



# **TOWN OF ESSEX**

## **BY-LAWS**

Revision Schedule:

- September 9, 1994
- August 1, 1995 (per A.T.M. of 5/95)
- October 4, 1996 (per A.T.M. of 5/96)
- June 2, 1997 (clamming regulation amendment)
- October 9, 1997 (per A.T.M. of 5/97)
- October, 2001 (per A.T.M.'s of 5/98 – 5/01)
- August and November, 2011 (per A.T.M. of 2011)
- V. 12.1: February 23, 2012 (per S.T.M. Nov. 14, 2011);
- V. 12.2: July 2, 2012 (per S.T.M. Nov 14, 2011);
- V. 12.3: July 16, 2012 (per S.T.M. June 11, 2012);
- V. 13.1: March 12, 2013 (per S.T.M. November 19, 2012; updates made to page/index corrections as well as to eliminate Chapter 8, Public Health Regulations and other appendixes/regulations that are not official Town By-laws);
- V. 13.2: August 21, 2013 (per A.T.M. May 6 & 7, 2013);
- V. 14.1: February 18, 2014 (per S.T.M. November 18, 2013);
- V. 14.2: July 24, 2014 (per A.T.M. May 5, 2014);
- V. 15.1: September 17, 2015 (per S.T.M. June 3, 2014 & A.T.M. May 4, 2015);
- V. 16.1: May 19, 2016 (per F.T.M. November 16, 2015);
- V. 17.1: March 1, 2017 (per F.T.M. November 14, 2016);
- V. 17.2: August 14, 2017 (per A.T.M. May 1, 2017);
- V. 18.1: March 7, 2018 (per F.T.M. November 13, 2017)
- V.18.2: August 15, 2018 (per A.T.M. May 7, 2018)

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## CHAPTER I

### GENERAL

#### 1-1 SHORT TITLE.

This book shall be known and may be cited as the "General Bylaws of the Town of Essex." The most recently revised version shall be the prevailing authority.

#### 1-2 DEFINITIONS.

For the purpose of this revision, and in the interpretation and applications of all other bylaws heretofore or hereafter adopted, except as the context may otherwise require:

**"Selectmen"** shall mean the Board of Selectmen of the town.

**"Bylaw"** shall mean any act of local legislation heretofore or hereafter adopted, and including this revision, so long as it is adopted by the procedure required for the adoption of a bylaw and so long as it remains in force and effect pursuant to law.

**"Clerk"** or **"town clerk"** shall mean the municipal clerk duly appointed pursuant to law.

**"Person"** shall mean any individual, natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, corporations or unincorporated groups; or any officers, agents, employees, servants, factors or any kind of personal representatives of any thereof in any capacity, acting either for himself or for any other person, under either personal appointment or pursuant to law.

**"Town"** shall mean the Town of Essex in the Commonwealth of Massachusetts.

**"Street"** shall include a street, avenue, road, alley, land, highway, boulevard, concourse, driveway, culvert, sidewalk, and crosswalk, and every class road, square, place or municipal parking field used by the general public.

**"Month"** shall mean a calendar month unless otherwise specifically provided.

**"Year"** shall mean a calendar year unless otherwise specifically provided.

**"Licensed"** shall mean licensed in accordance with the appropriate section or chapter of the General Bylaws of the Town of Essex or any other applicable law.

#### 1-3 CONSTRUCTION

For the purpose of this revision and any other ordinances heretofore or hereafter adopted, except as the context may otherwise require.

The present tense includes the past and future tenses and the future, the present.

The Masculine gender includes the female and neuter. The singular number includes the plural and the plural, the singular.

"Shall" is mandatory and "may" is permissive.

The time within which an act is to be done shall be computed by excluding the first and including the last day and if the last day be a Sunday, a legal holiday or a day on which the officers of the town are closed, that day shall be excluded.

"Writing" and "written" shall include printing, typewriting and any other mode of communication using paper or similar material which is in general use, as well as legible handwriting.

Whenever a specific time is used in this Bylaw, it shall mean the prevailing and established time in effect in the Commonwealth of Massachusetts any day in any year.

Any citation of a statute, law or bylaw contained in this revision shall be deemed to refer to such statute, law or bylaw as amended, whether or not such designation is included in the citation.

"Chapter" shall mean one of the major divisions of the revision identified by a Roman numeral and divided by subject matter. "Section" shall mean a major subdivision of a chapter. "Subsection" shall mean a subdivision of a section, identified by a decimal number. "Paragraph" shall mean a subdivision under a subsection, identified by an alphabetical letter or Arabic number.

#### **1-4 SEVERABILITY**

If any chapter, section, subsection or paragraph of this revision is declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such chapter, section, subsection or paragraph shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining chapters, sections, subsections or paragraphs of this revision.

## CHAPTER II

### ADMINISTRATION

#### 2-1 TOWN MEETING

**2-1.1 ANNUAL TOWN MEETING.** An annual town meeting shall be held on the first Monday in May and shall begin not earlier than 7:30 p.m.

**2-1.1a FALL TOWN MEETING.** A fall town meeting shall be held in November, exactly two Mondays preceding Thanksgiving, unless that Monday is the day that Veterans' Day is observed by the Commonwealth of Massachusetts in a particular year, in which case the date of the Fall Town Meeting shall be chosen by the Board of Selectmen. The Fall Town Meeting shall begin not earlier than 7:30 p.m.

**2-1.2 QUORUM AT TOWN MEETINGS.** Thirty registered voters shall constitute a quorum for the transaction of business at any town meeting; but a lesser number may adjourn to some future date.

**2-1.3 QUESTIONS TO BE DECIDED BY VOICE VOTE.** Whenever a question is put, including matters requiring a two-thirds vote by statute or bylaw, the sense of the meeting shall be determined by the voice of the voters, and the moderator shall first announce the vote as it appears to him by the sound. If the moderator is unable to decide by the sound of the voices, or if his announcement is immediately doubted by seven or more voters rising in their places for that purpose, the moderator shall, without debate, doubt the vote and order a rising vote, and he may appoint tellers to make and return the count.

**2-1.4 SPEAKERS FROM THE FLOOR.** Without first obtaining leave of the meeting, no person shall speak more than twice on any question except to correct a mistake or misstatement, and no person shall speak more than 5 minutes at any one time without being again recognized by the moderator.

**2-1.5 USE OF TOWN MEETING TIME.** The conduct of a town meeting not prescribed by: law or this chapter shall be determined by the rules of practice contained in TOWN MEETING TIME, most recently revised, so far as they are adapted to town meetings.

**2-1.6 TWO-THIRDS VOTE REQUIRED TO RECONSIDER CLOSED BUSINESS.** If any article of the warrant has been acted upon and disposed of, it shall not be reconsidered at that meeting or any adjournment thereof, except by a two-thirds vote.

**2-1.7 DEPUTY MODERATOR.** To the extent this bylaw is not inconsistent with G.L.c.39, § 14 and G.L.c. 41, § 10, the town moderator shall preside at all sessions of the town meeting. At the first session of the annual town meeting or the first town meeting following the election of the moderator, the moderator may appoint a voter as deputy moderator to assist the moderator, or to serve as moderator with all the powers and duties of the office in the event of a mid-term vacancy in the office or the absence, disability or refusal of the moderator. The appointment of a deputy moderator shall be subject to ratification by that town meeting.

In the absence of both the moderator and the duly ratified deputy moderator at any session of the town meeting, the town clerk shall open the meeting and preside over the election of a temporary moderator. In the absence of the moderator, duly ratified deputy moderator and the town clerk, the presiding officer of that session shall be determined in accordance with the General laws.

**2-1.8 SECRET BALLOTS.** If requested by one-fifth or more of those present and eligible to vote, the vote on a motion shall be taken by secret ballot in a form chosen by the moderator.

**2-1.9** Notice of any Town Meeting, except as otherwise provided by law, shall be given by posting attested copies of the warrant at the Town Hall, Post Office, and the Essex Elementary School.

## **2-2 ELECTION OF OFFICERS**

The first annual meeting shall be adjourned to the second Monday in May for the election of town officers and for balloting upon such matters as are required by law to be determined at such meetings. The polls shall be opened not earlier than 6:00 a.m. and shall be closed not later than 8:00 p.m.

If the town clerk or his deputy is not present at the opening of the polls, the clerk may appoint a person to fill such a vacancy who shall be an enrolled voter of the same political party as the absent officer, if any competent person enrolled in such party is present and willing to serve.

## **2-4 FINANCE AND ADVISORY COMMITTEE**

**2-4.1 MEMBERSHIP.** There shall be a finance and advisory committee consisting of seven legal voters of the town. None of the seven members appointed hereunder shall be an elected officer, a member of another board of committee, other than a capital budgeting or personnel committee, or a town employee. This provision that a member of the Finance Committee may not serve on another Board or Committee may be waived by unanimous vote of the Finance Committee and the Board of Selectmen, provided that the members may not serve on a committee that receives or requests funds to be appropriated by the Town Meeting.

**2-4.2 APPOINTMENT.** The appointed members of the committee shall serve for a term of three years on a staggered basis. An individual may be reappointed to additional three year terms by a majority of the Board of Selectmen.

Initial appointments following the 1968 annual town meeting, were two members to serve for one year; three members to serve for two years and two members to serve for three years.

Within ten days following each annual town meeting, positions on the committee vacant by reason of the expiration of a members term shall be filled by appointment by members of the committee whose terms did not expire at that annual town meeting. The Board of Selectmen must approve by majority vote any appointment to the Finance Committee.

If a vacancy occurs in the membership of the committee due to a members death, resignation or inability to act for any reason, a new member shall be appointed to fill such vacancy for the unexpired term thereof in the same manner specified above. Such vacancy shall be filled as soon as possible, but in any event, no later than 30 days from its occurrence. Any member who ceases to be a resident of the town shall upon such removal cease to be a member of the committee.

**2-4.3 ORGANIZATION.** Within one month of the annual town meeting, the committee shall meet at the call of any of the previous committees officers whose terms did not expire at the annual town meeting for the purpose of electing a chairman and secretary and any other officers and subcommittees from its own members as the committee deems necessary and desirable to carry out its work for the ensuing year.

**2-4.4 MEETINGS.** The committee shall meet at least monthly, except during the months of July and August at the town hall and may hold special meetings upon at least 24 hours' notice to each member.

The time of the regular meetings of the committee shall be established at its organizational meeting, and may be subsequently changed by a majority vote of its members. A quorum for the purposes of meeting under the Open Meeting Law shall be defined as a majority of the number of members that are presently on the Committee and its calculation shall not include vacant seats. In no event shall the Committee conduct business when less than three seats are filled.

**2-4.5 FINANCIAL REPORTS TO COMMITTEES.** All Town boards, officers, and committees authorized to expend Town money shall annually submit estimates of income and expenses for the ensuing fiscal year in connection with the operation, maintenance, and administration of their respective departments or offices. They shall also annually submit all income and expenses of their respective offices or departments for the preceding fiscal year and detailed estimates of amounts projected for the current fiscal year. The reports shall be supplemented by explanatory statements and reasons for any changes from amounts appropriated for the same purposes in the preceding fiscal year. Such reports shall be filed with the Town Accountant by January 10<sup>th</sup>, who shall at once transmit these reports to the Finance Committee.

**2-4.6 AUTHORITY AND DUTIES OF THE COMMITTEE.**

- a. All departments shall submit to the committee, and the committee shall consider any and all town questions which have a direct or indirect impact on the towns finances for the purpose of making reports and recommendations thereon to the town.
- b. The committee shall have authority at any time to investigate the books, accounts, and management of any department of the town, and to employ such expert and other assistance as it may deem advisable for that purpose, and the book and accounts of all departments and officers of the town shall be open to the inspection of the committee and any person employed by it for that purpose.
- c. The committee shall duly consider the estimates and statements filed by the town boards, officers, and committees, and may confer with these groups and hold hearings if they deem it advisable. The committee shall thereupon recommend to the town such sums and in such division of items as it considers necessary and practicable for each officer and department of the town.
- d. The committee shall consider and act upon all emergency requests requiring transfer of funds from the reserve fund.
- e. The committee shall be responsible for preparing a Capital Planning Budget with five-year projections annually.

**2-5 TOWN ACCOUNTANT, AUDITS, ACCOUNTING SYSTEM**

**2-5.1 TOWN ACCOUNTANT.** The selectmen shall appoint a town accountant in accordance with the provisions of Chapter 41, Section 55 of the General laws.

**2-5.2 ANNUAL AUDIT.** There shall be an annual audit of the towns accounts under the supervision of the director of accounts of the department of corporations and taxation, in accordance with the provisions of Chapter 44, Section 35 of the General Laws.

**2-5.3 ACCOUNTING SYSTEM.** An accounting system shall be installed in the town by the director of accounts in accordance with the provisions of Chapter 44, Section 35 of the General Laws.

**2-5.4 CONTRACTING AUTHORITY.** Unless otherwise provided by a vote of Town Meeting, each elected board or officer having authority for a particular appropriation is hereby authorized to enter into any contract not exceeding \$5,000 and not requiring a signature from the vendor binding the Town to the transaction for the expenditure of such appropriation, on such terms and conditions, including the length of contracts, which such board or officer deems appropriate.

Any contracts by any elected or appointed board or officer in excess of \$5,000 or which require a signature from the vendor binding the Town to the transaction must also be executed by the Selectmen. The Board of Selectmen is hereby authorized to enter into contracts for all matters not specifically under the jurisdiction or responsibility of any other elected board or officer. Notwithstanding the foregoing, the Board of Public Works established under Chapter 501 of the Acts of 1973 may enter into contracts a) for the procurement of supplies and services related to matters involving water supply and distribution as authorized by Chapter 262 of the Acts of 1934 without limitation as to contract value, and b) for any other purpose up to a contract value of \$50,000. No board or officer of the Town shall contract for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law.

## **2-6 BUILDING INSPECTOR.**

**2-6.1 APPOINTMENT.** The Board of Selectmen shall in the month of June each year appoint a Building Inspector who shall hold office for the term of one year from the date of his appointment or until his successor is appointed.

**2-6.2 QUALIFICATIONS.** The Building Inspector shall be a qualified architect, builder or civil engineer, or a person who by his education and experience can properly perform the duties of his office.

**2-6.3 ALTERNATE INSPECTOR.** If the Inspector shall have any interest in doing of work or the furnishing of materials for the construction, repair, or alteration of any building in the town, or in the making of plans or specification thereof, then the application shall be referred to the Board of Selectmen, who shall appoint a competent person to act as inspector in his stead.

**2-6.4 COMPENSATION.** The compensation of any inspector or alternate inspector shall be determined by the Personnel Board.

**2-6.5 RECORDS.** Each inspector shall keep complete records showing the receipt of all fees and applications for permits, the action taken thereon, the date of receiving requests for inspections, the date and nature of the inspection made, and of all notices and orders issued by him. He shall pay to the Treasurer of the Town monthly all fees received by him during the previous month.

**2-6.6 INSPECTION.** Each Inspector, when called upon to make any inspections required by law, shall make such inspections within 48 hours, Sundays and holidays excepted. The Building Inspector shall make at least three inspections in the following times;

- a. After excavations and before foundations or footings are installed.
- b. Before interior sheathing, plaster, lathing or placing of concrete floors, in whole or part.
- c. When all work is completed.

## **2-7 ELECTRICAL INSPECTOR.**

**2-7.1 APPOINTMENT.** The Board of Selectmen shall in the month of June in each year appoint an electrical inspector who shall hold office for the term of one year from the date of appointment or until his successor is appointed.

**2-7.2 COMPENSATION.** The compensation of the Electrical Inspector shall be determined by the Personnel Board.

**2-7.3 RECORDS.** The Inspector shall keep complete records showing the receipt of all fees and applications for permits, the action thereon, the date of receiving requests for inspections, the date and nature of the inspection made, and of all notices and orders issued by him. He shall pay to the Treasurer of the Town monthly all fees received by him during the previous month. Any filing of forms or payment of fees shall occur at the time and place of inspection.

**2-7.4 WORK BY OWNER.** The owner of a property shall be permitted to do any and all electrical work on his own property. Work meeting the standards of the State Electrical Code shall be satisfactory.

## 2-7A FEES, BUILDING, ELECTRICAL, PLUMBING, AND GAS

### ELECTRICAL FEE SCHEDULE

<u>CATEGORY</u>	<u>FEE</u>
With building permit:	\$3/thousand (based on estimated building permit construction cost – not estimated electrical cost) \$35 minimum/no maximum
Without building permit:	All work \$35
Re-inspection fee:	\$35
Penalty for work without permit:	Double fee

### BUILDING FEE SCHEDULE

Any construction work including new building, additions, etc.

<u>CATEGORY</u>	<u>FEE</u>
Permit Application Minimum	\$35.00
Cost of Construction	\$10.00 per \$1,000 plus minimum fee
Building Demolition Fee	\$75.00 per story
Reinspection Fee	\$25.00 per reinspection
Stop Work Order Release Fee	\$50.00
Sheet Metal Permits (residential)	\$ 5.00 per \$1,000
Sheet Metal Permits (commercial)	\$10.00 per \$1,000

For the purpose of determining the building permit fee, the “cost of construction” shall be generally be determined by the Inspector of Buildings to be an amount equal to the product of the square footage area of the construction multiplied by seventy-five dollars (\$75.00). Square footage of any second story shall, for the purpose herein, be deemed to be one-half of the actual square footage of such second story. In cases where it is impossible or impractical to determine the “cost of construction” by the above method, then such “cost of construction” shall be as the Inspector of Buildings shall in his discretion determine.

### PLUMBING FEE SCHEDULE

<u>CATEGORY</u>	<u>FEE</u>
New Construction – Residential	\$ 75.00 plus \$5.00 per fixture
New Construction - Commercial	\$100.00 plus \$5.00 per fixture
Renovation/remodeling:	
First 3 Fixtures	\$40.00
Each additional	\$ 5.00 per fixture
Hot Water Heater Replacement	\$25.00
Solar Hot Water Tank	\$25.00
Plumbing fixtures and appliances:	
For each fixture or appliance	\$35.00
Piping	\$30.00
Swimming pool(In ground), Cisterns	
Lawn Sprinklers	\$25.00



Septic/Sewer Connection	\$25.00
Drainage Pipe/Rain Leaders	\$25.00
Reinspection charge	\$25.00

## **GAS FEES SCHEDULE**

<u>CATEGORY</u>	<u>FEE</u>
Boiler-Central Heat-Residential	\$35.00
Boiler-Central Heat -Commercial	\$65.00
Gas fired hot water heater	\$25.00
L.P. Tank	\$35.00
Gas fixtures and appliances	\$20.00 (each)
Unit heater	\$20.00
Re-inspection charge	\$25.00

New construction and renovation/remodeling includes without limitation water closets, kitchen sinks, lavatories, bath tubs and shower stalls.

Appliances include dishwashers, disposals, and washing machines.

Fixtures include laundry trays, tankless heaters, slop sinks, floor drains, gas traps, urinals, drinking fountains, area drains, water piping, roof drains and back flow prevention.

Gas appliances include ranges, heaters, ovens, grills and dryers.

Gas fixtures include furnaces, gas generators, laboratory cocks, conversion burners, roof top units, direct vent heaters, pool heaters and test controls.

Building, plumbing, and gas work done without permits is subject to a doubling of the regular permit fee(s) as listed/calculated above in this section.

## **2-8 PLANNING BOARD.**

**2-8.1 ESTABLISHED.** On March 29, 1954, at a special town meeting the town adopted the Subdivision Control Law, Chapter 41, Sections 81A et seq. of the General Laws of Massachusetts. The authority of the Planning Board stems from Chapter 41, Section 81Q of these General Laws. Subdivision regulations are further detailed in Appendix A of this code.

**2-8.2 DUTIES.** The duties of the planning board shall include the following:

- a. To study and make plans of the resources, possibilities and needs of the town.
- b. To report annually to the town on results of its studies with any recommendations.
- c. To examine plans of proposed streets or other town improvements and make recommendations regarding these plans.
- d. To report to the town on any item referred to it by the town for its opinion.
- e. To report, after due consideration, to the town meeting in writing such recommendations as it deems best for the interests of the town and its citizens regarding any warrant pertaining to the physical resources and features of the town. The Selectmen, after drawing any such warrant, shall transmit immediately a copy thereof to each member of the board.

**2-8.3 BOARD REVIEW REQUIRED FOR NEW STREETS.** No street shall be proposed for acceptance at any town meeting unless such proposed action shall have been submitted to the planning board for its recommendation at least 60 days prior to the date of the town meeting.

**2-8.4 BOARD OF APPEALS.** The town shall establish a board of appeals for the planning board consisting of three members with powers as provided in Chapter 41, Section 81Z of the General Laws.

The board of appeals shall be appointed for terms of such length, and so assigned that the terms of one member shall expire each year. Three associate members shall likewise be appointed with powers as provided in Chapter 41 of the General Laws.

## **2-9 PERSONNEL BOARD.**

There shall be a personnel board established pursuant to Chapter 40, Section 21A and Chapter 41, Section 108A and 108C of the General Laws. The composition of the board and its duties shall be as set forth in section 3-3 of this revision.

## **2-10 CONSERVATION COMMISSION.**

The town hereby adopts the provisions of the General Laws, Chapter 40, Section 8C, as amended, and establishes the conservation commission for the purposes and with the rights and duties provided by law, to be composed of seven residents of the town appointed by the selectmen for the terms of three years except that the initial appointments shall be two for one year, two for two years and one for three years, and that there be established a conservation fund as authorized by law.

## **2-11 HOUSING AUTHORITY.**

Under the provisions of Chapter 121, Section 26K of the General Laws and any acts or amendments thereof and additions thereto, the town shall establish the Essex Housing Authority to provide housing for the families or elderly persons of low income and to make safe, sanitary dwellings available for those persons at rentals which they can afford.

## **2-12 JOINT HEALTH DISTRICT. [Reserved for future use].**

## **2-13 CONOMO POINT COMMISSIONERS, AUTHORITY AND DUTIES.**

There shall be a commission consisting of three persons which shall be known as the Conomo Point Commission. The duly elected Selectmen of the Town, by virtue of their election as Selectmen, shall be the members of said Conomo Point Commission and their terms of membership on said Commission shall be coterminus with their respective terms on the Board of Selectmen.

Meetings of said Commission may be held in the Town Hall on the same evenings as the Selectmen Meetings, or at such other times as the Selectmen may, by majority vote, determine from time to time.

All actions of the Conomo Point Commissioners shall be taken upon a vote of the majority of the members present at any meeting, provided no less than two Commissioners must be present at any meeting for business to be conducted.

Conomo Point Commissioners Authority and Duties shall include but not be limited to full control of the following as it applies to land which is property of the Town at Conomo Point.

**2-13.1** The moving or razing of all buildings other than dwelling houses, and the setting out or transplanting of all shrubs, hedges or trees, and the erecting of fences or anything else that might be to the detriment of the Town and secondly the leasees.

**2-13.2** Parking of motor vehicles on all non-leased land except streets. The Police Department shall regulate parking on streets.

**2-13.3** Maintenance of piers, sea walls, bathing beaches, and boat landings, and all other town-owned property at Conomo Point, aka Poor Farm or Proctor Deed, except highways, water pipes, and sewage disposal.

**2-13.4** To recommend the amount of land rents on all lots. Rents to be set at Town Meeting.

**2-13.4b** All rents to be paid to the Town Treasurer.

**2-13.5** The locating and relocating of all boundary lines of the leased lots.

**2-13.6** The removal or sale of all trees or other things not covered by the Town's soil stripping By-Law, and not within the boundaries of the highway.

**2-13.7** The right to cancel any lease for due cause.

**2-13.8** To maintain Conomo Point as a seasonal residential area without commercialization.

**2-13.9** All other matters affecting the property of the town at Conomo Point and the convenience, safety, and pleasure of the residents of Essex and the lessees.

**2-13.10** Incorporate in the leases the provision that if the Town shall at any time ever vote to sell any or all of the lots at Conomo Point that the leasees shall have first refusal to purchase their leased lots.

**2-13.11** No lots are to be let by the Conomo Point Commissioners until plans and roads are approved by the Planning Board and the Town Meeting. No lot or structure is to be let for any private use after May 2, 1994 unless said lot or structure is subject to a lease approved by the Town Meeting on or before May 2, 1994 and in force on that date, except with the approval of a Town Meeting.

**2-13.12:** To receive and publish the reports and recommendations of the Conomo Point Planning Committee and to place Articles prepared by the Committee before the Town - so long as the Selectmen shall serve as Commissioners.

**2-13.13:** Procedure for Sale or Lease of Property at Conomo Point

### **Section 1: Definitions**

The terms that follow shall have the meanings set forth below unless context otherwise requires:

Bridge Lease – a lease for a period of five years or less.

Commissioners – the Conomo Point Commissioners, which are also presently the Board of Selectmen.

### **Section 2: Bridge Leases**

- a. If duly authorized by a vote of Town Meeting, the Commissioners may enter into one or more Bridge Leases for occupancy of any or all of its property at Conomo Point.
- b. Bridge Leases with an initial term of less than five years may be extended, if authorized by Town Meeting and the Commissioners, as long as the total length of the lease, including any extensions, does not exceed five years.
- c. Prior to entering into any Bridge Lease(s), the Commissioners shall establish the essential terms and conditions for such leases. Such terms and conditions shall include a requirement that the lessee will pay at least the fair market rental value as determined in accordance with this Bylaw and all taxes assessed upon the property.
- d. After essential Bridge Lease terms and conditions have been established by the Commissioners, the Commissioners shall retain the services of a Massachusetts Certified General Appraiser with an MAI designation from the Appraisal Institute to determine the fair market rental value for each segregable portion of the property the Commissioners intend to lease.
- e. Upon receipt of appraisals, the Commissioners may offer current leaseholders a reasonable opportunity to accept the terms and conditions established by the Commissioners and enter into Bridge Leases.
- f. The Commissioners may offer Bridge Leases to the general public in accordance with an open, fair and competitive disposition process, using sound business practices and principles of fair dealing.

### **Section 3: Leases**

- a. If duly authorized by a vote of Town Meeting, the Commissioners may enter into one or more leases for occupancy of any or all of its property at Conomo Point.
- b. Any Town Meeting vote authorizing leases pursuant to this section shall also specify the maximum period of time for such leases.
- c. Prior to entering into any lease(s), the Commissioners shall establish the essential terms and conditions for such leases. Such terms and conditions shall include a requirement that the lessee will pay at least the fair market rental value as determined in accordance with this Bylaw and all taxes assessed upon the property.
- d. After essential lease terms and conditions have been established by the Commissioners, the Commissioners shall retain the services of a Massachusetts Certified General Appraiser with an MAI designation from the Appraisal Institute to determine the fair market rental value for each segregable portion of the property the Commissioners intend to lease.
- e. Upon receipt of appraisals, the Commissioners may offer current leaseholders a reasonable opportunity to accept the terms and conditions established by the Commissioners and enter into leases.
- f. The Commissioners may offer leases to the general public in accordance with an open, fair and competitive disposition process, using sound business practices and principles of fair dealing.

### **Section 4: Sales**

- a. If the Commissioners determine that all or any portion of the Town's property at Conomo Point should be sold to one or more parties, the following procedure shall be employed.
- b. The Commissioners shall identify each segregable portion of the property that they wish to sell along with all essential terms and conditions that will be attached to said sales. Such terms and conditions shall include a requirement that the purchaser will pay at least the fair market value as determined in accordance with this Bylaw.
- c. After essential sale terms and conditions have been established by the Commissioners, the Commissioners shall retain the services of a Massachusetts Certified General Appraiser with an MAI designation from the Appraisal Institute to determine the fair market value for each segregable portion of the property the Commissioners intend to sell.
- d. Upon receipt of the appraisals, the Commissioners shall, by placing an article on a Town Meeting warrant, seek the approval of Town Meeting to sell the identified portion or portions of the property.
- e. Upon receipt of Town Meeting's approval, and satisfaction of all applicable laws concerning the sale of real property, the Commissioners may offer Bridge Lease lessees a reasonable opportunity to accept the terms and conditions established by the Commissioners and purchase the property.
- f. The Commissioners may offer the property for sale to the general public in accordance with an open, fair and competitive disposition process, using sound business practices and principles of fair dealing.
- g. This section shall take effect upon approval by the Massachusetts Attorney General, provided that this section shall not take effect unless and until the Special Legislation which was approved by the voters at the November 15, 2010 Special Town Meeting, is passed by the Massachusetts Legislature to apply to sales of said property.

This Bylaw shall take effect upon approval by the Massachusetts Attorney General, provided that this Bylaw shall not take effect unless and until the Special Legislation known as "An Act Establishing Procedures for the Sale and/or Lease of Property Known as Conomo Point in the Town of Essex", which was approved by the voters at the November 15, 2010 Special Town Meeting, is enacted by the Massachusetts Legislature.

