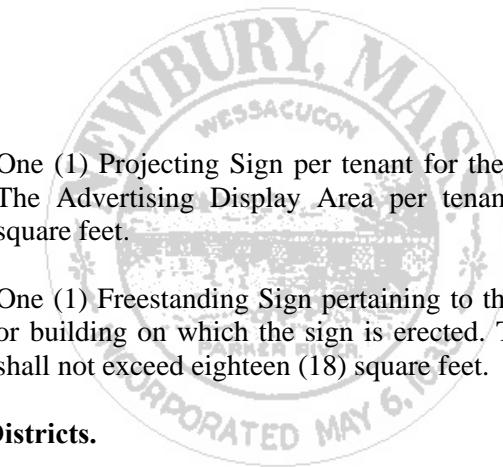
- (c) One (1) additional Wall Sign shall be allowed at a secondary entrance from a parking area for the identification of tenants. The Advertising Display Area per tenant shall not exceed two (2) square feet.
- (d) One (1) Freestanding Sign pertaining to the sale, lease, or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed eighteen (18) square feet.

## I. Business Districts.

The following signs are allowed in the business district subject to the provisions of Section 97-8.E of this Bylaw.

- (1) One (1) Freestanding Sign pertaining to the sale, lease or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed twelve (12) square feet.
- (2) One Ground Sign for identification purposes and the advertising of goods and services available. The Advertising Display Area shall not exceed eighteen (18) square feet.
- (3) One (1) Wall Sign for identification purposes. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of building wall facing the street from which its frontage is derived.
- (4) Window Signs shall not cover more than twenty (20) percent of the window glass area in which it is located.
- (5) In mixed use or multi-tenant buildings, sign usage shall conform to the following:
  - (a) One (1) Ground Sign per lot for identification purposes of the building and tenants located therein. The Advertising Display Area shall not exceed twenty (20) square feet
  - (b) One (1) Wall Sign per tenant for the identification of such tenant. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of the tenant's wall facing the street from which the building derives its frontage.

OR



One (1) Projecting Sign per tenant for the identification of such tenant. The Advertising Display Area per tenant shall not exceed three (3) square feet.

- (c) One (1) Freestanding Sign pertaining to the sale, lease, or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed eighteen (18) square feet.

**J. Industrial Districts.**

The following signs are allowed in the Industrial Districts subject to Section 97-8.E of this Bylaw.

- (1) One (1) Freestanding Sign pertaining to the sale, lease or use of the lot or building on which the sign is erected. The Advertising Display Area shall not exceed twenty-four (24) square feet.
- (2) One (1) Ground Sign for identification purposes. The Advertising Display Area shall not exceed thirty-six (36) square feet.
- (3) One (1) Wall Sign for identification purposes. The Advertising Display Area shall not exceed one (1) square foot for every two (2) lineal feet of building wall facing the street from which the building derives its frontage.

**K. Exceptions – only by Special Permit.**

Upon application duly made to the Zoning Board of Appeals, said Board may in appropriate cases and subject to the general requirements set out in Section 97-8.E above and appropriate safeguards and conditions, grant a Special Permit for changes in:

- (1) Permitted size.
- (2) Permitted setback.

Such exceptions may be allowed by Special Permit granted by the Zoning Board of Appeals and are subject to the following requirements:

- (1) The Board finds that the increase does not detract from the character of the neighborhood.
- (2) The Board finds that the increase does not constitute a threat to public health and safety.
- (3) The proposed sign complies with all other sections of this bylaw.

**L. Maintenance.**

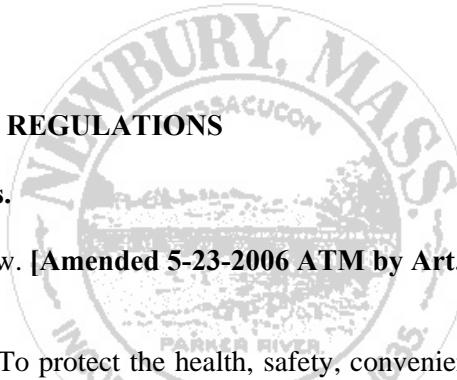
- (a) All Signs shall be maintained in a safe, presentable and good structural condition at all times to the satisfaction of the Building Inspector in accordance with Section 3102.5 through 3102.5.4 of the State Building Code.

**M. Sign Removal.**

- (1) It shall be the responsibility of the property owner to remove any sign identifying or advertising goods and services of a discontinued business within sixty (60) days of being so notified by the Building Inspector.

**N. Nonconforming Signs.**

- (1) Signs legally existing on the effective date of this article, or of any amendment hereto, may continue to be maintained; provided however that any such sign that fails to conform to the current requirements of this by-law shall not be enlarged or relocated.
- (2) Such signs shall be removed or brought into conformity upon the discontinuance of the business or the failure to be maintained in accordance with Section 97-8.L and shall be removed in accordance with Section 97-8.M upon receipt of a Certified Letter from the Building Inspector.
- (3) There shall be no increase in any nonconformity.



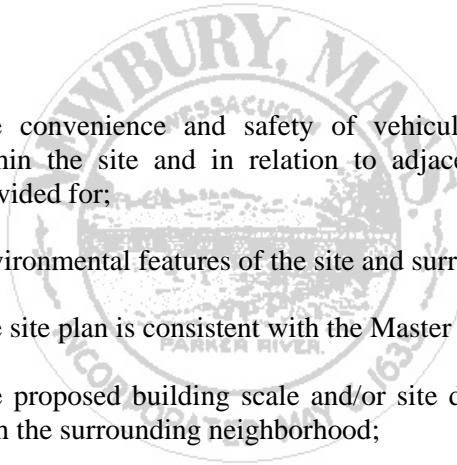
## **ARTICLE IX – SPECIAL REGULATIONS**

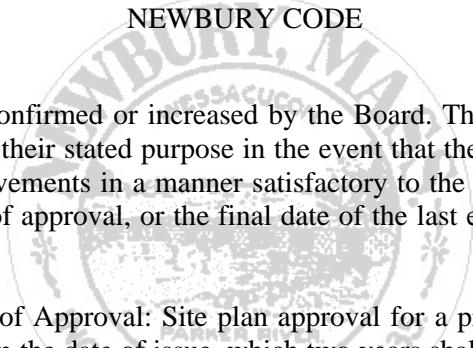
### **§ 97-9. Special Regulations.**

**A. Site Plan Review. [Amended 5-23-2006 ATM by Art. 18; 10-24-2006 STM by Art. 2]**

- (1) Purpose: To protect the health, safety, convenience and general welfare of the public by providing for a comprehensive review procedure of plans for uses and structures which may have impacts on traffic, services and utilities, environmental quality, water resources, drainage and community character. Any use or structure, or expansion thereof, referred to in G.L. c. 40A, § 3, (exemption from zoning) is not exempt from the provisions of this section, provided any of the criteria contained in § 97-9A(2) also applies.
- (2) Applicability: Any non-residential or non-agricultural construction project which requires construction of a new building or will result in a change in the outside appearance or a change of use of an existing building or buildings or premises, and which includes one or more of the following:
  - (a) Construction of 2,500 or more square feet of gross floor area..
  - (b) An increase in gross floor area of at least 2,000 square feet.
  - (c) Grading or re-grading of land to planned elevations and/or removal or disturbance of the existing vegetative cover except for agricultural activities, over an area of 5,000 square feet or more.
  - (d) Construction, enlargement or alteration of a parking area containing 10 or more parking spaces.
  - (e) The development of 10,000 square feet or more of impervious surface area or more than 15% of the lot area.
  - (f) The construction of a drive-in retail establishment serving food or dispensing merchandise from inside a building to persons seated in their automobiles on the premises.
- (3) Procedure
  - (a) An applicant for site plan review shall file with the Planning Board an application and such 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 Building Inspector, Conservation Commission, Board of Health, 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 project and shall file a decision within 90 days of the close of the hearing. Where the Planning Board is the Special Permit Granting Authority for the proposed work, the Public Hearing for the Special Permit shall take place in conjunction with the Public Hearing for the Site Plan Review. 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, 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 upon request of the Applicant and set forth mutually in a written agreement between the Planning Board and the applicant. Failure to act within the time limitations established in this article shall be deemed constructive approval of the application.
- (d) Final action, which shall be a "Decision of Site Plan Review" that is filed with the Office of the Town Clerk and the Building Inspector, shall consist of either:
- 01) A written approval of the application, including a finding and determination that the proposed project will constitute a suitable development based on conformance with the criteria and conditions of approval contained in § 97-9A(4) and § 97-9A(6) respectively.
  - 02) A written denial of the application based on a determination that insufficient information was submitted for the proposal or the proposal did not meet the criteria as stated in Section § 97-9A(4).
- (e) A vote of a simple majority of the full membership of the Board shall be sufficient to adopt a Decision of Site Plan Review.
- (f) Any person aggrieved by a Decision of Site Plan Review by the Planning Board may appeal such Decision to the Zoning Board of Appeals within 30 days of the date of the Decision.
- (4) Decision Criteria: The Planning Board shall approve an application for site plan review if it finds that:
- (a) The surrounding area will be protected from the proposed use on the site by provision of adequate surface water drainage, buffers against light, sight, sound, vibration, odors, dust and other air pollution and the preservation of adequate light and air;

- 
- (b) The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas and public ways is provided for;
- (c) Environmental features of the site and surrounding areas are protected;
- (d) The site plan is consistent with the Master Plan;
- (e) The proposed building scale and/or site development plan is consistent with the surrounding neighborhood;
- (f) All signs are in accordance with the sign regulations for the pertinent district;
- (g) All variances or special permits required from the Board of Appeals have been granted;
- (h) Notwithstanding the above, regulation of uses and structures referred to in G.L. c. 40A, § 3 (exemptions from zoning) shall be limited to the extent allowed under said section of the General Laws.
- (5) Conditions of Approval: Site plan approval may be made subject to conditions, modifications and restrictions as the Planning Board may deem necessary. Any construction, reconstruction, alteration or addition shall be carried on only in conformity with such conditions, modifications or restrictions and in conformity with the application and site plan. Any order of conditions from the Conservation Commission which imposes conditions inconsistent with site plan approval, shall require a revision of the site plan. A request for such revision must be submitted to the Planning Board. For any construction project or a change in use that requires site plan review, no building permit may be issued unless and until the applicant has complied with the provisions relating to site plan review under this article and the conditions, modifications, and restrictions contained within the Decision of Site Plan Review are referenced to and incorporated in, and made an express condition of, such building permit. Site plan approval by the Planning Board shall not be construed as approval from any other Board, official or department. At the discretion of the Building Inspector, with the concurrence 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 included as an additional condition precedent to the issuance of any building permit ((see G.L. c. 40A, § 11, 1 ¶. 4) Notice requirements for Public Hearings etc.).
- (6) Performance Guarantee: As a condition of site plan approval, the Planning Board may require by a simple majority of the full board that a performance bond, deposit of money or negotiable securities, (to be selected by the Applicant) 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 by a simple majority of the full board that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall include a 15% contingency and shall be determined based on 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.

- (7) Duration of Approval: Site plan approval for a 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 referred to in G.L. c. 40A, §§ 8 and 17, (Appeals to permit granting authority) unless any construction work contemplated thereby 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.
- (8) 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 fees may include a deposit for review by a consultant selected by the Town. The amount of fees shall be as listed in the Site Plan Review Submission Requirements and Procedures and administrated in accordance with § 117-46 thru § 117-48 of the Town's Regulations for the Subdivision of Land.

## §97-10 General Regulations

### A. Nonconforming Uses and Structures (Except Plum Island Overlay District).

#### (1) Continuance:

(a) The lawful use of any structure or land existing at the time of enactment or subsequent amendment of this By-Law may be continued, although such structure or use does not conform to the provisions of this By-Law. But if any such nonconforming use or structure is not used for a period of two (2) years, it shall not thereafter be resumed. Nonconforming uses may be changed, extended or altered, provided, however, that no such change, extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not substantially be more detrimental than the existing nonconforming use to the neighborhood.

(b) Nonconforming structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of such structure. The following circumstances shall not be deemed to increase the nonconforming nature of such structure:

(i) alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.

(ii) alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.

(iii) alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

In the event that the Building Inspector determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Zoning Board of Appeals may, by finding, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

(c) Constructions or operations under a building or special permit shall conform to any subsequent amendment to this By-Law unless the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit and, in cases involving construction, unless such construction is continued through completion, as continuously and expeditiously as is reasonable;

**§97-10.E. Small Wind Energy Systems. [Amended Art. 31 ATM 5-26-2009]**

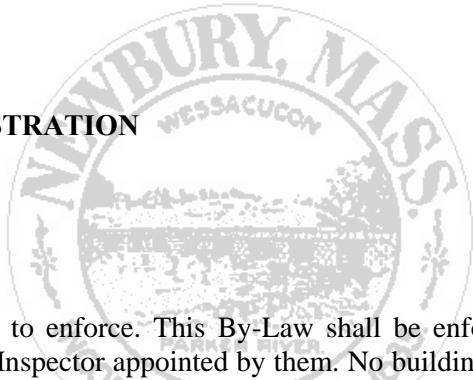
- (1) Purpose: To provide for the construction and use of small wind energy systems (SWES) as an alternative energy source to reduce or eliminate the on-site consumption of utility-supplied electricity.
- (2) Applicability: This section applies to small wind energy systems no greater than 60 kilowatts of rated nameplate capacity constructed as accessory use to the primary use of a property and intended to utilize energy from the wind to provide power to the primary use or a use accessory thereto.
- (3) Permitted Use: SWES shall be permitted for the applications stated above, provided that they meet the following requirements:
  - (a) Freestanding SWES Height: 120 feet maximum.
  - (b) Rooftop SWES Height: 120 feet maximum, including the height of the structure to which it is attached.
  - (c) Setback: Each wind energy system and its associated equipment shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, to ensure public safety and to protect the interests of neighboring property owners, a wind turbine shall not be erected nearer to any property line than a distance equal to the height of the wind turbine plus an additional ten feet.
  - (d) Noise: SWES shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10) A source of sound will be considered to be in violation of the Department's noise regulation if the source:
    - 01) Increases the broadband sound level by more than 3 dB(A) above ambient, or
    - 02) Produces a "pure tone" condition – when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest off site inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time.

- (e) Land Clearing, Soil Erosion and Habitat Impacts: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the Wind Energy Conversion System and is otherwise prescribed by applicable laws, regulations, and By-Laws.
- (f) Color and Finish: SWES shall remain painted or finished in the non-reflective, solid, neutral color that was originally applied by the manufacturer.
- (g) Lighting and Signage:

- 01) Wind turbines shall be lighted only to the extent required by the Federal Aviation Authority (FAA). Lighting of other parts of the Wind Energy Conversion System, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.
  - 02) Signs shall be limited to the manufacturer's "nameplate" and signage needed to identify the property, owner and warn of any danger. Otherwise, all signs shall comply with the requirements of the Town of Newbury's Sign Regulations, §97-8.
- (h) Shadowing and Flicker: Small Wind Energy Systems shall be sited in a manner that minimizes shadowing or flicker impacts on abutting properties.
- (i) Tower and Foundation Design: The design of the tower and any supporting foundations shall be certified by a Professional Structural Engineer registered in the Commonwealth of Massachusetts to be in conformance with the Massachusetts State Building Code (780 CMR).
- (j) Compliance with FAA Regulations: SWES shall comply with all applicable FAA regulations, including any necessary approvals for installations close to airports.
- (k) Unauthorized Access: SWES and appurtenant structures shall be designed and constructed to prevent unauthorized access to entry and/or climbing.
- (l) Maintenance: The property owner shall maintain the SWES in good condition. Maintenance shall include, but is not limited to, painting, structural repairs, and integrity of security measures.
- (m) Abandonment or Decommissioning: Any above ground components of a SWES which has reached the end of its useful life or has been abandoned or is being decommissioned shall be removed and the site on which it is located shall be returned to the same state it was prior to installation of the SWES.  
  
A SWES shall be considered to be abandoned when it fails to operate for one year. Upon a Notice of Abandonment issued by the Building Inspector, the SWES owner will have 30 days to provide sufficient evidence that the system has not been abandoned. If sufficient evidence is not provided, the Town of Newbury shall have the authority to enter the owner's property and remove the system at the owner's expense.
- (n) Secondary Uses: No part of any SWES shall be used for any purpose than the one for which it was designed, e.g. advertising, cellular antennas, etc.
- (o) Compliance with Laws, By-Laws, and Regulations: The construction and operation of all such proposed SWES shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

- (4) Permit Requirements: A building permit shall be required for the installation of a SWES. The building permit application shall be accompanied by deliverables including the following.
- (a) A plot plan showing:
- 01) Property lines and physical dimensions of the subject property within two times the total height from the tower location;
  - 02) Location, dimensions, and types of existing major structures on the property within two times the total height from the tower location;
  - 03) Location of the proposed wind system tower, foundations, guy anchors and associated equipment;
  - 04) The right-of-way of any public road that is contiguous with the property;
  - 05) Any overhead utility lines.
- (b) Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).
- (c) Tower foundation blueprints or drawings signed by a Professional Structural Engineer licensed to practice in the Commonwealth of Massachusetts.
- (5) Permit Expiration: A permit issued pursuant to this By-Law shall expire if:
- (a) The SWES is not installed and functioning within 36 months from the date the permit is issued, or
- (b) The SWES is abandoned.



## ARTICLE XI – ADMINISTRATION

### § 97-11. Administration.

#### A. Enforcement.

- (1) Authority to enforce. This By-Law shall be enforced by the Selectmen or a Building Inspector appointed by them. No building shall be built or altered and the use of a building shall not be changed without a permit having been issued by the Selectmen or the Building Inspector. Any person violating any of the provisions of the By-Law may be fined not more than \$100.00 dollars for each offense. Each day that such violation continues shall constitute a separate offense.

#### B. Zoning Board of Appeals.

- (1) Establishment. There is hereby established a Zoning Board of Appeals of 3 members and 2 associate members to be appointed by the Selectmen, such 3 members to be appointed for terms of such length and so arranged so that the term of 1 member shall expire in each year. Such Board shall act on all matters within its jurisdiction under this By-Law and under Chapter 40A of the General Laws in the manner prescribed in said Chapter 40A. Said Zoning Board of Appeals shall not be authorized to appoint a Zoning Administration under the provisions of Section 13 of said Chapter 40A or under the provisions of any other applicable law.

#### C. Special Permit Procedures — Public Hearing.

##### [Amended 4-24-2001 ATM, Art. 27]

- (1) Procedures. Any special permit which shall hereafter be issued under this By-Law, whether by the Selectmen, by the Planning Board, or by the Zoning Board of Appeals, shall be issued only following a public hearing held within 65 days after the filing of a petition or application with said Selectmen, Planning Board, or Zoning Board of Appeals, as appropriate, and provided that said applicant and/or petitioner has furnished written notice by U.S. Mail, certified or registered, not less than 21 days prior to said public hearing to all adjoining owners-abutters and furnished evidence of such written notice to the Selectmen, Planning Board, or Zoning Board of Appeals, as appropriate, a copy of which petition or application shall forthwith be given to the Town Clerk by the applicant. Any special permit granted under this By-Law shall lapse 2 years from the date of the granting of such permit (including time required to pursue or await the determination of an appeal from the grant thereof) if a substantial use thereof has not sooner commenced, or, in the case of a permit for construction, if such construction has not begun by such date, unless such failure is for good cause. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Selectmen providing the Selectmen find that the proposed accessory use does not substantially derogate

from the public good. Petitions or applications for special permits under the By-Law shall be submitted to and reviewed by the following (such reviews may be held either jointly or severally): the Board of Health, the Planning Board, the Conservation Commission and any other Board or Commission of the Town to which petition or application to be submitted for review. Any such Board or Commission to which petitions or applications are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the Selectmen, Planning Board, or zoning Board of Appeals, as applicable, and to the applicant; provided, however, that failure of any such Board or Commission to make recommendations within 35 days of receipt by such Board or Commission of the petition or application shall be deemed lack of opposition thereto.

- (2) **Granting Authority.** When a five-member Planning Board has been designated as the special permit-granting authority, one associate member may be authorized for a one-year term. The Board of Selectmen shall authorize/appoint the associate member who, upon the designation of the Chairman of the Planning Board, shall sit on the Board for the purposes of acting on a special permit application in the case of absence, inability to act or conflict of interest on the part of any member or in the event of a vacancy on the Board. **[Added 4-22-2003 ATM, Art. 8]**

**D. Definitions.**

(1) **General.**

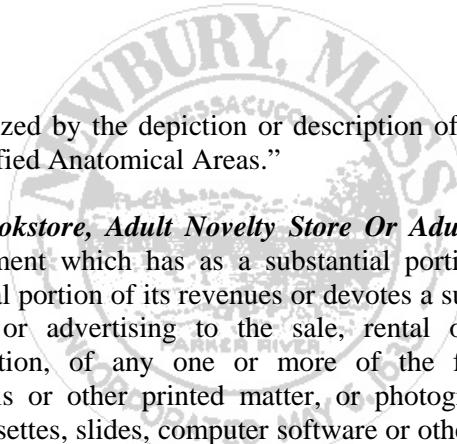
- (a) For the purposes of this bylaw, the following words and phrases shall have the following meanings, except that terms (including without limitation, appurtenant structure, base flood, development, flood, flooding, flood elevation determination, flood-prone area, flood-proofing mean sea level, mobile home, new construction, regulatory floodway, sand dunes, structure, substantial improvement and water surface elevation) used in Section 97-4E of this By-Law, including all sections thereof inclusive shall be as set forth in Section 1909.1, Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations, a copy of which Section 1909.1 shall be kept on file with the Town Clerk, the Planning Board and the Building Inspector.

(2) **Written Definitions.**

**Accessory Apartment:** one dwelling unit associated with a single-family dwelling which is subordinate to the principal unit.

**Accessory Structure:** A structure which houses or is being used for something other than an allowed principal use.

**Adult Arcade:** an establishment or portion thereof where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, computer displays, slides, or other photographic reproductions which are



characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."

**Adult Bookstore, Adult Novelty Store Or Adult Video Store:** a commercial establishment which has as a substantial portion of its stock in trade or a substantial portion of its revenues or devotes a substantial portion of its interior business or advertising to the sale, rental or viewing for any form of consideration, of any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, computer software or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas"; or instruments, devices or paraphernalia which are designed for use in connection with "Specified Sexual Activities."

**Adult Cabaret:** a nightclub, bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which features: a, persons who appear semi-nude, b. live performances which are characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities"; or c, films, motion pictures, video cassettes. Computer software, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."

**Adult Dance Club:** an establishment which, as its principal form of entertainment, permits a person or persons to perform in a state of nudity as defined in M.G.L. ch 272 § 31.

**Adult Entertainment Business:** shall mean those businesses meeting one or more of the following definitions: Adult Arcade, Adult Bookstore, Adult Novelty Store or Adult Video Store, Adult Cabaret, Adult Dance Club, or Adult Theater.

**Adult Theater:** a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear semi-nude or live performances which are characterized by exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities"

**Alteration:** Any construction, addition, or renovation to an existing structure, other than repair, that requires a permit. Also, a change in a mechanical system that involves an extension, addition, or change to the arrangement, type, or purpose of the original installation and that requires a permit [Added Art. 36 ATM 5-26-2009]

**Aquifer:** Geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

**Basement:** That portion of a building that is partly or completely below grade (see "Story above Grade"). [Added Art. 36 ATM 5-26-2009]

**Bedroom:** shall mean a bedroom as defined in 310 CMR 15.002 of the State Environmental Code.

**Building:** A combination of any materials, whether portable or fixed, having a roof, the purpose of which is the shelter of persons, animals, property or processes. For the purpose of this definition, "roof" shall include an awning or any similar covering whether or not permanent in nature. The word "building" shall be construed where the context allows as though followed by the words "or parts thereof". Building includes open porches, open breezeway and other roofed areas.