## **2-14 ESTABLISHMENT OF YOUTH COMMISSION.**

As authorized under the provisions of Chapter 40, Section 8E of the General Laws and any amendments thereto, the town is authorized to establish a youth commission.

## **2-15 BUILDING NUMBERS.**

The Board of Selectmen shall assign a number to all buildings on or near the line of public ways in the town whenever requested to do so by the board of assessors or the owner of a building. All persons shall post their assigned building number on the building so that it is clearly visible from the street or, if the building is not visible from the street, the building number shall be conspicuously posted at the actual driveway and on the building. Violations of this section shall be enforced by the Police Chief in accordance with G.L. c. 90G and c.40, section 21D and section 2-21 of these By-laws as follows:

First Offense:      Warning  
Second Offense:    \$50.00

Each thirty day period that a person is in violation of this by-law shall constitute a separate offense.

## **2-16 SHELLFISH ADVISORY COMMISSION.**

The selectmen are authorized to establish and to appoint members of a shellfish advisory commission. Such commission shall act as an advisory body only, and shall serve to advise and assist the inhabitants of the town with regard to matters involving shellfish and the taking of shellfish.

## **2-17 HISTORICAL COMMISSION.**

As authorized under the provisions of Chapter 40, Section 8D of the General Laws, and any amendments thereto, there is hereby established an historical commission to be composed of five residents of the town who shall be appointed by the selectmen for terms of three years, except that the initial appointments shall be one for one year, two for two years and two for three years.

## **2-18 DEVELOPMENT AND INDUSTRIAL COMMISSION.**

As authorized under the provisions of Chapter 40, Section 8A of the General Laws, and amendments thereto, there is hereby established a development and industrial commission to be composed of five members and which shall exercise all of the powers and duties applicable to such commissions as provided by law.

## **2-19 DISPOSAL OF SURPLUS EQUIPMENT.**

The Board of Selectmen may dispose of surplus equipment, the value of which equipment shall not exceed \$500.00 as determined by the Board of Assessors.

## **2-20 CONOMO POINT PLANNING COMMITTEE**

There is hereby established a Conomo Point Planning Committee, the members of which shall be persons with no direct financial interests in the Town's property at Conomo Point. The Committee shall consist of seven members who shall be appointed by any Town Meeting, the warrant of which has an article specifying that such action is to be considered.

If a vacancy occurs, the Board of Selectmen shall, in writing, appoint a registered voter of the Town to fill said vacancy. The person so appointed shall perform the duties of the office until the next Town Meeting, at which time the position shall be filled in accordance with the preceding paragraph, and until another is qualified.

The duties of the committee shall be to gather and report any information which the Committee might determine to be of value in aiding the townspeople to make decisions regarding the Town's property at Conomo Point, to make recommendations as to present and future uses of that property, and to submit Articles allowing the Town to implement the Committee's recommendations to the Board of Selectmen for inclusion in Warrants for Town Meetings.

If a member is absent from any four consecutive meetings, the position shall be deemed vacant, and the chair shall give notice of the same to the Board of Selectmen.

## **2-21 ENFORCEMENT BY CIVIL INFRACTION PROCESS OF M.G.L.**

Whenever so provided in these By-Laws, violations of designated By-Laws, rules, regulations or orders of the appropriate enforcement official with responsibility for the enforcement of such matters, may be enforced by the procedure established in M.G.L., c90G and c. 40 sec. 21D and an assessment shall be made for each violation in the amount as set forth in the applicable By-Law provision.

Unless otherwise specifically set forth by statute or in a particular By-Law allowing for such civil enforcement, any assessment collected in this manner shall be paid to the Town for such use as the Town may direct.

## **2-22 COUNCIL ON AGING.**

As authorized under the provisions of Chapter 40, Section 8B of the General Laws, and amendments thereto, there is hereby established a council on aging for the purposes and with the rights and duties provided by law, to be composed of at least seven and no more than eleven residents who shall be appointed to serve for terms of three years. Appointments and/or reappointments shall be made by members of the council whose terms have not expired, and the appointments then forwarded to the Board of Selectmen for approval. For the initial appointments after the 1996 Annual Town Meeting, the Board of Selectmen shall appoint 3 members for one year, 4 members for two years and 4 members for three years.

## **2-23 COMMUNITY PRESERVATION COMMITTEE**

**2-23.1 ESTABLISHMENT.** There is hereby established a Community Preservation Committee, consisting of seven (7) voting members pursuant to the provisions of G.L., c.44B, §5. The composition of the Committee, the appointing authority and the term of office for the Committee members shall be as follows

- (1) One member of the Conservation Commission as designated by the Commission;
- (2) One member of the Historical Commission as designated by the Commission;
- (3) One member of the Planning Board as designated by the Board;
- (4) The Public Works Director, whose responsibilities include the duties of the Board of Park Commissioners established under G.L. c.45, §2, or his designee;
- (5) One member of the Housing Authority as designated by the Authority;
- (6) One member of the Board of Selectmen or the Board's designee;
- (7) One additional member as designated by the Board of Selectmen.

Each member of the Committee shall serve for a term of three years or until the person no longer serves in the position or on the board or committee as set forth above, whichever is earlier.

Should any of the officers and commissions, boards, or committees who have appointing authority under this by-law be no longer in existence for whatever reason, the Board of Selectmen shall appoint a suitable person to serve in their place.

Any member of the Committee may be removed for cause by their respective appointing authority after hearing.

### **2-23.2 DUTIES.**

(1). The Community Preservation Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Department of Public Works, and the Housing Authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the Committee shall hold one annual public informational hearing, or more at its discretion, on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources,

notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.

(2). The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition, preservation, restoration and rehabilitation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the acquisition, creation, preservation and support of community housing and for the rehabilitation or restoration of such open space, land for recreational use and community housing that is acquired or created as provided in G.L. c.44B. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

(3). The Community Preservation Committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(4). In every fiscal year, the Community Preservation Committee must recommend either that the legislative body spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund for each of the following purposes: (a) open space (not including land for recreational use); (b) historic resources; and (c) community housing.

**2-23.3 REQUIREMENT FOR A QUORUM AND COST ESTIMATES.** The Community Preservation Committee shall comply with the provisions of the Open Meeting Law, G.L. c.39, §23B. The Committee shall not meet or conduct business without the presence of a majority of the members of the Community Preservation Committee. The Community Preservation Committee shall approve its actions by majority vote. Recommendations to the Town Meeting shall include the Committee's anticipated costs.

**2-23.4 AMENDMENTS.** This by-law may be amended from time to time by a majority vote of the Town Meeting, consistent with the provisions of G.L., c.44B.

**2-23.5 SEVERABILITY.** In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph or part shall continue in full force and effect.

**2-23.6 EFFECTIVE DATE.** Provided that the Community Preservation Act is accepted at the 2007 Annual Town election, this by-law shall take effect upon approval by the Attorney General of the Commonwealth, and after all requirements of G.L. c.40, §32 have been met. Each appointing authority shall have thirty days after approval by the Attorney General to make their initial appointments;

## **2-24. STRETCH ENERGY CODE**

**2-24.1. ADOPTION.** The Town has adopted the provisions of 780 CMR 115.AA (i.e., Appendix 115.AA of the State Building Code or the "Stretch Energy Code"), as it may be amended from time to time, and incorporated said 780 CMR 115.AA into the Town's General Bylaws by reference.

**2-24.2. PURPOSE.** The purpose of the Stretch Energy Code shall be to provide the Town with a more energy efficient alternative to the base energy code otherwise applicable to the relevant sections of the State Building Code for both new commercial and residential construction and existing commercial and residential buildings.

**2-24.3. APPLICABILITY.** The Stretch Code shall apply to new commercial and residential construction and to existing commercial and residential buildings. Construction and buildings not included in this scope shall comply with 780 CMR 13, 34, 61, or 93, as applicable.

**2-24.4. ENFORCEMENT.** The Stretch Code shall be enforced by the Building Commissioner or any Assistant Inspector of Buildings.

**2-24.5 EFFECTIVE DATE.** This bylaw shall take effect on January 1, 2016.

## **2-25. WATER RESTRICTION BY-LAW**

### ***Section 1: Authority***

This By-Law is adopted by the Town under its police powers to protect public health and welfare and its power under G.L. ch. 40 sec. 21 et seq. and implements the Town's authority to regulate water use pursuant to G.L. ch. 40, Sec. 69B. This By-Law also implements the Town's authority under G.L. ch. 40, Sec. 41A, conditioned upon a declaration of water supply emergency issued by the Massachusetts Department of Environmental Protection.

### ***Section 2: Purpose***

The purpose of this By-Law is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing the enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Massachusetts Department of Environmental Protection.

### ***Section 3: Definitions***

Person shall mean any individual, corporation, trust partnership or association, or other entity.

State of Water Supply Emergency shall mean a state of Water Supply Emergency declared by the Massachusetts Department of Environmental Protection under G.L. ch. 21G, Sec. 15-17.

State of Water Supply Conservation shall mean a state of Water Supply Conservation declared by the DPW (Water) Commissioners pursuant to Section 4 of this By-Law.

Water Users or Water Consumers shall mean all public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

### ***Section 4: Declaration of a State of Water Supply Conservation***

The Town, through its DPW Commissioners, may declare a State of Water Supply Conservation upon determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all consumers, to include fire fighting operations and to ensure compliance with the Massachusetts department of Environmental Protection's permitted and registered withdrawals. Public notice of a State of Water Conservation shall be given under Section 6 of this By-Law before it may be enforced.

### ***Section 5: Restricted Water Uses***

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

- a. Odd/Even Day Outdoor Watering: Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.
- b. Outdoor Watering Ban: Outdoor watering is prohibited.
- c. Outdoor Watering Hours: Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
- d. Filling Swimming Pools: Filling of swimming pools is prohibited.
- e. Outdoor Sprinkler Use: The use of lawn and/or garden sprinklers of all types, including the use of automatic sprinkler systems is prohibited. Hand watering is permitted.



- f. Vehicle/Boat Washing: The washing of motor vehicles (including motorcycles, trailers, mobile homes, etc. is prohibited.

***Section 6: Public Notification of a State of Water Supply Conservation***

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

***Section 7: Termination of a State of Water Supply Conservation: Notice***

A State of Water Supply Conservation may be terminated by a majority vote of the DPW Commissioners, upon determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by Section 6.

***Section 8: State of Water Supply Emergency: Compliance with DEP Orders***

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirements, condition of any order approved or issued by the department intended to bring about an end to the State of Emergency.

***Section 9: Penalties***

Any person violating the By-Law shall be liable to the Town in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with Section 21D of Chapter 40 of the General Laws. each day of violation shall constitute a separate offense.

## 2-26 Revolving Funds

There are hereby established in the Town of Essex pursuant to the provisions of [G.L. c.44, §53E½](#), the following Revolving Funds:

Revolving Fund	Spending Authority	Revenue Source	Allowed Expenses
Animal Control Officer	Board of Selectmen	Payments from dog owners seeking to claim impounded dogs	Compensating the ACO for the care of impounded dogs and reimbursing the ACO for all associated expenses
Board of Health – Youth Triathlon	Board of Health	Fees collected for the youth triathlon	Purchase of supplies and services for planning and execution of the Annual Youth Triathlon
Board of Health – Health, Safety and Emergency	Board of Health	Fees collected for the purpose of health, safety and/or emergency planning, preparation and education	Purchase of supplies and services for the purpose of health, safety and/or emergency planning, preparation and education
Board of Health – Public Health Nurse	Board of Health	Medicare and other reimbursements relating to contracted labor, pharmaceuticals and other reimbursements relating to the services of the Public Health Nurse	Purchasing supplies and pharmaceuticals for the Public Health Nurse and for Public Health nurse labor

Expenditures from each revolving fund shall be subject to the limitations established by Town Meeting, and to any additional limitations as otherwise set forth in General Laws Chapter 44, §53E½;

## **CHAPTER III**

### **PERSONNEL**

*The power of the Town to adopt acts concerning personnel is contained in M.G.L. Chapter 41, Section 108C.*

#### **3-1 PURPOSE AND INTENT**

The purpose of the personnel by-law is to establish a system of personnel administration, classification and compensation based on principles that ensure a uniform, fair and efficient application of personnel policies. The intent of this by-law is to provide a method of recruitment, selection, and development of a work force that is skilled and effective in accomplishing the service delivery missions of the Town. Personnel actions are to be made without regard to sex, race, religion, color, age as defined by law, handicap, sexual orientation, political affiliation or other non-job related factors. Nothing in this by-law shall be construed to conflict with Chapter 31 of the General Laws of the Commonwealth of Massachusetts (Civil Service).

#### **3-2 APPLICATION**

All Town departments and positions shall be subject to the provisions of this by-law and any regulations adopted pursuant to this by-law.

To the extent that any collective bargaining agreement conflicts with any provision of this by-law or rules & regulations promulgated under the authority of this by-law with respect to employees covered under such labor agreements, the provisions of the collective bargaining agreement shall prevail.

This personnel by-law and the regulations adopted pursuant to its provisions are intended to supersede any other previously adopted personnel by-law or other regulations or policies.

#### **3-3 PERSONNEL BOARD.**

**3-3.1 BOARD OF SELECTMEN TO SERVE AS.** The duly elected Selectmen of the Town, by virtue of their election as Selectmen, shall constitute the members of the Personnel Board, and their terms of membership on said Personnel Board shall be conterminous with their respective terms on the Board of Selectmen.

**3-3.2 ADMINISTRATION.** The board is hereby authorized to administer the provisions of this chapter except for such duties as may be specially assigned by statute or bylaw to other Town officers, boards or committees; and it shall have authority to decide all questions regarding the application of the provisions of this chapter.

**3-3.3 POWERS OF THE BOARD.** The board may, from time to time issue, amend, or revoke administrative orders for the purpose of giving effect to the provisions of this chapter and such other bylaws and votes of the Town as the board may be responsible for administering and enforcing. The board shall maintain in its office a file of all such orders issued, which file shall be open to public inspection.

**3-3.4 OFFICERS.** The board, annually within 30 days following the Town Meeting, shall elect its own chairman and secretary, and shall establish its own rules of procedure.

**3-3.5 MEETINGS.** The board shall meet a minimum of once per quarter for the transaction of business under the provisions of this chapter; and it may hold such special Meetings as may be called by the chairman or by the secretary upon written request of a majority of the members of the board. Reasonable notice of all Meetings of the board shall be given to all members of the board. A majority of the total membership of the board shall constitute a quorum.

**3-3.6 DUTIES OF THE BOARD.** The duties of the board shall include the following:

To review and investigate, from time to time of its own motion, the work content and standard rates of compensation of all positions in the Town service other than those covered under collective bargaining agreements (union employees) or employment contracts, and to make such other investigation of the conditions of employment of Town employees, other than union or contract employees, as it deems necessary and proper, and to investigate any complaint relative to such conditions as may be filed with the board by any department head, Town employee or other person or organization.

To make such recommendation to any Town Meeting relative to the amendment of this chapter as the board deems necessary and proper.

To make such recommendations to the Annual Town Meeting relative to the compensation of Town officials and employees as it deems necessary and proper via the annual development and submission of a Wage & Salary Scale.

To file with the Town Clerk for inclusion in the annual report of the Town an annual report of its activities and recommendations.

To keep personnel records of all employees in its office. Such records shall contain all pertinent data as requested by the board. It shall be the duty of each Town employee to furnish to the board, upon its request, all data needed for the maintenance and completion of this record and such personnel records and reports as the board may require.

To propose and revise the Personnel Rules & Regulations of the Town of Essex as deemed necessary pursuant to this chapter.

**3-4 ESTABLISHMENT OF A PERSONNEL SYSTEM**

A personnel system shall be established by the adoption of rules and regulations pursuant to Section 3-5. The personnel system may include but not be limited to the following elements: a method of administration; a method of recruiting and selecting employees; a classification and compensation plan; a centralized record keeping system; personnel rules and regulations which indicate rights and obligations of employees; disciplinary procedures; and other elements that are deemed necessary.

**3-5 ADOPTION OF RULES & REGULATIONS**

Personnel rules and regulations defining the rights, benefits and obligations of employees subject to this by-law shall be adopted or amended as follows:

**3-5.1 PREPARATION OF RULES & REGULATIONS.** The Personnel Board shall prepare proposed personnel rules and regulations. Any member of the Board of Selectmen, the Personnel Board, any appointing authority, or any two employees may suggest rules and regulations for consideration by the Personnel Board. The Personnel Board need not consider any proposal already considered by the Board in the preceding six months. Any person suggesting a new or amended rule or regulation shall provide the substance and reason for the rule or regulation change in writing.

**3-5.2 PUBLIC HEARING.** The Personnel Board shall hold a public hearing on suggested rules and regulations. Notice of any suggested rules and regulations or amendments to rules and regulations shall be advertised in a newspaper circulated in the Town of Essex and the full text shall be available in Town Hall at least five business days prior to the public hearing at which such suggestions are to be considered. The Personnel Board shall submit a copy of any suggested rule or regulation to the Board of Selectmen.

**3-5.3 PERSONNEL BOARD ACTIONS ON SUGGESTED RULES & REGULATIONS.** Within a reasonable period of time after the public hearing on any suggested rule or regulation, the Personnel Board shall vote to determine if the suggested rule or regulation shall be recommended for adoption by the Board of Selectmen.

**3-5.4 ACTIONS BY THE BOARD OF SELECTMEN.** The Personnel Board shall transmit any recommendations for the adoption of personnel rules and regulations or amendments, including the text, in writing

to the Board of Selectmen. The Board of Selectmen shall consider the recommendations of the Personnel Board and may adopt or reject the recommendations provided, however, if the Board of Selectmen fails to act, recommended rules and regulations shall be deemed adopted upon the expiration of forty-five days from the date of transmittal of the recommendations to the Board of Selectmen.

**3-5.5 POSTING OF RULES & REGULATIONS.** The Board of Selectmen shall cause the posting of the text of adopted rules and regulations in prominent work locations.

**3-5.6 OFFICIAL RECORD.** The Town Clerk shall maintain a compilation of all personnel rules and regulations adopted by the Board of Selectmen.

#### **LIABILITY INSURANCE FOR POLICE AND FIREFIGHTERS**

The town accepts liability with regard to bodily injuries to police officers and firefighters, including call firefighters, occurring during the course of and arising out of employment by the town, for all reasonable medical and hospital expenses not covered by insurance and weekly wages. The course of employment shall include going to or returning from fires or other town emergencies, participating in approved drills, parades, tests or trial of any equipment customarily used by the town or any other regularly approved supervised activity of the town police officers or firefighters. The following conditions shall apply:

**TOTAL DISABILITY.** When such injuries shall result in the continuous inability of the injured employee to perform every duty pertaining to his/her regular occupation, he/she shall be paid by the town during the continuance of such disability, but not beyond the date he/she attains age 65, in the case of a permanent police officer at his/her regular rate of town pay; and in the case of a firefighter or part-time police officer, at a weekly wage equal to the town wage of a top grade permanent patrolman.

**PARTIAL DISABILITY.** When such injuries shall result in the continuous inability of the injured employee to perform one or more important daily duties pertaining to his/her regular occupation he/she shall be paid by the town during the continuance of such disability, but not beyond the date he/she attains age 65, the difference between wages for which the town would be liable under total disability and the lesser wages actually earned during such period.

**COVERAGE OF PART-TIME POLICE/FIRE WAGES.** In the event that a part-time police officer or a call firefighter is able to perform his/her normal, full-time job after sustaining on-duty injuries but is unable to perform his/her part-time police or call firefighter duties, he/she is entitled to the average of such wages lost while unable to perform those duties pursuant to M.G.L. c. 41 § 111F.

**ASSIGNMENT OF OTHER BENEFITS.** Total and partial disability wage benefits shall be paid upon the condition that prior to his/her receiving such wages, the injured employee shall have executed all necessary documents assigning to the town, only to the extent the town is liable as set forth in paragraphs a, b, and c of this subsection, disability wage benefits under any existing town insurance policy covering such employee, social security disability benefits, state or county retirement system compensation or disability benefits due the employee as a result of such disability and any wage continuation or sick leave plan benefits actually received from his/her regular employer.

**RIGHT TO EXAMINE INJURED PERSON.** The town at its own expense shall have the right and opportunity to examine the person of the injured employee when and as often as it may reasonably require during the pendency of its liability hereunder.

Nothing herein contained shall prevent the town from purchasing insurance to indemnify any portion of such liability.

### **3-7 SEVERABILITY**

The provisions of this by-law and any regulations adopted pursuant to this by-law are severable. If any by-law provision or regulation is held invalid, the remaining provisions of the by-law or regulations shall not be affected thereby.

### **3-8 EFFECTIVE DATE/IMPLEMENTATION**

This by-law shall take effect upon adoption by Annual Town Meeting. Upon the effective date of this by-law, the personnel rules and regulations prepared anticipating the passage of this by-law shall become effective. Such personnel rules and regulations shall remain in full force and effect until amended or revised in accordance with Section 3-5 of this by-law and shall supersede other personnel rules and regulations that may be in effect.

## **CHAPTER IV**

### **POLICE BYLAWS**

#### **4-1 BURNT OR DANGEROUS BUILDINGS.**

**4-1.1 CLASSIFICATION AS NUISANCE; PROCEDURE.** The selectmen or an authorized agent, after written notice to the owner of a burnt, dilapidated or dangerous building, and after a hearing, may make and record an order judging it to be a nuisance to the neighborhood, or dangerous, and prescribe its disposition, alteration or regulation. The town clerk shall deliver a copy of the order to an officer qualified to serve civil process, who shall forthwith serve an attested copy thereof in the manner prescribed in Section 124, Chapter 111 of the General Laws of Massachusetts and report to the clerk of his doings thereon.

**4-1.2 APPEAL TO SUPERIOR COURT.** A person aggrieved by such order may appeal to the superior court for the county where such building is situated. To do so, he must present, within three days after the service of the attested copy upon him, a petition to the court stating his grievance and the order of the board of selectmen.

**4-1.3 TRIAL BY JURY.** After such notice to the board as the court shall order, there shall be a trial by jury as in other civil causes. The jury may affirm, annul or alter such order, and the court shall render judgment in conformity with the verdict, which shall take effect as an original order. All proceedings hereunder authorized by Section 10, Chapter 143 of the General Laws, after issue is joined therein, shall be in order for trial and shall have precedence over any case of a different nature pending in the court and then order of trial.

**4-1.4 COSTS.** If the order is affirmed, the petitioner shall pay the costs; if it is annulled, he shall recover from the town his damages, if any, and costs; and if it is altered, the court may render such judgment as to costs as justice shall require.

**4-1.5 ABATEMENT OR REMOVAL OF NUISANCE BY ALDERMEN OR SELECTMEN.** The selectmen shall have the same power to abate and remove any such nuisance as is given to the board of health of a town under Sections 123 to 125, inclusive of Chapter 111 of the General Laws.

#### **4-2 CURFEW.**

**4-2.1 HOURS; WRITTEN PERMIT.** No child under 17 years of age shall be, loiter, or remain upon any street or other public way, park, or public place in the town after the hour of 10:00 p.m. of any day from April 1 through September 30 and after 9:00 p.m. of any day from October 1 through March 31 in each year unless accompanied by or under the control or care of a parent, guardian or other adult person responsible for the care and custody of such child, or without a written permit to be outside of the child's home given such parent, guardian or other adult responsible for the care and custody of such child. Whenever any such child is outside of his home or place of abode with the written permission of any of the persons mentioned above, for a particular purpose, it shall be unlawful for such child to loiter upon any street, public way, park or other place.

**4-2.2 RECORD AND NOTIFICATION OF VIOLATION TO PARENTS.** The chief of police shall keep a record of all violations of subsection 4-2.1 noted by the police or reported to his office. Whenever a violation is reported to him, he shall notify the parent, guardian or adult person charged with the care and custody of the child.

**4-2.3 INVESTIGATION OF FAMILY LIFE; FORMAL COMPLAINTS.** The chief of police shall cause to be investigated all cases constituting violations of subsection 4-2.1 after such cases are reported to him. If the results of such investigation warrant and disclose situations where children under 17 years of age are growing up without proper parental or adult control, by reason of neglect or similar cause or under circumstances exposing them to idle and dissolute lives, it shall be the duty of the chief of police to cause complaints to be made before the proper tribunals either against the child or the parent, guardian or adult person in charge of such child, whichever the case may be, with the end in view of causing an improvement in the welfare of the child concerned.

**4-2.4 FIRE WHISTLES TO SIGNAL CURFEW HOUR.** The chief engineer of the fire department shall cause two blows to be sounded on the fire whistle each evening at 10:00 p.m. from April 1 through September 30, and at 9:00 p.m. each evening from October 1 through March 31 of each year.

#### **4-3 DISORDERLY BEHAVIOR.**

**4-3.1 LOITERING; PUBLIC BEHAVIOR.** No person shall behave in a disorderly manner or use any obscene language in any public street, sidewalk, or public place in the town; and no person shall without right stand or remain upon a wall, or upon a sidewalk, or upon a fence, or upon a doorstep, or upon any other projection from a house or building, so as to obstruct passage to or from a house or building, after having been requested by a police officer of the town, or by the owner or occupant of any such house or building, to depart and stay therefrom. Nothing in this subsection shall be construed to curtail, abridge or limit the right or opportunity of any person to exercise the right of peaceful persuasion guaranteed by Section 24 of Chapter 149 of the General Laws, or to curtail, abridge or limit the intentment of any statute of the Commonwealth of Massachusetts. Whoever violates any portion of this section shall be punished by a fine of not more than \$50.00 for each offense.

**4-3.2 NUDE BATHING.** No person shall bathe in any waters of the town in a state of nudity in places exposed to public view, or in immediate sight of the occupants of any building.

**4-3.3 ANNOYANCES.** No person shall by any noise, gesture or otherwise, wantonly or intentionally annoy or interfere with any person in any street, sidewalk, public place or public building, or frighten any horse in any street or public place.

**4-3.4 COASTING OR SKATING ON STREETS.** No person shall coast or skate on any street, sidewalk, or public place except on such as are designated by the selectmen or on public playgrounds.

**4-3.5 TOSSING OF BALLS AND PLAYING IN STREETS.** No person shall, without a written permit from the selectmen, throw or shoot any ball, stone, arrow, snowball, stick, brick or any other missile or hard substance; or engage in any game, exercise or amusement in any street, sidewalk or public place where the activity interferes with the safe and convenient uses thereof, or where such act disturbs the safety of persons or property, or the peace and quiet of any person.

**4-3.6 DISCHARGE OF FIREARMS.** No person shall fire or discharge, without a written permit from the selectmen, any gun, pistol or other firearm in or across any street, sidewalk or public place, or within 50 yards thereof, nor within 500 feet of a dwelling in use. This subsection shall not prevent the use of such weapons in the lawful defense of ones person, family or property, nor in the performance of any duty required or authorized by law.

**4-3.7 SALE OF ARTICLES ON STREETS.** Unless otherwise authorized by law no person shall continue to stand or remain in one place in any street, sidewalk or public place seeking to make sales of any articles or in exercise of any other business, after being directed by a police officer to "move on".

**4-3.8 DISTRIBUTION OF HANDBILLS.** No person shall distribute on any street handbills, circulars, advertising or printed matter of any kind except newspapers in such a manner as to make a disturbance or litter without a permit from the selectmen.

**4-3.9 CONSUMPTION OF ALCOHOLIC BEVERAGES.** No person shall consume any alcoholic beverage on any street, sidewalk or public place without written permit from the selectmen or the alcoholic licensing board. Neither shall any person possess any open container, full or partially full of any alcoholic beverage on any street, sidewalk or public place without a written permit from the selectmen or the alcoholic licensing board.

**4-3.10 LITTER.** No person shall place litter or discard refuse or other waste on any street, sidewalk or public place.

#### **4-4 HUNTING.**

**4-4.1** No person shall hunt, trap or fire or discharge any firearm on private property except with written consent of the owner or legal occupant thereof; and such consent shall be carried at all times by any person hunting or trapping,



and upon request shall be shown to any police officer or officer of the Department of Conservation, or the property owner or his agent.

**4-4.2** This section shall not apply to the lawful defense of life or property nor any law enforcement officer acting in discharge of his duties.

**4-4.3** Any person violating any of the provisions of this section shall be punished by a fine of not more than \$100.00 for each offense.

**4-4.4** No hunting, trapping or discharging of firearms shall be permitted on Town property.

#### **4-4A VESSEL MOORING PERMITS**

**4-4A.1** The Harbormaster, under the provisions of Massachusetts General Laws, Chapter 102, Section 19 thru 28, shall control the mooring of all vessels in the waterways of Essex.

**4-4A.2** No person shall establish a mooring or moor a vessel in the waterways of Essex until a mooring permit has been issued by the Harbormaster.

**4-4A.3** Applications for a mooring permit shall be made in writing to the Harbormaster's office. The application shall require such information as the Harbormaster considers necessary.

**4-4A.4** Mooring permits will be issued effective April 1st in the year of issue and will be valid until March 31st of the following year.

**4-4A.5** If, after review of an application, the Harbormaster determines that no adequate mooring space is currently available, the application will be placed on a waiting list. When a space which can accommodate the vessel becomes available, a mooring permit will be issued.

**4-4A.6** The fee for a mooring permit is \$6.00 per foot per vessel per year with a minimum total fee of \$90.00. For purposes of fee calculation, the vessel length will be rounded to the nearest whole foot. The fee for being maintained on the "waiting list" for a mooring permit is \$10.00 per year. The fee for a temporary mooring permit is \$10.00. The fee for a transient mooring permit is \$25.00 per day per vessel.

**4-4A.7** The fine for any vessel which remains on the Town dock beyond the maximum time limit shall be \$50 for the first offense and \$100 for any subsequent offense.

#### **4-5 MOTOR BOAT CONTROL.**

**4-5.1 AREA TO WHICH MOTOR BOAT CONTROL APPLIES.** All areas of water to which this section applies are pointed out on a map entitled "Chart Showing Areas of Water Subject to provisions of Motor Boat Control Bylaw, March 1961," on file in the office of the town clerk.

**4-5.2 CONTROLLED AREAS TO BE MARKED BY HARBORMASTER.** The harbormaster shall mark in the water or on the shore with conspicuous orange buoys, signs or signs lettered in orange, all of which shall bear the initials "H.M." and a metal tag reading "Area Marker of Harbormaster, Town of Essex," all areas of water pointed out upon the chart. For the purpose of enforcing this section, the areas so marked by the harbormaster shall be deemed prima facie to be the areas pointed out upon the chart and required to be marked, but each presumption shall be subject to rebuttal by competent evidence presented by the defendant, in which case similar evidence by the plaintiff shall also be considered.

The harbormaster is directed to have in his custody a copy of the chart and to keep a list of all areas marked by him, pursuant to this section, and to make such list and chart copy publicly available for inspection. No person shall deface, alter or remove any signs or marks placed by or under the direction of the harbormaster.

**4-5.3 SPEED LIMIT IMPOSED.** No person shall operate or cause to be operated any motor boat or other vessel propelled or moved by an internal combustion engine at greater than headway speed in the following waters:

- a. On the Essex River between Causeway bridge and Billy's Point.

b. On the Essex River in the Conomo Point Anchorage.

**4-5.4 WATER SKIING PROHIBITED IN CERTAIN AREA.** Water skiing shall be forbidden between Conomo Point and the Causeway Bridge.

#### **4-6 PUBLIC CEMETERY REGULATIONS.**

**4-6.1 FLOWERS, TREES AND SHRUBS TO REMAIN UNDISTURBED.** No person shall gather any flowers, either wild or cultivated, or remove, break, cut or mark any tree, shrub or plant not belonging on his lot.

**4-6.2 DEFACING MONUMENTS PROHIBITED.** No person shall climb over, deface or injure any monument, gravestone, fence or other structure in or belonging to the cemetery.

**4-6.3 DISCHARGING OF FIREARMS PROHIBITED.** No person shall discharge firearms of any description in the cemetery except in the case of military funerals, or as authorized by the selectmen.

**4-6.4 FUNDS.** The Town Treasurer shall receive and hold the Perpetual Care and Cemetery Lot Care Funds and any other funds, money or securities deposited with the Town Treasurer for the maintenance and care of any public burial place or specified lots therein situated in the Town of Essex and shall apply same in accordance with Massachusetts General Laws, Chapter 114, Section 19, and other provisions of these bylaws. Such funds, money or security shall be entered upon the books of the Treasurer and held in accordance with the Bylaws and shall invest such deposits. Upon receipt of the deposit for the maintenance and care of individual lots and/or public burial places, the Treasurer shall inform the Town Clerk, who shall record the facts relating to such deposit in margin of the Town Clerk's records of said lots.

Upon vote of the Board of Public Works acting as the Town's Cemetery Commissioners, which vote shall recommend the manner and amounts in which said funds should be applied and upon the subsequent approval of such recommendation by the Selectmen, said funds shall be applied for the maintenance and care of such places or lots as hereinabove described.

#### **4-7 PUBLIC STREETS.**

**4-7.1 SIGNS AND OBSTRUCTIONS PROHIBITED.** No person shall place any post, pipe, pole, barrier, box, container, sign, article, or advertising matter, in any street, way or sidewalk, or annex or affix to any building, pole, street, or structure, any building material, advertising matter, or other material which extends over a street, way or sidewalk, without first having obtained a permit from the board of selectmen. However, no permit shall be required to place a barrel or container, with rubbish therein, at the edge of the sidewalk or street adjacent to the property of any owner for rubbish collection. Neither shall a permit be required for an RFD mailbox at the side of a street or way.

**4-7.2 SIGNS, AWNINGS AND SHADE REGULATIONS.** No person, without the written permit of the board of selectmen, shall place or maintain over any street or sidewalk, any sign, awning or shade, and no permission therefore shall be granted unless the structure is safely and securely supported and not less than eight feet from the ground at its lowest point. Such awning, sign or shade, if built over a sidewalk, shall extend only as far as the outside thereof.

**4-7.3 RUNNING OF WATER INTO STREETS REGULATED.** No person shall permit water to run from his building to any street or sidewalk in the town to the injury or inconvenience of pedestrians nor shall he allow any sink water or other impure water to run from the house, barn or lot occupied by him or under his control, into any highway or public place.

**4-7.4 PERMIT REQUIRED TO SELL MERCHANDISE ON PUBLIC STREETS.** No person shall place or keep any table, stall, booth or any other structure in any street or sidewalk, nor place or keep the same in any of the public grounds of the town for the sale of fruit or other things without a written permit from the selectmen.

**4-7.5 DEFACING PUBLIC GROUNDS.** No person shall walk, stand, or loiter upon any portion of any public grounds of the town especially prepared and devoted by the officers in charge to the growing of grass, trees or

flowers, nor shall any person dig up, injure or deface such public grounds, grass, trees, or flowers without a written permit from the board in charge of specified property.

**4-7.6 DRIVING ON SIDEWALKS PROHIBITED.** No person shall drive any vehicle or ride any bicycle on the sidewalk of any street in town, except for the purpose of crossing the sidewalk in order to get into or out of some adjoining enclosure; however, this section shall not apply to children's or invalids' carriages propelled by hand.

**4-7.7 DROPPING OR LEAKING OF LOADS BY TRUCKS.** No vehicle of any kind shall be driven or moved on any public way or public property unless such vehicle is constructed or loaded or equipped so as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction or melting of snow and ice, and water or other substances may be sprinkled on public property for cleaning or maintaining such places. The owner or person in charge of such vehicle shall be liable for such violation.

**4-7.8 SNOW REMOVAL.** No person shall plow, push or throw any snow or ice on to the street or sidewalk of the Town unless it is immediately removed therefrom.

#### **4-8 REMOVAL OF LOAM.**

**4-8.1 PERMIT REQUIRED.** No person shall engage in the excavation and removal of loam, topsoil, gravel or stone without first obtaining a permit therefore from the board of selectmen and the planning board.

**4-8.2 REVOCATION OF PERMIT.** The board of selectmen and planning board may make such reasonable rules and regulations with regard to such excavations as will best protect the public safety and welfare and may, after notice and hearing, revoke any permit if it finds that any rule or regulation made under the authority of this section has been violated.

**4-8.3 REISSUANCE OF PERMIT.** In cases where a permit has been revoked, the board of selectmen and planning board may issue a new permit if they find that the conditions or activities constituting the violation have been corrected.

**4-8.4 EXCEPTIONS.** This section shall not apply to excavations made for the purpose of construction of any type of building, and excavations made for the purpose of driveways, walks, recreation areas, parking facilities and changes of grade which are appurtenant to any such building.

**4-8.5 PENALTY.** The penalty for violation of any provision of this section shall be \$50.00 for the first offense; \$100.00 for the second offense; and for each subsequent offense, \$200.00.

#### **4-9 SALE OF USED ARTICLES.**

**4-9.1 JUNK COLLECTORS; LICENSE REQUIRED.** The selectmen may license not more than three suitable persons to be junk collectors to collect or transport by purchase or otherwise, junk, old metals and secondhand articles from place to place in the town, subject to provisions of the laws of the Commonwealth. The license fee for each such junk collector shall be \$25.00 and shall be paid to the town treasure before the license shall be issued.

**4-9.2 LICENSING OF DEALERS OR SECONDHAND SHOPKEEPERS.** The selectmen may license suitable persons to be dealers in or keepers of shops for the purchase, sale or barter in old metals and secondhand articles in the town, subject to provisions of the Commonwealth. The license fee for each dealer and each keeper of a shop shall be \$50.00 annually and shall be paid to the Town of Essex, Licensing Board, before the license is issued.

**4-9.3 REGULATIONS OF YARD SALES AND FLEA MARKETS.** Yard sales may be held in the town without a permit. Permits are required for flea markets and the selectmen may issue the permits at their sole discretion. A yard sale consists of a sale of goods on the premises from which those goods were derived. That is, the goods were formerly used by the residents of those premises, or were stored there for possible use by such residents. Yard sales shall be limited to two sale days per year at any site. A sale shall be deemed a flea market when the goods being sold are not exclusively derived from the premises on which the sale takes place. That is, the sale consists of sales by invited vendors who attend to sell or who consign their goods for sale. The selectmen shall fix the fees to be charged for flea market permits.

#### **4-10 PENALTY.**

Any person who shall violate any of the bylaws of this chapter or any other bylaws of the town shall pay a fine of \$50.00 for each offense unless another penalty is prescribed by law.

#### **4-11 PERSONAL WATERCRAFT**

**4-11.1** The operation of jet skis, surf skis, wet bikes or other so-called 'personal watercraft' in or upon that portion of Chebacco Lake which is situated in the Town of Essex is prohibited.

**4-11.2** A violation of this section shall be punishable by a fine of not more than one hundred dollars (\$100.00) for each offense.

#### **4-12 ENFORCEMENT BY CIVIL INFRACTION PROCESS**

**4-12.1** Violations of such of the foregoing By-Laws in this Chapter IV as are designated below, and violation of orders of the enforcement officer having responsibility for the enforcement of such provisions, may be enforced by the Civil Infraction Process as set forth in M.G.L., c.90G and c.40 sec. 21D and 2-21 of these By-Laws, and the assessment designated next to each provision listed below shall be assessed for each such violation. Wherever herein after, more than one fine is listed for any offense, the last amount so listed shall be for subsequent offenses.

##### **4-2 Curfew**

4-2.1 Hours violation \$ 25.00

##### **4-3 Disorderly Behavior**

4-3.1 Loitering \$ 50.00  
4-3.2 Nude bathing \$ 50.00  
4-3.3 Annoyances \$ 50.00  
4-3.4 Coasting/skating \$ 50.00  
4-3.5 Tossing balls/playing \$ 50.00  
4-3.6 Discharge firearms \$100.00  
4-3.7 Sale articles/streets \$ 50.00  
4-3.8 Distribution/handbills \$ 50.00  
4-3.9 Consumption Alcohol \$ 50.00 / \$100.00  
4-3.10 Litter \$100.00

##### **4-4 Hunting**

4-4.1 Without permission \$100.00  
4-4.4 Town property \$100.00

##### **4-4A Vessel Mooring Permits**

4-4A.2 Mooring without a permit \$50.00

##### **4-5 Motorboat control**

4-5.3 Speed limit \$ 50.00  
4-5.4 Water skiing \$ 50.00

##### **4-6 Public Cemetery Regulations**

4-6.1 Flowers, trees, shrubs \$ 50.00  
4-6.2 Deface monuments \$100.00  
4-6.3 Discharge firearms \$100.00

##### **4-7 Public Streets**

4-7.1 Signs/obstructions \$ 50.00  
4-7.2 Signs/awnings/shade \$ 50.00  
4-7.3 Running water/street \$ 50.00  
4-7.4 Permit/sell/public street \$ 50.00

4-7.5 Deface public grounds	\$100.00
4-7.6 Driving on sidewalks	\$ 50.00
4-7.7 Dropping load	\$ 50.00
4-7.8 Plowing, throwing snow onto public roads	\$ 50.00

#### **4-9 Sale Used Articles**

4-9.1 Junk Collectors/license	\$ 50.00
4-9.2 License/second hand shop	\$ 50.00
4-9.3 Yard sales/flea market	\$ 50.00

#### **4-11 Personal Watercraft**

4-11.1 Prohibited operation	\$50.00 /\$100.00
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### **4-13. PENALTIES FOR NON-PAYMENT OF TAXES**

- (a) The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually, and may periodically, 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, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.
- (b) 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 or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the 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.
- (c) Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- (d) The board of selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight A in the business or activity conducted in or on said property.
- (e) This section shall not apply to the following licenses and permits: open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of chapter eighty-five; sales of articles for charitable purposes, section thirty-three of chapter one hundred and one; children work permits, section sixty-nine of chapter one

hundred and forty-nine; clubs, associations dispensing food or beverage licenses, section twenty-one E of chapter one hundred and forty; dog licenses, section one hundred and thirty-seven of chapter one hundred and forty; fishing, hunting, trapping license, section twelve of chapter one hundred and thirty-one; marriage licenses, section twenty-eight of chapter two hundred and seven and theatrical events, public exhibition permits, section one hundred and eighty-one of chapter one hundred and forty.

#### **Section 4-14. FALSE FIRE ALARMS.**

The owner of any fire alarm system that generates more than three false fire alarms in any given twelve-month period shall be assessed a fine of \$150 for the fourth and each subsequent false alarm within said period. A false fire alarm as used in this section shall mean the sounding of an alarm that summons the Fire Department to the property in the absence of any smoke or fire.

#### **4-15. DEMOLITION DELAY/REVIEW.**

##### **4-15.1 Intent and Purpose.**

The purpose of this bylaw is to encourage the preservation and protection of significant buildings and structures within the Town of Essex that constitute or reflect distinctive features of the Town's architectural, cultural, economic, political or social history and to limit the adverse effect that demolition may have on the character of the Town.

(Italics in the following sentences indicate terms defined in the next section). Under this bylaw, *applicants* for *permits to demolish* any *building* or *structure* deemed *preferably preserved* are encouraged to pursue alternatives to demolition that will preserve, rehabilitate or restore the building or structure, and to alert residents to impending demolition of buildings or structures that are deemed preferably preserved. To achieve this purpose, the *Commission* is empowered to advise the *Building Inspector* with respect to applications for *Permits to Demolish*. The issuance of Permits to Demolish is regulated as provided by this bylaw.

##### **4-15.2 Definitions.**

The terms that follow shall have the meanings set forth below unless context requires otherwise:

1. ***Applicant.*** Any person or entity that files an application for a Permit to Demolish. If the applicant is not the owner of the building or structure specified in the application, the owner's assent shall be filed with or attached to it.
2. ***Building.*** A combination of materials constructed to provide shelter to persons, animals or property.
3. ***Structure.*** A combination of materials assembled at a fixed location intended to provide support or access such as a bridge, trestle, tower, cribwork, retaining wall, streetscape or the like.
4. ***Building Inspector.*** The Building Inspector of the Town of Essex or any other person who may be authorized to issue a Permit to Demolish.
5. ***Commission.*** The Historical Commission of the Town of Essex or its designee.
6. ***Demolition.*** The act of pulling down, destroying, removing, dismantling or razing a building or structure or the commencement of work of total or partial demolition with intent of completing the same.
7. ***Permit to Demolish.*** The permit issued by the Building Inspector for the demolition of a building or structure.
8. ***Significant Building or Structure.*** Any building or structure within the Town of Essex that is in whole or in part at least one hundred years old and has been determined by the Commission to be significant based upon any one or more of the following criteria:
  - The building or structure is listed on, or is within an area listed on, The National Register of Historic Places; or
  - The building or structure has been deemed eligible for inclusion on The National Register of Historic Places; or
  - The building or structure is importantly associated with one or more historic events or persons or is associated with the architectural, cultural, political, economic or social history of the Town of Essex or the Commonwealth of Massachusetts; or
  - The building or structure is historically or architecturally important (in terms of period, style or method of its construction); or

- The building or structure is associated with a recognized architect or builder either by itself or in the context of a group of buildings or structures.
9. ***Preferably Preserved.*** Any significant building or structure that, by the determination of the Commission and following a public hearing, is deemed best preserved rather than demolished. Demolition of a preferably preserved building or structure is subject to a four (4) month delay period under this bylaw.

**4-15.3 Procedure.**

1. All applications for a permit to demolish a building or structure in the Town of Essex (whatever its age) shall include the actual (or if not ascertainable, the estimated) date or dates of construction.
2. A Permit to Demolish for a building or structure that is in whole or in part at least one hundred (100) years old shall be issued only in accordance with the provisions of this bylaw. If a building or structure is of unknown age, it shall be assumed to be at least one hundred years old for the purposes of this bylaw.
3. An applicant proposing to demolish a building or structure in the Town of Essex any part of which is at least one hundred years old shall file with the Building Inspector (in duplicate) an Application for a Permit to Demolish containing (at a minimum) the following:
  - The physical address of the building or structure to be demolished;
  - The owner's name, address and telephone number;
  - A written description of the building or structure;
  - The reason for requesting a Permit to Demolish;
  - The reason the applicant believes the building or structure is not significant or is not preferably preserved, if that is the applicant's position;
  - A written description of the proposed reuse, reconstruction or replacement, if any;
  - Such plans and specifications as shall be required by the Building Inspector; and
  - Photographs of the building or structure to be demolished. These shall include at least one photograph of each building or structure elevation.
4. The Building Inspector shall within seven (7) days of receipt forward a copy of the application to the Commission.
5. The Commission shall within fifteen (15) days of its receipt of the application determine in writing whether or not the building or structure is significant.
6. Should the Commission determine that the building or structure is not significant, the Commission shall notify both the Building Inspector and applicant in writing. The Building Inspector may then issue a Permit to Demolish provided that all other applicable requirements have been met.
7. Should the Commission determine that the building or structure is significant, the Commission shall so notify the Building Inspector and applicant in writing, and a Permit to Demolish shall not be issued at that time. If the Commission does not notify the Building Inspector within fifteen (15) days of its receipt of the application, the Building Inspector may issue a Permit to Demolish provided that all other applicable requirements have been met.
8. If the Commission finds that the building or structure is significant, it shall hold a public hearing within thirty (30) days after its written notification to the Building Inspector.
9. Public notice of the time, place and purpose of the hearing shall be published in a newspaper of general circulation in the Town of Essex at the applicant's expense and posted in a conspicuous place in Town Hall at least seven (7) days before the hearing, and forwarded to abutters of the subject property. The Commission shall also notify the Building Inspector and the applicant in writing of the time and place of the hearing.
10. The Commission shall decide at the hearing or within fifteen (15) days after completion of the hearing whether the building or structure is preferably preserved. To the extent agreed to by the applicant, the determination of the Commission may be postponed.
11. If the Commission determines that the building or structure is not preferably preserved, the Commission shall promptly give written notice of its determination to the Building Inspector and the applicant. The Building Inspector may then issue the Permit to Demolish provided that all other applicable requirements have been met.
12. If the Commission determines that the building is preferably preserved, the Commission shall promptly give written notice of its determination to the Building Inspector and the applicant. No Permit to Demolish may be issued for a period of four (4) months from the date of the Commission's determination unless agreed to by the Commission.

13. If the Commission does not, within fifteen (15) days after completion of its hearing, provide the Building Inspector written notice that it has determined that the building or structure is preferably preserved, the Building Inspector may issue the Permit to Demolish provided that all other applicable requirements have been met.
14. The Building Inspector may issue a Permit to Demolish a preferably preserved building within the four-month delay period if the Commission notifies the Building Inspector in writing that the Commission, after further review and receipt of updated plans, finds that the intent and purpose of this bylaw are served, or there is an emergency as defined in Section 4-15.5 of this bylaw.
15. Following the four-month delay period, subject to any other applicable requirements, the Building Inspector may issue the Permit to Demolish.

#### **4-15.4 Administration.**

1. After appropriate notice and a public hearing, the Commission may adopt such rules and regulations it considers appropriate for the administration of this bylaw.
2. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.
3. The Commission may delegate authority to make initial determinations of significance to one or more of its members or to a municipal employee.
4. The Commission may adopt and from time to time amend a list of one or more buildings or structures or both that it has determined are significant.

#### **4-15.5 Emergency Demolition.**

If after an inspection, the Building Inspector finds that a building subject to this bylaw poses a threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, the Building Inspector may issue an Emergency Permit to Demolish. The Building Inspector shall promptly submit a report to the Commission explaining the condition of the building and the basis for his decision.

#### **4-15.6 Enforcement and Remedies.**

The Commission and/or the Building Inspector are each specifically empowered to institute any and all actions and proceedings, in law or in equity, that they may deem necessary or appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof.

Any person who has demolished or has authorized or agreed to the demolition of a significant building or structure without complying with the provisions of this bylaw shall be subject to a fine of three hundred dollars (\$300). Each day the violation exists shall constitute a separate offense until a faithful restoration of the building or structure is completed or unless agreed otherwise by the Commission. Such violations may be enforced by the noncriminal procedure authorized by M.G. L. c. 40, sec. 21D and included in Sec. 2-21 of the Town Bylaws.

If a significant building or structure is demolished and the owner or any other person responsible for the demolition has not complied with this bylaw, no Building Permit shall be issued for a period of two (2) years from the date of demolition on the parcel of land where the building or structure was located or any adjoining parcel of land under common ownership and control, unless the Building Permit is for faithful restoration as referred to above or unless agreed otherwise by the Commission.

#### **4-15.7 Severability.**

If any provision of this bylaw is ruled invalid by a court, this bylaw shall be deemed amended to the extent necessary to remove the invalidity and as so amended shall continue in full force and effect.



## **4-16 ANIMAL CONTROL BYLAW**

**4-16.1 PURPOSE.** The purpose of this bylaw is control of animals to prevent injury to property, persons and animals.

### **4-16.2 ADMINISTRATION.**

- a. The Board of Selectmen shall annually appoint an Animal Control Officer who shall be responsible for the enforcement of this bylaw and the General Laws relating to the regulation of animals.
- b. For purposes of this bylaw and Massachusetts General Laws, Chapter 140, section 157, the Board of Selectmen shall be the Hearing Authority.

**4-16.3 CONTROL OF ANIMALS.** No person owning, harboring or having the custody or control of a dog shall permit such dog to enter or remain upon the following property at the time indicated:

- a. **PUBLIC SCHOOL GROUNDS.** No dog shall be allowed upon public school grounds between the hours of 7:30 a.m. and 4:30 p.m., local time, Monday through Friday, during the school year and any special sessions thereof. Dogs shall not be allowed on any school department property while schools in Essex are in session.
- b. **BEACHES.** No dog shall be allowed upon any public beach in Essex during June, July, and August in each year.
- c. **CEMETERY GROUNDS.** No dog shall be allowed upon any cemetery grounds in Essex, at all times of the year.
- d. **PUBLIC PARKS.** No dog shall be allowed in any public park in Essex, at all times of year, except at the Centennial Grove. Supervised dogs on a leash or under the direct control of their owner (not unsupervised dogs) shall be allowed at the Centennial Grove except during June, July, and August in each year, during which months dogs shall not be allowed at the Centennial Grove.

### **4-16.3A ROAMING AT LARGE**

- a. No person shall permit a dog owned or kept by them to cause a nuisance to people or other animals or a threat to public safety while roaming at large.
- b. Dogs that are, in the judgment of the Animal Control Officer, causing a nuisance to people or other animals or a threat to public safety while roaming at large may be caught and confined by the Animal Control Officer or any police officer of the Town of Essex. A dog so confined may be held for not more than seven days. If the owner or keeper of the dog claims it and pays the sum of \$40 for each day that the dog has been held, the dog shall be returned to its owner or keeper. Any dog not claimed by the owner or keeper within said seven day period may be subject to euthanization or adoption as set forth in Massachusetts General Laws, Chapter 140, sections 151A and 167, as may be amended from time-to-time.

### **4-16.3B NUISANCE AND DANGEROUS DOGS**

- a. The Animal Control Officer shall investigate all complaints made to the Animal Control Officer, the Town of Essex Police Department, the Board of Selectmen, or the Town Administrator, that any dog owned or kept within the Town of Essex is a Nuisance Dog or Dangerous Dog, as those terms are defined in Massachusetts General Laws, Chapter 140, sections 136A and 157, as may be amended from time to time.
- b. The Animal Control Officer shall require that said complaints be in writing and is hereby empowered to make whatever inquiry is deemed necessary to determine the accuracy of said complaint and may make such orders as he or she deems necessary to ensure the protection of public safety and/or to eliminate said nuisance, as provided in Massachusetts General Laws, Chapter 140, section 157, as may be amended from time to time.
- c. Any person aggrieved by an order of the Animal Control Officer may request a hearing before the Board of Selectmen. Said request shall be in writing and received by the Board of Selectmen within five (5) business

days of the issuance of the Animal Control Officer's order. If no such request is filed within the time specified herein, the order of the Animal Control Officer shall be final.

- d. Upon receipt of a timely request, the Board of Selectmen shall convene a public hearing, which shall include an examination of the complainant under oath, to determine whether the dog is a Nuisance Dog or Dangerous Dog. Based on the credible evidence and testimony presented at said public hearing, the Board of Selectmen may affirm the Animal Control Officer's order, reverse and nullify the Animal Control Officer's order, or issue any such order as it deems necessary to ensure the protection of public safety and/or eliminate a nuisance, as provided in Massachusetts General Laws, Chapter 140, section 157, as may be amended from time to time. The determination of the Board of Selectmen after a hearing shall be final.
- e. Nothing in this By-law is intended to limit or restrict the authority of the Board of Selectmen to act in accordance with G.L. c. 140, §157.

**4-16.3C. REMOVAL AND DISPOSAL OF DOG WASTE.** It shall be the duty of each person owning or having the care, custody, or control of any dog to remove and properly dispose of, in a sanitary manner, any feces left by such dog upon any sidewalk, street, thoroughfare, beach, or wetland, in or upon any public property, or in or upon the property of persons other than the owner or persons having the care, custody, or control of such dog. Anyone having the care, custody, or control of a dog in a public place where dogs are allowed shall have in their possession a device or equipment to pick up and remove dog feces. Individuals with disabilities aided by service dogs and law enforcement, emergency or rescue officials with dogs carrying out official duties are exempt from this section.

**4-16.4 DOGS IN SEASON.** Every female dog in heat shall be confined in a building or secure enclosure in such manner that such female dog cannot come into contact with another animal except for planned breeding.

**4-16.5 DOG TAGS.** All dogs shall wear a collar or similar device with the current dog tags (license) attached.

#### **4-16.6 LICENSING.**

- a. All dogs 6 months or over must be licensed, individually or via a kennel license, and tagged. The registering, numbering, and licensing of dogs, if kept in the Town of Essex, shall be conducted in the office of the Town Clerk.
- b. The annual License Period shall run from April 1<sup>st</sup> to March 31<sup>st</sup> of each calendar year.
- c. The annual fees to be charged by the Town of Essex for the issuance of licenses for dogs shall be:

Males and Females	\$24.00
Neutered Males and spayed Females*	\$15.00
*(a certificate of neutering or spaying will be required)	

- d. Kennels

##### **1. Kennel Licenses**

The owner or keeper of a pack or collection of more than 4 dogs, 3 months old or older, on a single premises, shall obtain one of the types of kennel licenses defined in MGL Ch. 140, §136A, and pay the required annual fee.

A Kennel License shall be in lieu of licensing dogs individually.

An owner or keeper of a pack or collection of 4 dogs or less, 3 months or older, on a single premises, may obtain a kennel license in lieu of licensing the dogs individually.

No Commercial Boarding or Training Kennel, Commercial Breeder Kennel, or Veterinary Kennel Licenses shall be issued unless the applicant demonstrates compliance with any other applicable laws concerning the operation of a business or commercial enterprise from the subject premises.

The annual Kennel License Period shall run from April 1<sup>st</sup> to March 31<sup>st</sup> of each calendar year.

## **2. Kennel Licenses – Limitation on Number of Dogs**

The maximum number of dogs that may be kept on a single premises at any one time shall be limited to fifty (50) dogs; provided that for an existing facility with a Kennel License authorizing the keeping of 11 dogs or more dogs, the maximum number of dogs that may be kept on a single premises at any one time shall be limited to one hundred (100) dogs.