**Common Wall:** A wall or floor that is connected, usable and heated on both sides of the existing dwelling.

**Dwelling Unit:** a single unit providing complete, independent living facilities for one (1) or more persons including permanent provision for living, sleeping, eating, cooking and sanitation.

**Dwelling, Multi-Family:** A building providing three or more dwelling units  
[Added Art. 36 ATM 5-26-2009]

**Finding:** shall mean a finding by the Zoning Board of Appeals, pursuant to G.L. c. 40A, s. 6, that the proposed alteration to a nonconforming structure or use shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood or the PIOD.

**Floor Area, Gross:** shall mean the total square feet of floor space under a roof within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

**Floor Area Ratio (FAR):** shall be construed as a mathematical expression determined by dividing total gross floor area of a building by the area of the lot on which it is located. For example, a lot with 12,000 square feet in a district with a maximum FAR of .25 could contain no more than 3,000 square feet of gross floor area ( $12,000 \times .25 = 3,000$ ).

**Footprint:** shall mean the total square feet within the outermost dimensions of a structure and/or building, including decks, porches, and staircases, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

[Amended Art. 36 ATM 5-26-2009]

**Groundwater:** All water found beneath the surface of the ground in a saturated zone.

**Height, Building:** The dimension in feet as measured from the mean level of the established grade at the building to the mean height of the highest roof. [Added Art. 36 ATM 5-26-2009]

**Height, Wind Turbine:** The distance from the average grade at the base of the tower (or structure to which it is attached) to the tip of the rotor blade at its highest point, or blade-tip height. [Amended Art. 33 ATM 5-26-2009]

**Impervious Material:** Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate into soil.

**Lot:** Any piece of land used or designed for use as the location of a residence or building.

**Lot Coverage, Maximum:** shall be determined by dividing the sum of all structure footprints by the area of the lot on which they are located. [Amended Art. 36 ATM 5-26-2009]

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

**Mobile Home or House Trailer:** A dwelling or residence designed as year-round living quarters, whether so used or not, and built on a chassis to be moved from site to site, whether used with or without a permanent foundation.

**Nacelle:** The frame and housing at the top of the tower that encloses the gearbox and generator and protects them from the weather. [Amended Art. 33 ATM 5-26-2009]

**On-Site Wind Facility:** A wind project which is located at a commercial, industrial, agricultural, institutional, or public facility that will consume more than 50% of the electricity generated annually by the project on-site [Amended Art. 33 ATM 5-26-2009]

**Permit Granting Authority:** For the purpose of this By-Law, the Permit Granting Authority shall be the Zoning Board of Appeals of the Town of Newbury.

**Rated Nameplate Capacity:** The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a “nameplate” on the equipment.[Amended Art. 33 ATM 5-26-2009]

**Recharge Areas:** Areas that collect precipitation or surface water and transmit it to aquifers. Recharge areas may include areas designated as Zone I, Zone II, or Zone III.

**Reconstruction:** shall mean the structural alteration of the existing building, but shall not include the demolition and rebuilding thereof.

**Residence:** Any structure, fixed or movable, designed for use as living quarters.

**Residence, Single Family:** A single structure, fixed or movable, providing complete, independent living facilities for one family.

**Residence, Two Family:** A single structure, fixed or movable, providing complete, independent living facilities for not more than two families.

**Rotor:** The blades and hub of the wind turbine that rotate during turbine operation.[Amended Art. 33 ATM 5-26-2009]

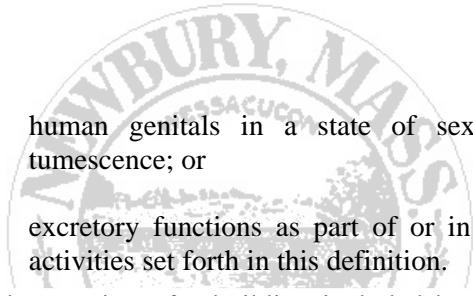
**Special Permit Granting Authority:** For the purpose of this By- Law, the Special Permit Granting Authority shall be the Board of Selectmen, the Planning Board, or the Zoning Board of Appeals. **[Amended 4-24-2001 ATM, Art. 27]**

**Specified Anatomical Areas:** shall include any of the following:

- 1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or
- 2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified Sexual Activities:** shall mean and include any of the following:

- 1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or
- 2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
- 3) masturbation, actual or simulated; or

- 
- 4) human genitals in a state of sexual stimulation, arousal or tumescence; or
  - 5) excretory functions as part of or in connection with any of the activities set forth in this definition.

**Story:** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above, excluding attics that have no habitable area and that are used solely for storage and to house mechanical equipment. Intermediate level(s) such as mezzanines, lofts, and penthouses shall be counted as a story. [Added Art. 36 ATM 5-26-2009]

**Story above Grade:** Any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade where the finished surface of the floor above the basement is:

- a. More than 6 feet (1829 mm) above grade plan;
- b. More than 6 feet (1829 mm) above the finished ground level for more than 50 percent of the total building perimeter;
- c. More than 12 feet (3658 mm) above the finished ground level at any point.

[Added Art. 36 ATM 5-26-2009]

**Street:** shall mean:

- 1) a public way or a way which the Town Clerk certifies is physically constructed and maintained and used as a public way; or
- 2) a private way shown on a definitive subdivision plan endorsed subsequent to 1953 and built to the specifications set forth therein; or
- 3) a way presently having in the opinion of the Planning Board sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed uses of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**Street, Highway:** For the purpose of § 97-3. and § 97-6 shall mean, where appropriate, the street lot line or the highway lot line.

**Structure:** That which is built or constructed, excluding ground level driveways and walkways, and fences and retaining walls [Added Art. 36 ATM 5-26-2009]

**Substantial Evidence:** Such evidence as a reasonable mind might accept as adequate to support a conclusion.[Amended Art. 33 ATM 5-26-2009]

**Toxic or Hazardous Material:** Any substance or mixture of physical, chemical, 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 of the Town of Newbury. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapters 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

**Use, Accessory:** A purpose subordinate to and dependant upon the principal use of a lot. [Amended Art. 36 ATM 5-26-2009]

**Use, Mixed:** Two or more principal uses occupying the same structure or lot, each of which is independent of and unrelated to the other.

**Use, Principal:** The main or primary purpose for which a structure or lot is designed, arranged, or intended or for which it is permitted to be used, occupied or maintained under this By-Law.

**Utility-Scale Wind Facility:** A commercial wind facility, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.[Amended Art. 33 ATM 5-26-2009]

**Water Supply Protection District:** A zoning district defined to overlay other zoning districts in the Town of Newbury. The water supply protection district may include specifically-designated aquifers and recharge areas.

**Wind Energy System/Wind Energy Facility:** All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, electrical collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines. [Amended Art. 33 ATM 5-26-2009]

**Wind Monitoring or Meteorological (“test” or “met”) Tower:** A temporary tower equipped with anemometer, wind vane, and other equipment to measure wind speed and direction, used to determine how much wind power a site can be expected to generate.[Amended Art. 33 ATM 5-26-2009]

**Wind Turbine:** A single device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower, nacelle body and components, and rotor with two or more blades.[Amended Art. 33 ATM 5-26-2009]

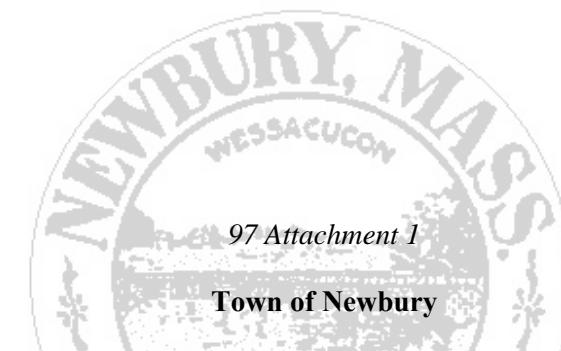
**Wireless Communication Services:** shall mean the provision of the following types of services: cellular telephone service, personal communications service, enhanced specialized mobile radio service, and radio transmission.

**Zone II:** The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation) as defined in 310 CMR 22.00.

**ARTICLE XII – VALIDITY****§ 97-12. Validity.**

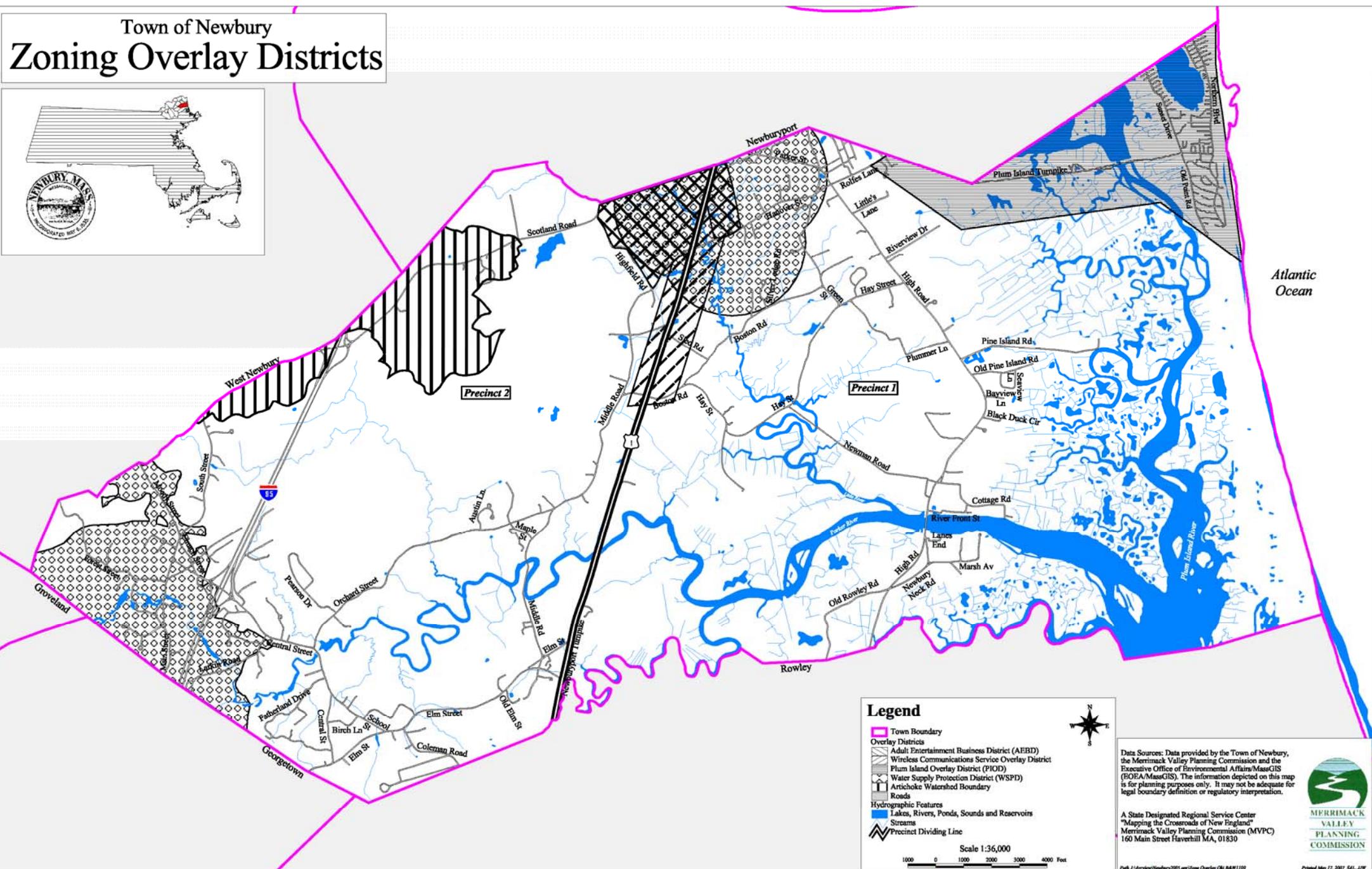
## A. General.

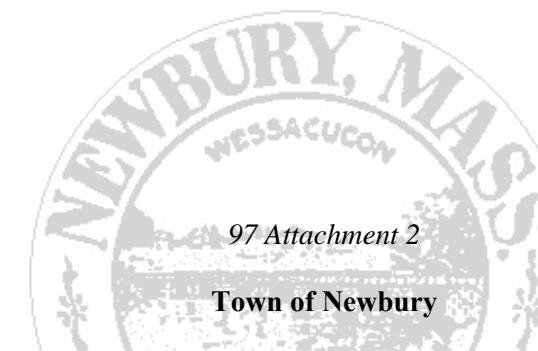
- (1) The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the bylaw. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.



97 Attachment 1

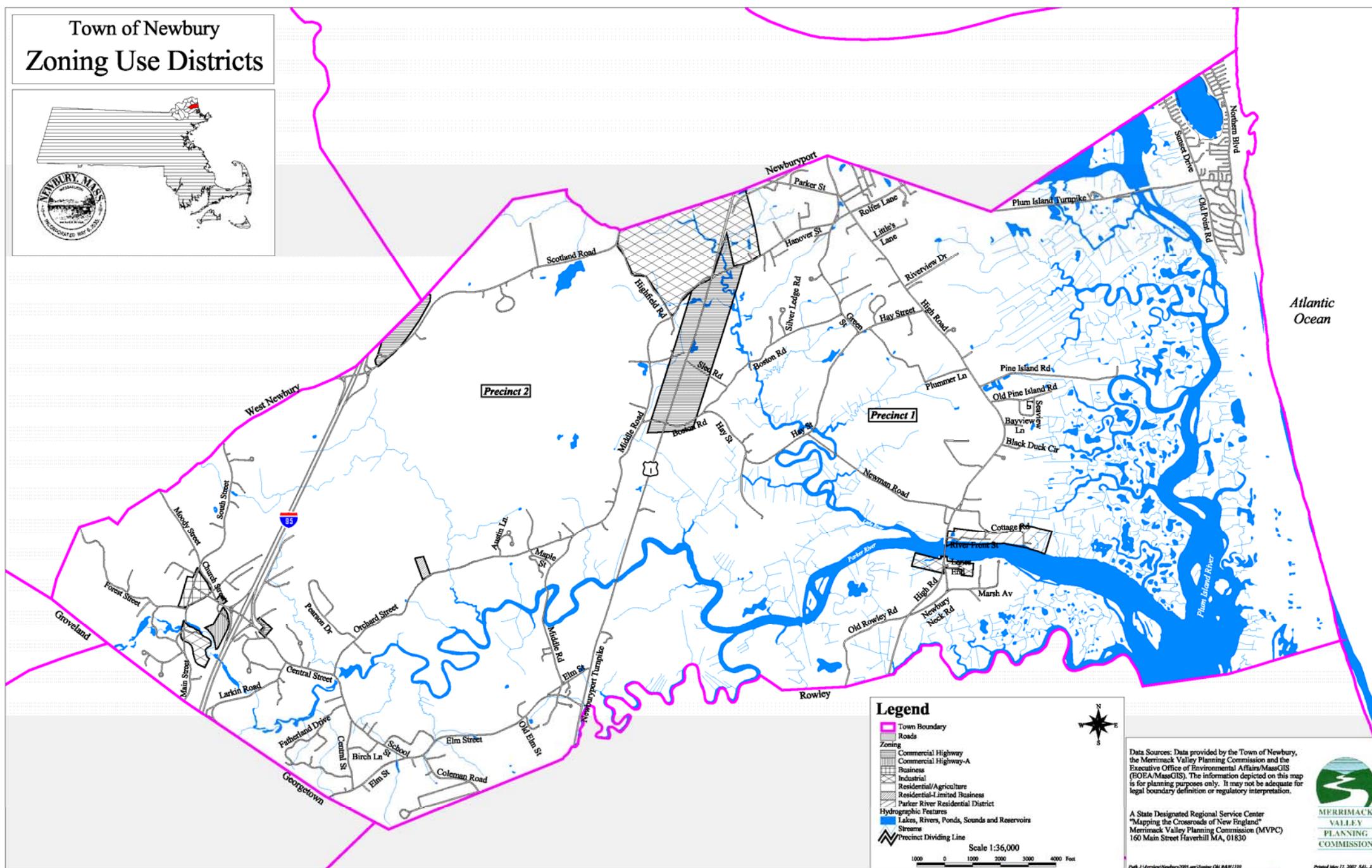
**Town of Newbury**

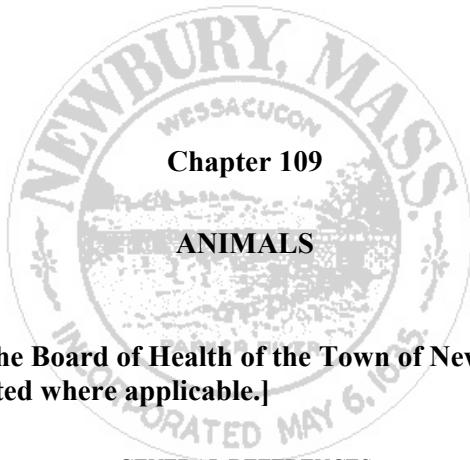




97 Attachment 2

### Town of Newbury





[HISTORY: Adopted by the Board of Health of the Town of Newbury as indicated in article histories. Amendments noted where applicable.]

#### GENERAL REFERENCES

Dogs and other animals — See Ch. 56.

### ARTICLE I Disposal of Waste [Adopted 3-25-1997]

#### § 109-1. Owner responsible; violations and penalties.

All persons owning or in custody of an animal on public recreation areas, a town beach, town playground, town parks, town greens or schoolyards will be responsible for the removal and disposal of that animal's waste which may not be placed in any receptacle owned by the town or in privately owned receptacles other than the owners. The fine for violation of this regulation shall be as follows:

- A. 1st Offense: Fifteen Dollars (\$15).
- B. 2nd Offense: Twenty five Dollars (\$25).
- C. 3rd and Subsequent Offenses: Fifty Dollars (\$50).

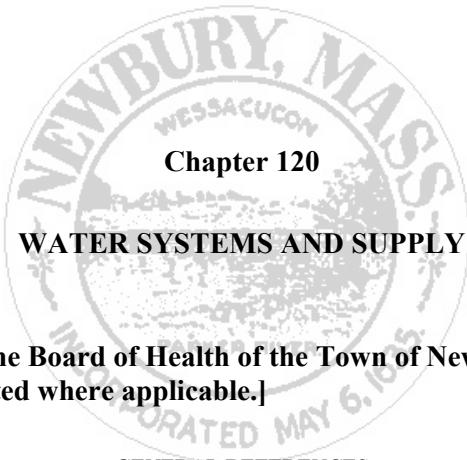
### ARTICLE II Dogs on the Beach [Adopted 6-9-2003]

#### § 109-2. Restriction on dogs on public beach.

No person being the owner or keeper of a dog shall allow said dog to be on any part of the public beach from May 15 to October 15, inclusive.

#### § 109-3. Violations and penalties.

Whoever violates this article shall be subject to a fine of \$25 for the first offense, \$35 for the second and \$50 for the third and subsequent offenses within one season. Fines to be paid before dog is released.



[HISTORY: Adopted by the Board of Health of the Town of Newbury as indicated in article histories. Amendments noted where applicable.]

#### GENERAL REFERENCES

Streets, sidewalks and commons — See Ch. 88.  
Subdivision of land — See Ch. 117.

### ARTICLE I Wells and Leaching Areas [Adopted 1-1-1969]

#### § 120-1. More than one family prohibited.

On lots of land containing less than one-half acre, no dwelling shall be constructed or altered to accommodate more than one family where the owners and/or occupants depend on wells for a water supply on said lots or on any area of land adjacent thereto.

#### § 120-2. Leaching areas.

No business shall be established by any person, corporation or other entity, that requires the disposal of waste and/or sewage onto a leaching area without written permission of the Board of Health.

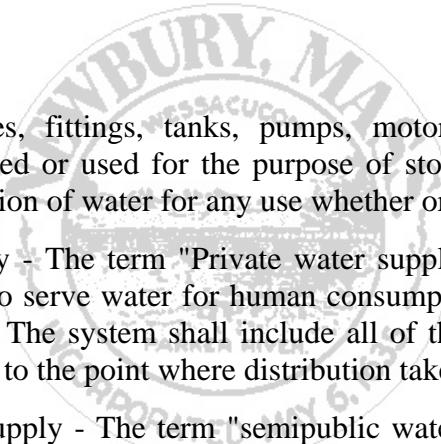
#### § 120-3. Violations and penalties.

Whoever violates these regulations shall be subject to a fine of not less than \$20.00 for each violation. Each 24 hour period shall constitute a separate violation.

### ARTICLE II System Regulations [Adopted 4-1-1975]

#### § 120-4. Regulation 1: Terms.

- A. Well - The word "well" so used in these regulations shall include any pit, pipe, excavation, spring, casing, drill hole or other source of water to be used for any purpose of supplying potable water in the Town of Newbury, and shall include dug wells, driven or tubular wells, drilled wells (artesian or otherwise) and springs, gravel packed, gravel walled wells, gravel developed, and wash borings and as further described in Massachusetts Department of Public Health Bulletin, Rural Water Supplies 1956.
- B. Water Systems - The words "water systems," as used in these regulations shall

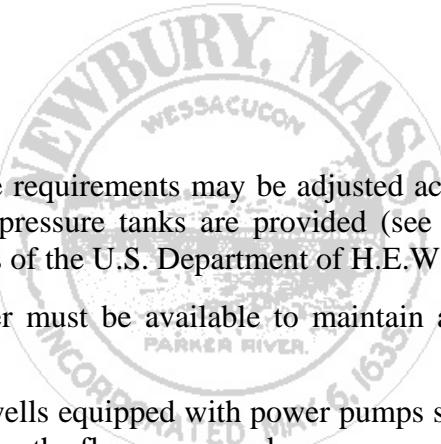


include pipes, valves, fittings, tanks, pumps, motors, switches, controls and, appurtenances installed or used for the purpose of storage, distribution, filtration, treatment or purification of water for any use whether or not inside a building.

- C. Private Water Supply - The term "Private water supply" means any water system serving or intended to serve water for human consumption or for domestic uses or purposes on one lot. The system shall include all of the sources, treatment works and distribution lines to the point where distribution takes place within the building.
- D. Semipublic Water Supply - The term "semipublic water supply" means any water system serving or intended to serve water for human consumption or for domestic uses or purposes including multiple dwelling of two or more units, or to more than one multiple dwelling under a single ownership and located on the same lot, or to restaurants, dairies, schools, institutions, motels, mobile home parks, bottling plants, campgrounds, recreational camps for children, state, forest, parks and beaches.