For purposes of this bylaw, the term “existing facility” shall mean an active kennel with a license in good standing at all times prior to November 14, 2017. A kennel shall no longer be considered an existing facility if its kennel license is revoked or not renewed for any reason, including but not limited to the owner’s failure to file a timely renewal application.

Every Kennel License shall specify the maximum number of dogs that may be kept on the premises at any one time and all Kennel Licenses shall be subject to the condition that no more than the number of dogs specified on the license may be kept on the subject property at any one time.

The Board of Selectmen may authorize an amendment to a kennel license to increase the maximum number of dogs that may be kept on the premises at any one time, after a public hearing in accordance with the procedure set forth in section 4 below, provided that the maximum number of dogs that may be kept on the premises at any one time shall be limited to fifty (50) dogs; or one hundred (100) dogs for an existing facility authorized to keep 11 or more dogs.

## **3. Kennel Licenses - Fees**

	<b><u>5 dogs or less</u></b>	<b><u>6 to 10 dogs</u></b>	<b><u>11 or more dogs</u></b>
Commercial Boarding or Training Kennel:	\$100	\$200	\$300
Commercial Breeder Kennel:	\$100	\$200	\$300
Domestic Charitable Corporation Kennel:	No fee if incorporated exclusively for purposes outlined in MGL Ch. 140, §137A (c).		
Personal Kennel:	\$75	\$150	\$200
Veterinary Kennels:	\$100	\$200	\$300

## **4. Kennel Licenses - Procedure**

No Kennel License shall be issued or renewed until the premises have been inspected and approved by the Animal Control Officer and applicable license fees have been paid in full.

No new license to operate a kennel shall be issued until after the Board of Selectmen conducts a public hearing on the application. Notice of said hearing shall be provided, at the applicant’s expense, to all abutters, owners of land directly opposite on any public or private street or way, and abutters to abutters within three hundred feet, and by publication in a newspaper of general circulation in the Town once, at least seven days prior to the hearing.

At said hearing, the Board of Selectmen shall take into account factors such as (but not limited to): geographic location, setbacks to property lines, proximity to abutters, distance to other similar facilities, and the number of dogs per acre of land.

If the Board finds, based on the facts adduced at said hearing, that the license may result in a nuisance or that it will otherwise create a risk of harm to public health, safety or welfare, the Board may recommend that the license be denied or that it be granted subject to such conditions as are deemed necessary to prevent such nuisance or harmful conditions, including but not limited to limiting the number of dogs that may be kept on the property at any one time.

The Board of Selectmen may adopt, and may from time-to-time revise, regulations to implement the provisions of this bylaw relative to conducting public hearings and establishing criteria for determining whether a kennel is likely to result in a nuisance or that it will otherwise create a risk of harm to public health, safety and welfare.

#### **5. Kennel Licenses – Renewals**

Kennel Licenses may be renewed by submitting a renewal application to the Town Clerk, along with the required fee and proof of inspection by the Animal Control Officer by March 1<sup>st</sup>.

Except as provided in the following paragraph, no public hearing will be required for renewal of a kennel license, provided that a timely renewal application is filed. Failure to file a renewal application and pay the applicable fee by the deadline set forth above will result in a subsequent application being treated as a new application.

For the first renewals made after the effective date of this Bylaw, the Town Clerk, in consultation with the Animal Control Officer, shall specify on the license for each kennel the maximum number of dogs authorized to be kept on the premises at any one time. For any new license issued between November 14, 2017 and the effective date of this bylaw, the first renewal will require a public hearing in accordance with the procedure set forth in section 4 and is subject to all powers and discretion of the Board of Selectmen and the Town Clerk contained in said section 4, up to and including denial or modification of the license. Any person aggrieved by the Town Clerk's determination as set forth herein may request a hearing by the Board of Selectmen. Said request shall be in writing and received by the Board within seven (7) days of the Town Clerk's determination.

#### **6. Kennel Licenses – Modification, Suspension, Revocation**

Upon receipt of a complaint from the Town's Animal Control Officer, a Town of Essex Police Officer, or upon petition by 25 citizens as outlined in G.L. c. 140, §137C, the Board of Selectmen, after conducting a public hearing, with at least seven days written notice to the license holder, may modify, suspend or revoke any kennel license if the kennel is not being maintained in a sanitary condition or if the kennel constitutes a nuisance or is otherwise harmful to public health, safety and welfare.

Nothing in this Bylaw is intended to limit or restrict the authority of the Board of Selectmen and/or the Animal Control Officer to enforce the laws relative to kennels, including but not limited to G.L. c. 140, §137C.

- e. Further, the Town Clerk will charge a late fee of Fifteen Dollars to obtain an individual or Kennel License after July 1<sup>st</sup> of any calendar year. All money received from issuance of dog licenses by the Town of Essex, or recovered as fines or penalties by said Town under provisions of Chapter 140 relating to dogs, shall be paid into the Treasury of the town and thereafter shall not be paid over by the Town Treasurer to Essex County.

#### **4-16.7 LICENSING OF DANGEROUS DOGS.**

- a. The Animal Control Officer shall notify the Town Clerk of all dogs that have been designated as Dangerous Dogs in accordance with Section 3B of this Bylaw and/or Massachusetts General Laws, Chapter 140, section 157.
- b. The Owner or keeper of any dog(s) designated as Dangerous Dogs in accordance with Section 3B of this Bylaw and/or Massachusetts General Laws, Chapter 140, section 157 which have not been ordered euthanized shall relicense said dog(s) as "Dangerous" within thirty days of such determination. A unique licensing number shall be assigned to a Dangerous Dog by the Town Clerk. That number shall be noted on the town licensing files.
- c. The owner or keeper of a Dangerous Dog shall notify within 12 hours the Animal Control Officer if said dog is unconfined, has attacked, another dog or has attacked a human, or has died or has been sold or given away; the owner or keeper shall also provide the Animal Control Officer with the name, address and telephone number of the new owner of the Dangerous Dog.

#### **4-16.8 ENFORCEMENT AND PENALTIES**

The Animal Control Officer or any police officer of the Town shall be empowered to enforce provisions of this Bylaw.

In addition to the remedies set forth in this Bylaw and in GL c. 140, §§136A to 174E, inclusive, including but not limited to GL c. 140, §157A, or any other applicable provision of law, this Bylaw may be enforced through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to G.L. c. 40, §21D. If non-criminal disposition is elected, then any person who violates any provision of this by-law shall be subject to the following penalties:

First Offense:	Written Warning
Second Offense:	\$100 fine
Third and subsequent Offense:	\$300 fine

Subsequent offenses shall be determined as offenses occurring within twelve months of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Animal Control Officer or any Town of Essex police officer may seize and impound any dog found outside of its enclosure in violation of this Bylaw or any order issued by the Animal Control Officer, the Board of Selectmen or a court.

#### **c. Other**

The Essex Board of Selectmen may enforce these Regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Selectmen shall not preclude enforcement through any other lawful means.

**CHAPTER V**  
**POLICE REGULATIONS**

**ARTICLE 1**

**DEFINITIONS**

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

- a. **"Street or Highway."** The entire width between property lines of every way open to the use of the public for purposes 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, except devices moved by human power or used exclusively upon stationary rails or tracks.
- e. **"Emergency Vehicle."** Vehicles of the Fire Department (Fire Patrol), police vehicles, public works vehicles, ambulances and emergency vehicles or 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.
- f. **"Parking."** The stopping or standing of a vehicle, whether occupied or not, otherwise than temporarily, except that a vehicle shall not be deemed parked when stopped or standing for the purpose of and while actually engaged in loading or unloading or in obedience to an officer of traffic control signs or signals or while making emergency repairs or, if disabled, while arrangements are being made to move such vehicle.
- g. **"Pedestrian."** Any portion afoot or riding on a conveyance moved by human power, except bicycles or tricycles.
- h. **"Sidewalk."** That portion of a street or highway set aside for pedestrian travel.
- i. **"Crosswalk."** That portion of a roadway ordinarily included within the prolongation or connection of curb lines and property lines at intersections, or at any portion of a roadway clearly indicated for pedestrian crossing by lines on the road surface or by other markings or signs.
- j. **"Traffic."** Pedestrians, ridden or herded animals, vehicles, or other conveyances either single or together while using any street or highway for the purpose of travel.
- k. **"Official Traffic Signs."** All signs, markings and devices, other than signals, not inconsistent with these rules and orders, and which conform to the standards prescribed by the Department of Public Works of the Commonwealth of Massachusetts and placed or erected by authority of a public body or official having jurisdiction, for the purpose of guiding, directing, warning or regulating traffic.
- l. **"Officer."** Any officer, investigator, examiner or inspector of the Registry of Motor Vehicles, any constable or special officer, provided he is in uniform or displays his badge of office.
- m. **"Funeral."** Any procession of mourners properly identified as such accompanying the remains of a human body.

n. **"Official Curb Marking."** That portion of a curbing, the painting of which has been authorized by the selectmen, and which complies with the standards of the Department of Public Works of the Commonwealth of Massachusetts and has the written approval of said department.

o. **"Official Street Marking."** Any painted line, marking or marker placed in or upon any way by authority of the selectmen and which complies with the standards of the Department of Public Works and has the written approval of said department.

## **ARTICLE 2**

### **SECTION 1: AUTHORITY AND DUTIES OF POLICE OFFICERS TO DIRECT TRAFFIC**

It shall be the duty of officers designated by the Chief of Police to enforce the provisions of these rules and orders. Such officers are hereby authorized to direct all traffic either in person or by means of visible or audible signals 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.

### **SECTION 2: POLICE MAY CLOSE STREETS TEMPORARILY**

The Chief of Police is hereby authorized to close temporarily, any street or highway in an impending or existing emergency, or for any lawful assemblage, demonstration or procession provided there is reasonable justification for the closing of such street.

### **SECTION 3: POLICE MAY PROHIBIT PARKING TEMPORARILY**

The Chief of Police is hereby authorized to prohibit, temporarily, parking on any street or highway or part thereof in an impending 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.

### **SECTION 4: EXEMPTIONS**

The provisions of these rules and orders shall not apply to operators actually engaged in work or repair, to officers when engaged in the performance of public duties nor to drivers of emergency vehicles while operating in an emergency and in performance of public duties when nature of 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 3**

### **TRAFFIC SIGNS, SIGNALS, MARKINGS AND ZONES**

#### **SECTION 1: TRAFFIC SIGNS AND SIGNALS**

The Director of Public Works may with the approval of the board of selectmen and shall at the request of the board of selectmen place and maintain or cause to be placed and maintained all official traffic signs, signals, markings and safety zones shall conform to the standards as prescribed by the Department of Public Works of the Commonwealth of Massachusetts.

#### **SECTION 2: DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS AND MARKINGS PROHIBITED**

It shall be unlawful for any person or corporation to place or maintain or to display upon or in view of any street any unofficial sign, signal or device which purposes to be or is an imitation or resembles an official sign or signal. The Chief of Police is hereby empowered to remove every such prohibited sign, signal marking device or cause it to be removed without notice.

#### **SECTION 3: INTERFERENCE WITH SIGNS, SIGNALS AND MARKINGS PROHIBITED**

Any person who willfully defaces, injures, moves, obstructs or interferes with an official traffic sign, signal or markings shall be liable to a penalty not exceeding twenty dollars for each and every offense.

#### SECTION 4: OBEDIENCE TO TRAFFIC SIGNS AND SIGNALS

No driver of any vehicle shall disobey the instructions of any official traffic control signal, sign, marking, marker of legend, unless otherwise directed by a police officer.

### ARTICLE 4

#### PARKING

##### SECTION 1: GENERAL PROHIBITIONS

No person shall park a vehicle in any of the following places and vehicles found parked in violation of the provisions of this section may be moved by or under the direction of the chief of police or such other officers of the rank of sergeant or higher, and at the expense of the owner to a place where parking is permitted.

- a. Within an intersection
- b. Upon any sidewalk
- c. Upon any crosswalk
- d. Upon the roadway in a rural or sparsely settled district
- e. Upon a roadway where parking is permitted unless both wheels on the right side of the vehicle are within 12 inches of the curb or edge of the roadway, except upon those streets which are designated as one-way streets. On such one-way streets, vehicles shall be parked in the direction in which said vehicle is moving and with both wheels within 12 inches of the curb. This shall not apply to streets or parts of streets where angle parking is required by these regulations.
- f. Upon any roadway where the parking of a vehicle will not leave a clear and unobstructed lane at least 10 feet wide for passing traffic.
- g. Upon any street or highway within 10 feet of a fire hydrant.
- h. So as to block any private road or driveway.
- i. Upon any street or highway within 10 feet of an intersecting way, except alleys unless otherwise provided.
- j. Within 15 feet of the wall of a fire station or directly across the street from such station provided signs are erected acquainting the driver of such restriction.
- k. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.
- l. Winter parking ban goes into effect December 1 to April 1. No parking on any street, midnight to dawn, with the exception of Pickering Street, (easterly side).
- m. Parking in beach area without a sticker.
- n. Blocking a service area.
- o. 30-minute maximum parking on the north side (odd-numbered side) of Martin St. from Route 133 (Main St.) to the west side of Winthrop; 30-minute maximum parking both sides of Pickering St. for 100 feet north of Martin St; 30-minute maximum parking both sides of Winthrop St. for 100 feet north of Martin St.; no parking on the south side of Martin St. from Route 133 (Main St.) to the fire station.
- p. Within an area **designated for resident parking only** unless the vehicle bears a **valid transfer station sticker** or a **valid Resident Parking Sticker**. Resident parking stickers are available through the Town Clerk's office. The fee for a Resident Parking Sticker shall be \$5.00 per sticker for residents under the age of 65 and \$1.00 per sticker for residents age 65 or older (at the time of the application). The applicant must show a valid vehicle registration for a vehicle registered in the Town of Essex to be eligible. Please consult with the Town Clerk for alternate proof of residency if the applicant's vehicle registration does not correspond to the applicant's Essex address. Resident Parking Stickers shall be valid until December 31 of the year of issue.



## **CHAPTER VI**

### **ZONING**

*The power of the town to adopt acts concerning zoning is contained in M.G.L. 40A et seq.*

#### **6-1 General Provisions**

##### **6-1.1 Short Title.**

This chapter shall be known and may be cited as the zoning by-laws of the Town of Essex.

##### **6-1.2 Authority**

The power of the town to adopt acts concerning zoning is contained in M.G.L.A 40A et seq.

##### **6-1.3 Purpose.**

This chapter is enacted in accordance with the provisions of Chapter 40A, Massachusetts General Laws, for the purpose of promoting the health, safety, and welfare of the inhabitants of the town.

##### **6-1.4 Severability**

Each provision of this Bylaw shall be construed as separate to the end that if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect.

#### **6-2 Definitions**

##### **6-2.1 Rules of Interpretation**

Except as specifically designated herein, all words used in this chapter shall carry their customary dictionary meanings. The word "lot" shall include the words "plot" and "parcel". The word "building" shall include the word "structure". The terms "used" or "occupied" as applied to any land or building shall be construed to mean also, "intended, arranged or designed to be used or occupied."

##### **6-2.2 Definitions**

##### **ABUTTER**

Owners of property located across a street or road from any premises shall be considered to be abutters as well as the owners of adjoining abutting property.

##### **ACCESSORY BUILDING.**

A building on the same lot with and of a nature customarily subordinate to, and physically separated from the principal building.

##### **AQUIFER.**

A geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable potable water.

##### **AUTOMOBILE OR MOTOR VEHICLE JUNK YARD.**

An area occupied by two or more unregistered, unserviceable, discarded or junked automotive vehicles or bodies, engines or other parts sufficient in bulk to equal two vehicles.

##### **BILLBOARDS.**

A structure, either freestanding or affixed to a building, the surface of which is for hire for advertising purposes.

**BUILDING AREA.**

The portion of a lot remaining after required yards have been provided.

**BUILDING.**

Any structure affording shelter.

**BUILDING HEIGHT.**

The vertical height from the sidewalk or finished grade at the center of the front of the building to the highest point of the roof surface, if a flat roof; to the deck line for mansard roofs; and to the mean height between eaves and ridges for gables, hip, and gambrel roofs.

**BUSINESS.**

The transaction or carrying on of a trade or commercial enterprise, not manufacturing, operating for profit or for a livelihood, or as a non-profit entity.

**DWELLING, MULTI-FAMILY.**

A detached building containing three or more dwelling units, other than a trailer or mobile home.

**DWELLING, SINGLE FAMILY.**

A single detached dwelling unit other than a trailer or mobile home.

**DWELLING, TWO-FAMILY.**

A detached building containing two dwelling units, other than a trailer or mobile home.

**DWELLING UNIT.**

A room or suite of rooms providing complete, independent living facilities for one or more persons including permanent provision for living, sleeping, eating, cooking, and sanitation.

**FAMILY.**

Persons occupying a dwelling unit who are related to each other by blood, adoption or marriage in no less than the second degree.

**GROUNDWATER.**

All the water found beneath the surface of the ground (in this Bylaw, the term refers to the slowly moving subsurface water present in aquifers and recharge areas).

**HAZARDOUS MATERIALS.**

- a. A product, a waste or a combination of substances which because of quantity, concentration, or physical or chemical, or infectious or radioactive characteristics may reasonably pose, in the determination of the enforcing authority, a substantial present or potential hazard to human health, safety or welfare, or the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed;
- b. Any substance which may create a special hazard in the event of a spill, leak, fire or exposure, and;
- c. All substances deemed to be hazardous waste as defined in M.G.L. Chapter 21C, s.2 and the Hazardous Waste Regulations promulgated hereunder by Massachusetts Department of Environmental Protection ("D.E.P.") at 310 CMR 30.010 in amounts in excess of that normally used in household maintenance or other materials which

are listed as toxic, hazardous or a priority pollutant by the United States Environmental Protection Agency under any of the following laws:

- (1) Toxic Substances Control Act, 15 U.S.C s.2601 et seq.;
- (2) Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. s.136 et seq.;
- (3) Resource Conservation and Recovery Act of 1976, 42 U.S.C. s.6901 et seq.;
- (4) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42U.S.C. 2.9601 et seq.; and
- (5) Federal Water Pollution Control Act, 33U.S.C. s.1251, et seq."

#### **HOME OCCUPATION.**

Any commercial activity conducted as an accessory use, in any dwelling unit which is the residence of the practitioner of the commercial activity, or in any accessory building to that residence, regulated under 6-5.11.

#### **IMPERVIOUS SURFACE.**

Material on the ground that does not allow surface water to penetrate into the soil.

#### **INDUSTRIAL LAND USE - CLASS A.**

Land on which there is located a building used for manufacturing purposes which is either greater than or equal to 2,500 square feet in are or within which 12 or more people are employed on one eight-hour shift.

#### **INDUSTRIAL LAND USE - CLASS B.**

Land on which there is located a building used for manufacturing purposes which is less than 2,500 square feet in area and within which 11 or less people are employed on any one eight-hour shift.

#### **JUNK**

Waste or discarded material which may be treated or prepared to be used again in another form.

#### **JUNK YARD**

An open area used for storage, keeping, sorting, processing, baling or abandonment of junk including but not limited to scrap metals or other materials such as paper, rags, bottles, automobile or other vehicles, machinery or parts thereof.

#### **LEACHABLE WASTES**

Waste materials including solid wastes, sewage, and sludge that are capable of releasing water-borne contaminants to the surrounding environment.

#### **LOT**

For purposes of this chapter, a lot is a registered or recorded parcel of land of at least sufficient size to meet minimum land-use requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required

Such lot shall have frontage on a way or a street. In computing the area of a lot for the purposes of dimensional requirements set forth in the Table of Dimensional Requirements. Tidal marshlands and wetlands, as defined by Chapter 131, Section 40 of the MGL Wetlands Protection Act as "bogs, coastal wetlands, freshwater wetlands, swamps, wet meadows, and marshes", shall be excluded.

Delineation of wetlands and tidal marshlands is required on all plans submitted for review, and shall be drawn and certified by a professional engineer or land surveyor.

## **LOT OF RECORD**

Land designated as a separate and distinct parcel in a legally recorded deed and plan filed in the records of the county.

## **LOT FRONTAGE**

The front of a lot shall be construed to be the portion nearest the street where reasonable and adequate access to the required parking facilities and principal buildings can be provided.

The minimum property depth required for computing the frontage shall be the minimum front yard requirements as measured perpendicular to the street which frontage is claimed. For the purposes of determining yard requirements on corner lots, all sides of the lot adjacent to the streets shall be considered frontage, and yards shall be provided as indicated under "Yards" in this section.

## **LOT LINES**

- a. FRONT: The line separating any lot from a street
- b. REAR: A lot line which is opposite and most distant from the frontline. In the case of a triangular or irregular lot, a line ten feet long within the lot, parallel to and farthest from the front line
- c. SIDE: Any lot line not a front or rear lot line.

## **LOT MEASUREMENTS**

- a. DEPTH: Depth of a lot shall be considered to be the distance between the midpoint of straight lines connecting the foremost points of the side lot line in front and the rearmost points of a side lot line in the rear
- b. WIDTH: Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard.

## **MEDICAL MARIJUANA TREATMENT CENTER OR REGISTERED MARIJUANA DISPENSARY**

A not-for-profit entity registered under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products ("MIPs"), tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, Medical Marijuana Treatment Center or Registered Marijuana Dispensary refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

## **MINING OF LAND**

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

## **NONCONFORMING USE**

Any structure or use which does not meet the requirements of this chapter.

## **NONCONFORMING USE, PREEXISTING**

A structure or use lawfully in existence, lawfully begun, or a building permit having been applied for before the first notice of the public hearing on such ordinance or bylaw whose adoption has rendered the structure, use or permit nonconforming.

## **PARKING SPACE, OFF STREET**

For the purposes of this chapter, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or way and maneuvering room.

Such space and appropriate maneuvering room shall be provided at approximately 300 square feet of individual space.

## **PRINCIPLE OFFICERS**

The board of selectmen shall be the principle officers.

## **RECHARGE AREAS**

Areas comprised of permeable stratified sand and gravel and certain wetlands that collect precipitation or surface water and carry it to aquifers.

## **REGISTERED MARIJUANA DISPENSARY**

See MEDICAL MARIJUANA TREATMENT CENTER

## **SIGN**

Any two or three dimensional fabrication, or assembly, including its supporting structure, consisting of any letter, figure, character, symbol, emblem, mark, design, pictorial representation, stripe, line, trademark, reading matter or illuminating device, constructed, attached, erected, fastened, or manufactured in any manner whatsoever so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, business, public performance, article, machine or merchandise whatsoever, and displayed in any manner for recognized identification or advertising purposes.

## **SOLID WASTE**

Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing. This includes but is not limited to rubbish, garbage, scrap materials, junk refuse, inert fill material and landscape refuse.

## **STORY**

That portion of a building included between the surface of any floor and the surface of the floor or the roof next above it.

A basement shall be considered as a story for the purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

## **STREET**

A public thoroughfare 30 feet or more in width established or maintained under public authority or a recorded way plotted and laid out for public use and which affords principle means of access to abutting property.

No new street shall be less than 44 feet in width.

## **STREET-LINE**

The right-of-way line of a street.

## **STRUCTURE**

Anything constructed or erected of more than one member requiring a fixed location on the ground.

Structures which are exempted from the requirement of a building permit in the Massachusetts State Building Code shall also be exempt from the requirement of a building permit by this Chapter.

## **TRAILER**

A building or structure designed, made, built, or used as a mobile home or trailer home or like building by whatever name so-called, or having the appearance of such a structure or building, which is used as a dwelling.

#### **USE, ACCESSORY.**

A subordinate use of land or buildings which is customarily incidental to the main building or to the principle use of the land and which is located on the same lot with the principle building or use.

#### **USE, CHANGE OF**

A change of use occurs when the change is from one principal use category to another, as listed in the section titled **Land Use Regulations** of this bylaw.

#### **USE, MIXED**

Two or more principal uses occupying the same land or building, each of which is independent of and unrelated to the other.

#### **USE, PRINCIPAL**

The main or primary purpose for which land or buildings are arranged or intended, or for which it may be used, occupied, or maintained under this bylaw.

#### **VARIANCE**

A relaxation of the requirements of this chapter where such variance will not be contrary to the public interest and owing to conditions peculiar to the property and not the result of the actions of the applicant, and where a literal enforcement of this chapter would result in unnecessary and undue hardship.

**WECS (WIND ENERGY CONVERSION SYSTEM).** A wind energy system consisting of a wind turbine, a tower, and associated control or conversion electronics.

**WECS, BUILDING-MOUNTED.** Any WECS unit, mounted on a building intended to generate power.

**WECS WIND TOWER.** The structure that supports the wind turbine.

**WECS TOTAL TOWER HEIGHT.** The vertical distance from current grade to the tip of the rotor blade when at its highest point.

#### **YARD**

A required opening unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, provided that fences, walls poles, posts and other customary yard accessories, ornament and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction and visibility.

#### **YARD, FRONT**

A required yard adjoining the front lot line, extending unobstructed between the side lot lines across the front of a lot between the principle building and the street.

#### **YARD, REAR**

A required yard adjoining the rear lot line, extending across the full width of the lot behind the principle building.

#### **YARD, SIDE**

A required yard adjoining a side lot line extending from the front to the rear yard.

#### **ZONING MAP**

A map of the town is on file at the selectmen's office.

### **6-3 Land Use Regulations.**

#### **6-3.1 General.**

Residential, business, motel and hotel, and industrial land uses shall be permitted provided that they conform to the requirements for the use contemplated as hereafter specified for each use.

## 6-3.2 Dimensional Requirements

### 6-3.2.1 Table of Dimensional Requirements

<b>Principal Buildings</b>	<b>Residential, Single and Two Family</b>	<b>Residential, Multi-Family</b>	<b>Business</b>	<b>Motel and Hotel</b>	<b>Industrial, Class A</b>	<b>Industrial, Class B</b>
Minimum Lot Area (sq. ft.)	40,000 (Notes a,b)	60,000 (3 units) 90,000 (4+ units) (Note d)	40,000 (Note a)	90,000	90,000	40,000 (Note a)
Minimum Lot Frontage (feet) (Note e)	150	300	150	200	300	150
Minimum Lot Width (feet)	150	-	-	-	-	125
Minimum Lot Depth (feet)	100	-	100	-	-	100
Minimum Front Yard, All Buildings	25	100	25	100	100 (Note c)	25 (Note c)
Minimum Side Yard	20	100	20	50	100 (Note c)	20 (Note c)
Minimum Rear Yard	30	100	50	100	100	30
Maximum Building Height (stories/feet)	2 ½ stories 35 feet	2 ½ stories 35 feet	2 ½ stories 35 feet	2 ½ stories 35 feet	35 feet	2 ½ stories 35 feet
Maximum Lot Coverage	25%	50% (Note f)	25%	-	33%	25%
<b>Accessory Buildings</b>						
Minimum Front Yard	25				25	
Minimum Side Yard	10				10	
Minimum Rear Yard	10	50			10	
Maximum Building Height	2 ½ stories 25 feet	1 story 15 feet		1 story 15 feet	2 ½ stories 25 feet	
Minimum Distance between Buildings		20		20		



### **6-3.2.2 Notes for Table of Dimensional Requirements**

- a. Lot area for land on street in existence on June 7, 1972, minimum 30,000 square feet.
- b. 40,000 square foot minimum per dwelling unit in the Water Resource Protection District.
- c. Any non-residential project comprised of buildings which in the aggregate occupy any area greater than 10,000 square feet shall meet the following: Front yard 50 feet, Side Yard 30 feet.
- d. Minimum land area per bedroom, 5,000 square feet. Maximum 8 bedrooms per building.
- e. Reasonable capability for adequate access to principal building is required over frontage.
- f. Maximum lot coverage for buildings and paved surfaces.

### **6-3.3 Additional Use Requirements**

#### **6-3.3.1 Residential Land Uses, Single Family.**

- a. Accessory Building. Accessory buildings may be used for any purpose other than human habitation.
- b. Location of Parking. All parking for the above use shall be a minimum of 30 feet from the street.

#### **6-3.3.2 Residential Land Use, Two-Family.**

- a. Maximum dwelling unit size. One of the two dwelling units shall have no more than two bedrooms.
- b. Accessory Buildings. Accessory buildings may be used for any purpose other than human habitation, provided that they conform to the following:
  - 1. Accessory buildings shall be located in rear and side yards only.
- c. Location of Parking. All parking for the above use shall be off the street and other than in the front yard.
- d. Septic System Approval. Drawings of existing septic systems must be submitted for approval by the health inspector.