#### **§ 120-5. Regulation 2: Wells.**

- A. No well shall be installed until a permit has been obtained from the Board of Health. The fee for this permit shall be set by the Board from time to time. (Effective April 1, 1975 the fee is ten dollars \$10.00.)
- B. The well contractor shall observe reasonable sanitary measures and precautions in the performance of his work in order to prevent pollution or contamination of the well.
- C. See illustration next page for suggested example of typical installation.
- D. A certified plot plan shall be submitted with the application for a well permit to the Board of Health indicating the proposed location of the well, all buildings, boundary lines, septic systems (within 200 feet.)
  - (1) Wells shall be located at least 15' from any public or private way or street and 10' from lot lines and 100' from any leaching system or any other such greater distance as may be required by the State Sanitary Code.
  - (2) Well must be properly curbed and covered to prevent entrance or contamination and to divert surface drainage away from the well.
- E. Evidence of the yield of the well shall include a demonstration test in the presence of the Board of Health Agent of the rate of flow in a satisfactory manner by the well contractor before his equipment is removed from the site.
  - (1) There shall be a minimum yield of 200 gallons per bedroom per day at 40 lbs. P.S.I. at the highest fixture serviced. A bedroom shall include undeveloped area that could be made into a bedroom.
  - (2) Pressure tanks for individual home installation shall have a capacity of 30 gallons per bedroom served with a minimum size of 42 gallons. The water system shall be able to deliver 5 gallons per minute for four hour continuous

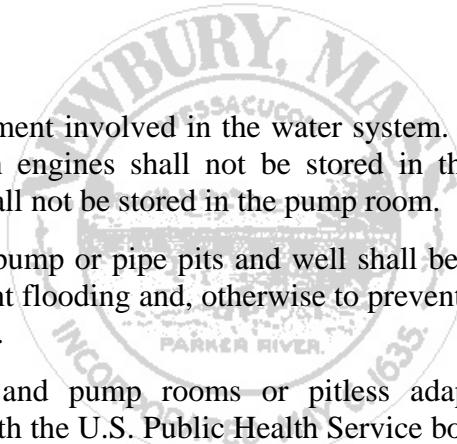


running.

- (3) Water flow rate requirements may be adjusted according when large storage, and/or storage pressure tanks are provided (see page 101 Individual Water Supply Systems of the U.S. Department of H.E.W.).
- (4) Auxiliary power must be available to maintain a water supply for multiple dwellings.
- (5) The casing of wells equipped with power pumps shall extend at least eighteen (18) inches above the floor or ground.
- (6) The wall of a dug well shall extend at least four inches above the floor or the original ground surface.

**§ 120-6. Regulation 3: Sanitation, production and quality.**

- A. Sanitary protection must be incorporated into the construction of the well and final finishing at grade shall include cement platform of 6' square or large enough to extend at least 2' in all directions from the well casing itself.
- B. All newly completed wells shall be disinfected in accordance with instructions from Massachusetts Department of Public Health "Rural Water Supplies." 1956.
  - (1) Before approval every well shall be pump tested. The results of the pump test shall be submitted to the Board of Health for approval. The pump test shall include a draw down test end a minimum of five (5) gallons per minute for four (4) hours.
  - (2) A bacteriological test to indicate a 0/100 ML coliform density will be the minimum requirement.
  - (3) A chemical analysis will be required. if the Board of Health agent notes any extenuating circumstances. The quality of the water must meet U. S. Public Health recommended standards. Toxicity tests may also be required.
- C. The owners of a semipublic water supply shall possess and display an unrevoked permit from the Board of Health which signifies the status of sanitary protection, maintenance, operation, and improvements recommended.
  - (1) The owners of private water supplies shall be required to registered with the Board of Health.
  - (2) The holder of a permit for a semipublic water supply shall furnish the Board of Health with a bacteria report from an approved laboratory each year before renewal of the water permit is issued. Also the hold of a semipublic water supply shall furnish at the request of the Board of Health or its Agent a complete report or other particular information concerning the condition and operation of the water system or any part of it.
- D. Pump houses or pump rooms shall be kept in a sanitary condition at all times. Also the size of the room should be no larger than necessary to house the pumping and



the electrical equipment involved in the water system. Lawnmowers, snowblowers or other gas driven engines shall not be stored in the pump room. Insecticides and/or fertilizers shall not be stored in the pump room.

- (1) Pump house, pump or pipe pits and well shall be designated and constructed so as to prevent flooding and, otherwise to prevent the entrance of pollution or contamination.
- (2) Pump house and pump rooms or pitless adapters shall be installed in accordance with the U.S. Public Health Service booklet "Manual of Individual Water Systems" as currently published.
- (3) No person shall install or enter into a contract for installing or making additions, modifications, or alterations to any "semipublic" water supply before submitting complete plans, specifications and descriptions to the Board of Health and receive from them written approval. Private and semiprivate water supply systems shall be approved by the Board of Health before occupancy is permitted.

#### **§ 120-7. Regulation 4: Water conditioning.**

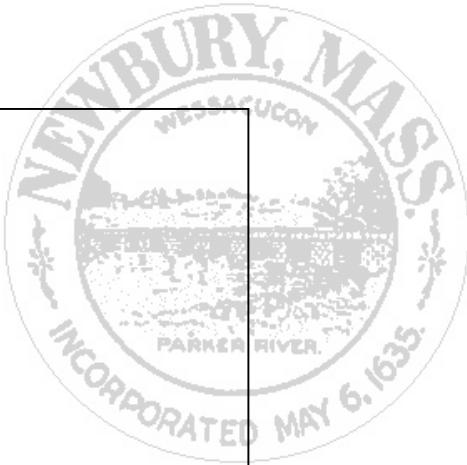
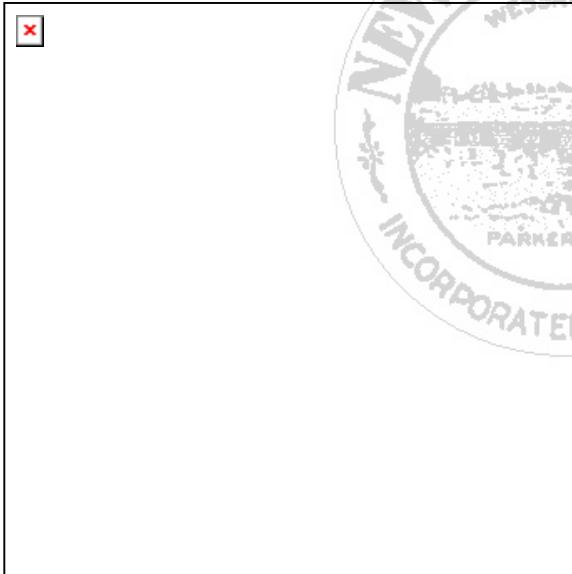
Permanent disinfection of a polluted supply is prohibited. Treatment plans for water conditioning such as iron, manganese hardness, or others shall be submitted for Board of Health approval.

#### **§ 120-8. Regulation 5: Pipes and equipment.**

- A. All service pipe and connections shall be of nontoxic material and meet the specifications approved by the New England Water Works Association.
- B. The installation of pipes shall be such that they are protected from crushing and/or attack by rodents and freezing.
- C. Dissimilar metals should be discouraged in the water system. The use of nonconductive plastic inserts between pipes and fittings or the installation of sacrificial anodes is helpful in minimizing electric corrosion problems.
- D. Electrical service grounds shall not be attached to the water piping.

#### **§ 120-9. Regulation 6: Prohibitions.**

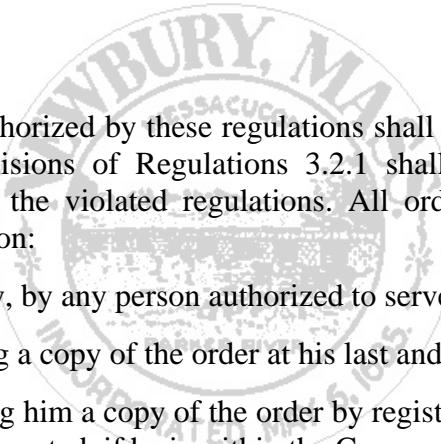
- A. Surface water supplies for private or semipublic water supplies shall be prohibited.
- B. Cisterns shall be prohibited.
- C. Cross connections shall be prohibited.
  - (1) No cross connection between a private source of water supply shall be allowed. (See illustration below.)



- (2) Other cross connections for whatever purpose shall not be allowed without a written permit from Massachusetts Department of Public Health.

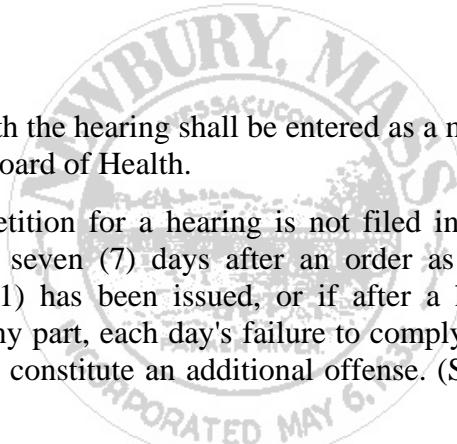
**§ 120-10. Regulation 7: Enforcement.**

- A. Variances. The Board of Health may vary the application of any provision of these regulations with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of these minimum standards. Any variance granted by the Board of Health shall be in writing. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the Clerk of the Town, or in the office of the Board of Health, and notice of the grant of variance shall be filed with the Commissioner of Public Health of the Commonwealth.
- B. Variance, Grant of Special Permission, Expiration, Modifications, Suspension of: Any variance or other modification authorized to be made by these regulations may be subject to such qualification, revocation, suspension, or expiration as the Board of Health expresses in its grant. A variance or modification authorized to be made by these regulations may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with the requirements for an order and hearing of Regulations in Subsections D and E.
- C. General Enforcement. The provisions of Article 1 of the State Sanitary Code shall govern the enforcement of these regulations.
- D. Orders: Service and Content.
  - (1) If an examination as provided for in regulation 3.2.1 reveals failure to comply with the provisions of these regulations the Board of Health may order the persons responsible to comply with the violated provision.

- 
- (2) Every order authorized by these regulations shall be in writing. Orders issued under the provisions of Regulations 3.2.1 shall be served on all persons responsible for the violated regulations. All orders shall be served on the designated person:
- Personally, by any person authorized to serve civil process; or
  - By leaving a copy of the order at his last and usual place of abode; or
  - By sending him a copy of the order by registered or certified mail, return receipt requested, if he is within the Commonwealth; or
  - If his last and usual place of abode is unknown or outside the Commonwealth, by posting a copy of the order in a conspicuous place on or about the affected premises.
- (3) Subject to the emergency provision of these regulations any order issued under the provisions of these regulations shall:
- Include a statement of the violation, or defect, and may suggest action which if taken will effect compliance with this code; and
  - Allot a reasonable time for any action it requires; and
  - Inform the person to whom it is directed of his right to a hearing and of his responsibility to request the hearing, and to whom the request shall be made.

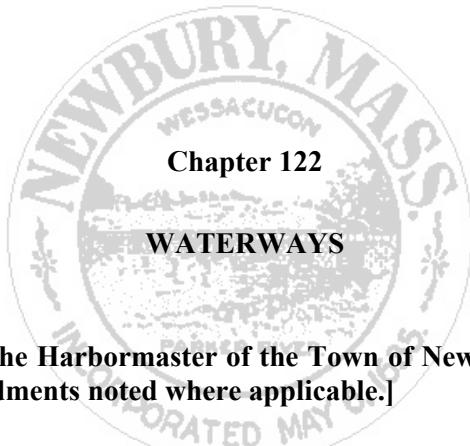
E. Hearing.

- The person or persons to whom any order served pursuant to regulation in Subsection D of these regulations has been directed may request a hearing before the Board by filing within seven (7) days after the day the order was served in the office of the Board of Health a written petition requesting a hearing on the matter. Upon receipt of such petition the Board of Health shall set a time and a place for such hearing and shall inform the petitioner thereof in writing. The hearing shall be commenced not later than ten (10) days after the day on which the petition was filed: provided, that upon application of the petitioner the Board of Health may postpone the date of the hearing for a reasonable time beyond such ten (10) day period if in the judgment of the Board of Health, the petitioner has submitted a good and sufficient reason for such postponement.
- At the hearing the petitioner shall be given an opportunity to be heard and to show why the order should be modified or withdrawn.
- After the hearing the Board of Health shall sustain, Modify, or withdraw the order and shall inform the petitioner in writing of its decision. If the Board of Health sustains or modifies the order, it shall be carried out within the period allotted in the original order or in the modification.
- Every notice, order, or other record prepared by the Board of Health in



connection with the hearing shall be entered as a matter of public record in the office of the Board of Health.

- (5) If a written petition for a hearing is not filed in the office of the Board of Health within seven (7) days after an order as provided in regulations in Subsection E(1) has been issued, or if after a hearing the order has been sustained in any part, each day's failure to comply with the order as issued or modified shall constitute an additional offense. (See regulation in Subsection G.)
- F. Appeal. Any person aggrieved by the decision of the Board of Health may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of the Commonwealth.
- G. Penalties.
- (1) Any person who shall violate any provision of these regulations for which penalty is not otherwise provided in any of the General Laws or in any other provision of these regulations or articles of the State Sanitary Code shall upon conviction be fined not less than ten (\$10) or more than fifty (\$50) dollars.
  - (2) Any person who shall fail to comply with any order issued pursuant to the provisions of these regulations shall upon conviction be fined not less than ten (\$10) or more than fifty (\$50) dollars. Each day's failure to comply with an order shall constitute a separate violation, only after the holder thereof has been notified in writing and has been given an opportunity to conform with the requirement for an order and hearing of regulations in Subsections D and E.
  - (3) The inspection and these regulations cannot be construed as a guarantee by the Town of Newbury or its agents that the water system will function satisfactorily.



[**HISTORY:** Adopted by the Harbormaster of the Town of Newbury 6-2-1999; as amended through 1-23-2007. Amendments noted where applicable.]

#### GENERAL REFERENCES

Beaches — See Ch. 45.  
Vehicles and traffic — See Ch. 93.  
Zoning — See Ch. 97.  
Subdivision of land — See Ch. 117.

#### § 122-1. Application.

- A. These rules shall apply to all persons engaged in boating as well as to boats located within the territorial confines of the Town of Newbury as such may be legally defined from time to time.
- B. These rules and regulations are in effect three miles off the Town of Newbury's shores.

#### § 122-2. Definitions.

In construing the provisions of these rules the following definitions shall apply, unless such construction would be inconsistent with the intent of the Selectmen.

**HARBORMASTER** refers to the duly appointed Town of Newbury Harbormaster, all Assistant Harbormasters and Newbury Police Officers assigned to harbor patrol duty.  
"Harbormaster" shall mean that official responsible for administering the provisions of all waterways rules and regulations.

**VESSEL** or **BOAT** shall mean watercraft of every description without limitation, including documented boats or vessels used or capable of being used as a means of transportation on water and including all types of propulsion.

**LOBSTERING** shall include the taking of lobsters by any means such as by trap, net or scuba equipment.

**MOORING** shall mean a relatively permanent arrangement of an anchor, chain and floating buoy to which a boat may be tied for extended periods. For the purposes of this article, it also includes any anchor or ground tackle used to secure a float or docks.

**PRIVATE DOCK** or **WHARF** refers to a permit to have a dock or wharf on private property. The dock or wharf would be anchored or moored in such a way that there is a walkway installed for direct access between land owned by the permit holder and the floating docks or wharves. (10A permit)

**MOORING NUMBER** refers to the assignment of a specific mooring number and location.

**COMMERCIAL MOORINGS** permit refers to the assignment of a specific mooring

and mooring location to a resident business of the town of Newbury.

**PRIVATE FLOATING DOCK** is a floating section of dock which is affixed to the river bottom with two or more moorings and capable<sup>1</sup> holding two boats.

**COMMERCIAL FLOATING DOCK** is a floating section of dock which is affixed to the river bottom with two or more moorings and capable<sup>2</sup> holding two boats. The resident business of the town of Newbury may lease or rent space on the floating dock.

**WATERWAY PERMIT** refers to a variety of permits (122-3-1 through 122-3-9) issued to use the waterways in the Town of Newbury.

**WATERWAY PERMIT STICKER/DECAL** refers to numbered decal that is to be affixed and displayed as defined in the waterway permit section. (122-3-1 through 122-3-9)

**ONE DAY RAMP PERMIT** refers to a permit issued by the harbormaster to use of the resident only ramp for one calendar day.

**TOWN DOCK SLIPS** refers to the dock slips located at the town wharf. These slips are limited to vessels under 10 feet in length, unless a written exception is issued by the harbormaster.

**COMERCIAL SLIPS OR DOCKS** refers to slips or docks installed and maintained by a resident business of the town of Newbury. Slips or docks are available to be rented or used by another.

**VESSEL LENGTH** measured from the bow in a straight line aft to the stern.

**WATER SKIING** shall include not only the towing or manipulation of person(s) on skis but also the towing or manipulation of a surfboard, aquaplane, kneeboard, parasail or other similar device behind any vessel.

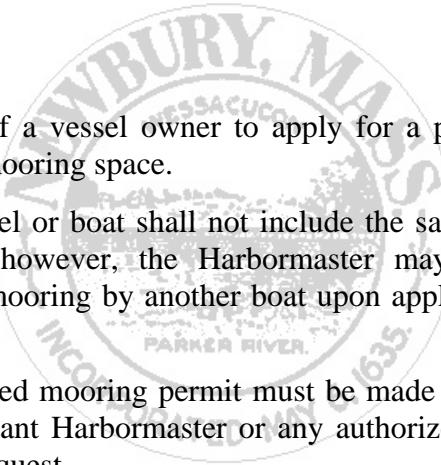
**WATERWAY** means all bodies of water within the territorial confines of the Town of Newbury, including without limitation, the Newbury section of the Plum Island Basin and the Plum Island designated beach.

### **§ 122-3. Waterway permits.**

- A. No person shall moor or anchor any vessel, or install a mooring or float within the Town of Newbury, or use the Town Ramp without first obtaining from the Harbormaster a Waterways Permit.
- B. Each waterway permit application must be completed fully, accurately and truthfully. [Amended 1-8-2002]
- C. The waterway permit fee applies to all who are liable under law to pay to the Town of Newbury.
- D. The permit fee is not refundable if the waterway permit has been revoked by the Harbormaster or the mooring has been removed by the owner for any reason during the year. The fee includes boats moored at slips, docks and private floats.
- E. All boats over eight feet (8') in length must obtain a waterways permit.
- F. All waterway permits shall expire midnight, December 31 of the year in which they

1. Editor's Note: So in original.

2. Editor's Note: So in original.



are issued. Failure of a vessel owner to apply for a permit before April 15 may result in the loss of mooring space.

- G. The sale of any vessel or boat shall not include the sale of the mooring permit or location. Provided, however, the Harbormaster may authorize in writing the temporary use of a mooring by another boat upon application by the holder of the permit.
- H. If requested, the issued mooring permit must be made available and shown to any Harbormaster, Assistant Harbormaster or any authorized law enforcement official within 24 hours of request.
- I. Waterway Permit Suspension, Revocation. A permit may be suspended or revoked by the Harbormaster whenever in his opinion the boat and/or mooring unduly threatens the safety or public health of the mooring area or the reasonable use of that area by other boats. Mooring at a place other than that specified on the permit will be grounds for revocation.
- J. Regardless of recommendations or inspections it shall be the ultimate responsibility of the owners or waterways permit holder to ensure the safe and serviceable condition of all mooring, lines, docks, pilings and equipment.
- K. Late fees — all payments and signed documents for renewals not received by the May 1,<sup>3</sup> unless otherwise specified will be assessed a late fee. See fee table 122-12.

The following Waterways Permits are issued in the Town of Newbury.

**Mooring permit — Commercial**

**Mooring permit — Private**

**Floating dock permit — Commercial**

**Floating dock permit — Private**

**Town Dock slip permit — resident**

**Town Dock slip permit — non-resident**

**Season ramp permit, vessel — resident**

**Season ramp permit, canoe & kayak — resident**

**Waterway permit — All other vessel**

**One day ramp permit**

**Wharf and dock — private (10a)**

122- **Mooring Permit — commercial**

3-1

- A. Permit to install a mooring (excluding floating docks). The Harbormaster will assign specific mooring location and number to a resident business located in the Town of Newbury. The business owner may lease or rent the mooring.

3. Editor's Note: So in original.

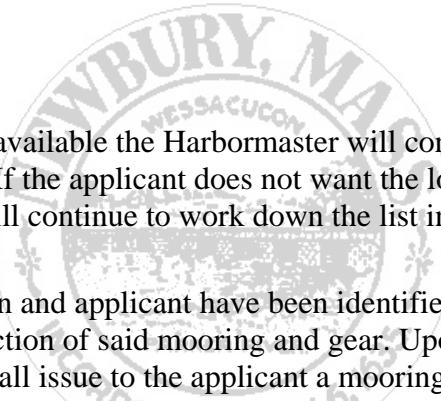
The vessel using the mooring must have a valid waterways permit.

- B. New Mooring Application — An applicant requesting a mooring permit shall file an application with the Harbormaster, and said application shall contain such information as the Harbormaster may reasonably require to determine the adequacy of the mooring and gear to be used by the applicant. The harbormaster will maintain a waiting list for new moorings requests. Commercial applicants shall be limited to 1 new application per year. Applications for new mooring permits shall be submitted after January 1 and shall be accompanied by a waiting list fee. See fee schedule 122-12. Upon receipt of the application and fee, the Harbormaster will add the applicant names to the waiting list.
- C. In order to hold their spot on the waiting list after January 1, the applicant must re-submit a mooring application with the waiting list fee. The waiting list fee and application must be postmarked no later than January 31.
- D. Once a space is available the Harbormaster will contact the next applicant on the waiting list. If the applicant does not want the location that is available, the Harbormaster will continue to work down the list in the order they were reserved.
- E. Once the location and applicant have been identified the Harbormaster may require an inspection of said mooring and gear. Upon payment the Harbormaster shall issue to the applicant a mooring number and waterways permit to be affixed to the vessel. The permit holder shall paint or attach the assigned mooring number on the mooring float. The numbers shall be a minimum of 3" block style letter, and shall be legible.

**122- Mooring Permit — private**

3-2

- A. Permit to install and moor a vessel (excluding floating docks). The harbormaster will assign specific mooring number and mooring location to an individual owner and a specific boat owned by the permit holder. This permit may not be transferred in any way (given, leased, rented, sold, etc.).
- B. New Mooring Application — An applicant requesting a mooring permit shall file an application with the Harbormaster, and said application shall contain such information as the Harbormaster may reasonably require to determine the adequacy of the mooring and gear to be used by the applicant. The harbormaster will maintain a waiting list for new moorings requests. Applications for new mooring permits shall be submitted after January 1 and shall be accompanied by a waiting list fee. See fee schedule 122-12. Upon receipt of the application and fee, the Harbormaster will add the applicant names to the waiting list.
- C. In order to hold their spot on the waiting list after January 1, the applicant must re-submit a mooring application with the waiting list fee. The waiting list fee and application must be postmarked no later than January 31.

- 
- D. Once a space is available the Harbormaster will contact the next applicant on the waiting list. If the applicant does not want the location that is available, the Harbormaster will continue to work down the list in the order they were reserved.
  - E. Once the location and applicant have been identified the Harbormaster may require an inspection of said mooring and gear. Upon payment the Harbormaster shall issue to the applicant a mooring number and waterways permit to be affixed to the vessel. The permit holder shall paint or attach the assigned mooring number the mooring float. The numbers shall be a minimum of 3" block style letter, and shall be legible.

**122- Floating dock permit — Commercial and Private**

3-3

- A. Permit to install and moor a floating dock. The harbormaster will assign specific Floating dock number and location to resident business located in the Town of Newbury. This permit may not be transferred in any way (given, leased, rented, sold, etc.).
- B. New Mooring Application — An applicant requesting a mooring permit shall file an application with the Harbormaster, and said application shall contain such information as the Harbormaster may reasonably require to determine the adequacy of the mooring and gear to be used by the applicant. The harbormaster will maintain a waiting list for new moorings requests. Applications for new mooring permits shall be submitted after January 1 and shall be accompanied by a waiting list fee. See fee schedule 122-12. Upon receipt of the application and fee, the Harbormaster will add the applicant names to the waiting list.
- C. In order to hold their spot on the waiting list after January 1, the applicant must re-submit a mooring application with the waiting list fee. The waiting list fee and application must be postmarked no later than January 31.
- D. Once a space is available the Harbormaster will contact the next applicant on the waiting list. If the applicant does not want the location that is available, the Harbormaster will continue to work down the list in the order they were reserved.
- D. Once the location and applicant have been identified the Harbormaster may require an inspection of said mooring and gear. Upon payment the Harbormaster shall issue to the applicant a floating dock number to be affixed to the floating dock. The permit holder shall paint or attach the assigned floating dock number on the down river end of dock. The numbers shall be a minimum of 5" block style letter, and shall be visible and legible at all times. Additionally the current year waterways decal shall be affixed immediately after the float number.
- F. Floating docks for private use may not rented or sublet and the permit may not be transferred in any way (given, leased, rented, sold, etc.).

122- **Town Dock slip permit — resident and non-resident**

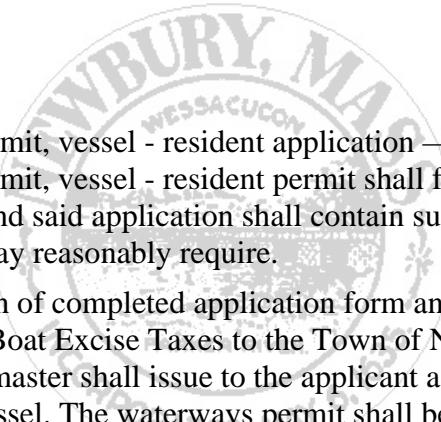
3-4

- A. Permit to rent a town dock slip on the town dock. The Harbormaster will assign specific slip location to an individual owner and a specific boat owned by the permit holder. This permit and town dock slip may not be transferred in any way (given, leased, rented, sold, etc.).
- B. New town dock slip Application — An applicant requesting a dingy Editor's Note: So in original. slip on town dock slip permit shall file an application with the Harbormaster, and said application shall contain such information as the Harbormaster may reasonably require. The harbormaster will maintain a waiting list for new town dock slip permits requests. Applications for new town dock slip permit shall be submitted after January 1 and shall be accompanied by a waiting list fee, see fee schedule 122-12. Upon receipt of the completed application and fee, the Harbormaster will add the applicant names to the waiting list.
- C. In order to hold their spot on the waiting list after January 1, the applicant must re-submit a town dock slip permits request application with the waiting list fee. The waiting list fee and application must be postmarked no later than January 31. Any application and fees not received with a postmark of January 31 or earlier will loose Editor's Note: So in original. their spot on the waiting list.
- D. Once a town dock slip space is available the Harbormaster will contact the next applicant on the waiting list. If the applicant does not want the location that is available, the Harbormaster will continue to work down the list in the order they were reserved.
- E. Once the location and applicant have been identified the applicant will be required to fill out the town dock slip permits application and pay the associated fee. Upon payment, the Harbormaster shall issue to the applicant a waterways permit to be affixed to the vessel. The waterways permit shall be applied and displayed on the upper Starboard (right) stern corner of a boat, just below the hull identification number.
- F. The owner agrees not to hold the town responsible for damages caused by fire, theft, storm, wind, rain, flood, or causes beyond its own control while the boat Editor's Note: So in original. located at the town dock. The boat owner will be held responsible for damage which he may cause to other boats or structures. Any boat which may sink while at the town dock may be removed by the Town at the expense of the boat owner.

122- **Season ramp permit, vessel - resident**

3-5

- A. Permit issued to residents of Newbury to use the town launch ramp. This permit is issued to an individual and a specific boat owned by the permit holder. This permit may not be transferred in any way (given, leased, rented, sold, etc.).

- 
- B. Season ramp permit, vessel - resident application — An applicant requesting a Season ramp permit, vessel - resident permit shall file an application with the Harbormaster, and said application shall contain such information as the Harbormaster may reasonably require.
- C. Upon submission of completed application form and payment, and Proof of the payment of Boat Excise Taxes to the Town of Newbury for the previous year the Harbormaster shall issue to the applicant a waterways permit to be affixed to the vessel. The waterways permit shall be applied and displayed on the upper Starboard (right) stern corner of a boat, just below the hull identification number.

**122- Season ramp permit, canoe & kayak — resident**

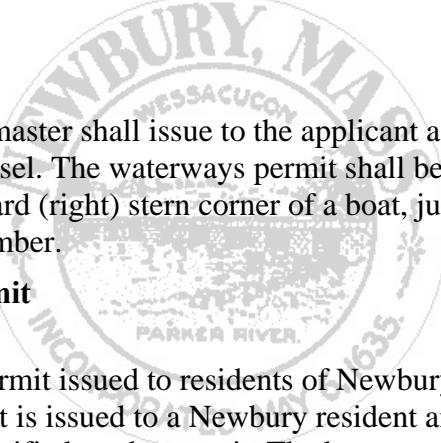
3-6

- A. Permit issued to residents of Newbury to use the town launch ramp. This permit is issued to an individual owner and a specific canoe & kayak owned by the permit holder. This permit may not be transferred in any way (given, leased, rented, sold, etc.).
- B. Season ramp permit, canoe & kayak — resident application — An applicant requesting a Season ramp permit, canoe & kayak — resident permit shall file an application with the Harbormaster, and said application shall contain such information as the Harbormaster may reasonably require.
- C. Upon submission of completed application form, fee payment, and Proof of the payment of Boat Excise Taxes to the Town of Newbury for the previous year, the Harbormaster shall issue to the applicant a waterways permit to be affixed to the vessel. The waterways permit shall be applied and displayed on kayaks or canoes on the starboard (right) side near the stern. It must be visible when the vessel is in the water.

**122- Waterway permit — All other vessel**

3-7

- A. Permit issued to all other vessel not addressed in the previous definitions and moored in the any bodies of water within the territorial confines of the Town of Newbury, including without limitation, the Newbury section of the Plum Island Basin and the Plum Island designated beach. Examples are, vessels on private or commercial docks, floating docks, commercial moorings, rack storage etc. This permit is issued to an individual owner and a specific vessel owned by the permit holder. This permit may not be transferred in any way (given, leased, rented, sold, etc.).
- B. Waterway permit — all other vessel application — An applicant requesting a Waterway permit — all other vessel permit shall file an application with the Harbormaster, and said application shall contain such information as the Harbormaster may reasonably require.
- C. Upon submission of completed application form and fee payment, and Proof of the payment of Boat Excise Taxes to the Town of Newbury for the previous



year, the Harbormaster shall issue to the applicant a waterways permit to be affixed to the vessel. The waterways permit shall be applied and displayed on the upper Starboard (right) stern corner of a boat, just below the hull identification number.

122- **One day ramp permit**

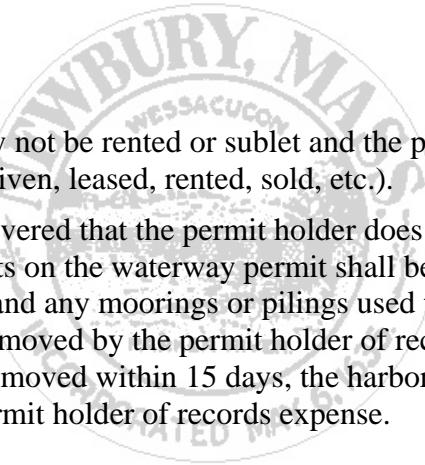
3-8

- A. One day ramp permit issued to residents of Newbury to use the town launch ramp. This permit is issued to a Newbury resident and allows them to launch a specific boat identified on the permit. The boat may be owned by them or their guest. This permit may not be transferred in any way (given, leased, rented, sold, etc.).
- B. One day ramp permit, An applicant requesting a One day ramp permit, shall request permission from the Harbormaster on duty. An application will be completed and given to the harbormaster. Should a harbormaster not be on duty when the vessel departs the fee is still owed to the Town of Newbury. The application shall contain such information as the Harbormaster may reasonably require.
- C. Upon submission of completed application form and payment to the Town of Newbury the Harbormaster shall issue to the applicant a One day ramp permit. The permit shall be kept in the boat and must be produced if requested by the Harbormaster.

122- **Dock or wharf permit — private (10 a permit)**

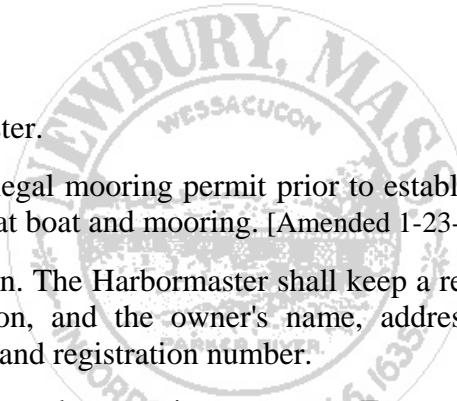
3-9

- A. Permit to have a dock or wharf on private property. The dock or wharf would be anchored or moored in such a way that there is a walkway installed for direct access between land owned by the permit holder and the floating docks or wharves. (10A permit). The harbormaster will assign specific dock number and location to property owner located in the Town of Newbury. This permit may not be transferred in any way (given, leased, rented, sold, etc.).
- B. New dock or wharf permit Application — An applicant requesting a dock or wharf permit shall file an application with the Harbormaster certifying ownership to the land from which the dock or wharf will be attached., and such other information as the Harbormaster may reasonably require to determine the adequacy of the mooring and dock to be used by the applicant.
- C. Once the location and applicant have been identified the Harbormaster may require an inspection of said mooring and docks. Upon payment the Harbormaster shall issue to the applicant a private dock number to be affixed to the outermost floating dock. The permit holder shall paint or attach the assigned private dock number on the down river end of outermost dock. The numbers shall be a minimum of 5" block style letter, and shall be visible and legible at all times. Additionally the current year waterways decal shall be affixed immediately after the float number.

- 
- D. Private docks may not be rented or sublet and the permit may not be transferred e.g. (given, leased, rented, sold, etc.).
  - E. Should it be discovered that the permit holder does not own the land that the dock or wharf rests on the waterway permit shall be immediately revoked. The wharf and docks and any moorings or pilings used to secure the docks or wharfs shall be removed by the permit holder of record. If the docks and wharfs are note removed within 15 days, the harbormaster may arrange for removal at the permit holder of records expense.

#### **§ 122-4. Regulations for moorings.**

- A. The Harbormaster Shall Establish and Enforce Regulations For Moorings And Buoys. The Harbormaster shall designate any and all mooring areas. The Harbormaster shall order the movement and placement of all vessels for the orderly and safe management of the Newbury waterways. (State Law Reference — Powers of Harbormaster to regulate harbors, M.G.L.A. Chapter 102, Sections 21, 23, 26.)
- B. Relocation of Boats.
  - (1) All moorings are subject to inspection by the Harbormaster. Any mooring may be inspected for size, type, construction and placement and removed or relocated whenever, in the reasonable judgment of the Harbormaster, the safety of other vessels or use of the area requires such action.
  - (2) Whenever the Harbormaster considers a mooring in violation of harbor bylaws and/or poses a hazard to navigation, he may, after due notification to the owner, in person or by registered mail to the address of record listed on the mooring permit, order the removal of the mooring, together with any vessel which may be attached to it, to a new location. Such action may be taken without notification to or reply from an owner only if; in the determination of the Harbormaster, the owner cannot be contacted within seventy-two (72) hours or if conditions require immediate action. Any expenses incurred in the removal or relocation of such mooring and/or vessel, or any resulting damage thereto shall be the sole responsibility of the owner. (State Law Reference — Harbormasters authority to remove vessels at anchor, M.G.L.A. Chapter 102, Section 24, 25.)
- C. Each mooring spar and buoy shall be visible at any tide level. Wood and/or metal mooring spars and buoys are not permitted.
- D. The use of an engine block or any other object which give rise to any oil or grease residue as a mooring anchor is disallowed. [Amended 1-23-07]
- E. Upon discontinuance of the use of a mooring, the permit holder shall notify the Harbormaster in writing, and shall remove the mooring and tackle.
- F. No movement of moorings shall be allowed unless permission has been obtained



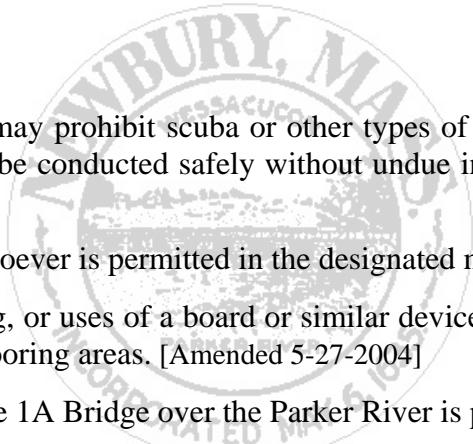
from the Harbormaster.

- G. Failure to obtain a legal mooring permit prior to establishing a mooring will result in the removal of that boat and mooring. [Amended 1-23-07]
- H. Mooring Information. The Harbormaster shall keep a record of all mooring permits issued, their location, and the owner's name, address, telephone number, boat length, type of boat and registration number.
- I. Abandonment of vessels, moorings etc. — Except in a maritime emergency currently affecting those aboard or others in the immediate vicinity, no vessel, mooring or other object shall be deliberately abandoned, sunk or otherwise placed in waters within the Town of Newbury where it may constitute a hazard. Any abandoned, sunk or improperly placed vessel, mooring or object so found and any vessel otherwise improperly secured, swamped, sunk, washed ashore or found in a restricted area may be ordered by the Harbormaster to be removed or relocated. If corrective action is not taken after twenty-four (24) hours notice to the owner or if the owner is not known after notice has been posted for the same period at the Harbormaster's office, the Harbormaster shall have authority to remove or relocate it, and the expense of such removal or relocation shall be charged to the vessel and its owner.
  - A. Nothing in the above shall be deemed to prevent emergency action by the Harbormaster with or without notice to the owner if, in his judgment, such action is necessary for the health and safety of persons or property.
  - B. Removal of any stray vessel by the Harbormaster shall be without liability to the Town of Newbury, its officers, agents or employees.

#### **§ 122-5. Parking and ramp; Parker River town facility.**

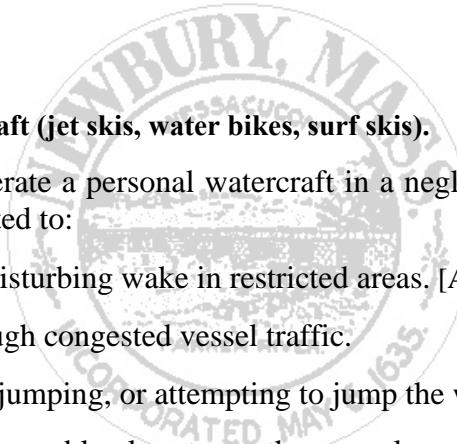
- A. Use of the Town Ramp is limited to those vessels displaying a current Town of Newbury waterways sticker or by purchase of a one day ramp permit. [Amended 5-27-2004; 1-23-07]
- B. No parking except in designated areas. The vehicle must display a current parking sticker from the Town of Newbury at all times while parked. [Amended 5-27-2004]
- C. Live parking only is permitted on the boat entrance ramp area.
- D. Residents of the Town of Newbury may use the Town Ramp and float facility provided the boat owner holds a valid waterways permit. Marine retailers within the Town of Newbury are entitled to use the Town Ramp. [Amended 5-27-2004; 1-23-07]
- E. No vessel will make fast to the town float for more than fifteen (15) minutes unless the express permission of the Harbormaster has been obtained.
- F. Swimmers and persons fishing must yield to boats using the town float at all times.

#### **§ 122-6. Prohibited uses.**

- 
- A. The Harbormaster may prohibit scuba or other types of diving in mooring areas if such diving cannot be conducted safely without undue inconvenience to other boat operations.
- B. No lobstering whatsoever is permitted in the designated mooring areas.
- C. Water skiing, tubing, or uses of a board or similar device being pulled by a line are prohibited in the mooring areas. [Amended 5-27-2004]
- D. Diving off the Route 1A Bridge over the Parker River is prohibited.
- E. No boat shall exceed six (6) miles per hour or cause a disturbing wake within the confines of posted areas or mooring areas. [Amended 5-27-2004]
- F. No person shall operate a boat within three hundred (300) feet of any beach or designated swimming area while water skiing, tubing or use of a board or similar devices being pulled by a line. [Amended 5-27-2004]
- G. No person shall operate a motor boat (a boat with machinery) within one hundred fifty (150) feet of any beach, public bathing area, or designated swimming area. [Amended 5-27-2004]
- H. Operation Near Scuba or Skin Divers. No person shall operate a power boat in the tidal waters of the Town within fifty (50) feet of a scuba diver's flag or marker unless such boat is being operated by a person identified with, working with or rendering assistance to such scuba diver. Persons skin diving or scuba diving in Newbury waters shall tow a float and divers flag while submerged. Such persons shall surface under such float and flag.
- I. No person shall operate a vessel in a reckless or negligent manner so as to endanger the life, safety or property of another person. Operators shall be responsible for damage caused by their excessive wake at any time.
- J. Except in the case of an emergency, boats are prohibited from tying up to any speed marker float, buoy or aid to navigation. (State Law Reference-Municipal authority to regulate motorboats and other vessels, M.G.L.A. Chapter 90B, Section 15)

**§ 122-7. Unlawful deposits.**

- A. No person shall throw or deposit in the Parker River, Plum Island River or in any pond, brook, or natural waterway within the limits of the Town, any dead animal, dead fish, rubbish, filth, foul or offensive substance, or any refuse matter whatsoever, fuel lubricating oil or other greasy substance so that the same shall create a danger to the public health, safety and welfare.
- B. No person shall discharge or cause to be discharged any petroleum products or waste into the Parker River, Plum Island River or any of the other waters surrounding the Town. (State Law References-Water pollution generally, M.G.L.A. Chapter 21, Section 26 et seq., Chapter 102, Section 17, Chapter 131, Section 41 et seq.; discharge of petroleum products, et seq. into tidal waters, etc., M.G.L.A. Chapter 91, Section 59.)



**§ 122-8. Personal watercraft (jet skis, water bikes, surf skis).**

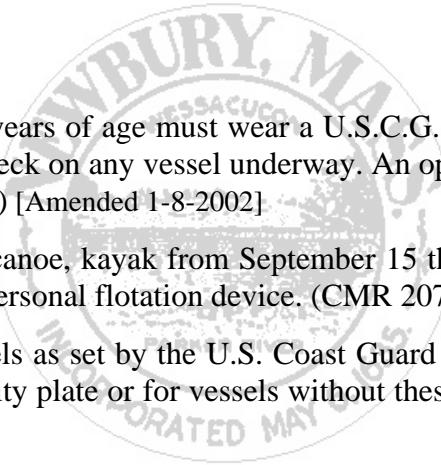
- A. No person shall operate a personal watercraft in a negligent manner. Including but not necessarily limited to:
  - (1) Excessive or disturbing wake in restricted areas. [Amended 5-27-2004]
  - (2) Weaving through congested vessel traffic.
  - (3) Unreasonable jumping, or attempting to jump the wake of another vessel.
  - (4) Crossing unreasonably close to another vessel.
  - (5) Operating a personal watercraft in such a manner that it endangers the life, limb or property of any person.
  - (6) Towing a water-skier or any person in any manner from a personal watercraft. [Amended 5-27-2004]
  - (7) Operating a personal watercraft during the evening (sunset to sunrise).
  - (8) No person 16 or 17 years of age shall operate a personal watercraft without having received a safety certificate evidencing satisfactory completion of a training course in safe operation. [323 CMR 4:00(b)]
  - (9) No person shall operate a personal watercraft if such person is under the age of sixteen (16).
- B. No person shall operate a personal watercraft:
  - (1) Within one hundred and fifty (150) feet of a beach, designated swimming area, or public bathing area. [Amended 5-27-2004]
  - (2) Within fifty (50) feet of a moored vessel. [Amended 5-27-2004]
  - (3) Between one hundred and fifty (150) and three hundred (300) feet of a beach, designated swimming area, or public bathing area except at headway speed. [Amended 5-27-2004]
  - (4) Within one hundred fifty (150) feet of a swimmer in the water.
- C. Violations of Personal watercraft Subsections A(1) through (7) and B(1) through (4) will result in a fine of \$50.00.

**§ 122-8.1. Dinghies on Town Dock. [Added 1-8-2002]**

Maximum length of dinghy on Town Dock not to exceed 10' (feet) unless written exception is attained from the Harbormaster.

**§ 122-8.2. Vessel Regulations.**

- A. Operator Provision of Personal Flotation Devices — The operator of any vessel on the waters of the Town of Newbury shall provide a United States Coast Guard approved personal flotation device for each person aboard a vessel. (CMR 207:p15)

- 
- B. Any child under 12 years of age must wear a U.S.C.G. approved personal flotation device when above deck on any vessel underway. An open boat is considered above deck. (CMR 207:p14) [Amended 1-8-2002]
  - C. Any person using a canoe, kayak from September 15 through May 15 must wear a U.S.C.G. approved personal flotation device. (CMR 207:p10)
  - D. Overloading of vessels as set by the U.S. Coast Guard Maximum capacity plate or Manufacturers capacity plate or for vessels without these plates the formula: [Added 1-8-2002]

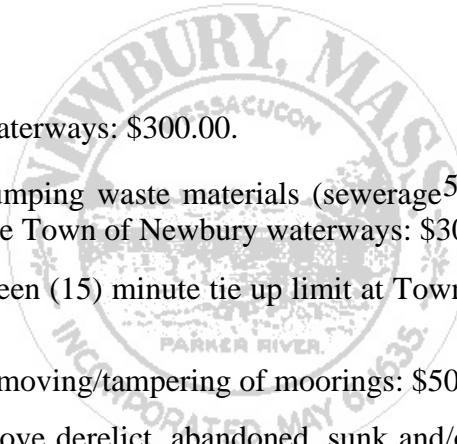
Number of people = Length of Vessel x Width of Vessel

15

#### **§ 122-9. Penalties and enforcement.**

- A. A waterway permit may be denied or revoked by the Harbormaster at any time for failure to comply with any waterways rules and regulations of the Town of Newbury and the Commonwealth of Massachusetts.
- B. Whoever violates any of these rules and regulations or refuses or neglects to obey the lawful orders of a Harbormaster, or resists him in the execution of his duties, shall subject the offender to a fine as set forth below and shall be liable in tort to any person suffering damage thereby. Each day of violation shall constitute a separate offense. Fines for acts constituting a violation are as follows:
  - (1) Placement of a mooring, float or dock without obtaining a waterway permit: \$50 per day. [Amended 1-23-07]
  - (2) Invalid, no vessel registration, or failing to display registration sticker: \$50.00. [Amended 5-27-2004]
  - (3) Failure to obtain, or display waterways permit for use of waterways of the Town of Newbury as defined in 122-3-1 through 122-3-8: \$40.00. [Amended 1-8-2002; 5-27-2004; 1-23-07]
  - (4) Exceeding six (6) mph in mooring area or causing a disturbing wake within the confines of posted areas or mooring areas: \$50.00. [Amended 1-8-2002; 5-27-2004]
  - (5) Reckless/negligent operation of a vessel: \$50.00. [Amended 1-23-07]
  - (6) Failure to mark mooring buoy or float with the assigned mooring number: \$40.00. [Amended 1-8-2002; 1-23-07]
  - (7) Water skiing, tubing, or pulling a similar device with a line in the mooring area: \$50.00. [Amended 5-27-2004]

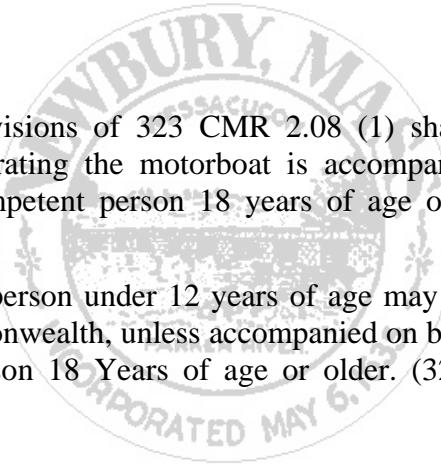
4. **Editor's Note:** So in original.