#### **6-3.3.3 Business Land Use.**

- a. Storage. All storage shall be in an enclosed building or screened from abutters view.

#### **6-3.3.4 Motel and Hotel Land Use.**

- a. Storage. All storage shall be in an enclosed building or screened from abutter's view.

#### **6-3.3.5 Industrial Land Use, Class A.**

- a. Location of Parking and Loading. All parking for the above use shall be off street and other than in the front yard. Loading and unloading facilities shall be located on the side or rear of the building.
- b. Storage. All storage shall be in an enclosed building or screened from abutter's view and be in the rear or side yard.

#### **6-3.3.6 Industrial Land Use, Class B.**

- a. Accessory Buildings. Accessory buildings may be used for any purpose other than human habitation, provided that they conform to the following:
  - 1. Accessory buildings shall be located in rear or side yards only.
- b. Location of Parking and Loading. All parking for the above use shall be off street and other than in the front yard. Loading and unloading facilities shall be located on the side or rear of the building.

- c. Storage and Display. All storage and display shall be conducted in an enclosed building or screened from abutters.

#### **6-3.4 Special Permits.**

##### **6-3.4.1 Special Permit Granting Authority**

The Planning Board shall act as the Special Permit Granting Authority.

##### **6-3.4.2 Uses Requiring Special Permit.**

Upon approval of the planning board the following may be allowed:

- a. Airport.
- b. Recreational facilities for other than home use.
- c. Private schools.
- d. Public utility installations.
- e. Radio, Telecommunications, Cellular and Television Facilities, Including Free Standing Tower Type Structures (subject to the requirements as outlined below).
- f. Trucking terminals.
- g. Private hospitals.
- h. Nursing homes.
- i. Accessory activities permitted as a matter of right which are necessary in connection with scientific research or scientific development or related production, whether or not on the same parcel as activities already permitted as a matter of right.
- j. Conversion of an existing dwelling into three-family unit provided that:
  - 1. No dwelling shall be altered to accommodate more than one family for each ten thousand square feet of area of the lot.
  - 2. The planning board finds that such conversion would not be substantially more detrimental to the neighborhood than the existing use.
  - 3. Except for creation of additional exits if required by law, the structure is not substantially changed or enlarged.
  - 4. Parking as required in the Parking section of this chapter is provided on the lot and behind the setback line.
- k. Multi-family dwelling and/or apartment land use, subject to at least the following requirements which shall in no way limit the right of the special-permit granting authority to impose stricter requirements and/or other conditions to the full extent permitted by law:
  - 1. Dimensional Requirements (see Table of Dimensional Requirements).
  - 2. Storage. All storage shall be enclosed and in the rear.
  - 3. All proposed multi-family, conversions to three-family, and multi-family, and/or apartment land use be required to provide the board of health with a septic system plan to be approved before permits are given.
- l. Wind Energy Conversion Systems (WECS).

Installation of Wind Energy Conversion Systems (WECS) except units which are building mounted, but including temporary wind monitoring towers, shall be permitted subject to the following requirements and such other conditions as the Special Permit Granting Authority may impose under MGL Chapter 40A and this bylaw.

  - 1. Only towers not exceeding 150 feet in total tower height shall be allowed.
  - 2. WECS towers shall be set back a distance equal to 1.25 times the Total Tower Height from

- a. Any public road or private right of way
  - b. Any overhead utility lines, unless written permission is otherwise granted by the affected utility to reduce this requirement.
  - c. All front, side and rear property lines unless written permission is granted by abutters to reduce this requirement.
3. Density of units: When more than one WECS may be installed on a lot there shall be a minimum of one acre allotted for each unit.
4. Color: WECS units shall be painted a non-reflective color that blends with sky and clouds.
5. Noise and electromagnetic interference: The WECS and associated equipment shall conform with the provisions of the Massachusetts Department of Environmental Protection's Division of Air Quality and Noise Regulations (310 CMR 7.10) as measured to the nearest lot line unless said abutter(s) give written permission otherwise. The applicant shall provide certification at his/her expense that the system will not cause electromagnetic interference at the lot line unless said abutter(s) give written permission otherwise. After the installation, if neighbors can demonstrate that there is interference, the Building Inspector may order that the WECS be dismantled or modified to eliminate said interference.
6. Lighting: The WECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). A temporary light used to inspect a WECS and associated equipment is permissible provided said light is used only for inspection purposes and not in operation for an extended period of time.
7. Access: All ground mounted electrical and control equipment shall be secured to prevent unauthorized access, and the tower shall be designed and installed so as not to provide step bolts or ladders readily accessible to the public for a minimum height of eight (8) feet above the ground.
8. Signs: All signs, other than manufacturers or installers identification, warning signs or owner identification on a WECS tower, or other structure visible from any public road shall be prohibited. All signs shall comply with Section 6-5.10 of Town of Essex bylaws.
9. Equipment shelters: All equipment necessary for monitoring and operation of the WECS should be contained within the turbine tower. If this is not feasible, ancillary equipment may be located outside of the tower, provided it is contained either within an underground vault or enclosed within a separate structure which shall be screened from view by year-round landscape or vegetated buffer.
10. Abandonment: A WECS that is out of service for a continuous 12-month period will be deemed to have been abandoned and the Building Inspector may issue a Notice of Abandonment to the owner. The owner shall have the right to respond to the Notice of Abandonment within 30 days of the receipt of the Notice. The Building Inspector shall withdraw the Notice and notify the owner of same if the owner provides information the demonstrates that the WECS has not been abandoned.
11. Removal: If the WECS is determined to be abandoned, the owner shall remove the WECS equipment at the owner's sole expense within 90 days of the Notice of Abandonment. If the owner fails to remove the WECS the Building Inspector may pursue legal action to have the tower and equipment removed at the owner's expense.
12. Building Mounted Units: Any WECS unit mounted on a building, intended to generate power, is excluded from the provisions of 6-6.9(l) and may be granted a building permit if the following requirements are met:
  - a. The total height of the installed unit must not be more than 20% above the highest point of the building, and must keep in reasonable scale with the size of the building.
  - b. The color of the unit must blend with the building and the surroundings.
  - c. Noise and electromagnetic interference: The WECS and associated equipment shall conform with the provisions of the Massachusetts Department of Environmental Protection's Division of Air Quality and Noise Regulations (310 CMR 7.10) as measured to the nearest lot line unless said abutter(s) give written permission otherwise. The applicant shall provide certification at his/her expense that the system will not cause electromagnetic interference at the lot line unless said abutter(s) give written

permission otherwise. After the installation, if neighbors can demonstrate that there is interference, the Building Inspector may order that the WECS be dismantled or modified to eliminate said interference

- d. The WECS unit must be situated in a manner that minimizes shadow and flickering. The applicant has the burden of proving that this effect does not have an adverse impact on the neighboring or adjacent uses, through either site placement or mitigation.
- m. Medical Marijuana Treatment Center/Registered Marijuana Dispensary, subject to the following requirements:
  1. In addition to the Dimensional Requirements set forth in the Table of Dimensional Requirements, no portion of a Medical Marijuana Treatment Center/Registered Marijuana Dispensary shall be located (a) within 2500 feet of any school, pre-school, day care center, playground or athletic field or (b) within 1500 feet of any residential dwelling.

#### **6-3.4.3 Application Requirements.**

Applications for special permits shall be filed with the planning board, and a copy of such application shall be filed by the applicant with the town clerk.

#### **6-3.4.4 Time Limits.**

Construction or operations must commence within two years from the date that a special permit is issued. Included within the specified time period is the time required to pursue or await the determination of an appeal.

#### **6-3.4.5 Radio, Telecommunications, Cellular and Television Facilities, Including Free Standing Tower Type Structures.**

Installations of radio, telecommunications, cellular and television facilities, including free standing tower type structures, shall be permitted subject to the following requirements, and such other conditions as the special permit granting authority may impose under G.L.c.40A and this By-Law.

- a. Citizen band radio, VHF and short-wave (ham) radio towers for private use are excluded from the provisions of this section. Any change from such excluded use to a use not excluded by this section shall require a special permit.
- b. Only freestanding monopole towers (hereinafter referred to as "Towers") shall be allowed. No guyed Towers shall be permitted.
- c. No Tower shall be located closer than two (2) miles from any other Tower.
- d. No Tower shall exceed one hundred fifty (150) feet in height, as measured from the ground level at the base of the Tower, or ten (10) feet below the FAA height which requires permanent lighting, whichever height is lower.
- e. Towers shall be set back from the front, rear and side property lines a distance equal to at least one hundred twenty-five (125) percent of the height of the Tower.
- f. Towers shall be set back at least one hundred fifty (150) feet from the boundary of all wetlands, water bodies or areas designated under "Wetlands District Delineation" of this chapter.
- g. All Towers shall be located a minimum of five hundred (500) feet from the nearest residential structure. This paragraph shall not apply to radio, telecommunications, cellular, PCS and television facilities, located inside an existing structure.
- h. Accessory buildings shall be set back from the front, rear and side property lines a minimum of fifty (50) feet. Accessory buildings shall be of a common design and color. A maximum of ten (10) accessory buildings, each limited to four hundred (400) square feet in area and a maximum of ten (10) feet in height may be permitted per Tower. Multiple buildings shall be connected by a common wall.
- i. Lighting shall be limited to that needed for maintenance and emergencies.

- j. Where feasible, Towers shall be located within established wooded areas, with a minimum radius of at least one hundred fifty (150) feet measured from the base of the Tower to the edge of the woods. This paragraph shall not apply to radio, telecommunications, cellular, PCS and television facilities, located inside an existing structure.
- k. All Towers and accessory buildings shall be removed by the record owner of the real property upon which it is located, within ninety (90) days of the abandonment or discontinuance of the specially permitted use.
- l. Each provision of this section shall be constructed so that if any provision is held invalid for any reason, the remaining sections shall continue in full force and effect.

### **6-3.5 Site Plan Review**

#### **6-3.5.1 Purpose.**

The site plan review bylaw regulates the development of structures and sites permissible under present zoning. The review process considers the following site specific concerns and where necessary requires modification of development proposals to eliminate or minimize potential problems and nuisances. The principal areas of concern are:

- a. The convenience and safety of vehicular and pedestrian movement within the site adjacent areas and roads.
- b. The protection of historic and natural environmental features on the site under review, and in the adjacent areas.
- c. To ensure the placement and aesthetics of the proposed development is safe, healthy, and in keeping with the community and neighborhood character so as to avoid substantial detriment to the community and neighborhood.

#### **6-3.5.2 Projects Requiring Site Plan Review.**

No building permit for the new construction, reconstruction, or relocation of any building with a ground floor footprint of greater than or equal to 2,500 square feet, or any change of use for any building or site, shall be given except in conformity with a site plan approval by the Planning Board. Required approval includes proposals for commercial, industrial, office, multifamily dwelling, residential development, municipal, utility, and recreational purposes.

#### **6-3.5.3 Criteria.**

- a. Traffic: Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.
- b. Parking: Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic control, including any provisions for delivery, pick-up, and location of trash receptacle.
- c. Drainage Control: Adequacy of methods for surface waters and ground water control. This includes minimizing soil erosion both during and after construction. The applicant shall prove that the proposed project meets the minimum standards for state storm water management as specified in the most current edition of the Storm water Management Policy Handbook.
- d. Existing Vegetation: Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees and undergrowth.
- e. Amenities: The applicant's efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.
- f. Town Character: The (building setbacks) area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding townscape, neighborhood, and the natural landscape, as far as practicable by minimizing any grade changes and vegetation and soil removal.

- g. Screening: Screening consisting of a solid fence, wall or evergreen planting, in all cases not less than six (6) feet in height or as specified by the Planning Board, shall be provided, erected and maintained wherever feasible to shield the business and light and industrial uses for any residential property.
- h. Hazardous Material: Plans for use, storage, or disposal of any hazardous materials as defined by MEP.
- i. Site and or project-specific criteria may be considered in addition to the items above.

#### **6-4 Non-Conforming Uses.**

##### **6-4.1 Conforming Use.**

No building or structure shall be erected, altered, enlarged, moved or used, and no land shall be used except in conformity to the provisions of this chapter. The provisions of this chapter shall apply equally to all uses of land and to all buildings and structures.

##### **6-4.2 Existing Non-Conforming Uses.**

Any building or structure or use of a building, structure, a building with its adjuncts, or premises existing on or immediately previous to June 7, 1972, even if not in conformity with its provisions, may be continued, maintained, and rebuilt if damaged or destroyed, provided that such rebuilding takes place within two years of such damage or destruction. If authorized by the planning board said structure or uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the planning board that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Extension of the time limit for rebuilding as herein provided may be granted upon proper application to the planning board where in the opinion of the board a delay in the reconstruction is caused by circumstances beyond the control of the owner.

A nonconforming use shall be deemed to be extended throughout any part of a building which were manifestly arranged or designed for such use on June 7, 1972, but no such use shall be extended to occupy any land outside such building without a permit from the planning board.

##### **6-4.3 Preexisting Non-Conforming Uses.**

Any preexisting nonconforming use may be continued, maintained, and rebuilt if damaged or destroyed provided that such rebuilding takes place within two years of such damage or destruction. If authorized by the Planning Board said structure or uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the Planning Board that the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Alteration, reconstruction, extension or structural change to a single family or two-family residential structure which doesn't increase the nonconforming nature of said structure shall be permitted as a matter of right and not subject to said finding by the Planning Board. A preexisting nonconforming use shall be deemed to be extended throughout any part of a building which was manifestly arranged or designed for such use at the time said use was rendered nonconforming by changes in ordinances or bylaws. Extension of the time limit for rebuilding as herein provided may be granted upon prior application to the Planning Board where in the opinion of the board a delay in the reconstruction is caused by circumstances beyond the control of the owner.

##### **6-4.4 Abandonment.**

A nonconforming use which has been abandoned or discontinued for a period of two consecutive years shall not be re-established, and any future use shall conform with all applicable provisions of this zoning bylaw, except in the case of land used for agriculture.

## **6-5 Supplementary Provisions.**

### **6-5.1 Relationship of Building to Lot.**

Every building erected after June 7, 1972 shall be located on a lot as defined in subsection 6-3.23, and so located on the lot to provide safe and convenient access for fire protection and required off-street parking.

### **6-5.2 Prohibited Use of Open Space.**

No part of a yard or open space required about any building according to this chapter shall be included as a part of the yard or open space required for any other building.

### **6-5.3 Supplementary Height Provision.**

The provisions of this chapter governing the height of buildings shall not apply to chimneys, cooling towers, elevator bulkheads, skylights, ventilators, and other necessary appurtenances carried above the roofs, nor stacks or spires if not used for human occupancy and not more than 25 percent of the ground floor area of the building, nor to observation towers, wind energy conversion systems WECS, television and radio towers and antennae, nor to churches or public or institutional buildings.

### **6-5.4 Visibility at Intersections.**

On a corner lot no obstruction shall be erected, placed, planted or allowed to grow at or near an intersection of two streets or ways in such a manner as to materially impede the vision of those using the ways.

### **6-5.5 Erection of More than One Principle Structure on a Lot.**

More than one structure which is housing a permitted or permissible use may be erected on a single lot provided that the yard and lot requirements of this chapter be met. Notwithstanding the preceding, a second structure which is a single family residential use may be erected on a single residential lot of at least 70,000 square feet in area which lot has had a residential structure in use for at least five years from the time of issuance of a permanent Certificate of Occupancy, and a third residential structure may be erected on a single lot of at least 110,000 square feet in area on a lot which has had two residential structures in use for at least five years from the time of issuance of a permanent Certificate of Occupancy, provided that they house in aggregate no more than three dwelling units, that lot area equal to that required for a single structure could be allotted to each structure, and that the dimensional requirement of Section 6-3.2 of this by-law be met. Each building must have access either jointly or separately by means of a driveway which is entirely within the lots that it serves. Any driveway must conform to the requirements of Section 6-6.3 and shall not be within 10 feet of a side or rear lot line, nor pass within 20 feet of a residential structure that such driveway does not serve.

### **6-5.6 Screening of Open Uses.**

An area outside of a completely enclosed building which is occupied by the following uses shall be completely screened, except for access, by means of a sightly fence, or densely planted screen of evergreen shrubs or trees at least six feet in height.

- a. Storage yards, where such occupancy is located within 50 feet of any residential property
- b. Vehicle and machinery storage yards.

### **6-5.7 Fencing of Swimming Pools Required.**

- a. Any person owning land in the Town on which there is situated a swimming pool, in-ground or above-ground, shall erect and maintain thereon an adequate enclosure either surrounding the property or pool area, sufficient to make the pool inaccessible to small children. Any such enclosure, including gates therein, must be not less than four (4) feet above the underlying ground. All gates must be self-latching with latches placed at least four (4) feet above the underlying ground or otherwise made inaccessible from the outside to small children. Any such enclosure shall be located at least a distance of five (5) feet away from the pool. Fences located on above-ground pool decks shall not be considered as meeting the requirements of this section unless specifically approved by the inspector of buildings. Above-ground pools with a wall height of five (5) feet or more will be exempt from the fencing requirement, but a gate must be placed around the access to any such pool.

- b. Any and all doors opening directly into the enclosed pool area from the living area of the dwelling shall be equipped with an audible alarm which will sound for at least ten seconds when the door and/or screen door is opened.
- c. This section shall apply retroactively to all in-ground and above-ground pools within the Town. Pre-existing, lawfully installed pools may be exempt from the above requirements if enclosures are provided which offer the same degree of protection as above and are acceptable to the inspector of buildings.

#### **6-5.8 Unregistered and Inoperative Motor Vehicles, Junk Yards.**

- a. There shall be no unregistered or inoperative motor vehicles permitted in a front yard.
- b. No more than two operative unregistered motor vehicles shall be permitted in a back yard or side yard.
- c. No inoperative cars shall be allowed unless they are in an enclosed building or screened from public view.
- d. Junk yards, as defined in subsection 6-2.2 shall not be permitted in the town.

#### **6-5.9 Trailers.**

- a. No trailer shall be placed, moved, erected, or allowed to remain upon a lot for more than three months.
- b. The Board of Selectmen for cause may grant a license for a trailer for more than three months, but not to exceed one year.

#### **6-5.10 Influence of Vacant Lots on Adjoining Lots.**

Where dimensional or other requirements for a use of a lot are influenced by the land use on adjoining lots, any adjoining lot not occupied by a use specified in subsection 6-3.2 of this chapter shall assume the character of the lot being influenced for purposes of determining the aforementioned requirements.

#### **6-5.11 Home Occupations**

Home occupations shall be allowed only if meeting all of the following:

- a. Not more than two persons who do not reside in the dwelling unit shall be engaged in such occupation.
- b. There shall be no change in the outside appearance of the building or premises, except as provided by paragraph d below, or other visible conduct of such home occupation other than one sign as permitted accessory use.
- c. No traffic shall be generated by such home occupation in greater volumes than would be normally expected in the immediate neighborhood. The determination of such a situation shall be decided by the enforcement officer, and any need for parking generated by conduct of such occupation shall be met off the street and other than in a front yard.
- d. All home businesses and occupations conducted on residential property including storage and display shall be conducted in an enclosed building, except for the display and sale of shellfish, garden or poultry produce, or small homemade handcrafted items.
- e. Not more than two (2) vehicles requiring registration as taxis, buses, or commercial vehicles shall be regularly parked outdoors on the premises.
- f. No commercial vehicle with registered gross weights in excess of 17,000 lbs. shall be regularly parked outdoors on the premises.
- g. No more than three parking spaces, in addition to those required for residential use are allowed for the home occupation.
- h. No equipment or process shall be used which creates offensive light, noise, vibration, smoke, dust, odors, fumes, heat or glare detectable to the normal senses off the premises.
- i. No equipment or process shall be used which creates interference in household devices off the premises.



## **6-6 Off-Street Parking and Loading**

### **6-6.1 Off-Street Parking Requirements**

Off-street parking by means of open air spaces each having an area not less than 200 square feet, plus necessary maneuvering space, or by garage space, shall be provided and maintained in accordance with the following table;

#### **6-6.1.1 Table of Parking Requirements.**

Type of Use	Minimum Parking Requirement
RESIDENTIAL STRUCTURES	Two parking spaces for each dwelling unit.
MULTI-FAMILY DWELLING AND OR APARTMENT USE	One and one half parking spaces for each bedroom.
MOTELS AND HOTELS	One parking space for each sleeping unit.
BOARDING AND LODGING HOUSES	One parking space for each two guestroom.
HOSPITALS, NURSING HOMES	One parking space for each 500 square feet or major fraction thereof of floor area, exclusive of cellar.
AUDITORIUMS, THEATERS, ASSEMBLY HALLS, FUNERAL HOMES, CHURCHES.	One parking space for each 100 square feet of assembly space.
FRATERNITIES, PRIVATE CLUBS AND LODGES	One parking space for each five members.
RETAIL STORE	One parking space for each 150 square feet, or major fraction thereof of first floor retail space; and one parking space for each 400 square feet of retail space or major fraction thereof for each floor above the first floor.
RESTAURANTS	One parking space for each 100 square feet or major fraction thereof of floor area not used for storage or food preparation.
OFFICES, PROFESSIONAL AND PUBLIC BUILDINGS	One parking space for each 300 square feet or major fraction thereof of floor area, exclusive of cellar.
BUSINESS, MANUFACTURING AND INDUSTRIAL BUILDINGS NOT CATERING TO RETAIL TRADE	One parking space for each 500 square feet of floor area or major fraction thereof

### **6-6.2 Parking Lots**

When a required off-street parking space is in the form of a parking lot or other open air parking space, it shall not be located within five feet of any lot line or, if located within a front yard, within thirty feet of the street line.

Any such parking shall be located not more than 200 feet from the building to which it is assigned.

### **6-6.3 Driveways.**

- a. No person shall hot top or construct a driveway or entrance from the traveled portion or from the curb of any public street or way for purpose of passing to or from abutting property, nor cut any curbing with out applying for and receiving a permit from the Department of Public Works, under conditions and restrictions the D.P.W commissioner deem proper.
- b. Common Driveways. Access driveways may be shared by no more than three lots with approved frontage on a public way. No building permits will be issued unless the following has been complied with:
  1. Curb cut approval has been obtained in accordance with a. above.

2. A common driveway shall lie entirely within the lots to which it provides access, and shall comply with the minimum standards stated in c. below.
3. No building permit shall be issued for any lot with access by a common driveway until an easement running with the land in perpetuity providing for maintenance and snow removal is executed by the owner(s) of the lots sharing the driveway, recorded at the Registry of Deeds, and evidence thereof is submitted to the Building inspector.
4. Common driveways may never be used to satisfy zoning frontage requirements.
5. Permanent signs shall be installed indicating the assigned street address of all lots. Street signs shall be placed within 10 feet of the intersections with the public way and individual driveways served by the driveway.

c. Minimum driveway standards for new driveways.

1. Driveway access to the dwelling or other building site shall be indicated on the plans submitted to the building inspector at the time of building permit application.
2. Such a driveway shall provide access for vehicles including moving vans, ambulance, fire and police vehicles and shall have:
  - A. Width of at least 12 feet, but shall be cleared to a width of at least 14 feet, applicable to the portion used by more than one lot.
  - B. Maximum grade of 10 percent.
  - C. Adequate clearing at the intersection of the public way to provide a minimum of 30 foot sight lines.
  - D. Shall be cleared to maintain 14 feet vertical clearance.

## **6-7 Signs**

### **6-7 SIGNS**

The purpose of this bylaw is to provide for a wide range of signage by right; to encourage safe, effective, informative signage; to protect property values, and to minimize the visual impact of signage.

#### **6-7.1 APPLICATION**

A. For purposes of this bylaw, the term "SIGN" shall mean any two or three dimensional fabrication, or assembly, including its supporting structure, consisting of any letter, figure, character, symbol, emblem, mark, design, pictorial representation, stripe, line, trademark, reading matter or illuminating device, constructed, attached, erected, fastened, or manufactured in any manner whatsoever so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, business, public performance, article, machine or merchandise whatsoever, and displayed in any manner for recognized identification or advertising purposes.

B. All permanent signs shall require a building permit and shall comply with the Massachusetts State Building Code, as amended.

C. Any sign, permanent or temporary, to be placed on the property of another, including signs on Town or State-owned property, will require the prior written approval of the property owner or the owner's representative in control thereof.

D. Signs associated with properties requiring special permit or site plan review approval shall also require approval by the Planning Board.

E. Exemptions:

1. Flags and temporary signs for any non-commercial purpose, including but not limited to political or charitable purposes, for public organizations, for states and political subdivisions thereof, and international and national flags are exempt from all provisions of this bylaw, except sections 6-7.4 (Public Safety Provisions) and 6-7.5 (Maintenance of Signs).
2. Signs displaying the street number and name or names of the occupants of the premises, not exceeding two (2) square feet in area.
3. Traffic and directional signs owned and installed by a government agency.

#### **6-7.2 REGULATION OF PERMANENT SIGNS:**

##### **A. AREA OF SIGN:**

1. The area, including all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, the frame around the sign, and any "cut outs" or extensions, but not including any supporting structure or bracing. Calculation of sign areas shall use the following formulae:

- a. For two-dimensional signs affixed to or fabricated from a mounting background or signboard: the area shall consist of the smallest rectangular plane that wholly contains the sign.
- b. For two-dimensional signs consisting of individual letters or symbols affixed directly to the building wall, window, or awning: the area shall consist of the smallest area enclosed by a series of straight lines connected at right angles which encompasses all of the letters and symbols.
- c. For two-dimensional double-faced signs less than four (4) inches thick: use the area of one face.
- d. For three-dimensional signs, double-faced signs greater than four (4) inches thick, objects used as signs, and "V" shaped signs: the area shall be determined by the largest of either the front or side projected view of the sign.

##### **B. ILLUMINATION:**

The act of supplying or brightening a sign with light. Lighted signs shall be illuminated only by a steady, stationary light without causing harmful glare for motorists, pedestrians or neighboring premises and/or internal lighting; but all flashing, changing, or intermittent illumination is prohibited, except for time/temperature signs, public safety signs and holiday decorations.

##### **C. LINEAL FRONTAGE:**

The length in feet of a building or storefront which abuts a street or public right-of-way at its first floor or entrance level.

##### **D. PERMANENT SIGNS SHALL BE DIVIDED INTO THE FOLLOWING CATEGORIES:**

1. Awning Sign: Any sign painted, sewn or attached onto an awning. The area of an awning sign(s) shall not exceed one-half (1 / 2) square foot per foot of lineal frontage of the storefront or building upon which the awning is attached. Awnings shall conform to the Massachusetts State Building Code.

2. Banner Sign: Any sign constructed of fabric or flexible material and intended for permanent attachment to a structure. Banner signs may also be used as temporary signs as set forth in section 6-7.7. A permanent banner sign shall not exceed fifteen (15) square feet in area.
3. Directory Sign: Any sign which contains listings of two or more commercial uses or users and/or the name and address of a commercial or residential development. A directory sign shall be designed and constructed with provisions for changes of listing without reconstruction of the entire sign. Maximum area for header area shall not exceed twelve (12) square feet. Listings shall not be larger than eight (8) inches by thirty (30) inches.
4. Free-standing Sign: Any sign structurally separate from the building, being supported on itself, on a standard, or on legs. Free-standing signs shall be non-moveable and permanently anchored.
5. Hanging Sign: Any sign other than a wall sign that is attached to and projects from the wall or face of a building or structure, including an arcade or marquee sign.
6. Wall Sign: Any sign painted on or affixed to a building wall is a wall sign. Wall signs consist of two basic categories:
  - a. Directly applied: painted or three-dimensional letters applied directly to a building surface.
  - b. Independent Wall Sign: painted, incised or three-dimensional letters affixed to a sign board which is then attached to a building surface.
7. Window sign: Any permanent sign affixed to the surface of the glass of any part of any building (See also Poster-type sign). Window sign(s) shall not occupy, in total, more than fifty percent (50%) of the glass area and may not be attached to the exterior surface of the glass. Any interior sign which is within three (3) feet of the window glass and which is visible from the outside of the building shall be considered a window sign even though it may not be affixed directly to the glass. Window displays of actual products or merchandise for sale or rent on the business premises shall not be considered window signs.

#### 6-7.3 BILLBOARDS.

- A. A Billboard is any permanent sign which advertises or otherwise directs attention to a product, service, activity, event, institution, or other business which occurs or is generally conducted, sold, manufactured, produced or offered elsewhere than on the premises where such sign is located.
- B. Billboards shall not be permitted in the town of Essex.