- 
- (8) Pollution of waterways: \$300.00.
  - (9) Any vessel dumping waste materials (sewerage<sup>5</sup>, garbage, plastics or paper products) in the Town of Newbury waterways: \$300.00.
  - (10) Exceeding fifteen (15) minute tie up limit at Town ramp: \$40.00. [Amended 1-8-2002]
  - (11) Unauthorized moving/tampering of moorings: \$50.00.
  - (12) Failure to remove derelict, abandoned, sunk and/or unsafe vessel after notice has been given: \$50.00 per day. [Amended 1-23-07]
  - (13) Operation of motor boat or personal watercraft within one hundred fifty (150) feet of a beach, designated swimming area, or public bathing area. (§ 122-6G, 122-8b-1): \$50.00. [Amended 5-27-2004]
  - (14) Parking in Town Ramp Parking Area without displaying a valid parking permit: \$50.00. [Amended 1-8-2002; 5-27-2004]
  - (15) Failure to wear a Type I, II, III personal flotation device from September 15 through May 15 for users of canoe, kayak: \$50.00.
  - (16) Fine for § 122-8E will be administered to adult on board for any child not wearing a USCG approved personal flotation device: \$50.00.
  - (17) Failure to have a Coast Guard approved personal flotation device for each person aboard a motorboat will result in end of voyage and fine of: \$50.00. [Amended 1-23-07]
  - (18) Operating without light — sunset to sunrise or restricted visibility (M.G.L.A. Ch. 90B Sec. 5): \$50.00.
  - (19) Overloading of vessel will result in end of voyage and fine of \$50.00. [Added 1-8-2002]
  - (20) Sublet of private mooring or floating dock: loss of waterways permit and/or \$50.00 per day. [Added 1-8-2002; 1-23-07]

#### **§ 122-10. Operation by minors.**

- A. Safety Certificate. Any person of at least 12 years of age and less than 16 years of age shall satisfactorily complete a training course in boating safety approved by the National Association of State Boating Law Administrators. Courses approved include those sponsored by the Division of Law Enforcement, boating agencies of other states in the U.S.A., the United States Coast Guard Auxiliary, the United States Power Squadron, or any other entity approved by the Director. Any such person who satisfactorily completes said course will be issued a safety certificate, which shall be in possession when operating a motorboat and available for inspection by empowered law enforcement officers. (323 CMR 2.08:1) Violation: \$50.00

5. Editor's Note: So in original.

- 
- B. Exception. The provisions of 323 CMR 2.08 (1) shall not apply if the person (minor) who is operating the motorboat is accompanied on board and directly supervised by a competent person 18 years of age or older. (323 CMR 2.08:2) Violation: \$50.00
- C. Minimum Age. No person under 12 years of age may operate a motorboat on the waters of the Commonwealth, unless accompanied on board and directly supervised by a competent person 18 Years of age or older. (323 CMR 2.08:3) Violation: \$50.00

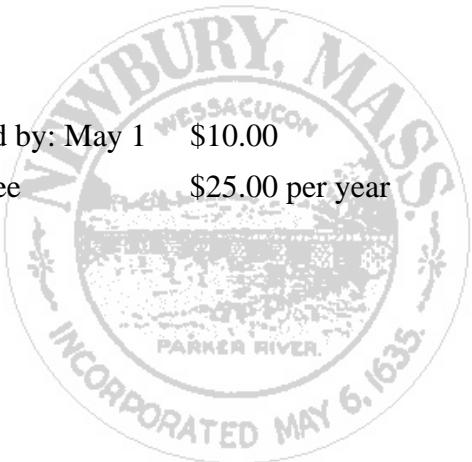
**§ 122-11. Miscellaneous.**

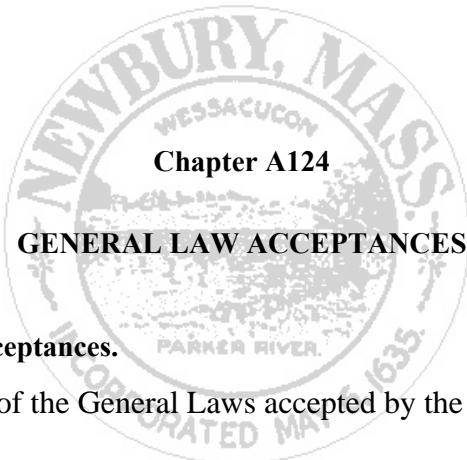
- A. Nothing contained herein shall be held or construed to supersede or conflict with or limit the Jurisdiction of the United States Government with respect to the enforcement of the navigation, shipping, anchorage, and associated laws of the United States, or any lawful regulation of the Division of Marine and Recreational Vehicles, or any of the laws of the Commonwealth of Massachusetts.
- B. In the event that any provisions of these rules and regulations are judicially found to be invalid, Such decision, invalidity or voidance shall not affect the validity of the remaining provisions.

**§ 122-12. Fees.** [Amended 1-8-2002; 5-27-2004; 2-13-07]

<b>Use</b>	<b>Fee</b>
Mooring Permit — Commercial	\$100.00 per year
Mooring Permit — Private	\$55.00 per year plus \$2.00 foot greater than 20 feet in length
Floating dock permit — Commercial	\$100.00 per year per float
Floating dock permit — Private	\$55.00 per year per float
Town Dock slip permit — resident	\$80.00 per year
Town Dock slip permit — non-resident	\$125.00 per year
Season ramp permit, vessel — resident	\$55.00 per year plus \$2.00 foot greater than 20 feet in length
Season ramp permit, canoe & kayak — resident	\$20.00 per year
Waterway permit — All other vessel	\$55.00 per year plus \$2.00 foot greater than 20 feet in length
Waiting list fee	\$10.00 per year
Commercial ramp use	\$300.00 per season
One day ramp permit	\$20.00 day
Private dock or wharf (10a permit)	\$55.00 per year

Late fee renewals not rec'd by: May 1      \$10.00  
Non-resident equipment fee                  \$25.00 per year

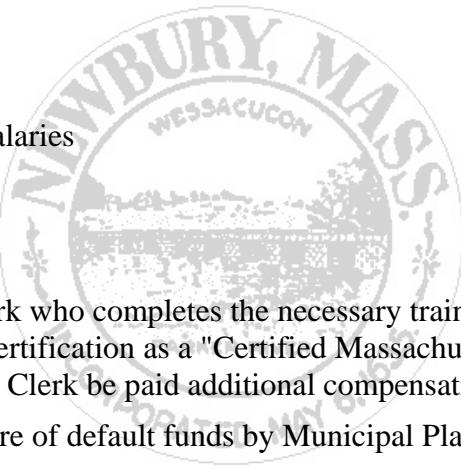




### § A124-1. General Law acceptances.

The following is a listing of the General Laws accepted by the Town of Newbury:

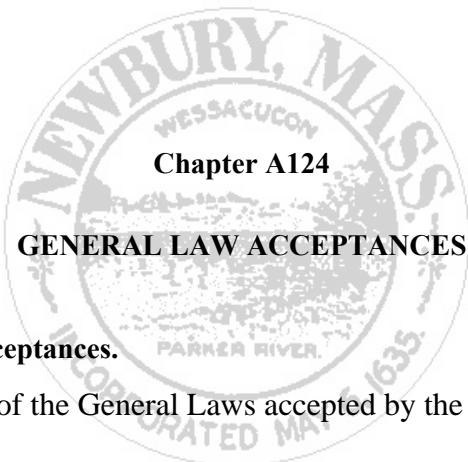
Statutory Reference	Subject	Adoption Information
c. 32, § 85H 1/2, Subsection (2)	Indemnifying call and volunteer fire fighters for injuries received in line of duty	4-23-1996 ATM, Art. 16
c. 32B	Providing for certain insurance benefits to certain employees	3-25-1967 ATE
c. 32B, § 7A	Subsidiary or additional payment for insurance for employees and dependents	4-21-1987 ATM, Art. 11
c. 32B, § 9D 1/2	Additional payments for health insurance for surviving spouse	4-21-1987 ATM, Art. 12
c. 32B, § 9E	Additional payments for insurance for retired employees	4-21-1987 ATM, Art. 13
c. 32B, § 18	Permits a transfer of Medicare-eligible retirees out of standard plans and into extension plans	4-26-1994 ATM, Art. 17
c. 39, § 20	Election of town officers by precinct voting	3-17-1925 ATM, Art. 16
c. 39, § 23D	Providing that, under certain circumstances, board, commission or committee members shall not be disqualified from voting on matters in adjudicatory hearings if they have missed one session	5-22-2007 ATM, Art. 13
c. 40, § 6C	Authorizing the appropriation of money for removal of snow and ice on private ways open to public use	3-21-1964 ATE
c. 40, § 8C	Conservation Commission	3-17-1964 ATM, Art. 28
c. 40, § 8D	Establishment and duties of Historic Commission	3-15-1977 ATM, Art. 11
c. 40, § 8G	Allows town to establish mutual aid agreements with Police Departments in other cities and towns	4-21-1992 ATM, Art. 11
c. 40, § 22F	Permits updating of charges and fees by municipal boards and officers	4-26-1994 ATM, Art. 30



c. 40, § 71	Teacher salaries	4-19-1988 ATM, Art. 46
c. 40A	Zoning	3-15-1977 ATM, Art. 22
c. 41, § 19K	Town Clerk who completes the necessary training and receives certification as a "Certified Massachusetts Municipal Clerk be paid additional compensation	4-27-2004 ATM, Art. 4
c. 41, § 81U, last paragraph	Expenditure of default funds by Municipal Planning Boards	4-19-1988 ATM, Art. 27
c. 41, § 97A	Establishment and organization of Police Department	3-20-1973 ATM, Art. 30
c. 41, § 106A	School physician may also be town physician	3-21-1933 ATM, Art. 15
c. 41, § 108L	Concerning police career incentive raises and reimbursement to town	4-23-1996 ATM, Art. 20
c. 41, § 110A	Allowing public offices of the Town to remain closed on Saturdays	5-22-2007 ATM, Art. 14
c. 44, § 53C	Pertaining to moneys received in payment for off-duty work by members of Police Department	3-20-1973 ATM, Art. 17
c. 44, § 53E	Offset of costs	4-20-1982 ATM, Art. 23
c. 54, § 103A	Providing for absent voting	3-19-1940 ATM, Art. 19
c. 59, § 5, Clause 22E, last paragraph	Accepting one-year residency requirement for tax exemption for soldiers and sailors, spouses and surviving spouses of soldiers and sailors who died in combat, and certain disabled veterans	5-22-2007 ATM, Art. 15
c. 59, § 5, Clause 41C	Elderly, over 70, tax exemption; amended to accept the provisions of Ch. 184, § 51 of the Acts of 2002 to lower eligibility age to 65; increase gross receipts limit and whole estate limit	4-19-1988 ATM, Art. 21; 4-26-2005 ATM, Art. 22
c. 59, § 5K	Authorization to establish program to allow persons over the age of 60 to volunteer to provide services to the Town in exchange for a reduction in their real estate tax obligation to a maximum of \$750 in any given tax year at an hourly rate not to exceed the current Massachusetts minimum wage and to raise and appropriate or appropriate from available funds the sum of \$4,500 for said program for fiscal year 2006	10-25-2005 STM, Art. 4
c. 59, § 57C	Permits quarterly tax bills	4-25-1995 ATM,

c. 59, § 57D	Requires that every preliminary tax bill include an affidavit of address to be sworn to by owner	Art. 12 4-23-1996 ATM, Art. 27
c. 71, §§ 16 to 16I	Providing for a Regional School District	12-28-1966 STM, Art. 1
c. 71, § 40	Salaries for teachers of Triton Regional School Committee	1-28-1986 STM, Art. 1
c. 80, § 13B	Enables elderly persons of low income to enter into agreements with the Town for the deferral and recovery of betterment assessments; and raise the qualifying gross receipts amount for elderly persons of low income entitled to a real estate tax exemption under MGL c. 59, § 5, Clause 41A from \$20,000 to \$40,000	6-26-2001 STM, Art. 5
c. 87, § 13	Election of Road Commissioner	3-3-1914 ATM, Art. 15
c. 90, §§ 20A 1/2, 20C, 20D and 20E	Motor vehicle regulations; parking	4-20-1982 ATM, Art. 21
c. 90, § 22B, Subsections (b) to (k)	Abandoned motor vehicles and penalties	6-12-1990 ATM, Art. 21
c. 139, §§ 1, 2 and 3	Nuisance property	3-15-1966 ATM, Art. 13
c. 140, § 147A	Licensing and regulation of dogs	4-15-1986 ATM, Art. 8
c. 258, § 13	Indemnity of municipal officers	4-25-1981 ATE
c. 262, § 34, Clauses 1-79	Uniform fee schedule for documents issued by City and Town Clerks	4-19-1988 ATM, Art. 50
Ch. 436, Acts of 1920	Juries	3-15-1921 ATM, Art. 21
Ch. 36, § 4A, Acts of 1929		3-18-1930 ATM, Art. 32
Ch. 304, Acts of 1929	Giving the Selectmen power and authority to regulate the taking and possession of certain shellfish	3-18-1930 ATM, Art. 25
Ch. 636, Acts of 1941	Authorizing town to supply itself and its inhabitants with water	3-21-1944 ATM, Art. 11
Ch. 820, Acts of 1950	Increasing certain pensions, retirements and annuities	3-18-1952 ATM, Art. 11
Ch. 781, Acts	Increasing certain pensions, retirements and annuities	3-18-1952 ATM,

of 1951		Art. 12
Ch. 249, Acts of 1962	Pertaining to requirements of obtaining nomination papers for any town officer	3-16-1965 ATM, Art. 12
Ch. 383, Acts of 1963	Enforcement of certain marine fisheries laws by police officers	3-17-1964 ATM, Art. 26
Ch. 156, Acts of 1967	Providing for a Regional School District	3-19-1968 ATM, Art. 23
Ch. 743, Acts of 1981	Amends c. 59, § 5, by creating a new Clause 17C	4-20-1982 ATM, Art. 24
Ch. 597, Acts of 1982		4-19-1983 ATM, Art. 15
Ch. 653, Acts of 1982		4-19-1983 ATM, Art. 16
Ch. 477, Acts of 1984		4-16-1985 ATM, Art. 15
Ch. 188, § 13, Acts of 1985	Professional development grant pertaining to certain teachers	1-28-1986 STM, Art. 2
Ch. 73, § 1, Clause 17D, Acts of 1986	Replaces Clause 17C and gives domicile exemption for up to three units	12-6-1988 STM, Art. I
Ch. 653, § 40, Acts of 1989	Assessment date changes for new growth	6-12-1990 ATM, Art. 20
Ch. 291, Acts of 1990	Enhanced 911 service	11-26-1991 STM, Art. 1
Ch. 71, § 83, Acts of 1993	Early retirement incentive program for teachers	4-26-1994 ATM, Art. 16

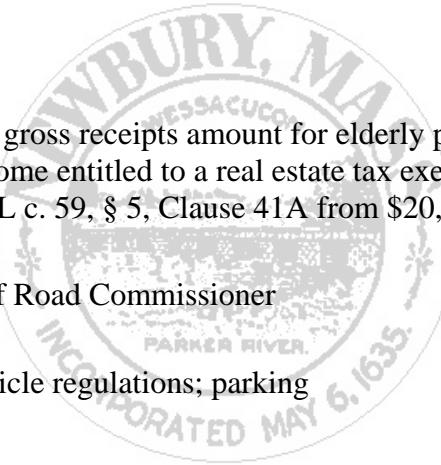


**§ A124-1. General Law acceptances.**

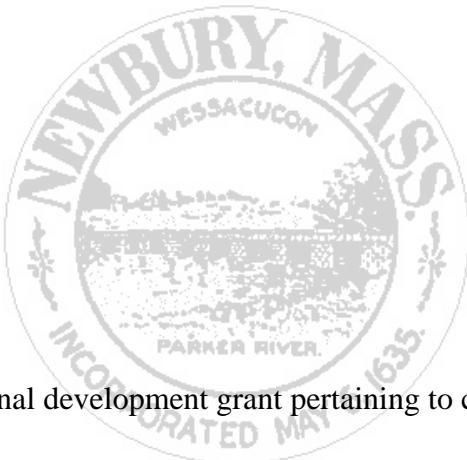
The following is a listing of the General Laws accepted by the Town of Newbury:

<b>Statutory Reference</b>	<b>Subject</b>	<b>Adoption Information</b>
c. 32, § 85H 1/2, Subsection (2)	Indemnifying call and volunteer fire fighters for injuries received in line of duty	4-23-1996 ATM, Art. 16
c. 32B	Providing for certain insurance benefits to certain employees	3-25-1967 ATE
c. 32B, § 7A	Subsidiary or additional payment for insurance for employees and dependents	4-21-1987 ATM, Art. 11
c. 32B, § 9D 1/2	Additional payments for health insurance for surviving spouse	4-21-1987 ATM, Art. 12
c. 32B, § 9E	Additional payments for insurance for retired employees	4-21-1987 ATM, Art. 13
c. 32B, § 18	Permits a transfer of Medicare-eligible retirees out of standard plans and into extension plans	4-26-1994 ATM, Art. 17
c. 39, § 20	Election of town officers by precinct voting	3-17-1925 ATM, Art. 16
c. 40, § 6C	Authorizing the appropriation of money for removal of snow and ice on private ways open to public use	3-21-1964 ATE
c. 40, § 8C	Conservation Commission	3-17-1964 ATM, Art. 28
c. 40, § 8D	Establishment and duties of Historic Commission	3-15-1977 ATM, Art. 11
c. 40, § 8G	Allows town to establish mutual aid agreements with Police Departments in other cities and towns	4-21-1992 ATM, Art. 11
c. 40, § 22F	Permits updating of charges and fees by municipal boards and officers	4-26-1994 ATM, Art. 30
c. 40, § 71	Teacher salaries	4-19-1988 ATM, Art. 46
c. 40A	Zoning	3-15-1977 ATM, Art. 22

c. 41, § 19K	Town Clerk who completes the necessary training and receives certification as a "Certified Massachusetts Municipal Clerk be paid additional compensation-."	4-27-2004 ATM, Art. 4
c. 41, § 81U, last paragraph	Expenditure of default funds by Municipal Planning Boards	4-19-1988 ATM, Art. 27
c. 41, § 97A	Establishment and organization of Police Department	3-20-1973 ATM, Art. 30
c. 41, § 106A	School physician may also be town physician	3-21-1933 ATM, Art. 15
c. 41, § 108L	Concerning police career incentive raises and reimbursement to town	4-23-1996 ATM, Art. 20
c. 44, § 53C	Pertaining to moneys received in payment for off-duty work by members of Police Department	3-20-1973 ATM, Art. 17
c. 44, § 53E	Offset of costs	4-20-1982 ATM, Art. 23
c. 54, § 103A	Providing for absent voting	3-19-1940 ATM, Art. 19
c. 59, § 5, Clause 41C	Elderly, over 70, tax exemption; amended to accept the provisions of Ch. 184, § 51 of the Acts of 2002 to lower eligibility age to 65; increase gross receipts limit and whole estate limit	4-19-1988 ATM, Art. 21; 4-26-2005 ATM, Art. 22
c. 59, § 5K	Authorization to establish program to allow persons over the age of 60 to volunteer to provide services to the Town in exchange for a reduction in their real estate tax obligation to a maximum of \$750 in any given tax year at an hourly rate not to exceed the current Massachusetts minimum wage and to raise and appropriate or appropriate from available funds the sum of \$4,500 for said program for fiscal year 2006	10-25-2005 STM, Art. 4
c. 59, § 57C	Permits quarterly tax bills	4-25-1995 ATM, Art. 12
c. 59, § 57D	Requires that every preliminary tax bill include an affidavit of address to be sworn to by owner	4-23-1996 ATM, Art. 27
c. 71, §§ 16 to 16I	Providing for a Regional School District	12-28-1966 STM, Art. 1
c. 71, § 40	Salaries for teachers of Triton Regional School Committee	1-28-1986 STM, Art. 1
c. 80, § 13B	Enables elderly persons of low income to enter into agreements with the Town for the deferral and recovery of betterment assessments; and raise the	6-26-2001 STM, Art. 5



	qualifying gross receipts amount for elderly persons of low income entitled to a real estate tax exemption under MGL c. 59, § 5, Clause 41A from \$20,000 to \$40,000	
c. 87, § 13	Election of Road Commissioner	3-3-1914 ATM, Art. 15
c. 90, §§ 20A 1/2, 20C, 20D and 20E	Motor vehicle regulations; parking	4-20-1982 ATM, Art. 21
c. 90, § 22B, Subsections (b) to (k)	Abandoned motor vehicles and penalties	6-12-1990 ATM, Art. 21
c. 139, §§ 1, 2 and 3	Nuisance property	3-15-1966 ATM, Art. 13
c. 140, § 147A	Licensing and regulation of dogs	4-15-1986 ATM, Art. 8
c. 258, § 13	Indemnity of municipal officers	4-25-1981 ATE
c. 262, § 34, Clauses 1-79	Uniform fee schedule for documents issued by City and Town Clerks	4-19-1988 ATM, Art. 50
Ch. 436, Acts of 1920	Juries	3-15-1921 ATM, Art. 21
Ch. 36, § 4A, Acts of 1929		3-18-1930 ATM, Art. 32
Ch. 304, Acts of 1929	Giving the Selectmen power and authority to regulate the taking and possession of certain shellfish	3-18-1930 ATM, Art. 25
Ch. 636, Acts of 1941	Authorizing town to supply itself and its inhabitants with water	3-21-1944 ATM, Art. 11
Ch. 820, Acts of 1950	Increasing certain pensions, retirements and annuities	3-18-1952 ATM, Art. 11
Ch. 781, Acts of 1951	Increasing certain pensions, retirements and annuities	3-18-1952 ATM, Art. 12
Ch. 249, Acts of 1962	Pertaining to requirements of obtaining nomination papers for any town officer	3-16-1965 ATM, Art. 12
Ch. 383, Acts of 1963	Enforcement of certain marine fisheries laws by police officers	3-17-1964 ATM, Art. 26
Ch. 156, Acts of 1967	Providing for a Regional School District	3-19-1968 ATM, Art. 23
Ch. 743, Acts of 1981	Amends c. 59, § 5, by creating a new Clause 17C	4-20-1982 ATM, Art. 24



Ch. 597, Acts of 1982		4-19-1983 ATM, Art. 15
Ch. 653, Acts of 1982		4-19-1983 ATM, Art. 16
Ch. 477, Acts of 1984		4-16-1985 ATM, Art. 15
Ch. 188, § 13, Acts of 1985	Professional development grant pertaining to certain teachers	1-28-1986 STM, Art. 2
Ch. 73, § 1, Clause 17D, Acts of 1986	Replaces Clause 17C and gives domicile exemption for up to three units	12-6-1988 STM, Art. I
Ch. 653, § 40, Acts of 1989	Assessment date changes for new growth	6-12-1990 ATM, Art. 20
Ch. 291, Acts of 1990	Enhanced 911 service	11-26-1991 STM, Art. 1
Ch. 71, § 83, Acts of 1993	Early retirement incentive program for teachers	4-26-1994 ATM, Art. 16

Chapter A125

SPECIAL ACTS

~ A125-1. Chapter 404 of the Acts of 2002.

AN ACT PROVIDING FOR RECALL ELECTIONS IN THE TOWN OF NEWBURY

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. A holder of an elected office in the town of Newbury may be recalled therefrom by the qualified voters of the town as provided in this act for any of the following reasons: lack of fitness; neglect of duties; corruption; misfeasance or violation of oath. Exercising discretion in voting or acting on matters before such office holder shall not be a reason for recall.

SECTION 2. Fifteen per cent of the registered voters of the town of Newbury may file with the town clerk an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for such recall. At least 66 names of registered voters shall be from each of the voting precincts into which said town is divided. Upon certification of the required signatures, said clerk shall deliver to the first named voter on the affidavit copies of petition blanks addressed to the board of selectmen demanding such recall, copies of which printed forms the clerk shall keep available. The petition blanks shall be issued by said clerk with his signature and official seal attached thereto. They shall be dated, shall contain the names of all persons to whom they are issued, the name of the person whose recall is sought and the grounds of recall as stated in the affidavit and shall demand the election of a successor to such office. A copy of the petition shall be entered in a record book to be kept in the office of said clerk. The recall petition shall be returned and filed with said clerk within 30 days after the filing of the affidavit and shall have been signed by at least 25 per cent of the registered voters of the town as of the date such affidavit was filed with said clerk. To every signature shall be added the place of residence of the signer, giving the street and number, if any. Said clerk shall, within 72 hours of receipt thereof, submit the petition to the registrars of voters in the town, and said registrars shall certify forthwith the number of signatures thereon which are names of registered voters of the town.

SECTION 3. If the petition shall be found and certified by the town clerk to be sufficient, he shall submit the same with his certificate to the board of selectmen without delay and said board shall give forthwith written notice of the receipt of the certificate to the officer sought to be recalled. If such officer does not resign within 5 days thereafter, said board shall order an election to be held on a date fixed by them not less than 70 nor more than 95 days after the date of said clerk's certificate

that a sufficient petition has been filed; but, if any other town election is scheduled to occur within 120 days after the date of the certificate, said board shall postpone the holding of the recall election to the date of such other election. If a vacancy occurs in said office after a recall election has been ordered, the election shall nevertheless proceed as provided in this section.

SECTION 4. Any officer sought to be removed may be a candidate to succeed himself and, unless he requests otherwise in writing, the town clerk shall place his name on the ballot without nomination. The nomination of other candidates, the publication of the warrant for the recall election and the conduct of the same shall all be in accordance with the provisions of law relating to elections, unless otherwise provided in this act.

SECTION 5. The incumbent shall continue to perform the duties of his office until the recall election. If he is not recalled, he shall continue in office for the remainder of his unexpired term, subject to recall as before, except as provided in section 7. If he is recalled, he shall be deemed removed upon the qualifications of his successor, who shall hold office during the unexpired term. If the successor fails to qualify within 5 days after receiving notification of his election, the incumbent shall thereupon be deemed removed and the office vacant.

SECTION 6. Ballots used in a recall election shall submit the following propositions in the order indicated:

For the recall of (name of officer)

Against the recall of (name of officer)

Immediately at the right of each proposition there shall be a square in which the voter, by making a cross mark (X), may vote for either of said propositions. Under the proposition shall appear the word "candidates" and the directions to voters required by section 42 of chapter 54 of the General Laws and, beneath this, the names of candidates nominated as hereinbefore provided. If 2/3 of the votes cast upon the question of recall is in the affirmative, then the candidate receiving the highest number of votes shall be declared elected. If more than 1/3 of the votes cast on the questions is in the negative, then the ballots for candidates need not be counted. If fewer than 25 per cent of the registered voters of the town participated in the election, no votes need be counted and the election shall be deemed to have determined that the incumbent should not be recalled.

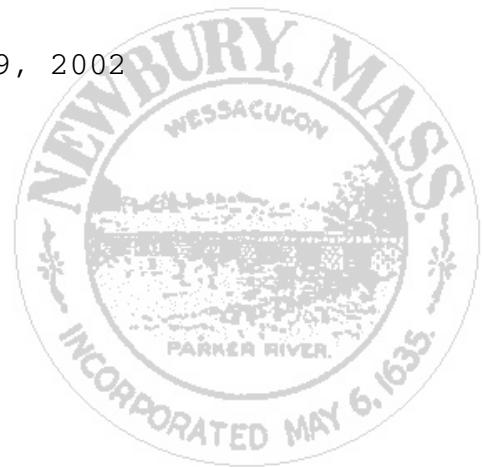
SECTION 7. A recall petition shall not be filed against an officer within 6 months after he takes office, nor in the last 6 months of his term, nor in the case of an officer subjected to a recall election and not recalled thereby, until at least 6 months has elapsed after the election at which his recall was submitted to the voters of the town.

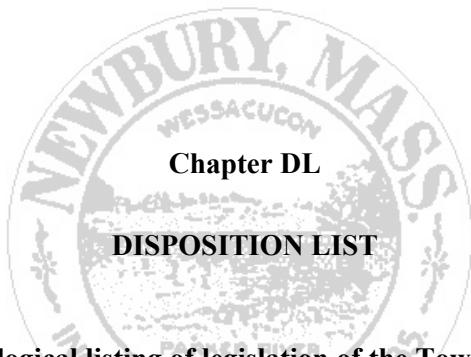
SECTION 8. A person who has been recalled from an office or who has resigned from office while recall proceedings were pending against him shall not be appointed to a town office within 2 years after such recall or resignation.

SECTION 9. This act shall take effect upon its passage.

Rev: ATM 5.26.09

Approved December 19, 2002



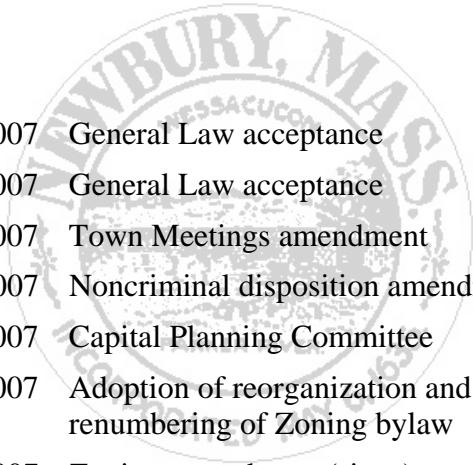


[The following is a chronological listing of legislation of the Town of Newbury adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Town Clerk. The last legislation reviewed for the original publication of the Code was Article 27 of the 4-24-2001 Annual Town Meeting.]

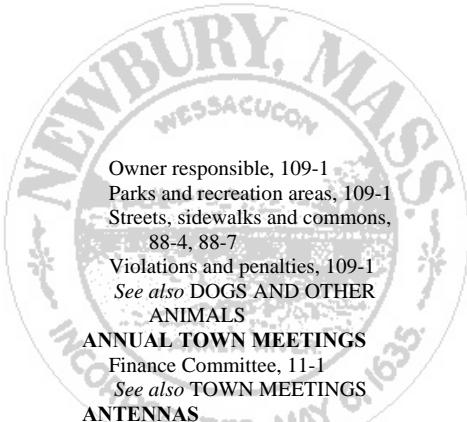
**§ DL-1. Disposition of legislation.**

<b>Adoption</b>			
<b>Enactment</b>	<b>Date</b>	<b>Subject</b>	<b>Disposition</b>
STM, Art. 5	6-26-2001	General Law acceptance	Ch. A124
STM, Art. 7	6-26-2001	Zoning amendment: wireless communications	Ch. 97
STM, Art. 8	6-26-2001	Zoning amendment: wetlands	Ch. 97
Board of Selectmen	-2001	Vehicles and traffic amendment	Ch. 93
STM, Art. 1	9-25-2001	Zoning amendment: Plum Island Overlay District	Ch. 97
STM, Art. 2	9-25-2001	Wetlands	Ch. 95
Board of Selectmen	1-8-2002	Waterways amendment	Ch. 122
Board of Selectmen	1-8-2002	Vehicles and traffic amendment	Ch. 93
Board of Selectmen	5-23-2002	Vehicles and traffic amendment	Ch. 93
Ch. 404, Acts of 2002	12-19-2002	Recall elections	Ch. A125
Planning Board	12-18-2002	Subdivision of land amendment	Ch. 117
Planning Board	1-8-2003	Subdivision of land amendment	Ch. 117
ATM, Art. 3	4-22-2003	Zoning amendment	Ch. 97
ATM, Art. 4	4-22-2003	Zoning amendment	Ch. 97
ATM, Art. 5	4-22-2003	Zoning amendment	Ch. 97

ATM, Art. 6	4-22-2003	Zoning amendment	Ch. 97
ATM, Art. 7	4-22-2003	Zoning amendment	Ch. 97
ATM, Art. 8	4-22-2003	Zoning amendment	Ch. 97
BOH Regulation No. 03-1	6-9-2003	Dogs on beaches	Ch. 109, Art. II
STM, Art. 14	6-24-2003	Zoning amendment	Ch. 97
STM, Art. 15	6-24-2003	Zoning amendment	Ch. 97
STM, Art. 16	6-24-2003	Zoning amendment	Ch. 97
STM, Art. 17	6-24-2003	Zoning amendment	Ch. 97
Board of Selectmen	10-28-2003	Vehicles and traffic amendment	Ch. 93
ATM, Art. 14	4-27-2004	General Law acceptance	Ch. A124
Harbormaster	5-27-2004	Waterways amendment	Ch. 122
Planning Board	6-2-2004	Subdivision of land amendment	Ch. 117
STM, Art. 7	6-22-2004	Zoning amendment	Ch. 97
Planning Board	9-15-2004	Subdivision of land amendment	Ch. 147
ATM, Art. 14	4-26-2005	Wetlands	Ch. 95
ATM, Art. 16	4-26-2005	Department of Municipal Finance	Ch. 15
ATM, Art. 22	4-26-2005	General Law acceptance amendment	Ch. A124
ATM, Art. 23	4-26-2005	Personnel Board amendment; personnel policy amendment	Chs. 22 and 24
STM, Art. 4	10-25-2005	General Law acceptance	Ch. A124
STM, Art. 6	10-25-2005	Newbury Improvement Trust	NCM
STM, Art. 10	10-25-2005	Personnel policies amendment	Ch. 24
STM, Art. 11	10-25-2005	Personnel policies amendment	Ch. 24
ATM, Art. 15	5-23-2006	Adoption of reorganization and renumbering of Zoning bylaw	Ch. 97
ATM, Art. 22	5-23-2006	Personnel policy amendment	Ch. 24
STM, Art. 4	10-24-2006	Town Meetings amendment	Ch. 34
ATM, Art. 8	10-24-2006	Personnel policy amendment	Ch. 24
ATM, Art. 9	10-24-2006	Appendix A (classification of existing positions and determination of compensation for all positions)	Ch. 24, editor's note only
Harbormaster	1-23-2007	Waterways amendment	Ch. 122
ATM, Art. 13	5-22-2007	General Law acceptance	Ch. A124



ATM, Art. 14	5-22-2007	General Law acceptance	Ch. A124
ATM, Art. 15	5-22-2007	General Law acceptance	Ch. A124
ATM, Art. 16	5-22-2007	Town Meetings amendment	Ch. 34
ATM, Art. 17	5-22-2007	Noncriminal disposition amendment	Ch. 1, Art. II
ATM, Art. 18	5-22-2007	Capital Planning Committee	Ch. 12
ATM, Art. 23	5-22-2007	Adoption of reorganization and renumbering of Zoning bylaw	Ch. 97
ATM, Art. 24	5-22-2007	Zoning amendment (signs)	Ch. 97



**DEFINITIONS NOTE:** For the convenience of the Code user, all terms defined in this Code are included in the Index under the heading "Definitions and Abbreviations."

**911, *see* ENHANCED 911 SERVICE**

**- A -**

**ABANDONMENT**

Junk vehicles, 71-7

**ACCEPTANCE OF BYLAW RE-NUMBERING**

General provisions, Ch. 1, Art. III

**ACCESSORY APARTMENTS**

Agricultural-Residential District, 97-10

**ACCESSORY USES**

*See also* NONCONFORMING USES; PERMITTED USES; PROHIBITED USES; SPECIAL PERMIT USES

**ACCIDENT RECORDS**

Vehicles and traffic, 93-6

**ACCOUNTANT**

Municipal Finance, Department of, 15-5

**ADULT ENTERTAINMENT**

Licenses and permits, 97-4

Parking, 97-4

Screens, 97-4

Setbacks, 97-4

Special use permit, 97-4

Zoning, 97-4

**ADVERTISING**

Streets, sidewalks and commons, 88-10

**AGRICULTURAL-**

**RESIDENTIAL DISTRICT**

Accessory apartments, 97-10

Permitted uses, 97-10

Signs, 97-8

Zoning, 97-3, 97-10

**ALCOHOLIC BEVERAGES**

Noncriminal disposition, 1-5

Use restricted, 41-1

Violations and penalties, 1-5, 41-2

*See also* INTOXICATION

**AMERICANS WITH DISABILITIES ACT**

Subdivision of land, 117-9

**ANCHORING**

Waterways, 122-3

**ANIMAL CONTROL OFFICER**

Dogs and other animals, 56-2

Powers and duties, 56-2

**ANIMAL REGULATIONS**

Noncriminal disposition, 1-5

Violations and penalties, 1-5

**ANIMALS**

Beaches, 45-6, 109-1

Disposal of waste, 109-1

Dogs on the beach, 109-2, 109-3

Owner responsible, 109-1  
Parks and recreation areas, 109-1  
Streets, sidewalks and commons, 88-4, 88-7  
Violations and penalties, 109-1  
*See also* DOGS AND OTHER ANIMALS

**ANNUAL TOWN MEETINGS**

Finance Committee, 11-1  
*See also* TOWN MEETINGS

**ANTENNAS**

Wireless Communications Services Overlay District, 97-4

**APPEALS**

Subdivision of land, 117-49  
Waters systems and supply, 120-10

**APPOINTMENTS, *see* specific boards, departments, officers, etc.**

**- B -**

**BACKFILLING**

Subdivision of land, 117-32

**BEACHES**

Animals, 109-1  
Animals restricted, 45-6  
Authority, 45-1  
Balls and other objects restricted, 45-7  
Camping prohibited, 45-8  
Enforcement, 45-1  
Fees, 45-6  
Fires prohibited, 45-5  
Games restricted, 45-4  
Garbage, rubbish and refuse, 45-3  
Littering prohibited, 45-3  
Noncriminal disposition, 1-5  
Vehicles prohibited, 45-2  
Violations and penalties, 1-5, 45-6, 45-9

**BED AND BREAKFAST**

Hearings, 97-5  
Special permits, 97-5

**BEREAVEMENT LEAVE**

Personnel policy, 24-16

**BIKEWAYS, *see* SIDEWALKS AND BIKEWAYS**

**BOARD OF APPEALS**

Appointments, 4-1  
Establishment of Board, 4-1

**BOARD OF HEALTH**

Submission and approval of plans, 117-16

**BOARD OF SELECTMEN**

Powers and duties, 117-50  
Subdivision of land, 117-50

**BONDS**

Earth removal, 60-1  
Site Plan Review, 97-10  
Storm water management, 117-62  
Submission and approval of plans, 117-16  
Wireless Communications Services Overlay District, 97-4

**BUILDING INSPECTOR**

Earth removal, 60-5  
Powers and duties, 60-5

**BUILDING PERMITS**

Plum Island, 97-4  
*, see* LICENSES AND PERMITS

**BURIAL PLACES**

Funds, 49-1  
Investment, 49-1  
Moneys and securities, 49-1

**BUSINESS DISTRICT**

Signs, 97-8  
Zoning, 97-3

**- C -**

**CAMPING**

Beaches, 45-8

**CAPITAL PLANNING COMMITTEE**

Appointments, 12-1  
Powers and duties, 12-2  
Terms of office, 12-1

**CERTIFICATES OF COMPLIANCE**

Wetlands, 95-9

**CHAIRMAN OF PERSONNEL BOARD**

Personnel Board, 24-3

**CHARGES, *see* COSTS AND EXPENSES**

**CHIEF OF POLICE**

Appointment, 28-1  
Police Department, 28-1, 28-2  
Powers and duties, 28-1, 28-2  
Salaries and compensation, 28-1  
Terms of office, 28-1

**CISTERNS**

Waters systems and supply, 120-9

**CLASSIFICATION PLAN**

Personnel policy, 24-5

**COMMERCIAL HIGHWAY AREA**

Signs, 97-8

**COMMERCIAL HIGHWAY DISTRICT**

Signs, 97-8

Zoning, 97-3

**COMMERCIAL HIGHWAY DISTRICT A**

Zoning, 97-3

**COMMON DRIVEWAY PERMITS, *see* LICENSES AND PERMITS**

**COMMON DRIVEWAYS, *see* DRIVEWAYS, COMMON**

**COMPENSATION, *see* specific boards, departments, officers, etc.**

**COMPENSATION PLAN**

Personnel policy, 24-6

**CONSERVATION COMMISSION**

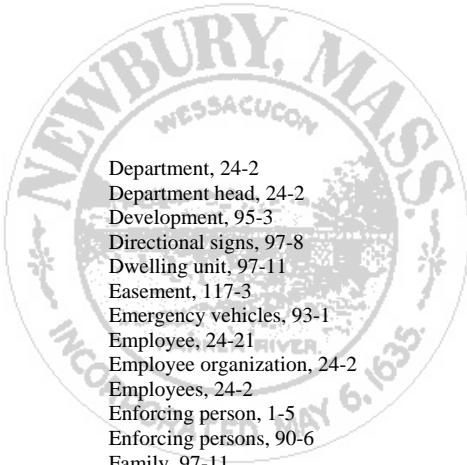
Acceptance of provisions, 7-1

Appointments, 7-2, 7-3

Composition, 7-1

Conservation Fund, 7-4

Membership, 7-2



Residency requirements, 7-1  
 Terms of office, 7-3

**CONSERVATION FUND**  
 Conservation Commission, 7-4

**CONSTRUCTION SPECIFICATIONS**  
 Subdivision of land, 117-31 – 117-44

**CONTINUATION OF BENEFITS (COBRA)**  
 Insurance coverage, eligibility for, 24-22

**COSTS AND EXPENSES**  
 Subdivision of land, 117-42, 117-47  
 Submission and approval of plans, 117-16  
*See also FEES*

**COURT LEAVE**  
 Personnel policy, 24-14

**COWS, see ANIMALS**

**CURBS, GRANITE**  
 Subdivision of land, 117-36

**- D -**

**DAY PASS RAMP USE**  
 Fees, 122-12  
 Waterways, 122-12

**DEFINITIONS AND ABBREVIATIONS**  
 Accessory apartments, 97-11  
 Accessory structure, 97-11  
 Administrative authority, 24-2  
 Adult arcade, 97-11  
 Adult bookstore, adult novelty store or adult video store, 97-11  
 Adult cabaret, 97-11  
 Adult dance club, 97-11  
 Adult entertainment business, 97-11  
 Adult theater, 97-11  
 Advertising display area, 97-8  
 Agricultural sign, 97-8  
 Animated sign, 97-8  
 Applicant, 117-3  
 Appropriate public authority, 24-21  
 Aquifer, 97-11  
 Awning, 97-8  
 Base flood elevation, 117-3  
 Bedroom, 97-11  
 Board, 24-2, 117-3  
 Boat, 122-2  
 Building, 95-3, 97-11  
 Building height, 97-11  
 Bus stop, 93-1  
 Canopies, 97-8  
 Classification Plan, 24-2  
 Commercial slips or docks, 122-2  
 Commercial floating dock, 122-2  
 Commercial moorings, 122-2  
 Common wall, 97-11  
 Compensation Plan, 24-2  
 Continuous employment, 24-2  
 Crosswalks, 93-1

Department, 24-2  
 Department head, 24-2  
 Development, 95-3  
 Directional signs, 97-8  
 Dwelling unit, 97-11  
 Easement, 117-3  
 Emergency vehicles, 93-1  
 Employee, 24-21  
 Employee organization, 24-2  
 Employees, 24-2  
 Enforcing person, 1-5  
 Enforcing persons, 90-6  
 Family, 97-11  
 Finding, 97-11  
 Floor area, gross, 97-11  
 Floor area ratio (FAR), 97-11  
 Footprint, 95-3, 97-11  
 Freestanding sign, 97-8  
 Full-time employee, 24-2  
 Gravel, 117-3  
 Grievance, 24-19  
 Ground sign, 97-8  
 Groundwater, 97-11  
 Harbormaster, 122-2  
 Height, 97-11  
 Holiday pay, 24-2  
 House trailer, 97-11  
 Impervious material, 97-11  
 Insurance eligibility, 24-21  
 Job description, 24-2  
 Land, 93-1  
 Lobstering, 122-2  
 Lot, 97-11, 117-3  
 Lot coverage, maximum, 97-11  
 Mining, 97-11  
 Mobile home, 97-11  
 Mooring, 122-2  
 Mooring number, 122-2  
 Non-commercial use, 97-8  
 Officer, 93-1  
 Official curb marking, 93-1  
 Official street marking, 93-1  
 Official traffic signs, 93-1  
 Off-premise sign, 97-8  
 One day ramp permit, 122-2  
 Overtime, 24-2  
 Parking, 93-1  
 Permit granting authority, 97-11  
 Person, 93-1  
 Private dock, 122-2  
 Private floating dock, 122-2  
 Private water supply, 120-4  
 Projecting sign, 97-8  
 Promotion, 24-2  
 Recharge areas, 97-11  
 Reconstruction, 97-11  
 Redevelopment, 95-3  
 Residence, 97-11  
 Residence, singly family, 97-11  
 Residence, two family, 97-11  
 Right-of-way, 117-3  
 Roadway, 93-1, 117-3  
 Roof sign, 97-8  
 Seasonal employee, 24-2  
 Semipublic water supply, 120-4  
 Sign, 97-8  
 Special permit granting authority, 97-11  
 Specified anatomical areas, 97-11  
 Specified sexual activities, 97-11  
 Street, 97-11  
 Street, highway, 97-11  
 Street or highway, 93-1  
 Streets, 88-2, 117-3  
 Streets: collector, 117-3  
 Streets: cul-de-sac, dead end or non-through, 117-3  
 Streets: minor, 117-3  
 Streets: paper, 117-3  
 Streets: subcollector, 117-3  
 Structure, 95-3  
 Subdivision, 117-3  
 Substantial improvement, 95-3  
 Taxicab stands, 93-1  
 Town, 24-2  
 Town dock slips, 122-2  
 Toxic or hazardous material, 97-11  
 Traffic control area, 93-1  
 Use, accessory, 97-11  
 Use, mixed, 97-11  
 Use, principal, 97-11  
 Vehicle, 93-1  
 Vessel, 122-2  
 Vessel length, 122-2  
 Veteran, 24-2  
 Wall sign, 97-8  
 Water skiing, 122-2  
 Water Supply Protection District, 97-11  
 Water systems, 120-4  
 Waterway, 122-2  
 Waterway permit, 122-2  
 Waterway permit sticker/decal, 122-2  
 Way, 117-3  
 Well, 120-4  
 Wharf, 122-2  
 Window sign, 97-8  
 Wireless communications services, 97-11  
 Zone II, 97-11

**DEFINITIVE PLAN**  
 Subdivision of land, 117-45  
 Submission and approval of plans, 117-16

**DEMOLITION**  
 Plum Island, 97-4

**DEPARTMENT OF MUNICIPAL FINANCE**  
 Effect on current personnel, 15-11  
 Reconsideration, 15-13  
*, see MUNICIPAL FINANCE, DEPARTMENT OF*

**DEPOSITS, see FEES**

**DESIGN STANDARDS**  
 Driveways, common, 97-7  
 Open Space Residential Development, 97-5  
 Storm water management, 117-61  
 Subdivision of land, 117-17 – 117-30

**DIRECTOR OF MUNICIPAL FINANCE**  
 Municipal Finance, Department of, 15-4, 15-10



Powers and duties, 15-10  
**DISABILITIES**, *see* AMERICANS WITH DISABILITIES ACT  
**DISORDERLY CONDUCT**  
 Peace and good order, 82-1  
**DOGS AND OTHER ANIMALS**  
 Animal Control Officer, 56-2  
 Enforcement, 56-2  
 Fees, 56-1  
 Hearings, 56-1  
 Licenses and permits, 56-1  
 Noncriminal disposition, 1-5  
 Notices, 56-1  
 Parks and recreation areas, 56-2  
 Running at large, 56-2  
 Sales, 56-1  
 Violations and penalties, 1-5, 56-1, 56-2  
**DOGS ON THE BEACH**  
 Animals, 109-2, 109-3  
 Restriction, 109-2  
 Violations and penalties, 109-3  
**D.P.W. REGULATIONS**  
 Vehicles and traffic, 93-21, 93-22  
**DRAINAGE**  
 Subdivision of land, 117-33  
**DRIVEWAYS, COMMON**  
 Design standards, 97-7  
 Easements, 97-7  
 Fees, 97-7  
 Signs, 97-7  
 Special permits, 97-7  
 Specifications, 97-7  
 Zoning, 97-7  
**DUTIES**, *see* specific boards, departments, officers, etc.