#### 6-7.4 PUBLIC SAFETY PROVISIONS.

- A. In the interest of public safety, the following signs and devices are not permitted:
  1. Signs with moving parts or flashing lights which suggest motion.
  2. Flashing illuminated signs.
  3. Noisemaking signs.
  4. Signs so located or colored or illuminated in any manner to attract attention from or obscure a traffic light or sign or to reduce in anyway its visibility and effect.
  5. Signs within view of a public street or highway so placed in such manner as to obstruct clear vision in any direction.
  6. Any device illuminating a sign which directs light toward a public way in such a manner as to cast its beams into the eyes of the oncoming motorist or pedestrians.
  7. Signs shall not project above the roof or front parapet of a building.
  8. All signs shall comply with all public safety requirements imposed by the Board of Public Works, public utilities, and/or the police and fire departments.

#### 6-7.5 MAINTENANCE OF SIGNS.

All signs must be kept clean, neatly painted and free from all hazards, such as, but not limited to, faulty wiring and loose fastenings, and must be maintained at all times in such safe conditions so as not to be detrimental to the public health or safety; or constitute a distraction or obstruction that may contribute to traffic accidents

#### 6-7.6 MEASUREMENT.

- A. Area limitations refer to the total sign area associated with each lot.  
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- B. In computing area only one side of a double-faced sign is to be included. Signs within a building are not included.
- C. Signs shall comply with the following dimensional requirements for each land use:  
Type of Use Sign Dimensions:
  1. Residential (1 to 2 family): One (1) sign not exceeding six (6) square feet in area.

2. Residential (multi-family/apartment): One (1) sign not exceeding six (6) square feet in area per dwelling unit and one directory sign for the development not to exceed twenty (20) square feet in area.
3. Non-residential (single use): Maximum permanent sign total area of thirty-two (32) square feet.
4. Non-residential (multiple uses on a common lot): shall be limited to twenty (20) square feet total area per individual use, not including a directory sign area.

D. Internally illuminated signs shall not be permitted.

E. Signs required for public safety shall not be included in the total sign area.

#### 6-7.7 REGULATION OF TEMPORARY SIGNS:

A. A sign which is intended for a limited period of display. A temporary sign may be erected for a period not to exceed thirty (30) days in a calendar year, unless a more specific time frame is set forth below.

B. A temporary sign that does not meet the criteria in Section 6-7-7 shall be subject to the same requirements as for permanent signs.

C. All temporary signs shall comply with the provisions of Sections 6-7.4 (Public Safety Provisions) and 6-7.5 (Maintenance of Signs) of this bylaw.

D. Temporary signs shall not be counted toward the maximum sign areas allowed for permanent signs.

E. Poster-type signs, construction signs, real estate signs and banner signs are considered temporary signs provided they meet the following criteria:

1. Poster-type sign:

- a. May not occupy more than 50 percent (50%) of the window area and may not be attached to the exterior surface of the window. Any interior sign which is within three (3) feet of the window glass and which is visible from the outside of the building shall be considered a window sign even though it may not be affixed directly to the glass. Window displays of actual or sample products or merchandise offered for sale or rent on the business premises shall not be considered window/poster signs.
- b. Shall be related to use conducted or goods available on the premises.
- c. May not be used for more than twenty-one (21) consecutive calendar days.

2. Construction sign:

- a. Identifies parties involved in construction on the same premises only
- b. Shall not be utilized for more than one (1) year, or for the duration of work on the lot, whichever is longer
- c. Shall be removed promptly by contractor within fourteen (14) calendar days of the completion of work.

3. Real Estate sign:

- a. Shall be related to sale, rental, or lease of same lot;
- b. Shall be removed within fourteen (14) calendar days after sale, rental, or lease.

4. Banner sign:

- a. Shall be considered a temporary sign provided it meets the following criteria:
  - i. A banner sign intended to advertise a business establishment prior to permanent signing.
  - ii. To be erected without a building permit for a maximum of thirty (30) days in a calendar year.
  - iii. Shall comply with the dimensional requirements of 6-7.6.
  - iv. Shall be attached to the building.
- b. A banner sign intended to advertise a special event:
  - i. Shall be no greater than seventy-five (75) square feet in area.
  - ii. May be erected without a building permit for a maximum of sixty (60) days in a calendar year, and
  - iii. Shall be removed within seven (7) calendar days after the event is over.

5. Sandwich board sign:

- a. A sign structurally separate from a building and being supported on itself, usually on legs; a sandwich board sign shall be moveable and without permanent anchoring. Said sign shall have no more than six (6) square feet in area on each side of a two-dimensional double-faced sign, shall be constructed of materials intended for outdoor use and shall not impair visibility or ability to use any public way or public area, and must be removed every day.
- b. Sandwich Board signs may be left in place for a maximum of thirty (30) days in a calendar year without a building permit.

6. Flags:

- a. An advertising device constructed of fabric or flexible material intended to wave in the wind.

- b. A total of three (3) flags will be permitted including one (1) "OPEN" flag and up to two (2) additional targeted message flags.
- c. Total square area shall not exceed thirty (30) square feet and shall comply with the provisions of 6-7.4 and 6-7.5.
- d. All flags shall be removed at the end of each business day.

## **6-8 Administration.**

### **6-8.1 Enforcement.**

The zoning bylaws shall be enforced by the Building Inspector.

### **6-8.2 Building Permit.**

#### **6-8.2.1. Requirements.**

No building or structure shall be erected, added to, moved, or structurally altered without a permit in writing from the building inspector. No building permit shall be issued until the planning board shall have approved the site plans showing the buildings to be placed thereon and the proposed use there for, except in the case of a variance from the terms of this chapter by the board of appeals in accordance with the provisions of Chapter 40A, Massachusetts General Laws.

#### **6-8.2.2. Application for Building Permit.**

All applications for building permits shall be accompanied by two copies of a site plan drawn to a suitable scale and containing the following information:

1. Names and address of owner and applicant.
2. Date.
3. Graphic scale and north arrow.
4. The actual shape, size, height, and location of the lot to be built upon and its relation to abutting streets.
5. The actual shape, size, height, and location of any buildings to be erected, altered or removed.
6. The exact size and location of yard and buildings already existing.
7. Required off street parking and loading space, existing or proposed.
8. Location of any screening required by this chapter.
9. Every application shall be signed by the owner or lessee of the land.
10. Any other information which may be required by the planning board or the building inspector in order that they may determine whether the provisions of this chapter are being complied with.

### **6-8.3 Certificate of Occupancy.**

#### **6-8.3.1 Requirements.**

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof created, erected, enlarged, converted, or wholly or partly altered or enlarged in its use or structure after June 7, 1972 until a certificate of occupancy shall have been issued by the Building Inspector and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this chapter.

#### **6-8.3.2 Temporary Certificate of Occupancy.**

Proper endorsement by the building inspector upon the original building permit may constitute a temporary certificate of occupancy for a period of six months during construction or alterations for partial occupancy of a

building pending its completion provided that such endorsement may require such conditions and safeguards as will protect the safety of the occupants and the public.

#### **6-8.4 Records.**

The Building Inspector shall maintain a public record of all such plans, permits and certificates of occupancy, and shall furnish copies of such permits and certificates to any person having a proprietary of tenancy interest in any building or premises affected. The planning board shall maintain and keep an up-to-date map and other records indicating the location in which plans have been approved in accordance with the provisions of this chapter and variances granted by the board of appeals in accordance with the provisions of this chapter.

#### **6-8.5 Time Period.**

Construction or operation must commence within six months after a building permit is issued. If construction or operations has not begun within the time period required or if construction is not continuing towards completion in as continuous and expeditious a manner as is reasonable, after the required time period the construction or operations must conform to any amendment to the ordinances or bylaws.

#### **6-8.6 Violations.**

If the Building Inspector is of the opinion that this chapter is being violated, he shall take immediate action to enforce its provisions by such means as he deems appropriate.

#### **6-8.7 Penalty.**

**Any person who shall violate any provision of this chapter shall be subject to a fine not to exceed \$20.00 for each day such violation exists.**

### **6-9 Board of Appeals.**

#### **6-9.1 Membership.**

The Board of Appeals shall consist of three members and two alternates who shall be appointed by the board of selectmen as provided in Chapter 40A of Mass. General Laws. Each member and each alternate shall have been a resident of the town for at least five consecutive years prior to his/her appointment.

Appeals Board members and alternates shall be appointed prior to February 1 of each year.

The term of office for members shall be three years. A member may be appointed to succeed himself, but may serve no more than two consecutive terms. A partial term shall not be counted as a term.

The term of office for alternates shall be two years. Alternates may be appointed to succeed himself without limit. An alternate term shall not be counted as a member term.

#### **6-9.2 Organization.**

The board shall annually elect a chairman and vice-chairman from its membership. The chairman shall preside at all meetings. The board shall appoint a secretary and shall adopt rules to govern its proceedings in accordance with this chapter and the provisions of Chapter 40A of the General Laws.

#### **6-9.3 Powers and Duties.**

The board of appeals shall have the following powers and duties;

##### **6-9.3.1 Administrative Review.**

To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the planning board or the building inspector or other administrative official in violation of the provisions of this chapter or of the provisions of Chapter 40A of the Massachusetts General Laws.

##### **6-9.3.2 Variances.**

To authorize upon appeal in specific cases a variance from the provisions of this chapter. Such variance may be granted only in accordance with the provisions of Chapter 40A, Section 15, Massachusetts General Laws, after

application, notice and hearing as required by state statute. In granting a variance the board shall make findings that the reasons set forth in the application therefore comply with the statute permitting variance.

In granting by unanimous vote any variance, the board of appeals may prescribe appropriate conditions and safeguards in conformity with the provisions of this chapter regarding the location, character, fencing, screening, landscaping or other features as it may deem advisable in furtherance of the intent and purpose of this chapter and may require posting of bonds to insure performance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

#### **6-9.4 Authority of the Board of Appeals.**

The board of appeals may in conformity with the provisions of Chapter 40A of the General Laws, reverse or affirm, in whole or in part, or may modify any orders or decisions of any town officer and may make sure order or decision as ought to be made, and to that end, shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

#### **6-9.5 Appeal Procedure.**

In all cases, a person aggrieved by any decision of the planning board or the building inspector shall commence his appeal within 30 days after receipt of a written decision of the planning board or building inspector. He shall file his appeal on the forms prescribed therefore by the board of appeal, and shall specifically set forth his grounds for appeal in the application.

#### **6-9.6 Public Hearing and Fees.**

##### **6-9.6.1 Hearing.**

Before taking action on an appeal, the board of appeals shall hold a public hearing, after publication of notice of such hearing once in each of the two successive weeks, the last publication to be at least 14 days prior to the date of hearing in a newspaper of local circulation.

##### **6-9.6.2 Costs.**

All costs incurred by the board of appeals shall be paid by the applicant prior to issuing a decision; the board of appeals shall notify by mail the owners of all abutting property and of other property considered by the board to be reasonably affected, of the nature of the appeal and of the time and place of the hearing thereon.

#### **6-9.7 Failure to Notify shall not Invalidate Action.**

Failure of any property owners to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the board of appeals, except in cases of manifest error, negligence or fraud. For the purposes of this section, the owners of property shall be considered to be parties listed by the assessors of taxes for the town as those against whom taxes are assessed.

#### **6-9.8 Notification of Enforcing Officer and Planning Board.**

Following the filing of an appeal, the board of appeals shall forthwith notify the building inspector and the planning board, and the appeal shall be in order for hearing at the next meeting of the board of appeals following by at least 21 days the mailing of notices. The planning board, if it deems necessary, may be represented at the hearing.

#### **6-9.9 Repeated Applications for Variance.**

If the board of appeals shall deny an application for variance, reconsideration thereof may be had in accordance with the provisions of Chapter 40A, Section 16, Massachusetts General Laws.

#### **6-9.10 Notification of Variance.**

The board of appeals shall give the planning board, the board of selectmen and the building inspector written notice of its action with respect to all application for variance.



## **6-10 OVERLAY DISTRICTS**

### **6-10.1 Wetlands Overlay District.**

#### **6-10.1.1 Purpose.**

The purpose of the wetlands district is to:

- a. Protect the public health and safety of persons and property against the hazards of flood water inundation.
- b. Preserve and maintain the water table and water recharge areas within the town so as to preserve and protect potential water supplies for the public health and safety.
- c. Protect the community from costs which may be incurred when unsuitable development occurs in swamps, marshes, along water courses, or in areas subject to floods.
- d. Conserve natural conditions, wildlife and open spaces for education, recreation and general welfare of the public.

#### **6-10.1.2 Wetlands District Delineation.**

- a. The provisions applicable to the wetland district shall overlay other zoning districts. Any uses permitted in the portions of the district so overlaid shall be permitted, subject to all the provisions of this section.
- b. The boundaries of each wetland district are shown on the set of maps accompanying this bylaw prepared by the Autometrics Division of the Raytheon Corp., Wayland, Massachusetts, dated April, 1974(scale: one inch equals 600 feet) which are on file with the clerk of the town of Essex.
- c. The variance categories of wetlands comprising wetland districts are, lake, pond, river, fresh marsh, deep fresh marsh, shrub swamp, wooded swamp, barrier beach, tidal flat, salt marsh and estuary.

#### **6-10.1.3 Wetland Use Regulations.**

- a. Permitted Uses. The following uses are exempt from provisions of this by-law, and the only ones permitted as a matter of right and only insofar as not otherwise prohibited by other zoning bylaws and only insofar as these uses comply with provisions under Massachusetts General Law, Chapter 131, Section 40, and Title 5 of the Commonwealth of Massachusetts Sanitary Code.
  1. Conservation area for water, water supply, plants and wildlife and dams and management shelters necessary for achieving this purpose.
  2. Outdoor recreation including play and sporting areas, nature study, boating, fishing and hunting (where legally permitted), footpaths and any non-commercial recreational use.
  3. Forestry, raising of livestock, agriculture, aquiculture, nurseries, truck gardening, growing and harvesting of crops, fish and shellfish.
  4. Maintenance and repair of existing structures, roadways and utilities.
  5. Temporary non-residential structures used in connection with fishing or growing, harvesting, storage or sale of crops, fish and shellfish, raised on the premises.
  6. Accessory uses such as flower and vegetable gardens, lawn, fences, flagpoles and non-commercial signs when and as permitted in the underlying district.
  7. Dams, excavations, dredging, filling, or grading consistent with the purposes of this section to create or maintain ponds, pools, or other changes in water courses for swimming, fishing or other recreation uses, agricultural uses, aquiculture uses, scenic feature, or drain improvement, not otherwise prohibited.
  8. Duck blinds, private boathouses and landings.
  9. All existing non-commercial uses of land prior to the adoption of this bylaw and within the jurisdiction of this bylaw may remain. be maintained, sold, and operated to its fullest capacity by the owner provided that no action is taken to encroach further on the wetlands.

10. Dredging required to maintain existing marine operations, not otherwise prohibited.
11. Dredging, enlarging or draining for mosquito or flood control authorized by public agency.
- b. Restrictions. Except as provided under this chapter, none of the following shall be permitted in a wetland district:
  1. Land fill or dumping.
  2. Construction of buildings or other structures.
  3. Dredging.
  4. Permanent storage of materials or equipment.

#### **6-10.1.4 Coverage.**

All provisions of the wetland district bylaw shall apply to land within the bank or boundary of any stream, river, water course or any wetland shown on the wetlands map of the Town of Essex.

#### **6-10.1.5 Appeals and Special Permits.**

- a. If there is a question as to the applicability or coverage of the wetland protection district and it is proven to the satisfaction of the Planning Board that the land is not generally wet or not unsuitable because of the hydrological topographic conditions for use which would otherwise be prohibited by this section and the planning board determines that the use of such land for such use will not interfere with the general purposes for which the district has been established and will not be detrimental to the public health, safety and/or welfare, the planning board may grant a special permit for such use which will comply in all respects with all other provisions of the underlying district or districts within which the land is located provided that any and all necessary permits, orders or approvals required by local, state or federal laws are obtained.
- b. Appeals on variances will be handled according to procedures setout in this chapter.
- c. The board of appeals and planning board prior to acting on any appeals or special permits covering the wetland district shall refer each question to the conservation commission, and the board of health and shall not act until these agencies have reported their recommendation or 35 days have elapsed after such referral and no report has been received, whichever shall first occur.
- d. The planning board or board of appeals in determining whether or not land within the boundaries of the wetland district is generally wet should use the following criteria:
  1. LAKES. Lakes are generally separated from ponds on the basis of size and vegetation. They have depth and area sufficient for developing wave action and thereby lack emergent and floating vegetation.
  2. PONDS. Ponds are relatively small shallow bodies of standing water in which relatively quiet water and extensive plant occupancy are common characteristics.
  3. RIVERS. Rivers are categorized in the "lotic" or running waters environment and differ from lakes in many ways, but primarily in terms of width, depth and singular direction of water flow.
  4. DEEP FRESH MARSH. This type has considerable open water interspersed with patches of floating or emergent vegetation. Water depth ranges from six inches to three feet through most of the growing season. It is too wet to support woody vegetation.
  5. FRESH MARSH. A place where the soil is usually waterlogged or covered up to six inches in depth during the growing season and characterized by emergent vegetation such as reeds, rushes, and cattails. There is usually little open water or woody vegetation present.
  6. SHRUB SWAMP. This type has variable water depths up to six inches during the growing season, and is characterized by such woody species as alder, buttonbush, dogwood and willows.
  7. WOODED SWAMP. This type has variable water depths(frequently a foot or more) and a wide variety of herbaceous and mature woody vegetation characterized primarily by red maple, black spruce, larch, hemlock and white cedar.

8. **BARRIER BEACH.** This is not a rigorous wetland category, but describes a resource area which serves as a natural defense for the marshes behind it. The more recent and smaller barrier beaches are usually devoid of vegetation and pronounced physiographic features while the older and larger beaches have very well developed dunes, grass and shrub vegetation and numerous fresh water lenses.
9. **TIDAL FLAT.** This type is frequently found in shallow bays and estuaries and offshore from sandy beaches. These areas are generally devoid of vegetation and have either sand, mud or rock bottoms. Of all the types, these are the most influenced by the tidal range and hence time of photography. Shallow depths, wave breakers and symbols on USGS sheets aid in the delineation of these areas.
10. **SALT MARSH.** The following general classes of marine environment are in this group:
  - a. Salt meadows characterized by a few inches of water at high tide;
  - b. Irregularly flooded salt marsh.
  - c. Those areas covered with a few inches of water during the highest monthly tides and regularly flooded salt marshes; and
  - d. Those areas covered by up to a foot of water at high tide.
11. **ESTUARY.** A coastal reach, subject to tidal influence, through which a river enters marine waters and in which fresh and saltwater become mixed. Estuaries vary greatly in size, shape and border environment, but may serve as ports or harbors and are, therefore, characterized by and subject to the influence of dense cultural development. Where Estuaries are undisturbed by man, they are often multi-channeled, bordered by abundant vegetation, and richly inhabited by aquatic life. The Boundaries of this wetland category are normally included as part of as open water border, e.g. the shore of a bay or a river bank.

#### **6-10.2 Flood Plain Overlay District.**

##### **6-10.2.1 Establishment.**

The Flood Plain District is established, effective July 17, 1986, as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- a. Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas.
- b. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00)
- c. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)
- d. Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00)
- e. Minimum Requirements for the Subsurface Disposal of Sanitary Sewerage, DEP (currently 310 CMR 15, Title 5)

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

The Flood Plain District includes only the Special Flood Hazard Areas (SFHAs) within the Town of Essex designated as Zone A, AE, and VE on the Essex County Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Essex are panel numbers 25009C0427F, dated July 3, 2012; 25009C0289G, 25009C0431G, 25009C0432G, and 25009C0451G, dated July 16, 2014; 25009C0291G, 25009C0293G, 25009C0294G, and 25009C0313G dated July 16, 2014 and revised by Letter of Map Revision dated April 10, 2017; and 25009C0292G and 25009C0311G, dated July 16, 2014 and revised by Letters of Map Revision dated April 10, 2017 and December 27, 2017. The exact boundaries of the District are defined by the 100-year base flood elevations shown on the FIRM and further defined by the 100-year (1-percent-annual-chance flood plain

boundary) flood elevations contained in the Essex County Flood Insurance Study (FIS) report dated July 16, 2014 and revised by Letter of Map Revision dated April 10, 2017. The FIRM and FIS report are incorporated herein by reference and are on file with the Board of Selectmen and Building Inspector.

All changes to FEMA panel designations pursuant to Article 30 of the Annual Town Meeting of May 5, 2014 shall not take effect until July 16, 2014.

#### **6-10.2.2 Development Regulations.**

The following requirements apply in the Flood Plain District:

- a. UN-NUMBERED ZONE A: Within any unnumbered Zone A, since the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or flood-proofing requirements, as appropriate, of the State Building Code. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is lesser, within unnumbered Zone A.
- b. Within areas designated as coastal high hazard areas (Zone VE), all development shall be located landward of the reach of mean high tide, since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash.
- c. Man-made alteration of sand dunes within Zone VE which would increase potential flooding damage are prohibited.
- d. SUBDIVISIONS: All subdivision proposals must be designed to assure that
  1. Such proposals minimize flood damage
  2. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  3. Adequate drainage is provided to reduce exposure to flood hazards.
- e. In Zone AE, along watercourses that have a regulatory floodway designated on the FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the Town during the occurrence of the base flood discharge (i.e., one-hundred year flood). In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit such encroachments.

#### **6-10.2.3 Notification of Watercourse Alteration**

In a riverine situation, upon submission of the application to the Planning Board, evidence shall be provided that the following entities have been notified in writing, including a copy of the application and plans, of a pending zoning permit to alter or relocate a watercourse:

- a. The adjacent communities of Gloucester, Hamilton, Ipswich and Manchester by the Sea.
- b. National Flood Insurance Program (NFIP) State Coordinator  
Massachusetts Dept. of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104
- c. NFIP Program Specialist  
FEMA Region 1  
99 High Street, 6th Floor  
Boston, MA 02110

#### **6-10.2.4 Effective Date**

The revisions to Section 6-10.2 made pursuant to Article 1 of the Special Town Meeting of June 11, 2012 shall not take effect until July 3, 2012.

### **6-10.3 Water Resource Protection Overlay District.**

#### **6-10.3.1 Purpose.**

The purpose of the Water Resource Protection District is to protect the public health, safety and welfare, by preserving and maintaining the existing and potential groundwater supply, groundwater recharge areas, and municipal wellfields providing water supply for the Town of Essex.

#### **6-10.3.2 Establishment and Delineation of Water Resource Protection District.**

For the purpose of this Bylaw there is hereby established a Water Protection District, which comprises all areas within Essex which are within the drainage basins of either Chebacco Lake or Cedar Swamp, as illustrated on the map "Water Resource Protection District" dated December 15, 1990, on file in the Office of the Town Clerk, and hereby made a part of this Bylaw.

Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should be properly located. At the request of the owner(s) the town may engage a Registered Land Surveyor or Professional Engineer to determine more accurately the location and extent of the drainage basins, and shall charge the owner(s) for the cost of the investigation.

#### **6-10.3.3 Use Regulations.**

The Water Resource Protection District shall overlay other zoning districts established in this Bylaw. Land in a Water Resource Protection District may be used for any use otherwise permitted at that location, subject to the following regulations:

- a. The following activities are prohibited within the Water Resource Protection District:
  1. Disposal of solid waste, other than brush and stumps;
  2. The operation of a solid waste transfer station;
  3. Storage of fuel oil, gasoline, or other refined petroleum products, except within buildings in which they are used or above ground, provided the storage and its containment is designed to contain spills and prevent any flow of petroleum product to floor drains or exposed soils;
  4. The disposal of liquid or leachable wastes, except sanitary sewage waste disposal systems;
  5. Commercial or industrial uses which discharge process waste water on site;
  6. Storage of road salt or other deicing chemicals except in confined and covered areas;
  7. Dumping of snow containing salt or other deicing chemicals which is brought in from outside the district;
  8. Mining of land except as necessary and incidental to a permitted use;
  9. The treatment, storage, discharge, or disposal of hazardous materials;
  10. Automobile or motor vehicle service, washing, or repair shops, used parts, and salvage yards;
  11. Junk yards;
  12. Dry cleaning or laundry businesses;
  13. Land use which renders impervious more than 15 percent of a lot, except as allowed by Section 6-10.3.3.b.7.
  14. Earth removal to within 4 feet of historical high groundwater unless regarded to a higher level within 45 days, except for excavations for building foundations or utility works;
  15. Storage of animal manure unless covered and contained in accordance with US Soil Conservation Service specifications;
  16. Storage of commercial fertilizers and soil conditioners unless within a structure designed to prevent escape of leachate and runoff.

- b. The following uses are permitted by Special Permit, subject to the approval of the Special Permit Granting Authority under such conditions as they may require and also subject to section a. above, to be approved upon finding that the proposal as planned will not have adverse impact upon ground or surface water quality within the Water Resource Protection District, and that safeguards will be provided to adequately reduce risk of accidental water quality damage:
1. Except for single-family dwellings, onsite sewage disposal systems having an estimated sewage flow exceeding 60 gallons per day per 10,000 square feet lot area;
  2. Regardless of lot size, any on-site sewage disposal having more than 15,000 gallons per day of sewage;
  3. Any use having on-site disposal of industrial waste, as determined under Title 5 of the State Environmental Code: 310 CMR 15.00;
  4. The application of pesticides for non-domestic or non-agricultural uses provided that all necessary precautions shall be taken to prevent hazardous concentrations of pesticides in the water and on the land within the Water Resource Protection District as a result of such application (Such precautions include, but are not limited to, erosion control techniques, the control of runoff water or the use of pesticides having low solubility in water, the prevention of volatilization and re-deposition of pesticides and the lateral displacement, i.e. wind drift, of pesticides);
  5. The application of fertilizers for non-domestic or non-agricultural uses provided that such application shall be made in such a manner as to minimize adverse impacts on surface and groundwater due to nutrient transport and deposition and sedimentation;
  6. Those commercial and industrial activities otherwise permitted, with a documented procedure to prevent compaction and siltation, loss of recharge, exfiltration for sewer pipes and contamination by oil, chemicals, nutrients, or the generation of hazardous waste or storage of sludge and septage, except as allowed under DEP Wellhead Regulations (310 CMR 22.21) etc.;
  7. Rendering impervious more than 2500 square feet or fifteen percent of lot area (whichever is greater) will require a plan for recharging storm water runoff such that it will not degrade ground water quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system 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.
- c. Boundary Lots. For the purpose of this Bylaw, any lot which has one third or more of its total area falling within the Water Resource Protection District must meet all the requirements of the Water Resource Protection District.

## 6-11 Southern Conomo Point Zoning District.

**6-11.1. Purpose:** The purpose of the Southern Conomo Point Zoning District (“SCPZD”) is to facilitate the subdivision of the previously developed area south of Robbins Island Road while minimizing disruption to the existing historical building configuration.

**6-11.2. Establishment:** The SCPZD is a zoning district shown on the Town’s Zoning Map (see Exhibit 1) and is subject to all provisions of Chapter VI of the Essex bylaws except as specifically defined below. Based on the existing land use patterns within the SCPZD, the SCPZD consists of two sub-districts as follows (see Table of Dimensional Regulations following at Section 6-11.6(E)):

- A. Single Family Sub-District
- B. Seasonal Cottage Sub-District

**6-11.3. Definitions:** In addition to the definitions set forth in Section 6-2.2 of the Zoning By-Law, the following definitions shall apply only in the SCPZD:

**Seasonal Cottage** – A detached residential dwelling unit, other than a mobile home, of 1½ stories or fewer and 1,800 square feet or under, to be used for seasonal occupancy only between April 15 and October 15 of any given year.

**Floor Area, Gross** – The area of all floors located within the principal structure enclosed within exterior walls, including the thickness of the walls. Unfinished or finished storage areas, attics, or basements more than 50% above the ground, shall be included as floor area.

**Floor Area Ratio (FAR)** – The ratio of the Gross Floor Area of all principal structures on a lot divided by the lot area. (Example: 3,000 SF Gross Floor Area / 30,000 SF lot area = FAR .1)

**Lot Building Coverage** – The percentage of the lot area covered by the area of all principal and accessory buildings or structures with roofs. (Example: 2,000 SF roof area / 30,000 SF lot area = 6.67% Lot Building Coverage)

**Impervious Surface Coverage** – The percentage of the lot area covered by impervious surface. (Example: 1,200 SF impervious surface / 6,000 SF lot area = 20% Impervious Surface Coverage)

### 6-11.4. Permitted Principal Uses:

- A. Single Family Sub-District – Single Family Dwellings are permitted as of right and may be used year-round.
- B. Seasonal Cottage Sub-District – Seasonal Cottages are permitted as of right, but use and occupancy shall be limited to seasonal use only between April 15 and October 15 of any given year.

### 6-11.5. Permitted Accessory Structures and Uses:

A. Accessory Buildings or Structures – Accessory Buildings or Structures are permitted as of right in both sub-districts, subject to the following limitations:

- a maximum of two Accessory Buildings and/or Structures per lot;
- total gross floor area of all Accessory Buildings and/or Structures on each lot shall not be greater than 576 SF;
- Maximum permitted height of 15 feet.
- Minimum side or rear yard setback of 5 feet.

B. Home Occupations – Home Occupations are permitted as of right in both sub-districts, subject to the following additional limitations:

- No more than one employee who does not reside in the building or structure;
- No more than one commercial vehicle shall be parked on the property;
- No external display or sale of goods or services shall be permitted.

### 6-11.6. Dimensional and Density Regulations:

A. General Requirement: Except as provided under Section 6-11.5.A., all lots, new construction and reconstruction of or additions, alterations or extensions to any principal or accessory buildings or structures shall comply with the dimensional regulations listed in Table 1 at Section 6-11.6(E).

B. Exceptions: This Section contemplates that new lots will be created through a subdivision to accommodate the principal and accessory buildings or structures in the SCPZD existing at the time of adoption of this Section. The following exceptions to the dimensional regulations in Table 1 at Section 6-11.6(E) shall apply within the SCPZD:

1. East of Conomo Point Road - New lots approximating the currently shown lease areas may be created on the eastern side of Conomo Point Road within the SCPZD (currently identified as Assessor's Map 19, Lots 116, 117 and 118) to accommodate the existing buildings and structures, provided that (a) such lots shall have a minimum lot area of 3,500 square feet and a minimum frontage of 80 feet, and (b) the existing buildings and structures on such lots shall have minimum front yard and side yard setbacks of 5 feet, and a minimum rear yard setback of 1 foot.
2. West of Conomo Point Road - New lots complying with the lot area and frontage requirements in Table 1 at Section 6-11.6(E) may be created within the areas of the SCPZD west of Conomo Point Road to accommodate the existing buildings and structures, even if the new lot lines render the existing buildings or structures nonconforming.

C. Regulation of Nonconforming Lots and Structures: All newly-created nonconforming lots created pursuant to this Section and all existing buildings and structures rendered nonconforming as a result of the newly-created lots created pursuant to this Section are hereby deemed to be lawful nonconforming lots and lawfully existing nonconforming buildings or structures. Future reconstruction, alterations, extensions and/or additions to such nonconforming lots and buildings/structures are subject to the following:

1. As-of-Right Changes: Any reconstruction, alteration, extension or addition to any existing nonconforming building or structure that conforms to the dimensional requirements listed in Table 1 at Section 6-11.6(E) and does not increase any existing nonconformity shall be permitted as-of-right, except as provided in subsection 2(b) below concerning nonconforming lots created on the eastern side of Conomo Point Road.
2. Variance Changes:
  - (a) Any reconstruction, alteration, extension or addition to an existing nonconforming building or structure that does not conform to the dimensional requirements listed in Table 1 at Section 6-11.6(E) or increases any nonconformity shall require a variance from the Board of Appeals.
  - (b) Any reconstruction, alteration, extension or addition to a building or structure on a nonconforming lot created on the eastern side of Conomo Point Road pursuant to 6-11.6(B)(1) shall require a variance from the Board of Appeals.

D. Merger: Within the SCPZD, adjoining lots that are held in common ownership shall retain their status as separate lots, and shall not be deemed to have merged into a single lot for purposes of zoning solely on the basis of such common ownership.

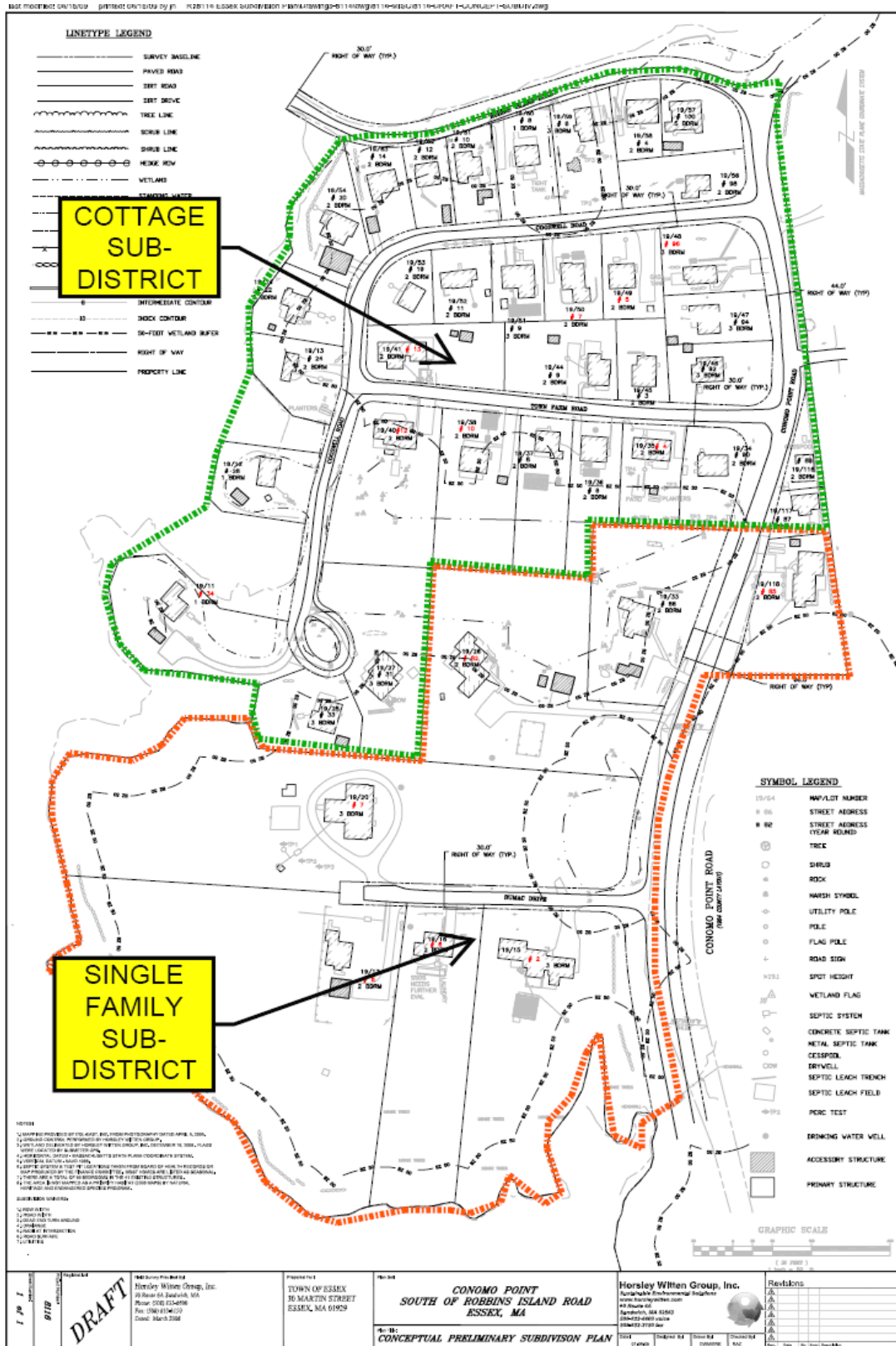


E. Table of Dimensional Regulations:

**Table 1 – Dimensional Regulations – Permitted As-of-Right:**

<b>Sub-District</b>		<b>A</b>	<b>B</b>
<b>Dimensional Controls</b>		<b>Single Family Sub-District</b>	<b>Seasonal Cottage Sub-District</b>
1	Minimum Lot Size in square feet	30,000	6,000
2	Minimum Frontage in feet	100	60
3	Minimum Front Yard Setback in feet	25	15
4	Minimum Side Yard Setback in feet	25	10
5	Minimum Rear Yard Setback in feet	25	25
6	Maximum Height in feet	20	15
7	Maximum Floor Area Ratio	.1	.2
8	Maximum Lot Building Coverage (%)	5%	15%
9	Maximum Impervious Surface Coverage (%)	10%	20%
10	Maximum Number of Stories	2	1.5

# SOUTHERN CONOMO POINT - ZONING MAP



## **6-12 Central Conomo Point Zoning District.**

**6-12.1. Purpose:** The purpose of the Central Conomo Point Zoning District (“CCPZD”) is to facilitate the subdivision of the central portion of the previously developed area north of Robbins Island Road while minimizing disruption to the existing historical building configuration.

**6-12.2. Establishment:** The CCPZD is a zoning district shown on the Town’s Zoning Map (see Exhibit 1) that includes a portion of land north of Robbins Island Road located along Robbins Island Road and Beach Circle. The CCPZD is subject to all provisions of Chapter VI of the Essex bylaws except as specifically defined below.

**6-12.3. Definitions:** In addition to the definitions set forth in Section 6-2.2 of the Zoning By-Law, the following definitions shall apply only in the CCPZD :

**Seasonal Cottage** – A detached principal structure with a residential dwelling unit, other than a mobile home, of 1½ stories or fewer, to be used for seasonal occupancy only between April 15 and October 15 of any given year.

**Floor Area, Gross** – The area of all floors located within the principal structure enclosed within exterior walls, including the thickness of the walls. Unfinished or finished storage areas, attics, or basements more than 50% above the ground within the principal structure, shall be included as floor area.

**Floor Area Ratio (FAR)** – The ratio of the Gross Floor Area of all principal structures on a lot divided by the lot area.

(Example: 2,500 SF Gross Floor Area / 5,000 SF lot area = FAR .5)

**Lot Area** – The area(s) of a lot above the mean high water elevation.

**Lot Building Coverage** – The percentage of the lot area covered by the area of all principal and accessory buildings or structures with roofs. (Example: 1,000 SF roof area / 5,000 SF lot area = 20% Lot Building Coverage)

**Impervious Surface Coverage** – The percentage of the lot area covered by impervious surface. (Example: 1,000 SF impervious surface / 5,000 SF lot area = 20% Impervious Surface Coverage)

**Right-of-Way Width** - The minimum right of way width for a new or established street within the CCPZD shall be at least 25 feet.

### **6-12.4. Permitted Principal Uses:**

A. Seasonal Cottages – Seasonal Cottages are permitted as of right, but use and occupancy shall be limited to seasonal use only between April 15 and October 15 of any given year.

B. Storage – Storage buildings or structures are permitted as a principal use provided they: 1) meet the dimensional regulations listed in Table 1 at Section 6-12.6(E); and 2) are restricted to non-commercial storage uses of any type.

C. Municipal Park and Recreational - Municipal uses, including but not limited to, parks, playgrounds, off-street parking facilities and public recreational areas, are permitted as of right as a principal use.

### **6-12.5. Permitted Accessory Structures and Uses:**

A. Accessory Buildings or Structures – Accessory Buildings or Structures are permitted as of right, subject to the following limitations:

- a maximum of two Accessory Buildings and/or Structures per lot;

- total gross floor area of all Accessory Buildings and/or Structures on each lot shall not be greater than 576 SF;
- maximum permitted height of 15 feet.
- minimum side or rear yard setback of 5 feet.

B. Home Occupations – Home Occupations are permitted as of right, subject to the following additional limitations:

- No more than one employee who does not reside in the building or structure;
- No more than one commercial vehicle shall be parked on the property;
- No external display or sale of goods or services shall be permitted.

#### **6-12.6. Dimensional and Density Regulations:**

A. General Requirement: Except as provided under Section 6-12.5.A., all lots, new construction and reconstruction of or additions, alterations or extensions to any principal or accessory buildings or structures shall comply with the dimensional regulations listed in Table 1 at Section 6-12.6(E).

B. Exceptions: This Section contemplates that new lots will be created through a subdivision to accommodate the principal and accessory buildings or structures in the CCPZD existing at the time of adoption of this Section. The following exceptions to the dimensional regulations in Table 1 at Section 6-12.6(E) shall apply within the CCPZD:

1. Lots - New lots approximating the currently shown lease areas may be created for the following areas to accommodate the existing buildings, structures and parking areas:

*Robbins Island Road:*

Assessor's Map 19, Lot 68B, provided that, if it becomes owned in common with Map 19, Lot 68A, such combined lot shall have a minimum lot area of 2,500 square feet and a minimum frontage of 25 feet. Map 19, Lot 68B shall not, by itself, be a buildable lot.

Assessor's Map 19, Lot 77, provided such lot shall have a minimum lot area of 4,000 square feet and a minimum frontage of 40 feet.

*Conomo Point Road:*

Assessor's Map 19, Lot 97, provided such lot shall have a minimum lot area of 4,500 square feet and a minimum frontage of 40 feet.

2. Structures and Parking Areas - New lots complying with the lot area and frontage requirements in Table 1 at Section 6-12.6(E), and the lots for which exceptions from such requirements are provided in Section 6-12.6(B)(1), may be created within the areas of the CCPZD to accommodate the existing buildings, structures and parking areas, even if the new lot lines render the existing buildings, structures or parking areas nonconforming.

C. Regulation of Nonconforming Lots, Structures, and Parking Areas: The lots for which exceptions are made in Section 6-12.6(B)(1), and the existing structures and parking areas that do not comply with the dimensional requirements listed in Section 6-12.6(E), Table 1, are hereby deemed to be lawful nonconforming lots and lawfully existing nonconforming structures and parking areas. Future reconstruction, alterations, extensions and/or additions to such nonconforming lots and structures are subject to the following:

1. As-of-Right Changes:

(a) Any reconstruction, alteration, extension or addition to an existing residential structure that does not either (i) create a new nonconformity, or (ii) increase or intensify any existing nonconformity, shall be permitted as-of-right.

(b) On a nonconforming lot (i.e., a lot subject to Section 6-12.6(B)(1)), any reconstruction, alteration, extension or addition to an existing residential structure that extends beyond the existing footprint, or that results in an increase in gross floor area or height, even if the Table 1 dimensional requirements are met, shall be deemed to increase or intensify the existing nonconformity of the lot, and shall not be permitted as-of-right.

2. Special Permit Changes:

(a) Any reconstruction, alteration, extension or addition to an existing residential structure that increases or intensifies an existing nonconformity, but does not create a new nonconformity, may be allowed by the Planning Board by a special permit, provided that the Planning Board finds that such reconstruction, alteration, extension or addition is not substantially more detrimental to the neighborhood than the existing structure.

(b) For an existing non-residential structure on a conforming lot, any reconstruction, alteration, extension or addition that complies with the dimensional requirements in Table 1 may be allowed by the Planning Board by a special permit, provided that the Planning Board finds that such reconstruction, alteration, extension or addition is not substantially more detrimental to the neighborhood than the existing structure.

3. Variance Changes:

(a) Any reconstruction, alteration, extension or addition to an existing residential structure that creates a new nonconformity shall require a variance from the Board of Appeals.

(b) Any reconstruction, alteration, extension or addition to an existing non-residential structure on a non-conforming lot, and any such reconstruction, alteration, extension or addition to an existing non-residential structure on a conforming lot that does not comply with the dimensional requirements in Table 1, shall require a variance from the Board of Appeals.

D. Merger: Within the CCPZD, adjoining lots that are held in common ownership shall retain their status as separate lots, and shall not be deemed to have merged into a single lot for purposes of zoning solely on the basis of such common ownership.

E. Table of Dimensional Regulations:

**Table 1 – Dimensional Regulations – Permitted As-of-Right for all Principal Uses:**

<b>Dimensional Controls</b>		
1	Minimum Lot Area (square feet)	5,000
2	Minimum Frontage (feet)	40
3	Minimum Front Yard Setback (feet)	5
4	Minimum Side Yard Setback (feet)	5
5	Minimum Rear Yard Setback (feet)	10
6	Maximum Height (feet)	15
7	Maximum Floor Area Ratio (%)	30%
8	Maximum Lot Building Coverage (%)	25%
9	Maximum Impervious Surface Coverage (%)	30%
10	Maximum Number of Stories	1.5



## **SECTION 6-13. OPEN SPACE RESIDENTIAL DEVELOPMENT**

### **6-13.01. PURPOSE AND INTENT**

1. The primary purposes for Open Space Residential Development (“OSRD”) are the following:

- a. Allow for greater flexibility and creativity in the design of residential developments;
- b. Encourage the permanent preservation of open space, agricultural land, woodland, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, and wetlands, recreational, historical and archeological resources, in a manner that is consistent with all current plans adopted by the Town of Essex, including such plans as the Town of Essex Community Development Plan; Town of Essex Watershed Protection Plan and Town of Essex Open Space and Recreation Plan;
- c. Encourage a less sprawling, more efficient and compact form of development that disturbs less open land and natural materials and conforms to existing topography and natural features better than a conventional or grid subdivision;
- d. Minimize the total amount of disturbance on the site;
- e. Further the goals and policies of the all current plans adopted by the Town of Essex, including such plans as Town of Essex Community Development Plan, Town of Essex Watershed Protection Plan and Town of Essex Open Space and Recreation Plan; as amended from time to time;
- f. Facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economic and efficient manner, that are in harmony with the architectural heritage of the Town of Essex; and
- g. Promote affordable housing and a more diversified housing stock.

### **6-13.02 APPLICABILITY**

1. Land Area: The proponent of any proposed residential development that is on a parcel of five (5) acres or more or on contiguous parcels totaling five (5) acres or more may submit a special permit application to the Planning Board for an OSRD in accordance with the provisions of this Section, which shall include an OSRD Special Permit Plan as described below. The Planning Board shall, in compliance with Massachusetts General Laws c. 40A, s. 9, hold a public hearing on the OSRD application. If a development for which a special permit application is submitted under the provisions of this Subsection involves the subdivision of land, the applicant shall also submit a Preliminary Subdivision Plan at the same time pursuant to the *Rules and Regulations Governing the Subdivision of Land in the Town of Essex*, as amended (hereinafter “the Subdivision Rules and Regulations”).

2. Contiguous Parcels: To be eligible for consideration as an OSRD, the total tract shall consist of one parcel of land or set of contiguous parcels. Parcels located on two sides of an existing road or similar minor separation shall be considered contiguous for this article.

3. Land Division: To be eligible for consideration as an OSRD, the proposed OSRD must involve either (i) a subdivision, or (ii) a division of land pursuant to Massachusetts General Laws c. 41, s. 81P.

### **6-13.03 SPECIAL PERMIT REQUIRED**

The Planning Board may authorize an OSRD pursuant to the grant of a special permit. Special Permit public hearings may be held simultaneous to the conventional preliminary plan discussions and to the conventional definitive plan public hearings.

### **6-13.04 PRE-APPLICATION CONFERENCE**

The applicant for an OSRD shall attend a pre-application conference with the Planning Board at a regular business



meeting of the Planning Board. The Planning Board shall invite to the conference a representative of:

- The Conservation Commission
- Open Space Committee
- Board of Health
- Department of Public Works, plus the
- Building Inspector

The purpose of a pre-application conference is to:

- Streamline the formal application process
- Minimize the applicant's costs of engineering and other technical experts
- Commence discussions with the Planning Board at the earliest possible stage in the development

At the pre-application conference the applicant may:

- Outline the proposed OSRD and the yield based on a conventional subdivision buildout
- Seek preliminary feedback from the Planning Board and/or its technical experts
- Set a timetable for submittal of a formal application

#### **6-13.05 DESIGN PROCESS**

1. At the time of the application for a special permit for an OSRD in conformance with *Subsection 6-13.06 PROCEDURES* below, applicants are required to demonstrate to the Planning Board that the following four-step design process was performed by a qualified design team. Such a team is to include a registered landscape architect, or a professional civil engineer. The team shall consider the layout of proposed streets, house lots, and open space.

- a. Step One: Identifying Conservation Areas and the Potentially Developable Area. The qualified design team shall first identify and delineate two categories of conservation areas at the site, as follows:

1. Primary Conservation Areas, consisting of those areas protected by federal, state or local laws, including but not limited to:

- Wetland resource areas
- Vernal pools
- Outstanding Resource Waters
- Rare species habitat
- Flood hazard areas
- Floodplains

2. Secondary Conservation Areas, consisting of those elements of the natural landscape that are not protected fully by law, but the maintenance of which in their natural state would provide environmental, aesthetic or other value to the environment or community, including but not limited to

- Steep slopes (typically greater than twenty five percent [25%])
- Mature woodlands
- Vernal pool species upland habitat
- Wetland buffer zones
- Existing trails and footpaths
- Farmland
- Large open meadows
- Stone walls
- Unique geological formations
- Critical wildlife habitats and
- Important cultural features such as historic and archeological sites
- Scenic views

3. Potentially Developable Area (hereinafter “PDA”) is land outside identified Primary Conservation Areas. Consideration shall be given to avoiding and/or properly implementing the Secondary Conservation Areas in landscaping plans. The Planning Board retains the right to exclude some or all of the Secondary Conservation Areas from development. The design team shall then delineate the PDA. Development shall be located exclusively within the PDA. However, in cases where rare species habitat designations would preclude the establishment of a PDA anywhere on the lot, or where a very small PDA cannot support the density of development based upon the Conventional Subdivision Sketch Plan, the Planning Board may work with the developer, developers consultants and the towns technical consultants to determine the best possible location for the limited amount of development to be allowed under the Open Space Residential Development.

b. Step Two: Locating House Sites. The landscape architect or design team shall then locate the approximate sites of individual structures within the PDA and delineate the private yards and shared amenities, so as to reflect an integrated neighborhood that conforms with the existing topography and natural features, with emphasis on consistency with the Town's historical development patterns and heritage.

c. Step Three: Aligning the Streets and Trails. The landscape architect or design team shall then align streets to access the house lots or units and lay out sidewalks and walking trails to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

d. Step Four: Delineate Lot Lines. The landscape architect or qualified design team shall then delineate the lot lines according to *Subsection 6-13.08 REDUCTION OF DIMENSIONAL REQUIREMENTS* below.

#### **6-13.06 PROCEDURES**

1. Application: An application for a special permit for an OSRD, or for an amendment thereto, shall include, among other supporting information, an OSRD Preliminary Plan. The OSRD Preliminary Plan submittal shall consist of an OSRD Sketch Plan and a Conventional Subdivision Sketch Plan, as follows:

- a. OSRD Sketch Plan. The OSRD Sketch Plan shall be prepared by the approved qualified design team, and shall identify the:
  - Primary Conservation Areas,
  - Secondary Conservation Areas,
  - Potentially Developable Area
  - General features of the land,
  - Approximate configurations of the lots,
  - Open space, and
  - Roadways, and shall also include
  - Information listed in the Subdivision Rules and Regulations to the extent applicable.

The proposed development as identified on the Sketch Plan shall reflect and incorporate the Four-Step Design Process set forth in *Subsection 6-13.05, DESIGN PROCESS* above.

b. Conventional Subdivision Sketch Plan. The Conventional Subdivision Sketch Plan shall depict the maximum number of lots as allowed in 6-13.07 below and Section 7 of the *Rules and Regulations Relative to Subdivision Control of the Town of Essex*.

2. Distribution for Review: Any application for an OSRD Special Permit or amendment thereto shall include fifteen (15) copies. Within five (5) business days of the filing of the completed application, copies of the application, including the accompanying OSRD Preliminary Plan and other documentation, will be

distributed by the Planning Board to the:

- Board of Health
- Conservation Commission
- Open Space Committee
- Building Inspector
- Department of Public Works
- Police Chief
- Fire Chief

for their review.

3. Public Hearing: The Planning Board shall, in compliance with Massachusetts General Laws c. 40A, s. 9, hold a public hearing on the OSRD application for a special permit. Notice and the publication and giving of notice for such public hearing and the procedural requirements for such public hearings shall be those set forth in said M.G.L. c. 40A, s. 9, as amended which is incorporated herein by reference. Similar to all applications to the Planning Board, all fees incurred for said application and notices and postage are the responsibility of the applicant. Also, similar to the application process for a Preliminary Plan and a Definitive Plan, Public Hearings must be held, all expenses will be the responsibility of the applicant and the procedure for the necessary escrow and bond funds shall be completed.

4. Site Visit: Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing process. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or his or her agents if requested by the applicant.

a. The Planning Board may adopt fees for the employment of outside technical experts, at the applicants' expense, as reasonably necessary in connection with its review of the applicant's proposed plan(s) or technical reports in accordance with the provisions of Massachusetts General Laws c. 44, s. 53G.

5. Procedures for Submission and Approval of an OSRD Preliminary Plan. Procedures for Submission and Approval of an OSRD Preliminary Plan shall follow the rules and regulations as set forth by Section 5.01 of the *Rules and Regulations Relative to Subdivision Control*.

6. Procedures for Submission and Approval of an OSRD Definitive Plan. Procedures for Submission and Approval of an OSRD Definitive Plan shall follow the rules and regulations as set forth by Sections 6.01 to 6.06 of the *Rules and Regulations Relative to Subdivision Control*. The procedural and substantive special permit requirements set forth in Section 6-13 of the Zoning Bylaw shall be in addition to any other requirements of the *Rules and Regulations Relative to Subdivision Control* and any other provisions of the Zoning Bylaw for the Town of Essex.

7. Relationship Between the OSRD Preliminary Plan and OSRD Definitive Plan. All OSRD special permits issued by the Planning Board shall, by virtue of this provision, include a condition that any OSRD Definitive Plan shall substantially comply with the approved OSRD Preliminary Plan and special permit conditions.

a. An OSRD Definitive Plan shall be considered not to substantially comply with the OSRD Preliminary Plan if the Planning Board determines that any of the following changes exist:

- (1) An increase in the number of building lots or dwelling units;
- (2) A significant decrease in the open space acreage or configuration;
- (3) A significant change in the lot or road layout or unit placement;

(4) A significant change in the general development pattern, which is contrary to or inconsistent with the primary purposes of an OSRD, as specified in *Subsection 6-13.01 PURPOSE AND INTENT* above;

(5) A significant change to the storm water management facilities; and/or,

(6) A significant change in the wastewater management systems.

(7) Other significant changes in landscape conservation, or development design specifically identified by reviewing parties, including members of the public.

- b. If the Planning Board determines that the OSRD Definitive Plan does not substantially comply with the OSRD Preliminary Plan special permit conditions, the Board may disapprove the OSRD Definitive Plan.
- c. The relationship between an OSRD Preliminary Plan and OSRD Definitive Plan shall be subject to the terms and conditions set forth in Section 5.02 of the *Rules and Regulations Relative to Subdivision Control*

#### **6-13.07. CONVENTIONAL SUBDIVISION YIELD PLAN - BASIC MAXIMUM NUMBER OF LOTS**

Determination of Yield: The basic maximum number of lots, as described herein, shall be derived from and delineated on a Conventional Subdivision Sketch Plan (hereinafter referred to as “Basic Maximum Number”). For the determination of yield, the Conventional Subdivision Sketch Plan shall show the maximum number of lots that could be placed upon the site under a conventional subdivision process according to the Subdivision Rules and Regulations and all applicable requirements of the Essex Zoning Bylaw. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots. The Planning Board may request further information related to the proposed yield, including but not limited to an approved wetland and resource delineation. The determination of yield shall set the amount of lots submitted in the Conventional Subdivision Sketch Plan.

#### **6-13.08. REDUCTION OF DIMENSIONAL REQUIREMENTS**

**1. The Planning Board may allow applicants to modify lot size, shape, and other dimensional requirements set forth in Section 6-3.2 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. However, the Planning Board may waive this limitation to the extent it determines that such waivers will substantially further the purposes and intent of Open Space Residential Development.
- b. At least 50% of the minimum front yard, side yard, and rear yard setbacks shown in Section 6-3.2.1, “Table of Dimensional Requirements,” shall be maintained for lots in the OSRD except for lots bordering lands outside the development, in which case each required setback shall be the same as in Section 6-3.2.1.**
- c. Minimum lot size shall be ten thousand (10,000) square feet for lots in the OSRD; provided, however, that the Planning Board may reduce this minimum lot size to the extent it determines that such reduction(s) will substantially further the purposes and intent of Open Space Residential Development.
- d. The requirement in Section 6-3.2.1 for maximum lot coverage shall not apply to lots in the OSRD. Instead, the percentage of the lot area covered by impervious surface (“impervious surface coverage”) on each individual lot shall be no greater than 25%; provided, however, that the Planning Board may increase this maximum impervious surface coverage to the extent it determines that the

overall design of the development protects an amount of open space and important resources that will substantially further the purposes and intent of Open Space Residential Development.

e. The minimums set forth in Section 6-3.2.1 for lot frontage, lot width, and lot depth may be reduced by up to 20% for a lot in the OSRD. The maximum building height set forth in Section 6-3.2.1 shall apply to lots in the OSRD.

f. Modifications to the dimensional requirements of Section 6-3.2.1 that are allowed by the Planning Board for lots in the OSRD are deemed to be conditions of the OSRD Special Permit. Any subsequent requests by the applicant or by future owners of building lots within the OSRD for further modifications to the dimensional requirements shall be considered amendments to the OSRD Special Permit and must receive approval by the Planning Board.