- E -

**EARTH REMOVAL**  
 Administration and enforcement, 60-5  
 Bonds, 60-1  
 Building Inspector, 60-5  
 Guaranties, 60-1  
 Land Reuse Plan, 60-1  
 Licenses and permits, 60-1, 60-2  
 Master Plan, 60-1  
 Noncriminal disposition, 1-5  
 Notices of violations, 60-5  
 Removal of sand and gravel or quarry, 60-2  
 Removal of soil, loam, sand, gravel, quarry or other earth material, 60-1  
 Removal of soil or loam, 60-3  
 Removal within 300 feet of streets, 60-4  
 Site plans, 60-1  
 Violations and penalties, 1-5, 60-5  
**EASEMENTS**  
 Driveways, common, 97-7  
 Subdivision of land, 117-23

**EMPLOYEES**, *see* OFFICERS AND EMPLOYEES  
**ENCROACHMENTS**  
 Flood Zone, 97-4  
**ENHANCED 911 SERVICE**  
 Authority, 93-25  
 Design requirements, 93-23  
 House and building numbers required, 93-23  
 Vehicles and traffic, 93-23 – 93-25  
 Violations and penalties, 93-24  
**ENVIRONMENTAL ANALYSIS**  
 Submission and approval of plans, 117-16  
**EXCAVATIONS**  
 Subdivision of land, 117-32  
**EXEMPTIONS**  
 Wireless Communications Services Overlay District, 97-4  
**EXPENSES**, *see* COSTS AND EXPENSES

- F -

**FEES**  
 Beaches, 45-6  
 Day pass ramp use, 122-12  
 Dogs and other animals, 56-1  
 Driveways, common, 97-7  
 Kayak and canoe fee, 122-12  
 Moorings, commercial and private, 122-12  
 Ramp, private, 122-12  
 Ramp use, commercial, 122-12  
 Site Plan Review, 97-10  
 Slips and docks, commercial and private, 122-12  
 Subdivision of land, 117-10, 117-45 – 117-49  
 Submission and approval of plans, 117-16  
 Town Dock slips, 122-12  
 Waterways, 122-3, 122-12  
 Wells, 120-5  
 Wetlands, 95-8  
 Zoning, 97-4  
*See also* COSTS AND EXPENSES

**FENCES**  
 Wireless Communications Services Overlay District, 97-4

**FILL**  
 Flood Zone, 97-4  
 Subdivision of land, 117-32

**FILTH**, *see* GARBAGE, RUBBISH AND REFUSE

**FINANCE COMMITTEE**  
 Annual Town Meetings, 11-1  
 Appointments, 11-1  
 Powers and duties, 11-3  
 Removal of disqualified members, 11-2  
 Terms of office, 11-1  
 Vacancies, 11-2

**FINES**, *see* VIOLATIONS AND PENALTIES

**FIREARMS**  
 Hunting, 67-1  
 Peace and good order, 82-4, 82-5

**FIRE LANES**  
 Parking, 93-18

**FIRE PREVENTION**  
 Beaches, 45-5  
 Subdivision of land, 117-30

**FIREWORKS**  
 Peace and good order, 82-4

**FLOOD PLAIN**  
 Subdivision of land, 117-25

**FLOODWAYS**  
 Flood Zone, 97-4

**FLOOD ZONE**  
 Encroachments, 97-4  
 Fill, 97-4  
 Floodways, 97-4  
 Mobile homes, 97-4  
 New construction, 97-4  
 Notices, 97-4  
 Trailers, 97-4  
 Variances, 97-4  
 Zoning, 97-4

**FLOTATION DEVICES, PERSONAL**, *see* PERSONAL FLOTATION DEVICES

**FUNCTIONS**, *see* specific boards, departments, officers, etc.

- G -

**GARBAGE, RUBBISH AND REFUSE**  
 Beaches, 45-3  
 Solid waste, 86-1  
 Streets, sidewalks and commons, 88-1

**GAS PIPING AND GAS APPENDAGES**  
 Inspector, 18-2

**GENERAL LAW ACCEPTANCES**  
 Enumeration of general law acceptances, A124-1

**GENERAL PROVISIONS**  
 Acceptance of bylaw renumbering, Ch. 1, Art. III  
 Enforcement, 1-1  
 Noncriminal disposition, 1-5  
 Prosecution, 1-1  
 Violations and penalties, 1-2  
 When effective, 1-4

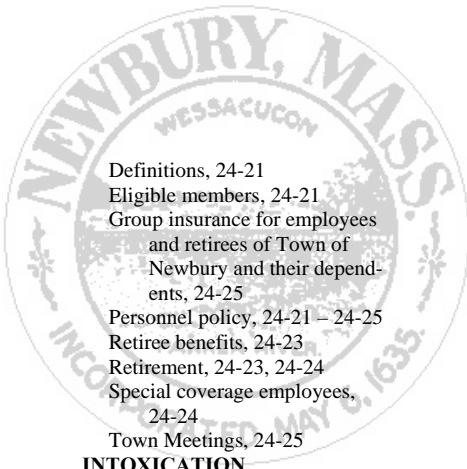
**GOOD ORDER**, *see* PEACE AND GOOD ORDER

**GRADING**  
 Subdivision of land, 117-21, 117-32

**GRANDFATHERING**  
 Zoning, 97-10

**GRASS STRIPS**  
 Subdivision of land, 117-40

**GRIEVANCE PROCEDURE**  
 Definitions, 24-19  
 Personnel policy, 24-19



Personnel Relations Review  
Board, 24-19  
Records, 24-19

#### **GUARANTIES**

Earth removal, 60-1  
Site Plan Review, 97-10  
Submission and approval of  
plans, 117-16

**- H -**

#### **HANDICAPPED PARKING**

Parking, 93-16  
Vehicles and traffic, 93-16

#### **HEARINGS**

Bed and breakfast, 97-5  
Dogs and other animals, 56-1  
Junk dealers and collectors, 71-3  
Licenses and permits, 76-3, 76-4  
Site Plan Review, 97-10  
Submission and approval of  
plans, 117-16  
Waters systems and supply,  
120-10  
Wetlands, 95-7  
Zoning, 97-4

#### **HEIGHT REGULATIONS**

Wireless Communications Ser-  
vices Overlay District, 97-4

#### **HOME OCCUPATIONS**

Zoning, 97-10

#### **HORSES, *see* ANIMALS**

**HUNTING**  
Consent required, 67-1  
Exemption, 67-2  
Firearms, 67-1  
Noncriminal disposition, 1-5  
Violations and penalties, 1-5,  
67-3

**- I -**

#### **IMPROVEMENTS**

Subdivision of land, 117-42

#### **INDUSTRIAL DISTRICT**

Zoning, 97-3

#### **INDUSTRIAL DISTRICTS**

Signs, 97-8

#### **INSPECTIONS**

Subdivision of land, 117-31,  
117-42  
Wireless Communications Ser-  
vices Overlay District, 97-4

#### **INSPECTOR**

Appointment, 18-2  
Gas piping and gas appliances,  
18-2  
Officers and employees, 18-2  
Powers and duties, 18-2

#### **INSURANCE**

Wireless Communications Ser-  
vices Overlay District, 97-4

*See also* FLOOD INSURANCE

#### **INSURANCE COVERAGE, ELI- GIBILITY FOR**

Continuation of benefits (CO-  
BRA), 24-22

Definitions, 24-21  
Eligible members, 24-21  
Group insurance for employees  
and retirees of Town of  
Newbury and their depend-  
ents, 24-25  
Personnel policy, 24-21 – 24-25  
Retiree benefits, 24-23  
Retirement, 24-23, 24-24  
Special coverage employees,  
24-24  
Town Meetings, 24-25

#### **INTOXICATION**

Personnel policy, 24-7  
*See also* ALCOHOLIC BEV-  
ERAGES

#### **INVESTIGATIONS**

Wetlands, 95-7, 95-12

**- J -**

#### **JET SKIS, *see* PERSONAL WA- TERCRAFT**

#### **JUNK DEALERS AND COL- LECTORS**

Applications, 71-3  
Examination of purchases, 71-5  
Hearings, 71-3  
Licenses and permits, 71-1 – 71-3  
Notices, 71-3  
Records, 71-4  
Signs, 71-5

#### **JUNK VEHICLES**

Abandonment prohibited, 71-7  
Exemptions, 71-11  
Licenses and permits, 71-9, 71-10  
Noncriminal disposition, 1-5  
Storage restrictions, 71-6  
Unregistered vehicles, 71-8  
Violations and penalties, 1-5,  
71-6, 71-12

**- K -**

#### **KAYAK AND CANOE FEE**

Fees, 122-12  
Waterways, 122-12

**- L -**

#### **LAND REUSE PLAN**

Earth removal, 60-1

#### **LEAVES OF ABSENCE**

Personnel policy, 24-11, 24-12,  
24-14 – 24-17

#### **LIABILITY**

Wireless Communications Ser-  
vices Overlay District, 97-4

#### **LICENSES AND PERMITS**

Adult Entertainment, 97-4  
Authority, 76-1  
Delinquent tax list, 76-2  
Denial, revocation or suspension  
for failure to pay taxes and  
charges, 76-1 – 76-6  
Dogs and other animals, 56-1

Earth removal, 60-1, 60-2  
Exceptions, 76-6  
Hearings, 76-3, 76-4  
Junk dealers and collectors,  
71-1 – 71-3  
Junk vehicles, 71-9, 71-10  
Notices, 76-3, 76-4  
Payment agreements, 76-4  
Signs, 97-8  
Streets, sidewalks and commons,  
88-10, 88-12  
Waivers, 76-5  
Wells, 120-5

*See also* MOORING PERMITS;  
SPECIAL PERMITS

#### **LIFE JACKETS, *see* PERSONAL FLOTATION DEVICES**

#### **LIGHTING**

Wireless Communications Ser-  
vices Overlay District, 97-4

#### **LITTERING**

Beaches, 45-3  
Peace and good order, 82-3  
**LOADING, *see* OFF-STREET  
PARKING AND LOADING**  
**LOITERING**  
Peace and good order, 82-2  
Streets, sidewalks and commons,  
88-9

#### **LOTS**

Open Space Residential Devel-  
opment, 97-5  
Plum Island, 97-4

**- M -**

#### **MARKINGS**

Vehicles and traffic, 93-9 – 93-13

#### **MASTER PLAN**

Earth removal, 60-1

#### **MEETINGS**

*See also* ANNUAL TOWN  
MEETINGS; TOWN  
MEETINGS

**MEMBERSHIP, *see* specific**  
boards, departments, commis-  
sions, etc.

#### **MILITARY LEAVE**

Personnel policy, 24-15

#### **MINORS**

Tobacco products, 90-4  
Waterways, 122-10

#### **MOBILE HOMES**

Flood Zone, 97-4

#### **MONITORING WELLS**

Storm water management,  
117-61, 117-62

#### **MONUMENTS**

Subdivision of land, 117-35

#### **MOORING**

Waterways, 122-3, 122-4

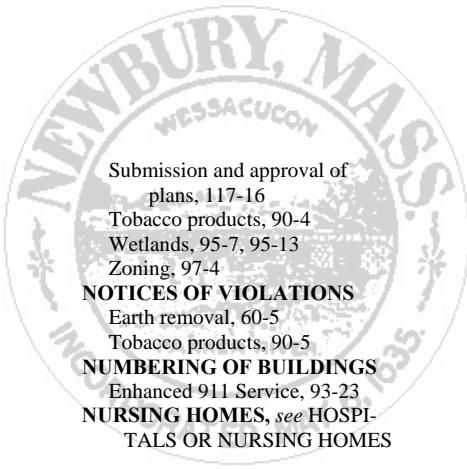
#### **MOORING PERMITS**

Waterways, 122-3

#### **MOORINGS, COMMERCIAL AND PRIVATE**

Fees, 122-12

Waterways, 122-12



**MOTELS**, *see* HOTELS AND MOTELS  
**MUNICIPAL FINANCE, DEPARTMENT OF**  
 Accountant, 15-5  
 Department established, 15-1  
 Director may hold additional positions, 15-7  
 Director of Municipal Finance, 15-4, 15-10  
 Membership, 15-2  
 Powers and duties, 15-9  
 Removal of Director, 15-8  
 Terms of office, 15-6  
 Treasurer/Collector, 15-5

**- N -**

**NEW CONSTRUCTION**  
 Flood Zone, 97-4  
**NOISE**  
 Wireless Communications Services Overlay District, 97-4  
**NONCONFORMING USES**  
 Zoning, 97-10  
**NONCONFORMING USES**  
*See also* ACCESSORY USES; PERMITTED USES; PROHIBITED USES; SPECIAL PERMIT USES  
**NONCONFORMING USES AND STRUCTURES**  
 Plum Island, 97-4  
**NONCRIMINAL DISPOSITION**  
 Alcoholic beverages, 1-5  
 Animal regulations, 1-5  
 Beaches, 1-5  
 Definitions, 1-5  
 Dogs and other animals, 1-5  
 Earth removal, 1-5  
 General provisions, 1-5  
 Hunting, 1-5  
 Junk vehicles, 1-5  
 Peace and good order, 1-5  
 Pet waste, 1-5  
 Solid waste, 1-5  
 Streets, sidewalks and commons, 1-5  
 Tobacco products, 1-5  
 Vehicles and traffic, 1-5  
 Violations and penalties, 1-5  
 Water systems and supply regulations, 1-5  
 Waterway regulations, 1-5  
 Wells and leaching areas, 1-5  
 Wetlands, 1-5  
 Zoning, 1-5

**NOTICES**  
 Dogs and other animals, 56-1  
 Flood Zone, 97-4  
 Junk dealers and collectors, 71-3  
 Licenses and permits, 76-3, 76-4  
 Personnel policy, 24-7, 24-12  
 Site Plan Review, 97-10  
 Storm water management, 117-61  
 Subdivision of land, 117-10

Submission and approval of plans, 117-16  
 Tobacco products, 90-4  
 Wetlands, 95-7, 95-13  
 Zoning, 97-4  
**NOTICES OF VIOLATIONS**  
 Earth removal, 60-5  
 Tobacco products, 90-5  
**NUMBERING OF BUILDINGS**  
 Enhanced 911 Service, 93-23  
**NURSING HOMES**, *see* HOSPITALS OR NURSING HOMES

**- O -**

**OFFENSES**, *see* VIOLATIONS AND PENALTIES  
**OFFICERS AND EMPLOYEES**  
 Inspector, 18-2  
 Personnel policy, 24-1 – 24-25  
 Selectmen, 18-1  
**OFF-STREET PARKING AND LOADING**  
*See also* PARKING  
**ON-SITE DISPOSAL SYSTEM**  
 Subdivision of land, 117-6  
**OPEN SPACE**  
 Subdivision of land, 117-24  
**OPEN SPACE RESIDENTIAL DEVELOPMENT**  
 Applications, 97-5  
 Density, 97-5  
 Design process, 97-5  
 Design standards, 97-5  
 Lots, 97-5  
 Planning Board, 97-5  
 Pre-application, 97-5  
 Procedures, 97-5  
 Purpose and intent, 97-5  
 Setbacks, 97-5  
 Site specific design standards, 97-5  
 Special permits, 97-5  
 Zoning, 97-5

**OPERATION AND MAINTENANCE PLAN**  
 Storm water management, 117-62  
**ORDER**, *see* PEACE AND GOOD ORDER  
**OVERLAY DISTRICTS**  
 Zoning, 97-2

**- P -**

**PARKER RIVER RESIDENTIAL DISTRICT**  
 Signs, 97-8  
 Zoning, 97-3  
**PARKER RIVER TOWN FACILITY**  
 Waterways, 122-5  
**PARKING**  
 Adult Entertainment, 97-4  
 Dates and times restricted, 93-15  
 Fire lanes, 93-18  
 Handicapped parking, 93-16  
 Right-of-ways restricted, 93-19

Special permit, 97-7  
 Tow zones, 93-17  
 Vehicles and traffic, 93-4,  
 93-14 – 93-20  
 Violations and penalties, 93-20  
 Waterways, 122-5  
 Zoning, 97-7  
*See also* OFF-STREET PARKING AND LOADING

**PARKS AND RECREATION AREAS**

Animals, 109-1  
 Dogs and other animals, 56-2

**PAVEMENT**

Subdivision of land, 117-32  
**PEACE AND GOOD ORDER**  
 Discharge of firearms and fireworks prohibited on public ways, 82-4

Discharge of firearms prohibited on private property, 82-5  
 Disorderly conduct, 82-1  
 Littering prohibited, 82-3  
 Loitering and accosting prohibited, 82-2  
 Noncriminal disposition, 1-5  
 Prohibited behavior, 82-1  
 Violations and penalties, 1-5,  
 82-2, 82-6

**PENALTIES**, *see* VIOLATIONS AND PENALTIES

**PERFORMANCE GUARAN- TIES**, *see* GUARANTIES

**PERFORMANCE STANDARDS**  
 Plum Island Barrier Beach, 95-4  
 Storm water management, 117-60

**PERMITS**, *see* LICENSES AND PERMITS

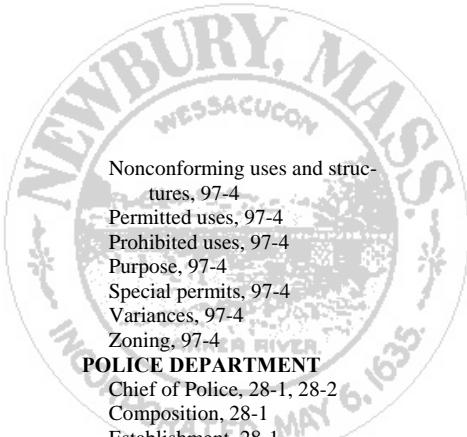
**PERMITTED USES**  
 Agricultural-Residential District, 97-10  
 Plum Island, 97-4  
 Zoning, 97-3, 97-4  
*See also* ACCESSORY USES; NONCONFORMING USES; PROHIBITED USES; SPECIAL PERMIT USES

**PERSONAL FLOTATION DE- VICES**

Waterways, 122-8, 122-8.2

**PERSONAL WATERCRAFT**  
 Waterways, 122-8

**PERSONNEL BOARD**  
 Appointments, 22-1, 22-3  
 Chairman of Personnel Board, 24-3  
 Composition, 22-3  
 Employment of consultants, 22-2  
 Membership, 22-3, 24-3  
 Organization, 24-3  
 Personnel policy, 24-3, 24-4  
 Powers and duties, 24-4  
 Qualifications, 24-3  
 Quorum, 24-3  
 Records, 24-3  
 Reports, 22-2  
 Salaries and compensation, 22-1,  
 22-4



Secretary of Personnel Board, 24-3  
Selection of members, 22-5  
Terms of office, 22-3, 24-3  
Vacancies, 22-5, 24-3

**PERSONNEL POLICY**  
Absence without leave, 24-18  
Amendment, repeal and severance, 24-20  
Authorization and application, 24-1  
Bereavement leave, 24-16  
Classification Plan, 24-5  
Compensation Plan, 24-6  
Court leave, 24-14  
Definitions, 24-2, 24-19  
Disciplinary action, 24-7  
Emergency closing of Town departments, 24-8  
Employment, promotion and transfer, 24-7  
General personnel and leave provisions, 24-1 – 24-20  
Grievance procedure, 24-19  
Holiday pay, 24-10  
Hours of duty, 24-8  
Insurance coverage, eligibility for, 24-21 – 24-25  
Intoxication, 24-7  
Leave of absence without pay, 24-17  
Leaves of absence, 24-11, 24-12, 24-14 – 24-17  
Military leave, 24-15  
Notices, 24-7, 24-12  
Officers and employees, 24-1 – 24-25  
Overtime, 24-9  
Personal injury sustained in line of duty, 24-13  
Personnel Board, 24-3, 24-4  
Personnel Relations Review Board, 24-19  
Records, 24-19  
Sick leave, 24-12  
Vacancies, 24-7  
Vacation leave, 24-11

**PERSONNEL RELATIONS REVIEW BOARD**  
Grievance procedure, 24-19  
Personnel policy, 24-19  
Powers and duties, 24-19

**PET WASTE**  
Noncriminal disposition, 1-5  
Violations and penalties, 1-5

**PLANNING BOARD**  
Open Space Residential Development, 97-5  
Powers and duties, 117-31  
Site Plan Review, 97-10  
Storm water management, 117-56 – 117-62  
Subdivision of land, 117-31

**PLUM ISLAND**  
Building permits, 97-4  
Demolition, 97-4  
Lots, 97-4

Nonconforming uses and structures, 97-4  
Permitted uses, 97-4  
Prohibited uses, 97-4  
Purpose, 97-4  
Special permits, 97-4  
Variances, 97-4  
Zoning, 97-4

**POLICE DEPARTMENT**  
Chief of Police, 28-1, 28-2  
Composition, 28-1  
Establishment, 28-1  
Powers and duties, 93-2 – 93-8  
Reports, annual, 28-2  
Vehicles and traffic, 93-2 – 93-8

**POLLUTION, *see* WATER POLLUTION**

**POWERS, *see* specific boards, departments, officers, etc.**

**PRELIMINARY PLAN**  
Subdivision of land, 117-45  
Submission and approval of plans, 117-15

**PRESERVATION OF STONE WALLS, *see* STONE WALLS, PRESERVATION OF**

**PROHIBITED USES**  
Plum Island, 97-4  
Signs, 97-8  
Waterways, 122-6  
Zoning, 97-3, 97-4  
*See also ACCESSORY USES; NONCONFORMING USES; PERMITTED USES; SPECIAL PERMIT USES*