### **6-13.09 OPEN SPACE REQUIREMENTS**

1. A minimum of fifty percent (50%) of the tract shown on the development plan shall be open space delineated as a separate lot or lots, and must be preserved as such in perpetuity in accordance with this Subsection.

2. At least fifty percent (50%) of the total uplands on the site shall be included in the open space set aside. Uplands shall not include wetland zones or Riverfront Area as defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40, and regulations adopted there under, as amended. The Planning Board may allow a reduction of this upland ratio if it furthers the purposes and intent of Open Space Residential Development.

3. The open space shall be connected. At the discretion of the Planning Board, open space may still be considered connected if it is separated by a trail or narrow roadway. Strips and patches of land proposed as open space will not be accepted. Separate open space areas may be considered by the Planning Board to the extent it determines that the proposed open space furthers the purpose of Open Space Residential Development.

4. The open space shall be suitable for and protected and maintained for wildlife habitat, conservation, historic preservation (landscapes and/or structures), outdoor education, passive or active recreation, park purposes, agriculture, horticulture, forestry, and/or a combination of these uses. The Planning Board may permit up to five percent (5%) of the open space to be impervious surface. Parking areas and areas used for vehicular access or egress shall not constitute open space; however a parking area for use by the open space parcel (for trails access or for parking at a farmstand) should be allowed to be counted as part of the open space, as long as it does not exceed the 5% impervious surface limit.

5. At the discretion of the Planning Board, subsurface wastewater and storm water management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required unless these systems are determined by the Planning Board to be "soft" (non-structural), natural-like, low-impact storm water management systems that do not create impervious surfaces, that enable infiltration and that are otherwise compatible with the contemplated uses of adjacent open space.

6. The open space shall either be subject to a recorded conservation restriction enforceable by the Town providing that such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein, and maintained in a manner which will ensure its suitability for its intended purposes, or, with the Planning Board's approval, shall be conveyed to one or more of the following:

- a. 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; and/or
- b. A corporation or trust owned jointly or in common by the owners of lots 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 that shall provide for mandatory assessments for maintenance expenses to each lot. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval as part of the OSRD special permit process, and shall thereafter be recorded.

In the case where the open space is not subject to a recorded conservation restriction, a restriction enforceable by the Town shall be recorded providing that such land shall be kept in an open state and preserved exclusively for the purpose set forth herein. No building permits shall be issued until this process is complete.

#### **6-13.10. DECISION OF THE PLANNING BOARD**

1. 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 and advances further the interests of the community than a conventional development proposed for the tract, after considering the following factors. Not all the following factors have to be met for the Planning Board to approve the proposed OSRD:

- a. Whether the OSRD achieves greater flexibility and creativity in the design of residential developments than a conventional plan;
- b. Whether the OSRD promotes permanent preservation of open space, agricultural land, woodland, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, and wetlands, and historical and archeological resources in a manner that is consistent with all current plans adopted by the Town of Essex, including such plans as the Town of Essex Community Development Plan, Town of Essex Watershed Protection Plan and Town of Essex Open Space and Recreation Plan;
- c. Whether the OSRD promotes a less sprawling, less land consumptive and more efficient and compact form of development that disturbs less open land and natural materials and conforms to existing topography and natural features better than a conventional subdivision;
- d. Whether the OSRD reduces the total amount of disturbance on the site as compared to a conventional subdivision;
- e. Whether the OSRD furthers the goals and policies of the Town of Essex Community Development Plan, Town of Essex Watershed Protection Plan, and Town of Essex Open Space and Recreation Plan as amended from time to time;
- f. Whether the OSRD facilitates the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner than a conventional subdivision plan;
- g. Whether the OSRD Special Permit Plan and other supporting documentation complies with all provisions of this Section;
- h. Whether the proposed construction of housing, landscape and streetscape is in harmony with the character of the Town of Essex;
- i. Whether the OSRD promotes affordable housing; and,
- j. Whether the OSRD promotes a more diversified housing stock.

### **6-13.11 INCREASES IN PERMISSIBLE DENSITY**

1. The Planning Board may award a density bonus for an OSRD to increase the number of lots beyond the Basic Maximum Number as determined by the Conventional Subdivision Yield Plan. The density bonus for the OSRD shall not, in the aggregate, exceed twenty percent (20%) of the Basic Maximum Number. Computations shall be rounded down. Any additional lot allowed as a density bonus shall conform to all dimensional requirements of this Section, and the OSRD shall remain subject to the open space requirements set forth in Section 6-13.09. Such a density bonus may be awarded in the following circumstances and only if the Planning Board determines that the proposed development is in substantial conformance with the purposes and intents of this by-law:

- a. For every lot on which each dwelling unit thereon is restricted in perpetuity or for the longest period allowed by law to sale for low and moderate income housing as defined by General Laws chapter 40B Section 20, such that the unit(s) shall qualify as low or moderate income housing under the Department of Housing and Community Development Subsidized Housing Inventory (“affordable lot”), the Planning Board may award a one lot density bonus; provided, however, that the number of units to be constructed on the additional lot shall not exceed the number of units on the affordable lot .
- b. For each set aside of an increased ten percent (10%) of open space over the minimum fifty percent (50%) open space set aside, the Planning Board may award a bonus of ten percent (10%) of the Basic Maximum Number of lots.

### **6-13.12. ADOPTION OF RULES AND REGULATIONS**

The Planning Board may after notice and hearing adopt rules and regulations to implement the provisions of this Section, including but not limited to specifying the content and number of required plans, application procedures, filing and review fees, design criteria, development standards, and other general requirements consistent with this Section.

## **6-14 TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS**

### **6-14.1 PURPOSE**

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016 by Chapter 351 of the Acts of 2016 and thereafter, on July 28, 2017 by Chapter 55 of the Acts of 2017) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses no later than April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a “Recreational Marijuana Establishment”), as defined in G.L. c. 94G, §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

#### **6-14.2 DEFINITION**

“Recreational Marijuana Establishment” shall mean a “marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”

#### **6-14.3 TEMPORARY MORATORIUM**

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through December 31, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.



## **CHAPTER VII**

### **PUBLIC HEALTH BYLAWS**

#### **7-1 ACCUMULATION AND DISPOSAL OF REFUSE.**

**7-1.1** No person shall put or suffer to accumulate on his premises any refuse, animal or vegetable matter, rubbish or filth whereby any offensive or noxious stench or effluvia shall be created, and the health or comfort of the citizens be injuriously affected, and no person shall throw any such substances into the Essex River or any tributary thereof, or into the tidewater within the town or into the streams and brooks of the town.

**7-1.2** No person shall throw or leave in or upon any street, court, square, lane, alley, public square, public enclosure, or any pond or body of water within the limits of the town, including the Essex river and tributaries thereof, any dead animals, dirt, sawdust, soot, ashes, cinders, shavings, papers, paper bags, glass, bottles, oyster, lobster shells, waste matter, rubbish, junk or filth of any kind or any refuse animal or vegetable matter whatever. No person shall further throw into or leave in or upon flats or tidewater within the jurisdiction of the town, any dead animal or other foul or offensive matter.

**7-1.3** Clam shells may be disposed of in the Essex river per regulations of and under the jurisdiction of the Board of Health.

#### **7-2 TOWN DUMP REGULATIONS.**

The Department of Public Works Commissioners shall formulate and post regulations concerning the use of the Town Dump.

The power to impose user fees shall be reserved to the Annual Town Meeting.

#### **7-3 PIGS AND PIGGERIES.**

**7-3.1 PERMIT REQUIRED.** No individual or individuals, partnership, company or corporation shall keep pigs or swine within the limits of the town without first obtaining a permit from the Board of Selectmen. All permits shall expire on December 31 of each year unless sooner revoked. Any permit may be revoked at any time by the Board of Health for cause.

Permits will be granted for the keeping of no more than four pigs for home use only.

No such permit shall be granted by the Board of Selectmen without first having a public hearing, notices of which shall be posted at the town hall and at each of the post offices in the town at least seven days before time and place of hearing.

**7-3.2 LICENSE REQUIRED TO TRANSPORT GARBAGE.** A license to transport garbage, offal or other offensive substances along the public highways of the town shall be obtained from the Board of Selectmen in accordance with Chapter III, Section 31-A of the General Laws and no such material shall be so transported without such a license. All licenses shall expire on December 31. Any license may be revoked at any time by the board of health for cause. Garbage and other offensive material shall be transported only in watertight vehicles or containers and shall be securely covered with wood, iron or canvas while the vehicle is in motion.

**7-3.3 LOCATION OF PIGGERIES.** All piggeries shall be suitably isolated and maintained in such a manner that no nuisance shall be created thereby. No pen or enclosure shall be located within 150 feet of any public highway.

No piggery shall be located, constructed or maintained any part of which is within 250 feet of the highway mark of any source of drinking water supply or any tributary thereof, or within 250 feet of the highwater mark of any open waters flowing directly or ultimately into any course of water supply.

Neither shall any pigs be kept within 50 feet of any room where milk is handled, nor shall any person, who handles milk assist in the maintenance of pigs or the cleansing of pens.

**7-3.4 BOARD OF HEALTH EXAMINATION.** All piggeries will be examined frequently by a representative of the board of health. who will make such recommendations to the owner as are necessary to maintain the piggery in proper condition.

**7-3.5 BUILDING REQUIREMENTS.** Properly ventilated buildings of substantial construction, preferably painted white or whitewashed, well lighted, and so designed that accumulation of offensive material can be readily removed, shall be provided. For indoor pens, watertight troughs of cement or metal kept in good repair shall be provided for feeding purposes, and these troughs shall be thoroughly cleaned every day.

**7-3.6 SPREAD OF MANURE.** Manure shall be spread upon land only when such land is in condition to plow, and any manure so spread shall be plowed under within 48 hours.

**7-3.7 WET MULCH PROHIBITED.** Wet mulch in outdoor pens shall be removed and replaced with clean sand.

**7-3.8 ADEQUATE WATER SUPPLY.** A water supply adequate for cleaning purposes shall be provided.

**7-3.9 PERSONNEL.** Adequate personnel shall be employed at all times for the proper maintenance and operation of the piggery.

**7-3.10 CLEANLINESS OF BUILDINGS, CANS, WAGONS AND TRUCKS.** All buildings used for the housing of swine shall be kept in a clean and satisfactory condition. Brood houses shall be cleaned daily. Garbage cans, wagons and trucks shall be thoroughly cleansed after the garbage has been removed therefrom.

**7-3.11 FEEDING PLATFORMS.** If outdoor pens or runs are provided, the swine shall be fed from platforms built of heavy watertight material flat on the ground or on skids one foot above the ground so arranged that the platform can be readily moved and the ground at the earlier location plowed in. If feeding platform is elevated, the space between the ground and the platform shall be kept clear and clean, and no food shall be allowed to accumulate about the platform or on the ground.

**7-3.12 GARBAGE BIN REQUIRED.** A bin for receiving garbage shall be provided, which shall be covered during warm weather.

**7-3.13 CLEANING OUT OF MANURE AND REFUSE.** Manure and refuse in outdoor pens shall be cleaned out at least twice weekly and shall either be immediately removed from the premises or kept that it shall not constitute a nuisance and so that pigs shall not have access to it.

**7-3.14 COMPOST PILES.** If uneaten garbage, manure and refuse are collected in compost piles, they shall be treated or covered with earth, loam or other suitable material in sufficient amount to eliminate any odor or nuisance. All such piles shall be at least 500 feet from any highway or dwelling. No garbage, manure or putrescible matter whatever, except in the cultivation and use of the soil in ordinary methods of agriculture, shall put upon the ground within 250 feet of highwater mark of any source of water supply or within 250 feet of highwater mark of any open water flowing directly or ultimately into the source of water supply. In addition, during the fly-breeding season, such piles shall be sprayed daily with some suitable coal-tar compound or other satisfactory insecticide.

**7-3.15** The Board of Health shall charge a fee of ten (10) dollars annually for a license to sell milk and cream.

**7-3.16** The Board of Health shall charge a fee of fifty (50) dollars annually for a license to operate recreational camps, overnight camps or cabins, motels, and manufactured housing communities.

**7-3.17** The Board of Selectmen shall charge a fee of fifty (50)dollars annually for innholder's licenses.

#### **7-4 PENALTY.**

Any person who shall violate any provision of this chapter shall be subject to a fine not exceeding \$100.00, except as otherwise provided by law.

#### **7-5 ENFORCEMENT BY CIVIL INFRACTION PROCESS.**

Violations of the foregoing Public Health By-Laws numbered 7-1 through 7-4, and such other regulations as shall be lawfully promulgated by the Board of Health, upon order of the enforcement officer or authority having responsibility for the enforcement of such By-Laws and regulations, may be enforced by the Civil Infraction Procedure as set forth in M.G.L., c. 90G and c.40, sec. 21D and 2-21 of these By-Laws, and an assessment shall be made for each violation thereof in the amount of \$100 for a first offense, \$200 for a second offense, and \$300 for a third and subsequent offense.

#### **7-6 SEWER USE REGULATIONS.**

The Board of Public Works is hereby authorized to adopt sewer use regulations pursuant to and under the authority of General Laws Chapter eighty-three, section ten. In addition to the civil penalties for violation of such regulations set forth in Chapter eighty-three, section ten, any person who violates a regulation adopted pursuant to this section shall be subject to a fine of one hundred dollars for the first offense, two hundred dollars for the second offense, and three hundred dollars for each subsequent offense. Each day that the violation continues shall be deemed a separate offense. This by-law and any regulation adopted by the Board of Public Works may be enforced through the non-criminal disposition procedures of General Laws Chapter 40, section twenty-one D and section 2-21 of the Town's by-laws and an assessment shall be made for each violation thereof in the amount of \$50 for the first violation; \$100 for the second violation; and \$150 for the third and subsequent violations. Any police officer in the Town or the Superintendent of Public Works or his or her designee shall have the authority to enforce this by-law or regulations adopted hereunder.

#### **7-7 SEWER SERVICE AREA.**

**7-7.1 PURPOSE.** It is the purpose of this by-law to protect water resources in order to:

- a. protect the health, safety and welfare of the residents of the Town of Essex through the preservation of the town's groundwater, surface water and marine water resources by addressing primarily existing sewage disposal problems;
- b. protect groundwater, surface water and marine resources from nitrogen contamination and pollution from subsurface disposal of wastewater; and
- c. protect other sensitive water resource areas, including those lands that contribute recharge to private drinking water supplies.

It is also the purpose of this by-law to regulate the connections to and extension of the Town's sewer system in order to preserve and manage limited treatment capacity pursuant to an intermunicipal agreement with the City of Gloucester which limits the total treatment capacity available to the Town of Essex to 225 thousand gallons a day.

**7-7.2 IDENTIFICATION OF LOTS TO BE SERVED.** Upon completion of construction of the Town's sewer collection system, only those lots existing as of record and recorded in the Essex County Registry of Deeds as of February 1, 2000 and listed in Appendix B to the Task 2 Report, Sewage Facility Plan MEPA Special Procedures Report (MEPA No. 11805) dated and filed with the Secretary of Environmental Affairs on March 30, 2000\* (hereinafter defined as the "Sewer Service Area"), shall be permitted to connect to the Town's sewer collection system. Each lot listed in Appendix B is entitled to connect a design flow of 330 gallons per day or the design flow in place as of February 1, 2000, whichever is greater, at any time. Any vacant lot listed in Appendix B is entitled to a design flow of one (1) sewer unit.

\* As amended below pursuant to Article 13 of the 2001 Annual Town Meeting:

**Add the following properties:**

Address	Map	Lot
8-10 Apple Street	32	23
166 Eastern Avenue	15	31 (second lot)
166 Eastern Avenue	15	31 (third lot)
10-12 Icehouse Lane	8	47A
1 Landing Road	33	16
3 Landing Road	33	16A
9 Landing Road	33	15
21 Lebaron Road	15	14
23 Lebaron Road	15	10A
28 Lebaron Road	15	6
47 Lebaron Road	15	9
47 Lebaron Road	15	9A
0 Scot's Way	8	15D
11 Southern Avenue	38	1
89 Southern Avenue	10	18

**Delete the following properties:**

Address	Map	Lot
0 Burnham Court (Garage Lot)	41	44
0 Burnham Court	37	11
0 Burnham Court	41	41
0 Dodge Street	41	23A
0 Dodge Street	41	23B
0 Dodge Street	41	28
0 Dodge Street	41	45
12 Dodge Street	41	22
0 Eastern Avenue	39	33A
0 Forest Avenue	10	27
0 Grove Street	10	33
0 Grove Street	34	62
3 Harlow Street	15	32
0 Lakeview Road	8	43C
13 Lakeview Road	8	38A
0 Shepard Memorial Drive	37	68
0 Southern Avenue	34	3
15 Tree Hill Road	13	14
0 Walnut Park	36	74
0 Western Avenue	40	46A
0 Winthrop Street	36	27

**7-7.3 RESERVE CAPACITY.** As used in this Bylaw, the term “Reserve Capacity” shall mean the difference between the total treatment capacity available to the Town pursuant to the Intermunicipal Agreement with the City of Gloucester, as may be amended in the future, currently 225,000 gpd, and the total amount of flow allocated to sewer users in accordance with this Bylaw.

**7-7.4 RESERVE CAPACITY FOR FUTURE MUNICIPAL BUILDINGS.** The Town shall maintain 16,600 gallons per day of Reserve Capacity for the sole purpose of serving future municipal buildings.

**7-7.5 ADDITIONAL CAPACITY FOR EXPANSION OR CHANGE IN USE OF EXISTING FACILITIES.** No property in the sewer service area shall be permitted to increase the design flow of the facility above its original capacity allocation as determined in accordance with Section 7-7.2 of this Bylaw, through an expansion or change in

use, except as provided herein. Violations of this section shall be punishable in accordance with the provisions of Section 7-6 of the Town Bylaws.

In accordance with the procedures set forth in regulations adopted by the Board of Public Works, the Town may allow property owners in the sewer service area to purchase Reserved Capacity from the Town, for a permanent privilege fee to be determined by the Board of Public Works in accordance with the formula set forth in Section 7-7.6 of this Bylaw, to allow for an increase in design flow for expansions or changes of use above the original capacity allocation as determined in accordance with Section 7-7.2 of this Bylaw.

Subject to available capacity, the Board of Public Works may approve requests for additional capacity of 1,000 gallons per day or less per property, in the aggregate. Requests for more than 1,000 gallons per day of additional capacity per property, in the aggregate must be approved by Town Meeting.

The Board of Public works is hereby authorized to adopt regulations to carry out the provisions of this Section, which regulations shall include provisions for the method of determining the amount of additional capacity needed for expansions or changes in use.

Upon the granting of additional capacity for an expansion or change in use, the Reserved Capacity shall be reduced by like amount.

All requests for additional capacity shall be subject to availability and in no case shall the Town allocate more than the total treatment capacity available to the Town pursuant to the Intermunicipal Agreement with the City of Gloucester, as may be amended in the future, currently 225,000 gpd.

All requests for additional capacity shall be processed on a first-come, first-served basis.

**7-7.6 COST REIMBURSEMENT FOR RESERVE CAPACITY.** The Town owns any and all Reserve Capacity not otherwise allocated specifically to an individual, corporation, or other entity. Anyone wishing to purchase Reserve Capacity from the Town for an expansion or change in use as set forth in Section 7-7.5 of this Bylaw, shall pay the Town a permanent privilege fee based on the value of one year of additional design flow, calculated by the Board of Public Works in accordance with the following formula:

$((\text{Additional GPD} \times 365)/1000) \times \text{Sewer Rate at Time of Request}$

Said permanent privilege fee shall be paid in conjunction with a building permit for a specific project and for only the sewage design flow required for that project. Reserved capacity allocation shall not be transferable to any other property or project, and shall be forfeited – with its associated sewage flow increase deemed null and void - should the project not be completed within one year of the issuance of the building permit (or, in the case of a project that required a Town Meeting approval, within three (3) years of said approval). Time allowed for the completion of a given project may be extended by the Board of Public Works for good cause shown.

**7-7.7 VACANT LOTS.** The owner of any vacant lot within the sewer service area shall be entitled to connect any facility with a design flow of 330 gallons per day, upon payment of a Capacity Allocation Fee as calculated in accordance with the following paragraph and subject to the terms and conditions set forth in this section and any regulations promulgated by the Board of Public Works, and such a connection shall not be considered an increase in design flow based on an expansion or change in use and the property owner shall not be required to pay a Permanent Privilege Fee except as provided below.

In recognition of the fact that the owners of vacant lots paid only forty percent (40%) of the required betterment at the time of the original sewer construction, such property owners shall pay a Capacity Allocation Fee equal to sixty percent (60%) of the required betterment as set forth in the Schedule of Betterment Units found in the Town's Sewer Use Regulations. The Capacity Allocation Fee shall be calculated as follows:

Capacity Allocation Fee = amount of original betterment had the property been occupied at the time of assessment X .60

Said Capacity Allocation Fee shall be paid at the time application is made.

If the owner of a vacant lot is seeking approval for the connection of a facility with a design flow of greater than 330 gallons per day, the number of gallons per day above 330 shall be considered an expansion of use and the application shall be subject to sections 7-7.5 and 7-7.6 of this Bylaw, including the payment of a Permanent Privilege Fee based on the number of gallons per day above 330. Under such circumstances, if the connection is approved, the property owner shall be required to pay the Capacity Allocation Fee and the Permanent Privilege Fee.

## **7-8 STORMWATER BY-LAW; ILLICIT CONNECTIONS AND DISCHARGES TO THE ESSEX STORM DRAIN SYSTEM (MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4))**

The purpose of this by-law is to regulate illicit connections and discharges to the storm drain system, which is necessary for the protection of Essex' water bodies and groundwater, to safeguard the public health, safety, welfare and the environment.

The objective of this by-law is to:

- a. Prevent pollutants from entering the Essex Storm Drain System;
- b. Prohibit illicit connections and unauthorized discharges to the Essex Storm Drain System;
- c. Require the removal of all such illicit connections;
- d. Comply with State and Federal statutes and regulations relating to discharges from the Essex Storm Drain System;
- e. Establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring and enforcement; and
- f. Prevent contamination of drinking water supplies.

**7-8.1. AUTHORITY.** The Department of Public Works shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Department of Public Works may be delegated by the Board of Public Works to employees or agents of the Department of Public Works.

**7-8.2. APPLICABILITY.** This by-law shall apply to flows entering the storm water and drainage system on public or private ways within the Town of Essex.

### **7-8.3. PROHIBITED ACTIVITIES**

1. **Illegal Discharges:** No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the storm drain system, watercourse or into the waters of the Commonwealth.
2. **Illicit Connections:** No person shall construct, use, allow, maintain or continue any illicit connection to the storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
3. **Obstruction of the Storm Drain System:** No person shall obstruct or interfere with the normal flow of stormwater into or out of the storm drain system without prior approval from the Board of Public Works or its designated agent.
4. **Exemptions not requiring a permit from the Department of Public Works:** This bylaw shall not apply to any of the following non-stormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the storm drain system:
  - a. Municipal water line flushing;
  - b. Discharges from landscape irrigation or lawn watering;

- c. Water from individual residential car washing and temporary fund-raising car wash events;
  - d. Discharges from de-chlorinated swimming pool water provided it is allowed to stand for one week prior to draining or tested for chlorine levels of less than 1 part per million and that the pool is drained in such a way as not to cause a nuisance;
  - e. Discharges from street sweepers of minor amounts of water during operations;
  - f. Discharges or flows resulting from fire fighting activities;
  - g. Non-stormwater discharges permitted under an NPDES permit, waiver or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver or order and applicable laws and regulations.
5. **Exemptions requiring a Permit from the Department of Public Works:** The Department of Public Works may issue a Connection Permit to an applicant for the discharge of any of the following non-stormwaters or flows provided that the source is not a significant contribution of a pollutant to the Essex Storm Drain System and that the applicant has demonstrated to the Department of Public Works that no other mean and location for the disposal of such non-stormwater flow exists:
- a. flows from potable water sources
  - b. springs
  - c. natural flows from riparian habitats and wetlands
  - d. diverter stream flows
  - e. rising groundwater
  - f. water from exterior foundation drains, etc.

All applications for a Connection Permit to the Essex Storm Drain System will require a plan indicating the source(s) and location of the non stormwater flow, the proposed connection method, the elevations of the non-stormwater source(s) in relationship to the Essex Storm Drain System and any other pertinent information determined necessary by the Department of Public Works.

All connections to the Essex Storm Drain System shall be at existing catch basins and/or manholes. No other locations will be accepted unless written approval is granted by the Department of Public Works.

#### **7-8.4. SUSPENSION OF STORM DRAIN SYSTEM ACCESS**

The Department of Public Works may suspend storm drain system access to any person property without prior written notice when such suspension is necessary to stop an illegal discharge that presents or may present imminent risk of public health, safety, welfare or the environment. In the event that any person fails to comply with an emergency suspension order, the authorized enforcement agency may take all reasonable steps necessary to prevent or minimize harm to public health, safety, welfare or the environment.

Any permitted discharging to the storm drain system in violation of this by-law may have their storm drain access terminated if such termination would abate or reduce an illicit discharge. The Department of Public Works shall notify either verbally or in writing, the violator, of the proposed termination of their storm drain system access. The violator may petition the Board of Public Works for reconsideration and a hearing. It shall be an offense for any person to reinstate access to the storm drain system without prior written approval from the Department of Public Works.

**7-8.5. NOTIFICATION OF SPILLS.** Notwithstanding any other requirements of local, state or federal law, as soon as any person responsible for a facility or operation or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility or operation which is resulting or may result in an illegal discharge of pollutants, that person shall take all necessary steps to ensure containment and clean up of the release. In the event of any hazardous materials, the person shall immediately notify

the Fire and Police Departments, Board of Health and the Department of Public Works. In the event of a non-hazardous material, said person shall notify the authorized enforcement agency no later than the next business day. Written confirmation of all communications and notifications shall be provided to the authorized enforcement agency within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

**7-8.6. ENFORCEMENT.** The Department Of Public Works or its authorized agent shall enforce this by-law and the regulations promulgated there under, as well as the terms and conditions of all permits, notices and orders and may pursue all civil or criminal remedies for such violations.

#### **Civil Relief**

If anyone violates the provisions of this by-law, regulation, permit, notice or order issued there under, the Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compelling the person to abate or remediate the violation.

#### **Fines**

Any person violating this bylaw shall be subject to a fine of \$300. Each day that the violation shall continue shall be considered a separate violation. In addition, this bylaw may be enforced through the non-criminal disposition procedures under G. L. c. 40, section 22D. Any employee of the Department of Public Works may enforce this bylaw through non-criminal disposition.

#### **Orders**

The Department of Public Works may issue a written order to enforce the provisions of this by-law or regulations there under, which may include:

- a. Elimination of illicit connections or discharges to the storm drain system;
- b. Termination of access to the storm drain system;
- c. Performance of monitoring, analyses and reporting;
- d. Cessation of unlawful discharges, practices or operations; and
- e. Remediation of contamination in connection therewith.

If the Department of Public Works determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work and expenses thereof shall be charged to the violator or property owner.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator or the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board of Public Works within thirty (30) days of receipt of the notification of costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Board of Public Works affirming or reducing the costs or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the violator or property owner and shall constitute a lien on the violator's or owner's property for the amount of said costs.

#### **Entry to Perform Duties under this By-law**

To the extent permitted by state law or if authorized by the owner or other party in control of the property, the Department of Public Works, its agents, officers and employees may enter upon private property for the purpose of performing their duties under this by-law and regulations and make or cause to be made such examinations, surveys or sampling as the Department of Public Works deems reasonably necessary.



**Appeals**

The decisions or orders of the Board of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

**Remedies not Exclusive**

The remedies listed in this by-law are not exclusive of any other remedies available under applicable federal, state or local law.

**7-8.7. FEES.** A fee established by the Department of Public Works shall be paid to the Town of Essex by the applicant at the time an application for a Connection Permit is filed with the Department of Public Works. Application fees are non-refundable.

Upon approval of said Connection Permit, the applicant will be required to pay a connection fee to the Town of Essex. Such fee shall cover any and all costs incurred by the Department of Public Works personnel for time spent for inspection/supervision during construction of said connection.

Connection to the Essex Storm Drain System shall be performed by an installer approved by the Department of Public Works.

**7-8.8. SEVERABILITY.** 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.

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