**PUBLIC HEARINGS**  
Zoning, 97-11  
*, see HEARINGS*

#### - Q -

**QUALIFICATIONS, *see* specific boards, departments, officers, etc.**

**QUORUM, *see* specific boards, departments, officers, etc.**

#### - R -

**RAMP, PRIVATE**  
Fees, 122-12  
Waterways, 122-12

**RAMP USE, COMMERCIAL**  
Fees, 122-12  
Waterways, 122-12

**RATES, *see* FEES**

**RECORDS**  
Grievance procedure, 24-19  
Junk dealers and collectors, 71-4  
Personnel Board, 24-3  
Personnel policy, 24-19  
Waters systems and supply, 120-10  
Waterways, 122-4

**RECREATION AREAS, *see* PARKS AND RECREATION AREAS**

**REFUSE, *see* GARBAGE, RUBBISH AND REFUSE**

**REPORTS**  
Personnel Board, 22-2  
Police Department, 28-2  
Subdivision of land, 117-43  
Town Meetings, 34-2  
Vehicles and traffic, 93-6

**RESIDENCY REQUIREMENTS, *see* specific boards, departments, officers, etc.**

**RESIDENTIAL - LIMITED BUSINESS DISTRICT**  
Zoning, 97-3

**RESPONSIBILITIES, *see* specific boards, departments, officers, etc.**

**RETAINING WALLS**  
Subdivision of land, 117-39

**RETENTION AND DETENTION PONDS**  
Storm water management, 117-62

**RETIREMENT**

Insurance coverage, eligibility for, 24-23, 24-24

**RUBBISH, *see* GARBAGE, RUBBISH AND REFUSE**

**RUNNING AT LARGE**  
Dogs and other animals, 56-2

- S -

**SAFETY CERTIFICATES**  
Waterways, 122-8, 122-10

**SALARIES, *see* specific boards, departments, officers, etc.**

**SALES**  
Dogs and other animals, 56-1  
Streets, sidewalks and commons, 88-6

**SCHOOLS**  
Tobacco products, 90-1 – 90-7

**SCREENS**  
Adult Entertainment, 97-4

**SECRETARY OF PERSONNEL BOARD**  
Personnel Board, 24-3

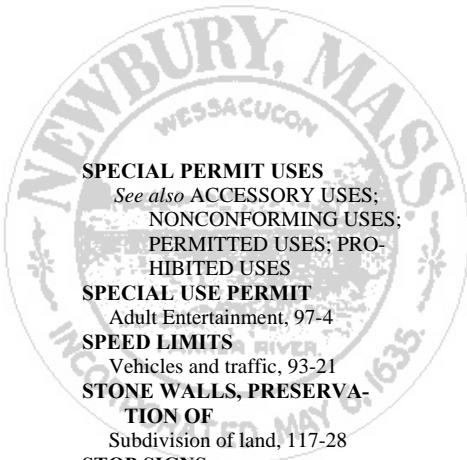
**SELECTMEN**  
Officers and employees, 18-1  
Powers and duties, 18-1

**SETBACKS**  
Adult Entertainment, 97-4  
Open Space Residential Development, 97-5

**SEWERS**  
Pipe requirements, 114-2  
Pollution of river prohibited, 114-1  
Subdivision of land, 117-6

**SICK LEAVE**  
Personnel policy, 24-12

**SIDE SLOPES**  
Subdivision of land, 117-38



**SIDEWALKS AND BIKEWAYS**  
Subdivision of land, 117-34

**SIGNS**  
Agricultural-Residential District, 97-8  
Business District, 97-8  
Commercial Highway A, 97-8  
Commercial Highway District, 97-8  
Definitions, 97-8  
Driveways, common, 97-7  
Exceptions, 97-8  
Exemptions, 97-8  
General requirements, 97-8  
Industrial Districts, 97-8  
Junk dealers and collectors, 71-5  
Licenses and permits, 97-8  
Maintenance, 97-8  
Nonconforming, 97-8  
Parker River Residential District, 97-8  
Prohibited uses, 97-8  
Purpose, 97-8  
Removal, 97-8  
Special permits, 97-8  
Subdivision of land, 117-27  
Vehicles and traffic, 93-9 – 93-13  
Zoning, 97-8

**SITE PLAN**  
Zoning, 97-4

**SITE PLAN REVIEW**  
Applicability, 97-10  
Bonds, 97-10  
Conditions of approval, 97-10  
Fees, 97-10  
Guaranties, 97-10  
Hearings, 97-10  
Notices, 97-10  
Planning Board, 97-10  
Procedure, 97-10  
Purpose, 97-10  
Zoning, 97-10

**SITE PLANS**  
Earth removal, 60-1

**SLIPS AND DOCKS, COMMERCIAL AND PRIVATE**  
Fees, 122-12  
Waterways, 122-12

**SOLID WASTE**  
Disposal, 86-1  
Garbage, rubbish and refuse, 86-1  
Noncriminal disposition, 1-5  
Violations and penalties, 1-5, 86-2

**SPECIAL ACTS, see CH. A125**

**SPECIAL PERMIT**  
Parking, 97-7

**SPECIAL PERMITS**  
Bed and breakfast, 97-5  
Driveways, common, 97-7  
General, 97-5  
Open Space Residential Development, 97-5  
Plum Island, 97-4  
Signs, 97-8  
Zoning, 97-3 – 97-5, 97-11

**SPECIAL PERMIT USES**  
*See also ACCESSORY USES; NONCONFORMING USES; PERMITTED USES; PROHIBITED USES*

**SPECIAL USE PERMIT**  
Adult Entertainment, 97-4

**SPEED LIMITS**  
Vehicles and traffic, 93-21

**STONE WALLS, PRESERVATION OF**  
Subdivision of land, 117-28

**STOP SIGNS**  
Vehicles and traffic, 93-22

**STOP-WORK ORDERS**  
Wetlands, 95-12

**STORAGE**  
Junk vehicles, 71-6

**STORAGE TANKS, WATER**  
Subdivision of land, 117-30

**STORM WATER MANAGEMENT, 117-62**  
Bonds, 117-62  
Design standards, 117-61  
General requirements, 117-62  
Monitoring wells, 117-61, 117-62  
Nitrogen and/or phosphorus loading report, 117-59  
Notices, 117-61  
Operation and Maintenance Plan, 117-62  
Performance standards, 117-60  
Planning Board, 117-56 – 117-62  
Policies and regulations, 117-57  
Retention and detention ponds, 117-62  
Rules and regulations, 117-56 – 117-62  
Storm Water Management Plan, 117-58, 117-60  
Subdivision of land, 117-56 – 117-62  
Submission requirements, 117-58  
Tests, 117-61  
Watercourses, 117-61

**STORM WATER MANAGEMENT PLAN**  
Storm water management, 117-58, 117-60

**STREET CLOSINGS**  
Vehicles and traffic, 93-3

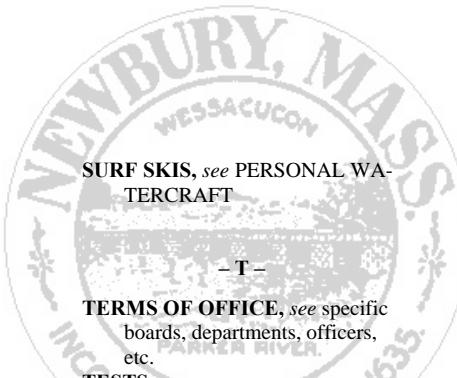
**STREETS AND SIDEWALKS**  
Subdivision of land, 117-19, 117-20, 117-32  
Submission and approval of plans, 117-16  
*See also SIDEWALKS AND BIKEWAYS*

**STREET SIGNS**  
Subdivision of land, 117-37

**STREETS, SIDEWALKS AND COMMONS**  
Advertising prohibited, 88-10  
Animals, 88-4  
Clothing required, 88-11  
Definitions, 88-2  
Deposit of rubbish prohibited, 88-1

Discharge of water, 88-3  
Frightening horses and games prohibited, 88-4  
Licenses and permits, 88-10, 88-12  
Loitering, 88-9  
Noncriminal disposition, 1-5  
Pasturing of animals restricted, 88-7  
Sales prohibited, 88-6  
Use of ramp restricted, 88-12  
Vehicles, 88-8  
Violations and penalties, 1-5, 88-13

**SUBDIVISION OF LAND**  
Administration, 117-50 – 117-55  
Amendments, 117-53  
Americans with Disabilities Act, 117-9  
Appeals, 117-49  
Approval under subdivision control not required, 117-10 – 117-13  
Authority, 117-2  
Backfilling, 117-32  
Board of Selectmen, 117-50  
Construction specifications, 117-31 – 117-44  
Consultant fees, 117-45  
Consultants authorized, 117-46  
Costs and expenses, 117-42, 117-47  
Curbs, granite, 117-36  
Definitions, 117-3  
Definitive Plan, 117-45  
Deposit of fees, 117-47  
Design purposes, 117-18  
Design standards, 117-17 – 117-30  
Determination of adequacy of way, 117-12  
Determination of frontage, 117-11.1  
Drainage, 117-33  
Easements, 117-23  
Endorsement, 117-13  
Enforcement, 117-50  
Excavations, 117-32  
Excess amounts, 117-48  
Fees, 117-10, 117-45 – 117-49  
Fill, 117-32  
Fire prevention, 117-30  
Flood plain, 117-25  
Form and contents of Plan, 117-11  
Forms, 117-54  
Funds, 117-47  
General, 117-17, 117-31  
General layout and dimensions, 117-21  
General provisions, 117-1 – 117-9  
Grading, 117-21, 117-32  
Grass strips, 117-40  
Improvements, 117-42  
Inspections, 117-31, 117-42  
Interest, 117-48  
Interim as-built plans, 117-44



Modify, amend or rescind approval, 117-51  
 Monuments, 117-35  
 Notices, 117-10  
 One dwelling on any lot, 117-5  
 On-site disposal system, 117-6  
 Open space, 117-24  
 Pavement, 117-32  
 Planning Board, 117-31  
 Preliminary Plan, 117-45  
 Public area, 117-24  
 References, additional, 117-55  
 Reports, 117-43  
 Retaining walls, 117-39  
 Right to make a subdivision, 117-4  
 Sewage disposal, 117-6  
 Side slopes, 117-38  
 Sidewalks and bikeways, 117-34  
 Signs, 117-27  
 Special review fees, 117-45 – 117-49  
 Stone walls, preservation of, 117-28  
 Storage tanks, water, 117-30  
 Storm water management, 117-56 – 117-62  
 Streets and sidewalks, 117-19, 117-20, 117-32  
 Street signs, 117-37  
 Submission, 117-10  
 Submission and approval of plans, 117-14 – 117-16  
 Trees, 117-32, 117-41  
 Trenches, 117-33  
 Typical cross section, 117-22  
 Use of fees, 117-48  
 Utilities, 117-33  
 Waivers, 117-7  
 Watercourses, 117-23  
 Water mains, 117-33  
 Water supply, 117-6  
 Wetlands, 117-26  
 Zoning Bylaw, compliance required with, 117-8

**SUBMISSION AND APPROVAL OF PLANS**

Board of Health, 117-16  
 Bonds, 117-16  
 Costs and expenses, 117-16  
 Definitive Plan, 117-16  
 Environmental analysis, 117-16  
 Fees, 117-16  
 General, 117-14  
 Guarantees, 117-16  
 Hearings, 117-16  
 Notices, 117-16  
 Preliminary Plan, 117-15  
 Streets and sidewalks, 117-16  
 Subdivision of land, 117-14 – 117-16

**SURF SKIS, *see* PERSONAL WATERCRAFT**

– T –

**TERMS OF OFFICE, *see* specific boards, departments, officers, etc.**

**TESTS**

Storm water management, 117-61  
 Wireless Communications Services Overlay District, 97-4

**TOBACCO PRODUCTS**

Definitions, 90-6  
 Enforcing persons, 90-6  
 Minors, 90-4  
 Noncriminal disposition, 1-5, 90-3  
 Notices of violations, 90-5  
 Notices to parent or guardian, 90-4  
 Possession or use prohibited, 90-1  
 School property, 90-1 – 90-7  
 Violations and penalties, 1-5, 90-2, 90-3

**TOWN DOCK SLIPS**

Fees, 122-12  
 Waterways, 122-12

**TOWN MEETINGS**

Auditor to be chosen, 34-3  
 Financial requirements, 34-2  
 Highway moneys, 34-4  
 Insurance coverage, eligibility for, 24-25  
 Meeting times designated, 34-1  
 Quantum of vote, 34-7  
 Quorum for Town Meetings, 34-6  
 Reports, 34-2  
 Warrants, 34-5  
*See also* ANNUAL TOWN MEETINGS

**TOW ZONES**

Parking, 93-17

**TRAFFIC REGULATIONS, *see* VEHICLES AND TRAFFIC**

**TRAILERS**

Flood Zone, 97-4

**TRASH, *see* GARBAGE, RUBBISH AND REFUSE**

**TREASURER/COLLECTOR**

Municipal Finance, Department of, 15-5

**TREES**

Subdivision of land, 117-32, 117-41

**TRENCHES**

Subdivision of land, 117-33

– U –

**USE DISTRICTS**

Zoning, 97-2

**UTILITIES**

Subdivision of land, 117-33

– V –

**VACATION LEAVE**

Personnel policy, 24-11

**VARIANCES**

Flood Zone, 97-4  
 Plum Island, 97-4  
 Waters systems and supply, 120-10  
 Wetlands, 95-5

**VEHICLES**

Beaches, 45-2  
 Streets, sidewalks and commons, 88-8

**VEHICLES AND TRAFFIC**

Accident records, 93-6  
 Authority, 93-12  
 Authority granted, 93-2  
 Compliance, 93-5  
 Definitions, 93-1  
 Destruction of signs, 93-11  
 D.P.W. regulations, 93-21, 93-22  
 Enhanced 911 Service, 93-23 – 93-25  
 Exemptions, 93-8  
 Handicapped parking, 93-16  
 Location of certain uses, 93-12  
 Markings, 93-9 – 93-13  
 Noncriminal disposition, 1-5  
 Obedience to signs and signals required, 93-13  
 Parking, 93-14 – 93-20  
 Parking, temporary prohibitions of, 93-4  
 Police Department, 93-2 – 93-8  
 Reports, annual traffic safety, 93-6  
 Signs, 93-9 – 93-13  
 Speed limits, 93-21  
 Stop signs, 93-22  
 Street closings, 93-3  
 Unofficial signs prohibited, 93-10  
 Vehicle weight limits, 93-26  
 Violations and penalties, 1-5

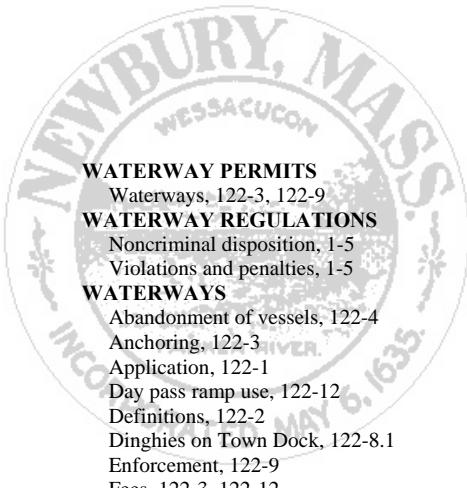
**VEHICLES, JUNK, *see* JUNK VEHICLES**

**VEHICLE WEIGHT LIMITS**

Vehicles and traffic, 93-26

**VIOLATIONS AND PENALTIES**

Alcoholic beverages, 1-5, 41-2  
 Animal regulations, 1-5  
 Animals, 109-1  
 Beaches, 1-5, 45-6, 45-9  
 Dogs and other animals, 1-5, 56-1, 56-2  
 Dogs on the beach, 109-3  
 Earth removal, 1-5, 60-5  
 Enhanced 911 Service, 93-24  
 General provisions, 1-2  
 Hunting, 1-5, 67-3  
 Junk vehicles, 1-5, 71-6, 71-12  
 Noncriminal disposition, 1-5  
 Parking, 93-20  
 Peace and good order, 1-5, 82-2, 82-6  
 Pet waste, 1-5  
 Solid waste, 1-5, 86-2



Streets, sidewalks and commons, 1-5, 88-13  
 Tobacco products, 1-5, 90-2, 90-3  
 Vehicles and traffic, 1-5  
 Waters systems and supply, 120-10  
 Water systems and supply regulations, 1-5  
 Waterway regulations, 1-5  
 Waterways, 122-8, 122-9  
 Wells and leaching areas, 1-5, 120-3  
 Wetlands, 1-5, 95-12  
 Wireless Communications Services Overlay District, 97-4  
 Zoning, 1-5

**- W -**

**WAGES**, *see* specific boards, departments, officers, etc.  
**WAIVERS**  
 Licenses and permits, 76-5  
 Subdivision of land, 117-7  
**WALLS**, *see* RETAINING WALLS; STONE WALLS, PRESERVATION OF  
**WARRANTS**  
 Town Meetings, 34-5  
**WATER BIKES**, *see* PERSONAL WATERCRAFT  
**WATERCOURSES**  
 Storm water management, 117-61  
 Subdivision of land, 117-23  
**WATER MAINS**  
 Subdivision of land, 117-33  
**WATER POLLUTION**  
 Sewers, 114-1  
**WATER SUPPLY PROTECTION DISTRICT**  
 Zoning, 97-4  
**WATER SYSTEMS AND SUPPLY**  
 Appeals, 120-10  
 Cisterns, 120-9  
 Definitions, 120-4  
 Enforcement, 120-10  
 Hearings, 120-10  
 Pipes and equipment, 120-8  
 Prohibitions, 120-9  
 Records, 120-10  
 Sanitation, production and quality, 120-6  
 Subdivision of land, 117-6  
 System regulations, 120-4 – 120-10  
 Variances, 120-10  
 Violations and penalties, 120-10  
 Water conditioning, 120-7  
 Wells, 120-5  
 Wells and leaching areas, 120-1 – 120-3  
**WATER SYSTEMS AND SUPPLY REGULATIONS**  
 Noncriminal disposition, 1-5  
 Violations and penalties, 1-5

**WATERWAY PERMITS**

Waterways, 122-3, 122-9

**WATERWAY REGULATIONS**

Noncriminal disposition, 1-5  
 Violations and penalties, 1-5

**WATERWAYS**

Abandonment of vessels, 122-4  
 Anchoring, 122-3  
 Application, 122-1  
 Day pass ramp use, 122-12  
 Definitions, 122-2  
 Dinghies on Town Dock, 122-8.1  
 Enforcement, 122-9  
 Fees, 122-3, 122-12  
 Kayak and canoe fee, 122-12  
 Minors, operation by, 122-10  
 Miscellaneous, 122-11  
 Mooring, 122-3, 122-4  
 Mooring permits, 122-3  
 Moorings, commercial and private, 122-12  
 Parker River town facility, 122-5  
 Parking and ramp, 122-5  
 Personal flotation devices, 122-8, 122-8.2  
 Personal watercraft, 122-8  
 Prohibited uses, 122-6  
 Ramp, private, 122-12  
 Ramp use, commercial, 122-12  
 Records, 122-4  
 Regulations for moorings, 122-4  
 Safety certificates, 122-8, 122-10  
 Slips and docks, commercial and private, 122-12  
 Town Dock slips, 122-12  
 Unlawful deposits, 122-7  
 Vessel regulations, 122-8.2  
 Violations and penalties, 122-8, 122-9  
 Waterway permits, 122-9

**WELLS AND LEACHING AREAS**

Fees, 120-5  
 Licenses and permits, 120-5  
 More than one family prohibited, 120-1  
 Noncriminal disposition, 1-5  
 Violations and penalties, 1-5, 120-3  
 Water systems and supply, 120-1 – 120-3, 120-5

**WETLANDS**

Applications, 95-6  
 Certificates of compliance, 95-9  
 Consultant services, 95-13  
 Definitions and Abbreviations, 95-3  
 Development and redevelopment, 95-3  
 Duration of orders, 95-8  
 Enforcement, 95-12  
 Fees, 95-8  
 Hearings, 95-7  
 Investigations, 95-7, 95-12  
 Jurisdiction, 95-2  
 Land restrictions, 95-8  
 Modifications, amendments, revocations, 95-8  
 Nonconforming uses, 97-10  
 Noncriminal disposition, 1-5  
 Notices, 97-4  
 Open Space Residential Development, 97-5  
 Overlay districts, 97-2

Noncriminal disposition, 1-5

Notices, 95-7, 95-13

Orders and decisions, 95-8

Performance standards for the Barrier Beach, 95-4

Purpose, 95-1

Responsibility for compliance, 95-10

Rules and regulations, 95-11

Security to assure performance, 95-8

Stop-work orders, 95-12

Subdivision of land, 117-26

Variances, 95-5

Violations and penalties, 1-5, 95-12

**WIRELESS COMMUNICATIONS SERVICES OVERLAY DISTRICT**

Antennas, 97-4

Bonds, 97-4

Exemptions, 97-4

Fences, 97-4

Height regulations, 97-4

Inspections, 97-4

Insurance, 97-4

Liability, 97-4

Lighting, 97-4

Noise, 97-4

Purpose, 97-4

Tests, 97-4

Violations and penalties, 97-4

Zoning, 97-4

**- Z -**

**ZONING**

Administration, 97-11

Adult Entertainment, 97-4

Agricultural-Residential District, 97-3, 97-10

Business District, 97-3

Commercial Highway District, 97-3

Commercial Highway District A, 97-3

Definitions, 97-11

Dimensional regulations, 97-6

Enforcement, 97-11

Establishment of use districts, 97-2

Fees, 97-4

Flood Zone, 97-4

General provisions, 97-1

General regulations, 97-10

Grandfathering, 97-10

Hearings, 97-4

Home occupations, 97-10

Industrial District, 97-3

Location of districts, 97-2

Location of overlay districts, 97-2

Nonconforming uses, 97-10

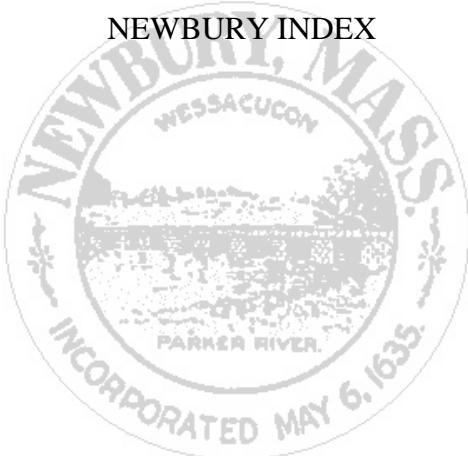
Noncriminal disposition, 1-5

Notices, 97-4

Open Space Residential Development, 97-5

Overlay districts, 97-2

## NEWBURY INDEX



- Parker River Residential District, 97-3
- Parking and common driveways, 97-7
- Permitted uses, 97-3, 97-4
- Plum Island, 97-4
- Prohibited uses, 97-3, 97-4
- Public hearings, 97-11
- Purpose and intent, 97-1
- Regulations of overlay districts, 97-4
- Regulations of use districts, 97-3
- Residential - Limited Business District, 97-3
- Signs, 97-8
- Site Plan, 97-4
- Site Plan Review, 97-10
- Special permits, 97-3 – 97-5, 97-11
- Special regulations, 97-10
- Subdivision of land, 117-8
- Types of use districts, 97-2
- Use Districts, 97-2
- Violations and penalties, 1-5
- Water Supply Protection District, 97-4
- Wireless Communications Services Overlay District, 97-4
- Zoning Board of Appeals, 97-11
- Zoning Map, 97-2

### **ZONING BOARD OF APPEALS**

- Appointments, 97-11
- Establishment, 97-11
- Membership, 97-11
- Zoning, 97-11

### **ZONING MAP**

- Zoning, 97-2